



**ARIZONA DEPARTMENT OF TRANSPORTATION**

**PUBLIC-PRIVATE PARTNERSHIP**

**DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT**

**For**

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

**ADOT Project No. 17 MA 229 H6800 01C**

**Federal Project No. NHPP-017-A(228)S**

**Phoenix – Cordes Junction Highway**

**October 28, 2021**

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1 **PUBLIC PRIVATE PARTNERSHIP (P3)**  
2 **DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT**  
3 **I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction)**

4 This Design-Build-Operate-Maintain Agreement (“**Agreement**”) is entered into and effective as  
5 of October 28, 2021, by and between the Arizona Department of Transportation, a public agency  
6 of the State of Arizona (“**ADOT**”), and Kiewit-Fann Joint Venture, a joint venture formed by and  
7 between Kiewit Infrastructure West Co. and Fann Contracting Inc. under the laws of the State of  
8 Delaware (together with its permitted successors and assigns, “**Developer**”) (“**ADOT**” and  
9 “**Developer**,” collectively “**Parties**”).

10 **RECITALS**

- 11 A. The State of Arizona desires to facilitate private sector investment and participation in  
12 the development of the State’s transportation system by entering into public-private  
13 partnerships as contemplated and authorized by Arizona Revised Statutes, Title 28,  
14 Chapter 22, Article 1 (the “**Statute**”) and ADOT’s P3 Program Guidelines as authorized by  
15 A.R.S. Title 28, Chapter 22, § 7702 (the “**Guidelines**”).
- 16 B. ADOT wishes to enter into an agreement with a private sector developer to design, build,  
17 operate and maintain certain capital improvements to an existing section of Interstate 17  
18 running from the northern Phoenix area to the Sunset Point Rest Area from MP 229  
19 (otherwise known as the Anthem Way Traffic Interchange) to MP 252 near the Sunset  
20 Point Rest Area (the “**Project**”).
- 21 C. Pursuant to the Statute and the Guidelines, ADOT issued a Request for Qualifications on  
22 October 29, 2019 (as amended, the “**RFQ**”).
- 23 D. In response to the RFQ, ADOT received five statements of qualifications on December 23,  
24 2019, and on January 30, 2020, shortlisted three proposers.
- 25 E. On December 3, 2020, ADOT issued to the shortlisted proposers a Request for Proposals  
26 (as subsequently amended by addenda, the “**RFP**”) to design, build, operate and maintain  
27 the Project.
- 28 F. In response to the RFP, ADOT received three proposals on July 20, 2021.
- 29 G. After conducting a thorough analysis of all responses to the RFP, ADOT determined that  
30 Developer’s Proposal best met the selection criteria contained in the RFP and that the  
31 Proposal was the one that provided the best value to the State of Arizona, and  
32 recommended that a project agreement be awarded to Developer.
- 33 H. This Agreement and the other Contract Documents collectively constitute a design-build-  
34 operate-maintain agreement as contemplated under the Statute.

1 I. The Director of ADOT has been authorized to enter into this Agreement pursuant to the  
2 Statute, and the Arizona State Transportation Board has included the Project in the  
3 current ADOT Five-Year Transportation Facilities Construction Program.

4 NOW, THEREFORE, in consideration of the sums to be paid by ADOT to Developer, the Work to  
5 be performed by Developer, the foregoing premises and the covenants and agreements set forth  
6 herein, the Parties hereby agree as follows:  
7

1     **SECTION 1.     DEFINITIONS AND INTERPRETATIONS; ORDER OF PRECEDENCE; APPLICABLE**  
2                                    **STANDARDS; REFERENCE INFORMATION DOCUMENTS**

3     **1.1     Definitions and Interpretations**

4             **1.1.1**     Unless the context otherwise requires, in this Agreement:

5             (a)     capitalized terms have the meaning given in Exhibit 1 (Abbreviations and Defined  
6                    Terms);

7             (b)     the words “including,” “includes” and “include” will be read as if followed by the  
8                    words “without limitation;”

9             (c)     the meaning of “or” will be that of the inclusive “or,” that is meaning one, some  
10                    or all of a number of possibilities;

11            (d)     a reference to any Party or Person includes each of their legal representatives,  
12                    trustees, executors, administrators, successors, and permitted substitutes and  
13                    assigns, including any Person taking part by way of novation;

14            (e)     references to days are references to calendar days, provided that, if the date to  
15                    perform any act or provide any Notice falls on a non-Business Day, such act or  
16                    Notice may be timely performed on the next Business Day. Notwithstanding the  
17                    foregoing, requirements contained in this Agreement relating to actions to be  
18                    taken in the event of an Emergency and other requirements for which it is clear  
19                    that performance is intended to occur on a non-Business Day shall be required to  
20                    be performed as specified, even though the date in question may fall on a non-  
21                    Business Day;

22            (f)     a reference to any Governmental Entity, institute, association or body is:

23                    (i)     if that Governmental Entity, institute, association or body is reconstituted,  
24                    renamed or replaced or if the powers or functions of that Government  
25                    Entity, institute, association or body are transferred to another  
26                    organization, a reference to the reconstituted, renamed or replaced  
27                    organization or the organization to which the powers or functions are  
28                    transferred, as applicable; and

29                    (ii)    if that Governmental Entity, institute, association or body ceases to exist,  
30                    a reference to the organization which serves substantially the same  
31                    purposes or objectives as that Governmental Entity, institute, association  
32                    or body;

33            (g)     a reference to this Agreement or to any other agreement, document or  
34                    instrument includes a reference to this Agreement or such other agreement,

- 1 document or instrument as amended, revised, supplemented or otherwise  
2 modified from time to time;
- 3 (h) a reference to any legislation or to any section or provision of it includes any  
4 amendment to or re-enactment of, or any statutory provision substituted for, that  
5 legislation, section or provision;
- 6 (i) words in the singular include the plural (and vice versa) and words denoting any  
7 gender include all genders;
- 8 (j) headings are for convenience only and do not affect the interpretation of this  
9 Agreement;
- 10 (k) a reference to a Section, Appendix, Attachment or Exhibit is a reference to a  
11 Section, Appendix, Attachment or Exhibit of or to the document in which the  
12 reference appears;
- 13 (l) where any word or phrase is given a defined meaning, any other part of speech or  
14 other grammatical form of that word or phrase has a corresponding meaning;
- 15 (m) a reference to “\$” is to currency in the United States;
- 16 (n) a reference to time is a reference to Mountain Standard Time in the United States  
17 as observed in the State of Arizona, which does not follow daylight savings time;
- 18 (o) Submittals received by ADOT after 5:00 p.m. Mountain Standard Time shall be  
19 deemed to have been received the next Business Day;
- 20 (p) in the event of an ambiguity in or dispute regarding the interpretation of this  
21 Agreement, this Agreement shall not be interpreted or construed against the  
22 Person who prepared this Agreement, and, instead, other rules of interpretation  
23 and construction shall be used; and
- 24 (q) the term “may”, when used in the context of a power or right exercisable by ADOT  
25 or ADOT’s Authorized Representative, means that ADOT or ADOT’s Authorized  
26 Representative can exercise that right or power in its absolute and unfettered  
27 discretion and ADOT or ADOT’s Authorized Representative has no obligation to  
28 Developer to do so.

29 **1.1.2** Wherever the Contract Documents impose or incorporate parts, sections or  
30 other provisions of the ADOT Standard Specifications, those parts, sections or provisions are

1 deemed to exclude all the provisions under the headings “Method of Measurement” and “Basis  
2 of Payment” in the ADOT Standard Specifications.

3 **1.2 Order of Precedence**

4 **1.2.1** Unless the context otherwise requires and except as provided otherwise in this  
5 Section 1.2.1, in the event of any conflict, ambiguity or inconsistency between or among the  
6 Contract Documents, the order of precedence, from highest to lowest, is as follows:

- 7 (a) for design, operations, maintenance and other non-Construction Work:
  - 8 (i) Supplemental Agreements or Directive Letters in accordance with this  
9 Agreement;
  - 10 (ii) This Agreement (including all Exhibits and the executed originals of  
11 Exhibits that are contracts, except Exhibit 2 (Developer’s Proposal  
12 Commitments and Clarifications);
  - 13 (iii) Exhibit 2 (Developer’s Proposal Commitments and Clarifications);
  - 14 (iv) Amendments to the Technical Provisions, and all exhibits and attachments  
15 to such amendments;
  - 16 (v) Technical Provisions, excluding the exhibits and attachments to the  
17 Technical Provisions;
  - 18 (vi) Exhibits and attachments to the Technical Provisions;
  - 19 (vii) Applicable Standards; and
  - 20 (viii) Project Plans.
- 21 (b) Without limiting Section 1.2.3, the same order of precedence shall apply to  
22 Construction Work as for non-Construction Work in clause (a) above, except that  
23 the Final Design Documents Submittal shall also be considered part of this  
24 Agreement and included as Section 1.2.1(a)(viii) in the order of precedence,  
25 except that any Deviations contained in the Final Design Documents Submittal  
26 take priority over conflicting requirements of other parts of this Agreement, the  
27 Technical Provisions and Applicable Standards but only to the extent that  
28 Developer specifically identifies the conflicts to ADOT and ADOT approves such  
29 Deviations by Notice to Developer.

30 **1.2.2** Except as provided otherwise in this Section 1.1.2, in the event of any conflict,  
31 ambiguity or inconsistency between the standards, criteria, requirements, conditions,

1 procedures, specifications or other provisions of the Technical Provisions and the Applicable  
2 Standards, the Technical Provisions will prevail.

3 **1.2.3** Except as otherwise directed by ADOT, in its sole discretion, in the event of any  
4 conflict, ambiguity or inconsistency between or among two or more Contract Documents, the  
5 greater or higher requirement, standard, quality, level of service, quantity or scope prevails.

6 **1.2.4** Additional or supplemental details or requirements in a lower priority Contract  
7 Document shall be given effect except to the extent they irreconcilably conflict with  
8 requirements, provisions and practices contained in the higher priority Contract Document.

9 **1.2.5** Developer acknowledges and agrees that it had the opportunity and obligation,  
10 before submission of its Proposal, to review the terms and conditions of this Agreement and to  
11 bring to the attention of ADOT any conflicts, ambiguities or inconsistencies of which it is aware  
12 contained within this Agreement.

13 **1.2.6** ADOT's interim or final answers to the questions posed during the RFP process  
14 for this Agreement do not form part of this Agreement and are not relevant in interpreting this  
15 Agreement, except to the extent ADOT, in its sole discretion, believes this Agreement is  
16 ambiguous, in which case such interim or final answers may be used to clarify such ambiguous  
17 provisions.

18 **1.2.7** Incorporation into this Agreement of any part of the Proposal, including Exhibit  
19 2 (Developer's Proposal Commitments and Clarifications) shall not (a) limit, modify, or alter  
20 ADOT's right to review and approve any Submittal included in the Proposal, or submitted to ADOT  
21 after the Proposal (including any Project Schedule), or (b) be deemed as acceptance or approval  
22 of any part of the Proposal by ADOT.

23 **1.2.8** Developer shall not take advantage of or benefit from any apparent or actual  
24 error, conflict, ambiguity or inconsistency in this Agreement. If Developer becomes aware that  
25 any matters with respect to the Work are not sufficiently detailed, described, or explained in this  
26 Agreement, or if Developer becomes aware of any error or any conflict, ambiguity or  
27 inconsistency between or among the documents forming this Agreement, Developer shall  
28 promptly provide Notice to ADOT, including the item Developer considers should apply based on  
29 the applicable rules in this Section 1.1.2. Except as expressly stated in this Agreement, if (a) the  
30 conflict, ambiguity or inconsistency conflict or error cannot be reconciled by applying the  
31 applicable rules or (b) the Parties disagree about (i) which rule applies and/or (ii) the results of  
32 the application of such applicable rule(s), then ADOT will determine, in its good faith discretion,  
33 which of the conflicting items is to apply and provide Notice to Developer before Developer  
34 proceeds with the applicable aspect of the Work.

35 **1.2.9** Developer shall comply and require its Subcontractors to comply with all Federal  
36 Requirements, including those requirements set forth in Exhibit 4 (Federal Requirements). In the  
37 event of any conflict between any applicable Federal Requirements, including those set forth in  
38 Exhibit 4 (Federal Requirements), and the other requirements of the Contract Documents, the

1 Federal Requirements shall prevail, take precedence and be in force over and against any such  
2 conflicting provisions.

3 **1.2.10** If a conflict occurs between the terms of a Utility Agreement and those of the  
4 Contract Documents, the terms that establish the higher quality, manner or method of  
5 performing Utility Adjustment Work, establish better Good Industry Practice, or use more  
6 stringent standards, shall prevail between Developer and ADOT. If the foregoing criteria are not  
7 met by the conflicting Utility Agreement or otherwise not relevant to the terms at issue, then the  
8 Contract Documents shall prevail, unless expressly provided otherwise in the Contract  
9 Documents.

### 10 **1.3 Applicable Standards**

11 **1.3.1** References in this Agreement or the Technical Provisions to Applicable Standards  
12 governing the Work shall mean the most recent edition, revision, amendment or supplement in  
13 effect on the Setting Date.

14 **1.3.2** In interpreting Applicable Standards as well as TP Attachments 450-1, 455-1 and  
15 466-1:

- 16 (a) the interpretation provisions in this Agreement or Section GP 110.01.1.1 of the  
17 Technical Provisions shall apply;
- 18 (b) references to the “project owner,” “department” or “agency” shall mean ADOT,  
19 except where the context indicates a different department or agency;
- 20 (c) references to “District Engineer,” “Resident Engineer,” “Engineer” or “authorized  
21 representative” shall mean ADOT or its Authorized Representative, except where  
22 the context indicates a different entity or individual;
- 23 (d) references to “contractor” shall mean Developer;
- 24 (e) references to “Plan(s)” or “RFC Plans” shall mean the RFC Submittals.
- 25 (f) capitalized terms and acronyms have the respective meanings provided in the  
26 Applicable Standards or applicable TP Attachment if not defined in Exhibit 1  
27 (Abbreviated and Defined Terms);
- 28 (g) any word or combination of words that (i) is not capitalized, or is capitalized but  
29 not defined in the Applicable Standards or TP Attachment and (ii) describes an  
30 item, matter or event that is similar in substance or meaning to a term defined in  
31 Exhibit 1 (Abbreviated and Defined Terms) shall have the meaning of the defined  
32 term in Exhibit 1;
- 33 (h) provisions concerning bid prices shall have no force or effect; and

1 (i) provisions concerning payment of additional compensation, incentive payments  
2 or time extension shall have no force or effect; rather, this Agreement shall  
3 exclusively govern Developer’s rights to additional compensation, incentive  
4 payments and time extension.

5 **1.4 Errors in Technical Provisions and Applicable Standards**

6 **1.4.1** Developer acknowledges that prior to the Effective Date Developer had the  
7 opportunity to identify any Errors and potentially unsafe provisions in the Technical Provisions  
8 and Applicable Standards, and the opportunity and duty to notify ADOT of such fact and of the  
9 changes to the provisions that Developer believed were the minimum necessary to render the  
10 provisions correct and safe. Developer shall not take advantage of or benefit from any Error in  
11 the Technical Provisions or Applicable Standards that Developer knew of or, through the exercise  
12 of reasonable care, had reason to know of prior to the Effective Date.

13 **1.4.2** If it is reasonable or necessary to adopt changes to the Technical Provisions or  
14 Applicable Standards after the Effective Date to make the provisions correct and safe, such  
15 changes shall not be grounds for any adjustment to the Contract Price, adjustment of Completion  
16 Deadlines or other Claim; provided, however, that adoption of such a change shall be treated as  
17 an ADOT-Directed Change if:

18 (a) (i) Developer neither knew nor had reason to know through the exercise of  
19 reasonable care prior to the Effective Date that the provision was erroneous or  
20 created a potentially unsafe condition, or (ii) Developer knew of and reported to  
21 ADOT the erroneous or potentially unsafe provision prior to the Effective Date and  
22 ADOT did not adopt reasonable and necessary changes; and

23 (b) Adoption of such change is not treated as a Change in Law under Section 16.4.9.

24 **1.4.3** If Developer commences or continues any Work affected by such a change after  
25 the need for the change was discovered or suspected, or should have been discovered or  
26 suspected through the exercise of reasonable care, Developer shall bear any additional costs  
27 associated with redoing the Work already performed.

28 **1.4.4** If Developer identifies any Errors in the Technical Provisions or Applicable  
29 Standards (including those Reference Information Documents described in Section 1.5.4),  
30 Developer shall promptly notify ADOT of such Errors and obtain specific instructions from ADOT  
31 regarding any such Error before proceeding with the affected Work.

32 **1.4.5** If Developer determines that the Contract Documents do not detail or describe  
33 sufficiently the Work or any matter relative thereto, Developer shall request further explanation  
34 from ADOT and shall comply with any explanation thereafter provided by ADOT. The fact that  
35 the Contract Documents omit or lack details of any Work that are necessary to carry out the  
36 intent of the Contract Documents shall not relieve Developer from performing such omitted or  
37 insufficiently detailed Work (no matter how extensive). Instead, Developer shall be deemed to

1 have known or have had reason to know of such omission or lack of detail prior to the Effective  
2 Date, and shall perform such Work as if the details were fully and correctly set forth and  
3 described in the Contract Documents without entitlement to a Supplemental Agreement, except  
4 as specifically allowed under Section 16.

5 **1.4.6** Errors in the Schematic Design that require a Necessary Schematic ROW Change  
6 are governed by Sections 8.4.3(b) and 16.4.15.

7 **1.4.7** Inconsistent or conflicting provisions of the Contract Documents shall not be  
8 treated as erroneous provisions under this Section 1.4, but instead shall be governed by Section  
9 1.2.

10 **1.5 Reference Information Documents**

11 **1.5.1** ADOT has provided the Reference Information Documents to Developer for the  
12 purposes of disclosure and, in the case of general industry and general governmental manuals  
13 and publications, for guidance regarding Good Industry Practice.

14 **1.5.2** Developer acknowledges and agrees that neither ADOT nor any ADOT Person  
15 gives any warranty, representation or undertaking in respect of the Reference Information  
16 Documents, including that the Reference Information Documents:

- 17 (a) are complete, accurate or fit for purpose;
- 18 (b) contain accurate or reliable cost estimates; or
- 19 (c) represent all of the information in ADOT's possession or power, relevant or  
20 material in connection with the Project.

21 **1.5.3** Developer acknowledges and agrees that:

- 22 (a) it has, before the Effective Date, conducted its own analysis and review of the  
23 Reference Information Documents upon which it places reliance;
- 24 (b) any use or reliance on such Reference Information Documents by Developer shall  
25 be solely at its own risk;
- 26 (c) no Developer-Related Entity is entitled to make any Claim against ADOT or any  
27 ADOT Person for any liability in connection with the Reference Information  
28 Documents including on the grounds:
  - 29 (i) of any misunderstanding or misapprehension in respect of the Reference  
30 Information Documents;

- 1 (ii) of any failure to disclose or make available to any Developer-Related Entity  
2 any information, documents or data or to review or update the Reference  
3 Information Documents; or
- 4 (iii) that the Reference Information Documents are inaccurate, incomplete or  
5 not fit for purpose; and
- 6 (d) the Reference Information Documents may include interpretations,  
7 extrapolations, analyses, and recommendations about data, design solutions,  
8 technical issues and solutions, construction and installation means and methods,  
9 and operations and maintenance means and methods. Such interpretations,  
10 extrapolations, analyses, and recommendations are:
- 11 (i) preliminary in nature and, in many cases, obsolete;
- 12 (ii) not intended to express the views or preferences of ADOT or any other  
13 Governmental Entity, or represent any statement of approval or  
14 acceptance thereof by ADOT or any other Governmental Entity; and
- 15 (iii) not intended to form the basis of Developer’s design solutions, technical  
16 solutions, construction, operations or maintenance means and methods.

17 **1.5.4** Certain Reference Information Documents, or portions thereof, are specifically  
18 referenced in the Contract Documents for the purpose of defining requirements of the Contract  
19 Documents. Notwithstanding Sections 1.5.2 and 1.5.3, Reference Information Documents, or  
20 portions thereof, that are specifically referenced in the Contract Documents for the purpose of  
21 defining certain requirements shall be deemed incorporated into the Contract Documents to the  
22 extent so referenced with the same order of priority as the applicable Contract Document.

23 **1.5.5** Sections 1.5.2 and 1.5.3 shall not adversely affect the specific relief available to  
24 Developer under Section 16 for Relief Events under clauses (f), (g), (i), (j), (k), (o), (p), (s) and (t)  
25 of the definition of Relief Event.  
26





1 **3.3 Project Plans**

2 Developer shall:

3 **3.3.1** Prepare, update and submit the Project Plans to ADOT for review and approval  
4 in accordance with Section GP 110.03 of the Technical Provisions;

5 **3.3.2** Unless otherwise agreed by ADOT, and except as provided otherwise in Section  
6 1.2, perform the Work and deliver the Project in accordance with the approved Project Plans;  
7 and

8 **3.3.3** Except as provided otherwise in Section 1.2, comply at all times with the then  
9 current approved version of the Project Plans.

10 **3.4 Incorporation of ATCs**

11 **3.4.1** The Work shall include all ATCs identified in Exhibit 2-1 (Developer’s Schematic  
12 Design Including Alternative Technical Concepts).

13 **3.4.2** If this Agreement incorporates any ATCs which require Governmental Approvals,  
14 analysis, assessment, review, approvals, permits or findings before implementation, Developer  
15 shall:

16 (a) obtain all Governmental Approvals other than the NEPA Categorical Exclusion  
17 which ADOT shall be responsible for obtaining;

18 (b) except for potential extension of Completion Deadlines pursuant to clause (m) of  
19 the definition of Relief Event, be solely responsible for the cost, risk and schedule  
20 impact of any Governmental Approvals, analysis, assessment, review, approvals,  
21 permits and findings (including the risk that any approvals, permits or findings are  
22 not (or are not timely) granted, issued, approved or obtained); and

23 (c) except for potential extension of Completion Deadlines pursuant to clause (m) of  
24 the definition of Relief Event, not be entitled to any Claim against ADOT for any  
25 liability as a result of any delay or cost associated with additional Environmental  
26 Approvals, analysis, assessment, review, approvals, permits or findings related to  
27 or otherwise in connection with such ATC.

28 **3.4.3** If this Agreement includes ATCs in Exhibit 2-1 (Developer’s Schematic Design  
29 Including Alternative Technical Concepts) and Developer:

30 (a) does not comply with one or more ADOT conditions of pre-approval for the ATC ;  
31 or

32 (b) does not obtain the required Governmental Approvals, analysis, assessment,  
33 review, approvals, permits or findings for the ATC,

1 then Developer shall comply with the requirements in this Agreement that would have applied  
2 in the absence of such ATC and shall not be entitled to make a Claim in connection with such ATC.

3 **3.4.4** Developer agrees that ADOT may, in its sole discretion, deliver to Developer a  
4 Request for Change Proposal, incorporating alternative technical concepts contained in  
5 proposals submitted by unsuccessful proposers.

6 **3.5 Professional Services Licensing Requirements**

7 **3.5.1** ADOT does not intend to contract for, pay for, or receive any Professional  
8 Services that are in violation of any professional licensing or registration laws and, by execution  
9 of this Agreement, Developer acknowledges that ADOT has no such intent.

10 **3.5.2** The Parties agree that:

11 (a) Developer shall furnish the Professional Services of the Project through itself or  
12 Subcontracts with licensed/registered Professional Service firm(s) as provided in  
13 this Agreement;

14 (b) any reference to Developer’s responsibilities or obligations to “perform” the  
15 Professional Services portions of the Work shall be deemed to mean that  
16 Developer shall “furnish” the Professional Services for the Project as described in  
17 this Section 3.5; and

18 (c) the terms and provisions of this Section 3.5 shall control and supersede every  
19 other provision of this Agreement.

20 **3.6 Utility Services**

21 **3.6.1** Developer shall coordinate with ADOT and APS for provision of electrical facilities  
22 and related service required for the Project, as more particularly set forth in Section 15.5.  
23 Developer shall provide all other Utility service facilities and related Utility service (both on the  
24 Site and off the Site) required to carry out the Work or required for the Project. The Utility service  
25 facilities include those needed for power, gas, communications, water, sewage and drainage.  
26 Except as provided in Sections 3.6.2, 3.6.3 and 15.5, Developer is responsible for all costs of such  
27 Utility service facilities and related Utility service, including:

28 (a) Costs of Utility service facility design and construction (both on-Site and off-Site),  
29 Governmental Approvals, connection fees, testing, inspection, and certification;

30 (b) Utility service/usage fees and charges required to perform the Work;

31 (c) Water used to water plants in the Developer’s nursery for the Project and to water  
32 plants, including salvaged plants, throughout the landscape establishment period;  
33 and

1 (d) Costs of Utility service facilities and Utility service/usage fees and charges at any  
2 of Developer’s Temporary Work Areas.

3 **3.6.2** Following Project Substantial Completion or South Segment Substantial  
4 Completion, if applicable, Developer shall not be required to pay Utility service/usage fees and  
5 charges attributable to the South Segment. Following Project Substantial Completion, Developer  
6 shall not be required to pay electricity costs for the normal operation of (a) roadway and signage  
7 lighting within the O&M Limits, (b) ITS equipment within the O&M Limits and (c) the Flex Lanes  
8 System.

9 **3.6.3** Section 3.6.1 shall not preclude inclusion in any Compensation Amount of  
10 incremental additional costs of Utility service facilities and Utility service/usage fees and charges  
11 directly attributable to any Relief Event for which Developer is otherwise entitled to a  
12 Compensation Amount.  
13

1                   **SECTION 4.    REPRESENTATIONS, WARRANTIES AND COVENANTS**

2   **4.1    Representations and Warranties of Developer**

3   Developer represents and warrants to ADOT that:

4           **4.1.1**   Developer and its Subcontractors and their respective employees have all  
5   required authority, licenses, registrations, professional ability, skills and capacity to perform the  
6   Work in accordance with the requirements contained in the Contract Documents.

7           **4.1.2**   Based upon Developer’s Reasonable Investigation, Developer has evaluated the  
8   constraints affecting design and construction of the Project, including the limits of the Schematic  
9   ROW as well as the conditions of the NEPA Approval, and is satisfied that it is feasible to design  
10   and develop the Project within such constraints.

11           **4.1.3**   Developer has evaluated the feasibility of performing the D&C Work within the  
12   Completion Deadlines and for the D&C Price, accounting for constraints affecting the Project,  
13   including the maximum allowable payments for Work prior to issuance of NTP 2, and is satisfied  
14   that such performance (including achievement of Project Substantial Completion and Final  
15   Acceptance by the applicable Completion Deadlines for the D&C Price) is feasible and practicable.

16           **4.1.4**   Developer has evaluated the feasibility of performing the O&M Work throughout  
17   the O&M Period and for the O&M Price and is satisfied that such performance is feasible and  
18   practicable, subject to Developer’s right to seek relief for Necessary Schematic ROW Changes  
19   under Section 16.

20           **4.1.5**   Prior to the Proposal Due Date and in accordance with Good Industry Practice,  
21   Developer conducted a Reasonable Investigation and as a result of such Reasonable Investigation  
22   is familiar with and accepts the requirements of the Work, subject to Developer’s right to seek  
23   relief under Section 16.

24           **4.1.6**   Developer has familiarized itself with the requirements of any and all applicable  
25   Laws and the conditions of any required Governmental Approvals prior to entering into this  
26   Agreement. As of the Effective Date, Developer has no reason to believe that any Governmental  
27   Approval required to be obtained by Developer will not be granted in due course and thereafter  
28   remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

29           **4.1.7**   Developer is in compliance with all federal immigration laws and regulations and  
30   A.R.S. § 23-214, subsection A that relate to its employees and the employees of the  
31   Subcontractors. Developer agrees, warrants and acknowledges that a breach of this warranty  
32   shall be deemed a material breach of the Agreement that is subject to penalties and ADOT may  
33   terminate this Agreement. ADOT retains the legal right to inspect the documentation of  
34   Developer’s employees and of any Subcontractor employee who works on the Project to ensure  
35   that Developer or Subcontractor is complying with this warranty.

36           **4.1.8**   Developer has familiarized itself with the requirements of Local Jurisdictions

1 applicable to the Project and the conditions therein prior to entering into this Agreement, and  
2 will comply with all such requirements to enable the Work to proceed in accordance with the  
3 Contract Documents.

4 **4.1.9** All Work furnished by Developer will be performed by or under the supervision  
5 of Persons who hold all necessary and valid licenses to perform the Work in the State, by  
6 personnel who are careful, skilled, experienced and competent in their respective trades or  
7 professions, who are professionally qualified to perform the Work in accordance with the  
8 Contract Documents and who shall assume professional responsibility for the accuracy and  
9 completeness of the Design Documents, Construction Documents and other documents  
10 prepared or checked by them.

11 **4.1.10** As of the Effective Date, Developer is a joint venture duly formed and validly  
12 existing under the laws of the state of Delaware with all requisite power and all required licenses  
13 to carry on its present and proposed obligations under the Contract Documents and has full  
14 power, right and authority to execute and deliver the Contract Documents and the Subcontracts  
15 to which Developer is (or will be) a party and to perform each and all of the obligations of  
16 Developer provided for herein and therein.

17 **4.1.11** Developer is duly qualified to do business, and is in good standing in the State as  
18 of the Effective Date, and will remain in good standing throughout the Term and for as long  
19 thereafter as any obligations remain outstanding under the Contract Documents.

20 **4.1.12** At any time a Guaranty is required to be in place pursuant to the Contract  
21 Documents, the applicable Guarantor is duly organized, validly existing and in good standing  
22 under the laws of the state of its organization, will remain in good standing in the state of its  
23 organization for as long as any obligations guaranteed by such Guarantor remain outstanding  
24 under the Contract Documents, is not engaged in the conduct of business in the State of Arizona  
25 and therefore has not qualified to do business in the State of Arizona, and has all requisite power  
26 and all required licenses to carry on its present and proposed obligations under the Contract  
27 Documents.

28 **4.1.13** At any time a Guaranty is required to be in place pursuant to the Contract  
29 Documents, all required approvals have been obtained with respect to the execution, delivery  
30 and performance of such Guaranty, and performance of such Guaranty will not result in a breach  
31 of or a default under the applicable Guarantor's organizational documents, or any indenture,  
32 loan or credit agreement or other agreement or instrument to which the applicable Guarantor is  
33 a party or by which its properties and assets may be bound or affected.

34 **4.1.14** Each Guaranty has been duly authorized by all necessary corporate action, has  
35 been duly executed and delivered by each Guarantor, and constitutes the legal, valid and binding  
36 obligation of such Guarantor, enforceable in accordance with its terms, subject only to applicable  
37 bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors  
38 generally and the general principles of equity.

1           **4.1.15** The execution, delivery and performance of the Contract Documents and the  
2 Subcontracts to which Developer is (or will be) a party have been (or will be) duly authorized by  
3 all necessary corporate action of Developer; each person executing the Contract Documents and  
4 the Subcontracts on behalf of Developer has been (or at the time of execution will be) duly  
5 authorized to execute and deliver each such document on behalf of Developer; and the Contract  
6 Documents and the Subcontracts have been (or will be) duly executed and delivered by  
7 Developer.

8           **4.1.16** Neither the execution and delivery by Developer of the Contract Documents or  
9 the Subcontracts to which Developer is (or will be) a party, nor the consummation of the  
10 transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict  
11 with or has resulted or will result in a default under or a violation of the governing instruments  
12 or organizational documents of Developer or a breach or default under any credit agreement or  
13 other material agreement or instrument to which Developer is a party or by which its properties  
14 and assets may be bound or affected.

15           **4.1.17** Each of the Contract Documents and the Subcontracts to which Developer is (or  
16 will be) a party constitutes (or at the time of execution and delivery will constitute) the legal,  
17 valid and binding obligation of Developer, enforceable against Developer, in accordance with its  
18 terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the  
19 enforceability of the rights of creditors generally and to general principles of equity.

20           **4.1.18** As of the Effective Date, there is no action, suit, proceeding, investigation or  
21 litigation pending and served, or of which Developer is otherwise aware, against Developer which  
22 challenges Developer's authority to execute, deliver or perform, or the validity or enforceability  
23 of, the Contract Documents or the Subcontracts to which Developer is a party, or which  
24 challenges the authority of any of Developer's officials that are executing the Contract  
25 Documents or the Subcontracts, and Developer has disclosed to ADOT prior to the Effective Date  
26 any pending, un-served or threatened action, suit, proceeding, investigation or litigation with  
27 respect to such matters of which Developer is aware.

28           **4.1.19** As of the Proposal Due Date, Developer disclosed to ADOT in writing all  
29 organizational conflicts of interest of Developer and its Subcontractors of which Developer was  
30 actually aware; and between the Proposal Due Date and the Effective Date, Developer has not  
31 obtained knowledge of any additional organizational conflict of interest, and there have been no  
32 organizational changes to Developer or its Subcontractors identified in its Proposal which have  
33 not been approved in writing by ADOT. For this purpose, organizational conflict of interest has  
34 the meaning set forth in the RFP.

35           **4.1.20** To the extent the Lead Contractor, Lead Engineering Firm or the Lead O&M Firm  
36 is not Developer, Developer represents and warrants, as of the effective date of the relevant  
37 Subcontract, as follows:

- 38           (a) Each of the Lead Contractor, Lead Engineering Firm and the Lead O&M Firm is duly  
39 organized, validly existing and in good standing under the laws of the state of its

1 organization and is duly qualified to do business, and is in good standing, in the  
2 State;

3 (b) The ownership interests of each of them that is a single purpose entity formed for  
4 the Project (including options, warrants and other rights to acquire ownership  
5 interests) is owned by the Persons whom Developer has set forth in a written  
6 certification delivered to ADOT prior to the Effective Date;

7 (c) Each of them has the power and authority to do all acts and things and execute  
8 and deliver all other documents as are required to be done, observed or  
9 performed by it in connection with its engagement by Developer;

10 (d) Each of them has (i) obtained and will maintain all necessary or required  
11 registrations, permits, licenses and approvals required under applicable Law and  
12 (ii) expertise, qualifications, experience, competence, skills and know-how to  
13 perform the D&C Work and O&M Work, as applicable, in accordance with the  
14 Contract Documents;

15 (e) Each of them will comply with all health, safety and environmental Laws in the  
16 performance of any work activities for, or on behalf of, Developer for the benefit  
17 of ADOT; and

18 (f) None of them is in breach of any applicable Law that would have a material  
19 adverse effect on any aspect of the Work.

20 **4.2 Representations and Warranties of ADOT**

21 ADOT represents and warrants to Developer that:

22 **4.2.1** ADOT has full power, right and authority to execute, deliver and perform its  
23 obligations under, in accordance with and subject to the terms and conditions of the Contract  
24 Documents to which it is a Party;

25 **4.2.2** Each Person executing on behalf of ADOT the Contract Documents to which  
26 ADOT is a Party has been or at the time of execution will be duly authorized to execute each such  
27 document on behalf of ADOT;

28 **4.2.3** The Section 404 MOA is in full force and effect as of the Effective Date, and ADOT  
29 has designated the Project as a priority federal-aid highway project under the Section 404 MOA;  
30 and

31 **4.2.4** ADOT will not revoke or cancel the Section 404 MOA or the designation of the  
32 Project as a priority federal-aid highway project under the Section 404 MOA, and absent  
33 unforeseen circumstances ADOT intends to negotiate for renewal of the Section 404 MOA prior  
34 to the expiration date stated therein.  
35

1                                   **SECTION 5.    MANAGEMENT SYSTEMS AND OVERSIGHT**

2   **5.1    Submittal, Review and Approval Terms and Procedures**

3                   **5.1.1    General**

4           This Section 5.1 sets forth uniform terms and procedures that shall govern all Submittals  
5 to ADOT pursuant to the Contract Documents or the Project Management Plan, Operations and  
6 Maintenance Management Plan and component plans thereunder. In the event of any  
7 irreconcilable conflict between the provisions of this Section 5.1 and any other provisions of the  
8 Contract Documents or the Project Management Plan, Operations and Maintenance  
9 Management Plan and component plans thereunder concerning submission, review and  
10 approval procedures, this Section 5.1 shall exclusively govern and control, except to the extent  
11 that the conflicting provision expressly states otherwise.

12                   **5.1.2    Time Periods**

13           (a)    Except as otherwise provided in this Section 5.1.2 or in Section 9.5, whenever  
14 ADOT is entitled to review, comment on or to affirmatively approve or accept, a  
15 Submittal, ADOT will have a period of ten Business Days to act after the date ADOT  
16 acknowledges receipt of an accurate and complete Submittal in conformity with  
17 the Contract Documents, together with a completed transmittal form in a form to  
18 be mutually agreed by the Parties and all necessary or requested information and  
19 documentation concerning the subject matter. If ADOT determines that a  
20 Submittal is not complete, ADOT will notify Developer of such determination  
21 within ten Business Days of the date ADOT acknowledges receipt of such  
22 Submittal. ADOT’s review period for Developer’s re-submission of a previously  
23 submitted, complete Submittal shall be ten Business Days for each such re-  
24 submission. The Parties shall agree in good faith upon any necessary extensions  
25 of the review-comment-and-approval period to accommodate particularly  
26 complex or comprehensive Submittals.

27           (b)    If any other provision of the Contract Documents expressly provides a longer or  
28 shorter period for ADOT to act, such period shall control over the time periods set  
29 forth in Section 5.1.2(a). If the time period for ADOT to act should end on a non-  
30 Business Day, the time period shall automatically be extended to the next  
31 succeeding Business Day.

32           (c)    All time periods for ADOT to act shall be extended by the period of any delay  
33 caused by any Developer Act.

34           (d)    During any time there exists a Persistent Developer Default, the applicable period  
35 for ADOT to respond to any Submittals received during such time, and not related  
36 to curing the Persistent Developer Default shall automatically be extended by 15  
37 Business Days.

1 (e) ADOT may, in its sole discretion, accommodate a written request from Developer  
2 for expedited action on a specific Submittal, within the practical limitations on  
3 availability of ADOT personnel appropriate for acting on the types of Submittal in  
4 question; provided Developer sets forth in its request specific, abnormal  
5 circumstances, not caused by a Developer-Related Entity, demonstrating the need  
6 for expedited action. This provision shall not apply, however, during any time  
7 described in Section 5.1.2(c) or 5.1.2(d). If Developer submits a request under this  
8 Section 5.1.2(e), ADOT may, in its sole discretion, implement an extension of  
9 ADOT's time to respond to other then-outstanding Submittals by up to ten  
10 Business Days per Submittal, and such extension shall not constitute an ADOT-  
11 Caused Delay, ADOT-Directed Change, Relief Event or other basis for an increase  
12 in the Contract Price, adjustment of a Completion Deadline or any other Claim.

13 **5.1.3 ADOT Discretionary Approvals**

14 (a) If a Submittal is one for which the Contract Documents state that approval or  
15 consent or acceptance is required from ADOT in its sole discretion or absolute  
16 discretion, then ADOT's lack of approval, determination, decision or other action  
17 within the applicable time period described in Section 5.1.2 shall be deemed  
18 disapproval. If approval is subject to the sole discretion or absolute discretion of  
19 ADOT, then ADOT's decision shall be final, binding and not subject to the Dispute  
20 Resolution Procedures and such decision shall not constitute an ADOT-Caused  
21 Delay, ADOT-Directed Change, Relief Event or other basis for an increase in the  
22 Contract Price, adjustment of a Completion Deadline or any other Claim.

23 (b) If a Submittal is one for which the Contract Documents state that approval or  
24 consent or acceptance is required from ADOT in its good faith discretion and ADOT  
25 delivers no approval, consent, determination, decision or other action within the  
26 applicable time period under Section 5.1.2, then Developer may deliver to ADOT  
27 a written notice stating the date within which ADOT was to have decided or acted.  
28 If ADOT does not decide or act within five Business Days after receipt of such  
29 notice, delay from and after lapse of such five Business Day period may constitute  
30 ADOT-Caused Delay for which Developer is be entitled to issue a Relief Event  
31 Notice under Section 16.1.2, and thereafter pursue relief subject to the  
32 requirements of Section 16. If the approval is subject to the good faith discretion  
33 of ADOT, then ADOT's decision shall be binding unless it is finally determined by  
34 clear and convincing evidence that such decision was arbitrary or capricious. If the  
35 decision is determined to be arbitrary and capricious and causes delay, it will  
36 constitute and be treated as an ADOT-Caused Delay.

37 **5.1.4 Other ADOT Approvals**

38 (a) Whenever the Contract Documents provide that a Submittal or other matter is  
39 subject to ADOT's approval or consent but the approval or consent is one not

1 governed by Section 5.1.3 concerning discretionary approvals, then the standard  
2 shall be reasonableness.

- 3 (b) Whenever the reasonableness standard applies and ADOT delivers no approval,  
4 consent, determination, decision or other action within the applicable time period  
5 under Section 5.1.2, then Developer may deliver to ADOT a written notice stating  
6 the date within which ADOT was to have decided or acted. If ADOT does not decide  
7 or act within five Business Days after receipt of such notice, delay from and after  
8 lapse of such five Business Day period may constitute ADOT-Caused Delay for  
9 which Developer is entitled to issue a Relief Event Notice under Section 16.1.2,  
10 and thereafter pursue relief subject to the requirements of Section 16.

### 11 **5.1.5 ADOT Review and Comment**

12 Whenever the Contract Documents provide that a Submittal or other matter is subject to  
13 ADOT's review, comment, disapproval or similar action not entailing a prior approval and ADOT  
14 delivers no comments, exceptions, objections, rejections or disapprovals within the applicable  
15 time period under Section 5.1.2, then Developer may proceed thereafter at its election and risk,  
16 without prejudice to ADOT's rights to later object or disapprove in accordance with Section  
17 5.1.7(a). No such failure or delay by ADOT in delivering comments, exceptions, objections,  
18 rejections or disapprovals within the applicable time period under Section 5.1.2 shall constitute  
19 an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for an increase in the  
20 Contract Price, adjustment of a Completion Deadline or any other Claim. When used in the  
21 Contract Documents, the phrase "completion of the review and comment process", "comments  
22 have been addressed", "responded to the comments", "comments (are) (have been) resolved"  
23 or similar terminology means either (a) ADOT has reviewed, provided comments, exceptions,  
24 objections, rejections or disapprovals, and all the same have been fully resolved, or (b) the  
25 applicable time period has passed without ADOT providing any comments, exceptions,  
26 objections, rejections or disapprovals.

### 27 **5.1.6 Submittals Not Subject to Prior Review, Comment or Approval**

28 Whenever the Contract Documents provide that Developer is to deliver a Submittal to  
29 ADOT but express no requirement for ADOT review, comment, disapproval, prior approval or  
30 other ADOT action, then Developer is under no obligation to provide ADOT any period of time to  
31 review the Submittal or obtain approval of it before proceeding with further Work contained in  
32 or relating to the particular Submittal; however ADOT will have the right, but is not obligated, to  
33 at any time review, comment on, take exception to, object to, reject or disapprove the Submittal  
34 in accordance with Section 5.1.7(a). No failure or delay by ADOT in delivering comments,  
35 exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute  
36 an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for an increase in the  
37 Contract Price, adjustment of a Completion Deadline or any other Claim.

1           **5.1.7    Resolution of ADOT Comments and Objections**

2           (a)    If the Submittal is not governed by Section 5.1.3, then ADOT’s exception,  
3           objection, rejection or disapproval shall be deemed reasonable, valid and binding  
4           if based on any of the following grounds or other grounds set forth elsewhere in  
5           the Contract Documents:

6                   (i)    The Submittal or a component thereof fails to comply, or is inconsistent,  
7                   with the Contract Documents or any Project Plan;

8                   (ii)   The Submittal or subject component thereof does not comply with the  
9                   standards of Good Industry Practice;

10                  (iii)   Developer has not provided all content or information required or  
11                  reasonably requested in respect of the Submittal or a component thereof;

12                  (iv)   Adoption of the Submittal or a component thereof, or of any proposed  
13                  course of action thereunder, would result in a conflict with or violation of  
14                  any Law or Governmental Approval; or

15                  (v)    In the case of a Submittal that is to be delivered to a Governmental Entity  
16                  as a proposed Governmental Approval, or to obtain, modify, amend,  
17                  supplement, renew, extend, waive or carry out a Governmental Approval,  
18                  it proposes commitments, requirements, actions, terms or conditions that  
19                  are (i) inconsistent with the Contract Documents, any Project Plan,  
20                  applicable Law, the requirements of Good Industry Practice, or ADOT  
21                  practices for public-private contracting, or (ii) not usual and customary  
22                  arrangements that ADOT offers or accepts for addressing similar  
23                  circumstances affecting its projects.

24           (b)    Developer shall respond in writing to all of ADOT’s comments, exceptions,  
25           disapprovals and objections to a Submittal and, except as provided below, make  
26           modifications to the Submittal as necessary to fully reflect and resolve all such  
27           comments, exceptions, disapprovals and objections, in accordance with the  
28           review processes set forth in this Section 5.1 and Section GP 110.10 in the  
29           Technical Provisions. However, if the Submittal is not governed by Section 5.1.3,  
30           the foregoing shall in no way be deemed to obligate Developer to incorporate any  
31           comments or resolve exceptions, disapprovals or objections that: (a) are not on  
32           any of the grounds set forth in Section 5.1.7(a) (and not on any other grounds set  
33           forth elsewhere in the Contract Documents); and (b) would result in a delay to the  
34           Critical Path on the Project Schedule, in Extra Work Costs or in Delay Costs, except  
35           pursuant to an ADOT-Directed Change. If Developer does not resolve any  
36           comment, exception, disapproval or objection, Developer shall deliver to ADOT  
37           within 15 days after receipt of ADOT’s comments, exceptions, disapprovals or  
38           objections, a written explanation why modifications based on such comment,

1 exception, disapproval or objection are not required.

2 (c) If Developer fails to notify ADOT within the time period set forth in Section  
3 5.1.7(b), in addition to constituting a Noncompliance Event as set forth in Exhibit  
4 14 (Noncompliance Event Tables), ADOT may deliver to Developer a written notice  
5 stating the date by which Developer was to have addressed ADOT's comments. If  
6 Developer does not address those comments within five Business Days after  
7 receipt of such notice, then Developer's failure shall constitute Developer's  
8 agreement to make all changes necessary to accommodate and resolve the  
9 comment or objection at issue and full acceptance of all responsibility for such  
10 changes without right to an ADOT-Caused Delay, Supplemental Agreement, Relief  
11 Event or other basis for an increase in the Contract Price, adjustment of a  
12 Completion Deadline or any other Claim.

13 (d) After ADOT receives Developer's explanation as to why the modifications are not  
14 required as provided in Sections 5.1.7(b) and (c) and Section GP 110.10 of the  
15 Technical Provisions, if ADOT disagrees with Developer's explanation, the Parties  
16 shall attempt in good faith to informally resolve the dispute. If the Parties are  
17 unable to informally resolve the dispute within 15 days of receipt of Developer's  
18 explanation, and the Submittal is not one governed by Section 5.1.3(a), the  
19 dispute shall be resolved according to the Dispute Resolution Procedures;  
20 provided, however, that if ADOT elects to issue a Directive Letter pursuant to  
21 Section 17.3 with respect to the matter in dispute, Developer shall proceed in  
22 accordance with such Directive Letter while retaining any Claim as to the matter  
23 in dispute.

#### 24 **5.1.8 Limitations on Developer's Right to Rely**

25 (a) No review, comment, objection, rejection, approval, disapproval, acceptance,  
26 concurrence, certification (including certificates of South Segment Substantial  
27 Completion, Project Substantial Completion and Final Acceptance), or Oversight  
28 by or on behalf of ADOT, including review and approval of the Project  
29 Management Plan and Operations and Maintenance Management Plan, and no  
30 lack thereof by ADOT, shall constitute acceptance by ADOT of materials or Work  
31 or waiver of any legal or equitable right under the Contract Documents, at Law, or  
32 in equity. ADOT will be entitled to complete and accurate Submittals, to remedies  
33 for unapproved Deviations, Nonconforming Work and Developer Defaults, and to  
34 identify and require additional Work to bring the Work and Project into  
35 compliance with requirements of the Contract Documents, regardless of whether  
36 previous review, comment, objection, rejection, approval, disapproval,  
37 acceptance, concurrence, certification or Oversight were conducted or provided  
38 by ADOT. Without regard to any such activity or failure to conduct any such activity  
39 by ADOT, Developer at all times shall have an independent duty and obligation to  
40 fulfill the requirements of the Contract Documents. Developer agrees and

- 1 acknowledges that any such activity or failure to conduct any such activity by  
2 ADOT:
- 3 (i) Is solely for the benefit and protection of ADOT;
  - 4 (ii) Does not relieve Developer of its responsibility for the selection of, and the  
5 competent performance by, all Developer-Related Entities performing any  
6 Work;
  - 7 (iii) Does not create or impose upon ADOT any duty, standard of care or  
8 obligation toward Developer to cause it to fulfill the requirements of the  
9 Contract Documents or toward any other Person, all of which are hereby  
10 expressly disclaimed;
  - 11 (iv) Shall not be deemed or construed as any form of warranty, express or  
12 implied, by ADOT;
  - 13 (v) May not be relied upon by Developer or used as evidence in determining  
14 whether Developer has fulfilled the requirements of the Contract  
15 Documents;
  - 16 (vi) Shall not be deemed or construed as any assumption of risk by ADOT as to  
17 design, construction, operations, maintenance, performance or quality of  
18 Work or materials; and
  - 19 (vii) May not be asserted by Developer against ADOT as a defense, legal or  
20 equitable, to, or as a waiver of or relief from, Developer's obligation to  
21 fulfill the requirements of the Contract Documents.
- 22 (b) Developer shall not be relieved or entitled to reduction of its obligations to  
23 perform the Work in accordance with the Contract Documents, or any of its other  
24 liabilities and obligations, including its indemnity obligations, as the result of any  
25 activity identified in Section 5.1.8(a) or failure to conduct any such activity by  
26 ADOT. Such activity or failure to conduct such activity by ADOT will not relieve  
27 Developer from liability for, and responsibility to cure and correct, without the  
28 right to an increase in the Contract Price, a Completion Deadline adjustment or  
29 any other Claim, any unapproved Deviations, Nonconforming Work or Developer  
30 Defaults.
- 31 (c) To the maximum extent permitted by Law, Developer hereby releases and  
32 discharges ADOT from any and all duty and obligation to cause Developer's Work,  
33 Submittals or the Project to comply with the Applicable Standards and other  
34 requirements of the Contract Documents.
- 35 (d) Notwithstanding the provisions of this Section 5.1.8:

- 1 (i) Developer shall be entitled to rely on written approvals and acceptances  
2 from ADOT (A) for the limited purpose of establishing that ADOT’s approval  
3 or acceptance occurred, or (B) that are within ADOT’s sole discretion or  
4 absolute discretion, but only to the extent that Developer is prejudiced by  
5 a subsequent decision of ADOT to rescind such approval or acceptance;
- 6 (ii) Developer shall be entitled to rely on specific written Deviations ADOT  
7 approves under Section 8.2.5 or 10.5, subject to any conditions therein;
- 8 (iii) Developer shall be entitled to rely on the certificates of South Segment  
9 Substantial Completion, Project Substantial Completion and Final  
10 Acceptance from ADOT for the limited purpose of establishing that South  
11 Segment Substantial Completion, Project Substantial Completion and Final  
12 Acceptance, as applicable, have occurred, and the respective dates  
13 thereof, without prejudice to any rights and remedies available to ADOT in  
14 relation to unapproved Deviations, Nonconforming Work and Developer  
15 Defaults; and
- 16 (iv) ADOT is not relieved from any liability arising out of a knowing and  
17 intentional material misrepresentation under any written statement ADOT  
18 delivers to Developer in relation to the Submittals.

## 19 **5.2 Role of General Engineering Consultant and ADOT Consultants**

20 The General Engineering Consultant will assist ADOT in the management and oversight of the  
21 Project, including administration of the Contract Documents. ADOT may retain other consultants  
22 to provide services to ADOT relating to the Project. Developer shall cooperate with the General  
23 Engineering Consultant and other ADOT consultants, to the same extent Developer shall  
24 cooperate with ADOT, in the exercise of their respective duties and responsibilities in connection  
25 with the Project.

## 26 **5.3 Role of and Cooperation with FHWA**

27 Developer acknowledges and agrees that FHWA will have certain approval rights with respect to  
28 the Project (including rights to approve the Project design and certain Supplemental  
29 Agreements), as well as the right to provide certain oversight and technical services with respect  
30 to the Project. Developer shall cooperate with FHWA in the reasonable exercise of FHWA’s duties  
31 and responsibilities in connection with the Project.

## 32 **5.4 Project Management Plan**

33 **5.4.1** Developer is responsible for all quality assurance and quality control activities  
34 necessary to manage the Professional Services as well as certain public involvement activities of  
35 Developer as specified in Section CR 425 of the Technical Provisions. Developer is responsible  
36 for all quality control activities necessary to manage all other Work, including the Utility

1 Adjustment Work. Developer shall undertake all aspects of its quality assurance and quality  
2 control activities in accordance with the Technical Provisions, Project Management Plan, Quality  
3 Management Plan, Good Industry Practice and applicable Law.

4 **5.4.2** Developer shall develop the Project Management Plan and its component parts,  
5 plans and other documentation in accordance with the requirements set forth in Section GP  
6 110.04 of the Technical Provisions and Good Industry Practice. The Project Management Plan  
7 shall include all the parts, component plans and other documentation identified in Table 110-6  
8 of Section GP 110.04 of the Technical Provisions.

9 **5.4.3** Developer shall ensure that the Project Management Plan meets all  
10 requirements of Good Industry Practice, including those for quality assurance (for Professional  
11 Services) and quality control, and all FHWA oversight requirements (if any). Developer  
12 acknowledges that FHWA has designated the Project as a “Project of Division Interest” under 23  
13 USC § 106, which requires submission and approval of a project management plan and annual  
14 updates thereto, as provided in 23 USC § 106, and that the Project Management Plan and the  
15 annual updates thereto required under the Contract Documents are intended to fulfill these  
16 requirements.

17 **5.4.4** Developer shall submit to ADOT, in accordance with the procedures described in  
18 Section 5.1 and the timeline set forth in Table 110-7 of Section GP 110.04 of the Technical  
19 Provisions, each component part, plan and other documentation of the Project Management  
20 Plan and any proposed changes or additions to or revisions of any such component part, plan or  
21 other documentation. The same shall be subject to ADOT’s approval, review and comment, or  
22 other disposition as set forth in Table 110-7 of Section GP 110.04 of the Technical Provisions. To  
23 the extent there are any components of the Project Management Plan that are subject to ADOT’s  
24 reasonable approval, Section 5.1.4 shall apply in determining whether ADOT’s objection,  
25 rejection or disapproval was reasonable.

26 **5.4.5** Developer shall not commence or permit the commencement of any aspect of  
27 the Project’s construction, operation or maintenance before the relevant component parts, plans  
28 and other documentation of the Project Management Plan applicable to such Work have been  
29 submitted to and approved by ADOT in accordance with the procedures described in Section 5.1  
30 and the applicable timelines set forth in Table 110-7 of Section GP 110.04 of the Technical  
31 Provisions. The applicable schedule for submitting each component part, plan and other  
32 documentation of the Project Management Plan is set forth in the corresponding section of the  
33 Technical Provisions describing the requirements for each such component part, plan and other  
34 documentation.

35 **5.4.6** If any part, plan or other documentation of the Project Management Plan refers  
36 to, relies on or incorporates any manual, plan, procedure or like document, then all such  
37 referenced or incorporated materials shall be submitted to ADOT for approval at the time that

1 the relevant part, plan or other documentation of the Project Management Plan or change,  
2 addition or revision to the Project Management Plan is submitted to ADOT.

3 **5.4.7** Developer shall carry out internal audits of Developer’s compliance with the  
4 Project Management Plan in accordance with the Project Management Plan. The Project  
5 Management Plan shall specify the extent of such audits and the frequency with which such  
6 audits will occur, which shall be subject to ADOT’s approval in its good faith discretion. Developer  
7 shall bear the sole responsibility for keeping all documents and materials evidencing its  
8 compliance with, and adherence to, the Project Management Plan.

9 **5.4.8** Developer shall cause each of its Subcontractors at every level to comply with  
10 the applicable requirements of the approved Project Management Plan.

11 **5.4.9** Developer shall ensure the Quality Manager has the authority from Developer  
12 to (a) establish and maintain the Project Management Plan, and (b) report to ADOT on the  
13 performance of the Project Management Plan, and (c) stop Work. The Quality Manager shall have  
14 authority independent of the Project Manager and at least equivalent in level of authority to that  
15 of the Project Manager. The Quality Manager shall have direct reporting obligations to superiors  
16 that are above the level of the Project Manager.

17 **5.4.10** Developer shall ensure that Professional Services Quality Manager (a) has  
18 authority independent of the Project Manager, (b) has direct reporting responsibility to the  
19 Quality Manager, (c) is collocated with the designer and engineers performing the Design Work  
20 whenever design activities are being performed, including design activities related to field design  
21 changes, and (d) has the authority to stop Work.

22 **5.4.11** Developer shall ensure that the Construction Quality Manager (a) has authority  
23 independent of the Project Manager, (b) has direct reporting responsibility to the Quality  
24 Manager, (c) is present on Site whenever Construction Work is being performed, and (d) has the  
25 authority to stop Work.

26 **5.4.12** Developer shall ensure the O&M Manager has the authority from Developer to  
27 (a) establish and maintain the Operations and Maintenance Quality Management Plan, (b) report  
28 to ADOT on the performance of the Project Management Plan during the O&M Period, and (c)  
29 stop or suspend O&M Work. Developer shall ensure that the O&M Manager, as part of his or her  
30 functions, regularly reviews a sample of O&M Work and related work processes to verify that  
31 Developer is in compliance with the Contract Documents and Project Management Plan during  
32 the O&M Period.

33 **5.4.13** The Project Management Plan, including the Professional Services Quality  
34 Management Plan and Construction Quality Management Plan, shall be consistent with  
35 Sections 5.4.9, 5.4.10 and 5.4.11. Refer to Sections GP 110.08.2 and GP 110.08.3 of the Technical  
36 Provisions for additional terms and conditions applicable to the Quality Manager, Professional  
37 Services Quality Manager, Construction Quality Manager, and Developer’s other quality  
38 management personnel.

1 **5.5 Traffic Management**

2 **5.5.1 Developer’s Obligation During D&C Period**

3 Commencing with NTP 2 and continuing until the end of the D&C Period, Developer shall  
4 be responsible for the management of traffic on the Project or impacted by the Work. Developer  
5 shall carry out such traffic management on the Project in accordance with applicable Technical  
6 Provisions, Laws, Governmental Approvals and the Transportation Management Plan and  
7 updates thereto, if any.

8 **5.5.2 Transportation Management Plan**

9 Developer shall prepare the Transportation Management Plan in accordance with Section  
10 DR 462.2.3 of the Technical Provisions. In accordance with Section 9.4.1, preparation of the initial  
11 Transportation Management Plan and resolution of all ADOT comments thereon shall be a  
12 condition precedent to issuance of NTP 2.

13 **5.5.3 ADOT’s Rights**

14 Notwithstanding the foregoing, ADOT will have at all times, and without obligation or  
15 liability to Developer, the right to provide traffic management and operations on the Project,  
16 including via dynamic message signs or other means, traveler and driver information, and other  
17 public information (e.g., AMBER alerts).]

18 **5.6 Oversight, Inspection and Testing**

19 **5.6.1** ADOT will have the right at all times to conduct Oversight to: (a) comply with  
20 FHWA or other applicable federal agency requirements; and (b) verify Developer’s compliance  
21 with the Contract Documents, Project Management Plan and any applicable Law. ADOT may  
22 designate any Person or Persons, including its consultants and independent auditors, to carry out  
23 any Oversight on ADOT’s behalf. ADOT will conduct Oversight in accordance with Developer’s  
24 safety procedures and manuals, and in a manner that does not unreasonably interfere with  
25 normal Project construction activity or normal Project operation and maintenance activity. The  
26 foregoing shall not be construed to limit ADOT’s Oversight or prevent ADOT from conducting any  
27 Oversight that ADOT, in its sole discretion, deems necessary.

28 **5.6.2** ADOT’s Oversight rights shall include the following:

- 29 (a) Monitoring and auditing Developer, Developer-Related Entities and their Books  
30 and Records as more particularly set forth in Sections 25.4 and 25.5;
- 31 (b) Conducting periodic reviews of Project documentation and files;
- 32 (c) Conducting material tests, according to ADOT’s test methods, to verify:
  - 33 (i) Developer’s compliance with all testing frequencies and requirements,

- 1 including performance and acceptance testing, set forth in the Contract  
2 Documents and the approved Project Management Plan;
- 3 (ii) the accuracy of the tests, inspections and audits performed by or on behalf  
4 of Developer pursuant to the Professional Services Quality Management  
5 Plan and Construction Quality Management Plan; and
- 6 (iii) compliance of materials incorporated into the Project with the Applicable  
7 Standards and other applicable requirements, standards and conditions of  
8 the Contract Documents, Governmental Approvals, the Project  
9 Management Plan and Law;
- 10 (d) Reviewing and commenting on, and giving recommendations, objections or  
11 exceptions, regarding Submittals;
- 12 (e) Reviewing records and conducting interviews as necessary to verify compliance  
13 with federal, State, and local laws and regulations;
- 14 (f) Participating in meetings described in Section 5.10 to discuss design progress,  
15 construction progress, Developer’s quality assurance and control processes, audit  
16 activities, and other Project Management Plan issues;
- 17 (g) Conducting its own surveillance and inspections, including the Inspections related  
18 to Handback, assessing Developer’s records of inspections, O&M Work and  
19 Project conditions, and assessing the condition of Elements;
- 20 (h) Attending and witnessing Developer’s other tests and inspections, including  
21 system start-up and acceptance tests and inspections of the equipment and the  
22 Flex Lanes System;
- 23 (i) Reviewing Developer’s certification of Record Drawings and surveys and As-Built  
24 Schedule;
- 25 (j) Auditing and monitoring the activities described in the Project Plans to assess  
26 Developer’s compliance with the Project Plans; and
- 27 (k) Investigating and confirming Developer’s compliance with the Safety  
28 Management Plan and Operations and Maintenance Safety Management Plan.

29 **5.6.3** ADOT has the right, in its sole discretion, to conduct formal reviews of every  
30 Design Document and Construction Document. ADOT will have the right to conduct “over-the-  
31 shoulder” reviews of Design Documents and other Submittals in accordance with Section GP  
32 110.10 of the Technical Provisions. However, no “over-the-shoulder” review by or on behalf of  
33 ADOT shall constitute acceptance by ADOT of materials or Work or waiver of any legal or  
34 equitable right under the Contract Documents, at Law, or in equity. Whether or not over-the-  
35 shoulder reviews are conducted, Developer at all times shall have an independent duty and

1 obligation to fulfill the requirements of the Contract Documents.

2           **5.6.4** Nothing in the Contract Documents shall preclude, and Developer shall not  
3 interfere with, any review, surveillance, inspection or oversight of Submittals, Work or the Project  
4 that ADOT desires to conduct, or that the FHWA or any regulatory agency with jurisdiction may  
5 desire to conduct.

## 6 **5.7 Rights of Cooperation and Access**

7           **5.7.1** Developer at all times shall coordinate and cooperate, and require its  
8 Subcontractors and Developer-Related Entities to coordinate and cooperate, with ADOT, its  
9 Authorized Representative and its designees to facilitate ADOT Oversight activities. Developer  
10 shall cause its representatives to be available during normal business hours and at all other  
11 reasonable times for consultation with ADOT and its designees.

12           **5.7.2** Without limiting the foregoing, ADOT, its Authorized Representative and its  
13 designees shall have the right to, and Developer shall afford them:

- 14           (a) safe and unrestricted access to the Project at all times;
- 15           (b) safe access during normal business hours to Developer's Project offices and  
16 operations buildings and those of its Subcontractors;
- 17           (c) safe access during normal business hours to Developer's Temporary Work Areas;  
18 and
- 19           (d) unrestricted access to data respecting the Project design, Project ROW acquisition,  
20 construction, operations and maintenance, and the Utility Adjustment Work.

## 21 **5.8 Testing and Test Results**

22 ADOT, its Authorized Representative and its designees shall have the right to attend and witness  
23 any tests and verifications to be conducted pursuant to the Technical Provisions and applicable  
24 component plans of the Project Management Plan. Developer shall provide to ADOT all test  
25 results and reports (which may be provided in electronic format in accordance with the Technical  
26 Provisions) within the applicable time period set forth in the Technical Provisions.

## 27 **5.9 Interpretive Engineering Decisions**

28           **5.9.1** Developer may apply in writing to ADOT for approval of an interpretive  
29 engineering decision concerning the meaning, scope, interpretation and application of the  
30 Technical Provisions (an "**Interpretive Engineering Decision**"). If, however, meaning, scope,  
31 interpretation or application of the Technical Provisions is uncertain because of irreconcilable  
32 conflict, ambiguity or inconsistency among the Contract Documents or provisions within other  
33 Contract Documents, then this Section 5.9 shall not apply and, instead, the provisions of Section  
34 1.1.2 shall apply. ADOT may approve or disapprove of Developer's proposed Interpretive

1 Engineering Decision or issue its own Interpretive Engineering Decision. No document, including  
2 any field directive, shall be valid, effective or enforceable as an Interpretive Engineering Decision  
3 unless expressly identified as an “Interpretive Engineering Decision” and signed by ADOT’s design  
4 manager, construction manager or project manager for the Project.

5 **5.9.2** Within ten Business Days after Developer applies for an Interpretive Engineering  
6 Decision, or such other time period as ADOT and Developer may agree to at the time of such  
7 application, ADOT will provide its written determination including explanation of any disapproval  
8 of such application or any differing interpretation. If ADOT does not respond within such time  
9 period, the request shall be deemed disapproved. If Developer disputes ADOT’s disposition of  
10 the application, such dispute shall be subject to resolution in accordance with the Dispute  
11 Resolution Procedures.

12 **5.9.3** Accepted Interpretive Engineering Decisions shall constitute provisions of the  
13 Technical Provisions and shall not constitute an ADOT-Directed Change or entitle Developer to  
14 an increase in the Contract Price, adjustment of a Completion Deadline or other Claim or Relief  
15 Event. Subsequent ADOT written orders and directives that are issued in accordance with this  
16 Agreement but are contrary to the Interpretive Engineering Decision shall constitute an ADOT-  
17 Directed Change.

18 **5.10 Meetings**

19 **5.10.1** Developer shall conduct or participate in various Project meetings with ADOT  
20 during the D&C Period and O&M Period, in accordance with Section GP 110.02 of the Technical  
21 Provisions. In addition, each Party shall conduct or participate in any other meeting set forth in  
22 other sections of the Technical Provisions or other Contract Document. At ADOT’s request,  
23 Developer shall require the Lead O&M Firm, other Subcontractors and engineers of record to  
24 attend any such meetings.

25 **5.10.2** Developer shall conduct regular progress meetings with ADOT at least once each  
26 month (or as otherwise mutually agreed by ADOT and Developer) during the course of the D&C  
27 Work.

28 **5.10.3** Developer shall conduct regular DBE/OJT meetings with the Compliance  
29 Oversight Committee at least once each month during the design and construction, as more  
30 particularly set forth in Section 13.02 of Exhibit 6 (ADOT’s DBE Special Provisions) and Section 8.0  
31 of Exhibit 7 (ADOT’s OJT Special Provisions).

32 **5.10.4** Further, ADOT and Developer, through their respective Authorized  
33 Representatives, shall meet from time to time at the other Party’s request to discuss and resolve  
34 matters relating to the Design Work, Construction Work, O&M Work or the Project in general.

35 **5.10.5** Developer shall provide at least five Business Day advance notice to ADOT prior  
36 to meeting with any Utility Company or any Governmental Entity, and ADOT shall have the right  
37 to participate in such meetings.

1           **5.10.6** For all meetings that ADOT will attend, Developer shall conduct the meetings at  
2 the collocated office or ADOT field office, unless otherwise authorized by ADOT, and shall  
3 schedule the meetings on dates and at times reasonably convenient to both Parties. Except in  
4 the case of urgency, Developer shall provide ADOT with written notice and a meeting agenda as  
5 set forth in Section GP 110.02 of the Technical Provisions.

6           **5.10.7** ADOT will have the right to include representatives of FHWA or other  
7 Governmental Entities in any ADOT meetings with Developer or Subcontractors. Such  
8 representatives shall have the right to participate in such meetings and to raise questions,  
9 concerns and opinions without restriction; provided, however, that such representatives shall  
10 not have the right to direct or control such meetings, and Developer shall take direction (if any)  
11 only from ADOT regarding performance of the Work.

## 12 **5.11 Software Compatibility**

13           **5.11.1** Unless otherwise specifically stated in the Contract Documents, all software that  
14 Developer uses for any aspect of the Project shall be compatible with software used by ADOT,  
15 including the software requirements specified in the Technical Provisions. Prior to using any  
16 software or version of software not then in use by ADOT or compatible with software then in use  
17 by ADOT, Developer must obtain approval from ADOT. In addition, Developer shall provide to  
18 ADOT staff, at Developer's cost, working electronic copies of the software, any necessary licenses  
19 for ADOT's use of the software required under Section 25.7.3(a), and any training reasonably  
20 necessary to ensure that ADOT is able to use the same or compatible software as Developer.

21           **5.11.2** Developer shall submit all documents, correspondence and Submittals to ADOT  
22 through ADOT's project management information system.  
23

1                   **SECTION 6.    PROJECT PLANNING, GOVERNMENTAL APPROVALS;**  
2                   **ENVIRONMENTAL COMPLIANCE; PUBLIC INFORMATION**

3   **6.1    Planning and Engineering Activities**

4           **6.1.1**    Developer, through the qualified and licensed design professionals identified in  
5 the Project Management Plan, shall perform or cause to be performed all Professional Services  
6 necessary to develop the Project and the Utility Adjustments included in the D&C Work in  
7 accordance with the Contract Documents and Good Industry Practice.

8           **6.1.2**    Before commencing any Work on any portion or aspect of the Project, Developer  
9 shall:

- 10           (a)    verify all governing dimensions of the Site;
- 11           (b)    examine and account for all existing and future highways, streets and roads,  
12 including upgrades and expansions thereof, that are or will be adjacent to,  
13 connecting with or crossing under or over the Project; and
- 14           (c)    examine and account for any project, work, improvement or development that (i)  
15 is planned, under construction or developed, (ii) is located on property contiguous  
16 with the Project and (iii) could or does impact the Project or such Work.

17           **6.1.3**    Developer shall ensure that any Design Documents and Construction Documents  
18 furnished as part of the Work accurately depict all governing and adjoining dimensions.

19   **6.2    Site Conditions**

20           **6.2.1**    Developer shall bear the risk of any incorrect or incomplete review, examination  
21 and investigation by Developer of the Site and surrounding locations (even if Developer  
22 conducted a Reasonable Investigation), and of any incorrect or incomplete information resulting  
23 from preliminary engineering activities conducted by Developer, ADOT or any other Person.

24           **6.2.2**    The provisions of this Section 6.2 do not apply to, and shall not adversely affect,  
25 the specific relief available to Developer under Section 16 for Relief Events under clauses (f), (g),  
26 (i), (j), (k), (p), (s) and (t) of the definition of Relief Event.

27   **6.3    Governmental Approvals**

28           **6.3.1**    ADOT obtained for the Project the NEPA Approval, based on the Schematic  
29 Design. Developer acknowledges it received and is familiar with the NEPA Approval and  
30 supporting documentation, as contained in the Reference Information Documents.

31           **6.3.2**    Developer hereby assumes responsibility for obtaining, and shall obtain:

- 32           (a)    All Environmental Approvals, other than the NEPA Approval, required in

1 connection with Developer’s Schematic Design or Final Design, the Project, the  
2 Project ROW, the Developer-Designated ROW, the Work or a Relief Event;

3 (b) All reevaluations, amendments and supplements of the NEPA Approval required  
4 in connection with Developer’s Schematic Design or Final Design, the Project, the  
5 Project ROW, the Developer-Designated ROW, the Work or a Relief Event; and

6 (c) All other Governmental Approvals required in connection with Developer’s  
7 Schematic Design or Final Design, the Project, the Project ROW, Developer-  
8 Designated ROW or the Work.

9 **6.3.3** Developer shall deliver to ADOT true and complete copies of all new or amended  
10 Governmental Approvals, including reevaluations, amendments and supplements of the NEPA  
11 Approval.

12 **6.3.4** Prior to submitting to a Governmental Entity any Governmental Approval  
13 Package, Developer shall submit the same to ADOT for appropriate action, if any, in accordance  
14 with Section DR 420.2.6 of the Technical Provisions. ADOT assumes no duty, obligation or liability  
15 regarding completeness or correctness of any Governmental Approval Package, regardless of  
16 ADOT’s approval, review and comment, or lack thereof.

17 **6.3.5** Developer shall be responsible for all necessary actions, and Developer shall bear  
18 all risk of delay and all risk of increased cost, attributable to, resulting from or arising out of: (1)  
19 any differences between Developer’s Final Design for any portion of the Project and the  
20 Schematic Design or Developer’s Schematic Design, including differences due to any Alternative  
21 Technical Concepts set forth in Exhibit 2-1 (Developer’s Schematic Design Including Alternative  
22 Technical Concepts), but excluding any differences due to an ADOT-Directed Change; or (2)  
23 differences between the construction means and methods (including temporary works)  
24 Developer chooses for any portion of the Project and those set forth, referred to or contemplated  
25 in the NEPA Approval, excluding any differences due to an ADOT-Directed Change. Such actions  
26 and risks that Developer assumes shall include:

27 (a) Any associated with change in the Project location due to Developer’s design;

28 (b) Conducting all necessary environmental studies and re-evaluations and preparing  
29 all necessary environmental documents in compliance with applicable  
30 Environmental Laws;

31 (c) Obtaining and complying with all necessary new Governmental Approvals subject,  
32 however to potential extension of Completion Deadlines pursuant to clause (m)  
33 of the definition of Relief Event;

34 (d) Obtaining and complying with all necessary modifications, renewals and  
35 extensions of the NEPA Approval or other existing Governmental Approvals,  
36 subject, however to potential extension of Completion Deadlines pursuant to

1                    clause (m) of the definition of Relief Event; and

2                    (e)      All risk and cost of litigation by Persons other than ADOT.

3                    **6.3.6**    If Developer is unable to obtain any of the items described in Sections 6.3.5(c) or  
4 6.3.5(d), then Developer shall be obligated to design and construct the Project based on the  
5 Schematic Design (with changes as necessary to comply with the Technical Provisions) and the  
6 construction means and methods (including temporary works) set forth, referred to or  
7 contemplated in the NEPA Approval, or such other design, means and methods for which  
8 Developer is able to obtain Governmental Approvals and that comply with the Contract  
9 Documents. None of the foregoing circumstances described in this Section 6.3.6 shall:

10                  (a)      constitute an ADOT-Caused Delay or ADOT-Directed Change, Relief Event or other  
11 basis for an increase in the Contract Price, adjustment of a Completion Deadline  
12 or any other Claim; or

13                  (b)      result in any representation or warranty by ADOT as to the feasibility, accuracy or  
14 completeness of, or absence of errors in, the Schematic Design.

15                  **6.3.7**    Developer shall first comply with, and obtain any consent or waiver required  
16 pursuant to, then-existing agreements between ADOT and other Governmental Entities if  
17 Developer pursues:

18                  (a)      Developer-Designated ROW;

19                  (b)      Temporary Construction Easements or Developer's Temporary Work Areas other  
20 than those ADOT will provide as set forth in Section DR 470 of the Technical  
21 Provisions;

22                  (c)      Replacement Utility Property Interests; or

23                  (d)      any other modification of or Deviation from any Governmental Approvals,  
24 including the NEPA Approval.

25                  **6.3.8**    At Developer's request and subject to this Section 6.3.8, ADOT will reasonably  
26 assist and cooperate with Developer in obtaining the Governmental Approvals (including any  
27 modifications, renewals and extensions of existing Governmental Approvals) that Developer is  
28 required to obtain under the Contract Documents. ADOT's obligation to assist and cooperate  
29 shall not require ADOT to:

30                  (a)      Take a position which it believes to be inconsistent with the Contract Documents,  
31 the Project Management Plan (and component plans thereunder), applicable Law,  
32 Governmental Approval(s), the requirements of Good Industry Practice, or ADOT  
33 practices for public-private partnership contracting;

34                  (b)      Take a position that is not usual and customary for ADOT to take in addressing

1 similar circumstances affecting its own projects (except if usual and customary for  
2 ADOT regarding its projects delivered via public-private partnership contracting);  
3 or

- 4 (c) Refrain from concurring with a position taken by a Governmental Entity if ADOT  
5 believes that position to be correct.

6 **6.3.9** Litigation involving Environmental Approvals shall be subject to the following  
7 provisions.

- 8 (a) In the event any pending Environmental Approval is denied, then (a) the Parties  
9 shall promptly confer to analyze the circumstances and determine what further  
10 action to take, and (b) either Party may elect to appeal such denial and to bring  
11 legal action challenging the denial. If either Party elects, or both Parties elect, to  
12 appeal and bring legal action, then the Parties shall reasonably assist and  
13 cooperate with one another, each at its own expense, in the conduct of such  
14 appeal and legal action. The Parties may mutually choose, but are not obligated,  
15 to be jointly represented by legal counsel or to enter into a joint prosecution  
16 agreement in such appeal and legal action.

- 17 (b) In the event any administrative proceeding, litigation or other legal action is or has  
18 been brought by a third party challenging the issuance of an Environmental  
19 Approval for the Project, excluding the NEPA Approval, the Parties shall actively  
20 assist and cooperate with one another, each at its own expense, to defend their  
21 interests and the subject Environmental Approval and to settle such  
22 administrative proceeding, litigation or other legal action. The Parties may  
23 mutually choose, but are not obligated, to be jointly represented by legal counsel  
24 or to enter into a joint defense agreement in such administrative proceeding,  
25 litigation or other legal action.

- 26 (c) In the event a third party brings or has brought any administrative proceeding,  
27 litigation or other legal action challenging the issuance of the NEPA Approval,  
28 Developer shall, at the request of ADOT, reasonably and actively assist and  
29 cooperate with ADOT to defend ADOT's interest and the NEPA Approval.  
30 Developer's assistance and cooperation shall be at ADOT's expense unless the  
31 administrative proceeding, litigation or other legal action is based, in whole or in  
32 part, on Developer's design, but only to the extent Developer's design differs from  
33 the Schematic Design.

34 **6.3.10** Certain Governmental Entities may require that Governmental Approvals be  
35 applied for or issued in ADOT's name, or that ADOT directly coordinate with such Governmental  
36 Entities in connection with obtaining the Governmental Approvals. In such event, Developer at  
37 its expense shall provide all necessary support and efforts to prepare the Governmental Approval  
38 Package and apply for and obtain the Governmental Approvals in ADOT's name. Such support  
39 shall include conducting necessary field investigations, preparing mitigation analyses and studies

1 and plans, preparing surveys, and preparing any required reports, applications and other  
2 documents in form approved by ADOT. Such support also may include joint coordination and  
3 joint discussions and attendance at meetings with the applicable Governmental Entity. Refer to  
4 Section DR 420.2.6.2 of the Technical Provisions for more specific provisions on applications for  
5 Environmental Approvals filed in ADOT's name.

6 **6.3.11** Developer shall be solely responsible for compliance with all applicable Laws in  
7 relation to Developer's Temporary Work Areas and for obtaining any Environmental Approval or  
8 other Governmental Approval required in connection with Developer's Temporary Work Areas.

9 **6.3.12** The Contract Price includes, and Developer shall be solely responsible for paying,  
10 all application fees, in-lieu mitigation fees and other charges incident to obtaining Governmental  
11 Approvals, including ASLD charges incident to removing earthen material from ASLD lands as  
12 described in Section CR 417.3.4 of the Technical Provisions. If any such fees or charges are  
13 imposed on ADOT, ADOT will have the right to debit its payment against the D&C Price or O&M  
14 Price, as applicable.

#### 15 **6.4 Environmental Compliance**

16 **6.4.1** Except as provided otherwise in Section 6.4.2, ADOT delegates to Developer, and  
17 Developer accepts, all ADOT obligations, commitments and responsibilities under all  
18 Environmental Approvals. Except as provided otherwise in Section 6.4.2, Developer shall, at its  
19 sole cost and expense:

- 20 (a) Comply with all Environmental Laws;
- 21 (b) Comply with all conditions and requirements imposed by all Environmental  
22 Approvals;
- 23 (c) Perform all commitments and mitigation measures set forth in all Environmental  
24 Approvals; and
- 25 (d) Undertake all actions required by, or necessary to maintain in full force and effect,  
26 all Environmental Approvals.

1           **6.4.2** ADOT retains sole responsibility for payment and performance of the  
2 environmental obligations, commitments and responsibilities expressly identified as not  
3 delegated to Developer in the Project Environmental Commitment Requirements.

4           **6.4.3** Developer shall perform or cause to be performed all environmental mitigation  
5 measures required under the Contract Documents.

6           **6.4.4** Developer shall comply with the provisions, requirements and obligations  
7 regarding environmental compliance set forth in Sections DR 420 and CR 420 of the Technical  
8 Provisions.

9           **6.4.5** Developer expressly acknowledges that the Project Environmental Commitment  
10 Requirements may not contain an exhaustive or accurate list of all environmental obligations,  
11 commitments and responsibilities that apply to the Project. ADOT does not warrant or represent  
12 the completeness or accuracy of the Project Environmental Commitment Requirements, which  
13 are made available to Developer as a convenience to assist Developer in preparing the  
14 Environmental Management Plan. Developer is solely responsible for the completeness and  
15 accuracy of the Environmental Management Plan, including the correction of any errors or  
16 omissions in Attachment 420-1 of the Technical Provisions. Neither incompleteness nor  
17 inaccuracy of the Project Environmental Commitment Requirements shall alter or limit the scope  
18 of Developer's environmental compliance obligations as set forth in the Contract Documents or  
19 entitle Developer to an increase in the Contract Price, a Completion Deadline adjustment or any  
20 other Claim.

## 21 **6.5 Community Outreach and Public Information**

22 Developer's obligations regarding public outreach, stakeholder communications and  
23 construction relations are set forth in Section CR 425 of the Technical Provisions.  
24

1       **SECTION 7.     RIGHT OF WAY ACQUISITION; ACCESS TO PROJECT RIGHT OF WAY; UTILITY**  
2                   **ADJUSTMENTS; RELATED FACILITIES AND WORK; USE OF ADOT PROPERTY**

3       **7.1     Project ROW Acquisition**

4       ADOT shall acquire all Project ROW in accordance with Section DR 470 of the Technical Provisions.  
5       Developer shall assist ADOT with ROW acquisition to the extent necessary for ADOT to acquire  
6       the Project ROW.

7       **7.2     Temporary Construction Easements and Developer-Designated ROW**

8           **7.2.1    Temporary Construction Easements**

9           (a)     Within 30 days following ADOT’s issuance of NTP 1, Developer shall submit to  
10           ADOT an initial request for any additional property outside the Schematic ROW  
11           for which Developer seeks Temporary Construction Easements (“**Additional TCE**  
12           **Property**”); provided that ADOT hereby approves acquisition of Additional TCE  
13           Property that is contiguous to the Schematic ROW, owned by the BLM and not  
14           within any boundary of the Agua Fria National Monument. For all other requests,  
15           ADOT shall respond to Developer’s request for Temporary Construction  
16           Easements on Additional TCE Property within 30 days following ADOT’s receipt of  
17           such request from Developer.

18           (b)     ADOT shall acquire Temporary Construction Easements over all Additional TCE  
19           Property that is requested by Developer and approved by ADOT. ADOT’s response  
20           to be provided under Section 7.2.1(a) shall identify the Additional TCE Property  
21           over which it agrees to acquire Temporary Construction Easements for Developer,  
22           the conditions to use thereof, and the cost of acquisition for which Developer is  
23           responsible, if any.

24           (c)     Developer shall be responsible for the costs described in Section 7.2.5 that ADOT  
25           incurs to acquire Temporary Construction Easements over Additional TCE  
26           Property.

27           (d)     Grounds for ADOT to reject Developer’s request to acquire Temporary  
28           Construction Easements over Additional TCE Property not pre-approved under  
29           Section 7.2.1(a) include:

30                   (i)     The acquisition would require changes to the environmental documents,  
31                   including the NEPA Approvals, such as the need for a supplemental  
32                   environmental assessment;

33                   (ii)    The acquisition would require a public hearing regarding environmental  
34                   impacts;

- 1 (iii) The Additional TCE Property contains or could affect Known Cultural  
2 Resource Sites or other archeological, paleontological or cultural  
3 resources; or
- 4 (iv) Successful timely completion of the acquisition is not likely.
- 5 (e) Following the initial 30-day period to request TCEs set forth in Section 7.2.1(a),  
6 Developer may thereafter request that ADOT obtain TCEs over further Additional  
7 TCE Property as needed. Such request for TCEs over further Additional TCE  
8 Property shall be subject to the provisions of this Section 7.2.1.

9 **7.2.2 Developer-Designated ROW**

10 ADOT shall acquire all Developer-Designated ROW subject to the following terms and  
11 conditions:

- 12 (a) Acquisition of Developer-Designated ROW shall be subject to ADOT’s prior written  
13 approval, provided that ADOT hereby approves acquisition of Developer-  
14 Designated ROW that (i) is contiguous to the Schematic ROW, owned by the BLM  
15 and not within any boundary of the Agua Fria National Monument or (ii) is  
16 identified in an ADOT-approved ATC.
- 17 (b) Grounds for ADOT to disapprove shall consist of those described in Section  
18 7.2.1(d)(i) through (iv).
- 19 (c) Developer shall be responsible for the costs of Developer-Designated ROW,  
20 including the costs of ADOT’s acquisition of Developer-Designated ROW, in  
21 accordance with Section 7.2.5.

22 **7.2.3 Developer’s Temporary Work Areas**

- 23 (a) Developer shall acquire, or cause to be acquired, all of Developer’s Temporary  
24 Work Areas in its own name. Developer shall comply with all applicable  
25 Governmental Approvals and Laws in acquiring, maintaining or disposing of any of  
26 Developer’s Temporary Work Areas.
- 27 (b) ADOT will not exercise its power of eminent domain in connection with  
28 Developer's acquisition of any such property right or interest for Developer’s  
29 Temporary Work Areas.
- 30 (c) Developer shall be responsible for and shall pay directly all costs and expenses in  
31 connection with acquiring, renting, using, maintaining, insuring, and disposing of  
32 Developer’s Temporary Work Areas. Developer shall not be entitled to an increase  
33 in the Contract Price, adjustment of a Completion Deadline or any other Claim due  
34 to such costs and expenses. ADOT will have no obligations or liabilities with  
35 respect to the acquisition, maintenance or disposition of Developer’s Temporary

1 Work Areas, including no liability for unexpected costs or delay that Developer  
2 experiences relating to its acquisition of or inability to acquire Developer's  
3 Temporary Work Areas. No such delay shall constitute an ADOT-Caused Delay or  
4 other Relief Event, or otherwise entitle Developer to an increase in the Contract  
5 Price, adjustment of a Completion Deadline or other Claim.

6 (d) Developer shall have no obligation to submit information to ADOT concerning, or  
7 obtain ADOT's approval of Developer's acquisition of, any property right or  
8 interest for Developer's Temporary Work Areas.

9 (e) Developer shall cause the lease, license or other agreement by which Developer  
10 acquires a property right or interest in a Developer's Temporary Work Area to  
11 contain the granting party's express acknowledgment that ADOT shall have no  
12 liability with respect thereto. Developer shall promptly deliver a copy of such  
13 documentation to ADOT.

14 **7.2.4 Replacement Utility Property Interests**

15 ADOT will acquire ROW necessary for Replacement Utility Property Interests, subject to  
16 the following terms and conditions:

17 (a) Both Developer and the Utility Company shall provide evidence reasonably  
18 satisfactory to ADOT that:

19 (i) acquisition of the subject Replacement Utility Property Interest is  
20 necessary because it is not physically possible, including through  
21 commercially reasonable design modifications, to perform the subject  
22 Utility Adjustment within the Schematic ROW or to use Protection in Place;  
23 and

24 (ii) the Utility Company either lacks the power to acquire the Replacement  
25 Utility Property Interest or has been unsuccessful in negotiating the  
26 acquisition.

27 (b) Except in circumstances where Developer is entitled to compensation under  
28 Section 16.4.4(b), Developer shall be responsible for the costs of Replacement  
29 Utility Property Interests, including the costs of ADOT's acquisition of  
30 Replacement Utility Property Interests, in accordance with Section 7.2.5.

31 (c) ADOT's acquisition of Replacement Utility Property Interests shall not relieve  
32 Developer of its sole responsibility for satisfactory compliance with its obligations  
33 respecting Utility Adjustment Work and timely completion thereof.

34 (d) ADOT will not be obligated to take title to the Replacement Utility Property  
35 Interest unless otherwise required by Law in connection with ADOT's exercise of  
36 its power to acquire. If ADOT is obligated by Law to take title, then it will do so on

1 the condition that the Utility Company concurrently accepts conveyance of title  
2 from ADOT to the Utility Company, without warranty or representation and with  
3 the Utility Company’s written indemnification against any third-party liability that  
4 may arise out of ADOT’s status as title holder.

5 (e) Except in circumstances where Developer is entitled to relief under Section  
6 16.4.4(b), ADOT will have no risk or liability whatsoever due to delay in its  
7 completing acquisition of any Replacement Utility Property Interest, and no such  
8 delay shall constitute an ADOT-Caused Delay or other Relief Event, or otherwise  
9 entitle Developer to an increase in the Contract Price, adjustment of a Completion  
10 Deadline or other Claim.

11 **7.2.5 Costs of ADOT Right-of-Way Acquisition**

12 (a) Developer shall be responsible for all costs and expenses that ADOT incurs to  
13 acquire Developer-Designated ROW, Temporary Construction Easements over  
14 Additional TCE Property, and Replacement Utility Property Interests, excluding  
15 ADOT’s internal costs of administration and management and fees of the Arizona  
16 Attorney General or private attorneys for the State involved in the purchases or  
17 acquisitions. Such costs and expenses include:

18 (i) The purchase or acquisition prices, severance damages (including cost-to-  
19 cure damages) and court awards or judgments for all Developer-  
20 Designated ROW, Temporary Construction Easements over Additional TCE  
21 Property, and Replacement Utility Property Interests;

22 (ii) The cost of permitting;

23 (iii) Fees and costs of appraisers and other experts;

24 (iv) Fees and costs to prepare or produce materials, transcripts, photos,  
25 exhibits and other documentation;

26 (v) Closing costs associated with purchases or acquisitions, in accordance with  
27 the Uniform Act and ADOT policies, including title insurance premiums;

28 (vi) Relocation assistance payments and costs, in accordance with the Uniform  
29 Act;

30 (vii) Property management expenses, including demolition and clearance  
31 costs;

32 (viii) Costs of Hazardous Materials Management;

33 (ix) Title insurance premiums;

- 1 (x) Any uneconomic remnants resulting from the acquisition of Developer-  
2 Designated ROW; and
- 3 (xi) any and all other out-of-pocket costs (excluding attorneys' fees) incurred  
4 by ADOT in connection with the acquisition of Developer-Designated ROW,  
5 Temporary Construction Easements over Additional TCE Property, and  
6 Replacement Utility Property Interests.
- 7 (b) Developer shall not be entitled to an increase in the Contract Price, adjustment of  
8 a Completion Deadline or any other Claim due to such costs and expenses.
- 9 (c) If ADOT incurs any such costs and expenses on Developer's behalf, ADOT may  
10 deduct the amount of such costs and expenses from progress payments and/or  
11 Monthly O&M Payments to Developer until ADOT is fully reimbursed.
- 12 (d) At Developer's request, which shall be no more frequent than once a month,  
13 ADOT shall provide periodic updates on estimated acquisition costs described in  
14 Section 7.2.5(a).

15 **7.2.6** Developer shall not be entitled to any increase in the Contract Price (except to  
16 the extent provided otherwise in Section 16.4.4(b) regarding compensation for certain  
17 Replacement Utility Property Interests), a Completion Deadline adjustment (except to the extent  
18 provided otherwise in Sections 16.4.19 and 16.6.4 regarding Completion Deadline adjustment)  
19 or any other Claim, as a result of Site conditions (including those relating to Hazardous Materials,  
20 Differing Site Conditions or Utilities) associated with any Temporary Construction Easements,  
21 Developer-Designated ROW, Developer's Temporary Work Areas or Replacement Utility Property  
22 Interests.

### 23 **7.3 Access to Project ROW**

24 **7.3.1** ADOT will notify Developer of the availability of Project ROW within five Business  
25 Days after the later of the date ADOT issues NTP 1 or the date ADOT obtains possession of such  
26 Project ROW. Developer shall be responsible for being informed of and complying with any access  
27 restrictions that may be set forth in any documents granting possession of any Project ROW.

28 **7.3.2** Upon obtaining knowledge of any anticipated delay in the dates for acquisition  
29 of any Project ROW, ADOT shall promptly notify Developer in writing. In such event, Developer  
30 shall immediately determine whether the delay impacts the Critical Path and, if so, to what extent  
31 it might be possible to avoid such delay through re-sequencing, reallocation or other alternative  
32 construction methods or otherwise (which, in the case of a Relief Event, shall be subject to  
33 Section 16.9.3). Developer shall promptly meet with ADOT to determine the best course of action  
34 and prepare a written report setting forth its recommendations, which recommendations shall  
35 be subject to ADOT's written approval.

36 **7.3.3** Where Developer makes a written request for access or a temporary entry

1 agreement for any Project ROW for which access has not yet been acquired, ADOT will consider  
2 in good faith whether to negotiate (in accordance with applicable Law, including the Uniform Act)  
3 with property owners or occupants for early access or temporary use of land. At ADOT's request,  
4 Developer shall assist ADOT with such negotiations, without additional charge to ADOT. All  
5 temporary entry agreements must be approved by, and are subject to the approval of, FHWA.

6 **7.4 Utility Adjustments**

7 **7.4.1 Developer's Responsibility**

8 (a) Developer shall coordinate and cause to be completed all Utility Adjustments  
9 necessary to accommodate timely construction, operation, maintenance and use  
10 of the Project, as located under the Final Design.

11 (b) Except as otherwise provided in Section 16, Developer shall cause all Utility  
12 Adjustment Work, whether performed by Developer or a Utility Company, to  
13 proceed and be completed in accordance with the Project Schedule, in  
14 coordination with the Work, and in compliance with the Contract Documents.

15 **7.4.2 Utility Agreements**

16 (a) In performing the Utility Adjustments, Developer shall comply with Section DR 430  
17 of the Technical Provisions.

18 (b) Subject to Sections 7.4.2(f) and (g), for all Utility Adjustments, Developer is  
19 responsible for preparing, negotiating, and entering into instruction-specific,  
20 construction-detailed Utility Agreements with all Utility Companies, regardless of  
21 whether the Utility Companies are identified in the Technical Provisions or  
22 Reference Information Documents. The general procedures, framework and  
23 forms for preparing the Utility Agreements and processing Utility issues shall  
24 follow the standard practices, procedures and forms of the respective Utility  
25 Companies for such Utility Agreements, subject to:

26 (i) The requirement that the Utility Agreement comply with Section DR  
27 430.2.4.2 of the Technical Provisions; and

28 (ii) Developer's right to negotiate with Utility Companies for variations from  
29 standard terms, provided the variations comply with Section DR 430.2.4.2  
30 of the Technical Provisions.

31 (c) ADOT agrees to cooperate, at its own cost, as reasonably requested by Developer  
32 in pursuing Utility Agreements, including attendance at negotiation sessions and  
33 review of Utility Agreements. Developer shall keep ADOT informed of the status  
34 of any such negotiations and shall deliver to ADOT, within ten days after  
35 execution, a true and complete original of each Utility Agreement entered into by  
36 Developer.

- 1 (d) Except as provided in Section 7.4.2(e), ADOT shall not be a party to Utility  
2 Agreements to which Developer is a party, and Developer shall cause each Utility  
3 Agreement to expressly provide that ADOT will have no liability under the Utility  
4 Agreement unless and until ADOT receives a written assignment of the  
5 Developer's interests in the Utility Agreement and assumes in writing Developer's  
6 obligations thereunder; provided, however, that Developer shall cause the Utility  
7 Agreements to designate ADOT as an intended third-party beneficiary thereof and  
8 to permit assignment of Developer's right, title, and interest thereunder to ADOT  
9 without necessity for Utility Company consent. Developer shall not enter into any  
10 agreement with a Utility Company that purports to bind ADOT in any way.
- 11 (e) If a Utility Company has proper Prior Rights Documentation in connection with a  
12 Utility Adjustment or otherwise claims that it has Prior Rights Documentation  
13 concerning real property affected by a Utility Adjustment, then Developer shall  
14 follow the process set forth in Sections DR 430.2.4.1 and DR 430.3.4 of the  
15 Technical Provisions. If it is determined that the Utility Company has Prior Rights  
16 Documentation in connection with a Utility Adjustment, then at Developer's  
17 request ADOT will join with Developer as a party to the corresponding Utility  
18 Agreement, but for the sole purpose of indicating ADOT's consent thereto and  
19 agreement to the terms and conditions in the Utility Agreement respecting such  
20 prior rights.
- 21 (f) If Developer has prepared and negotiated an instruction-specific, construction-  
22 detailed Utility Agreement with a Utility Company and such Utility Company  
23 refuses to enter into the Utility Agreement with Developer but is willing to enter  
24 into the Utility Agreement with ADOT, ADOT will enter into the Utility Agreement  
25 directly with the Utility Company and delegate its obligations to Developer, in  
26 which case Developer shall accept such delegation and assume such obligations.
- 27 (g) If a Utility Company is unwilling to negotiate a Utility Agreement with Developer  
28 but is willing to do so with ADOT, then ADOT will use reasonable efforts to enter  
29 into a reasonably acceptable form of Utility Agreement and delegate its  
30 obligations thereunder to Developer, in which case Developer shall accept such  
31 delegation and assume such obligations. Developer acknowledges and agrees that  
32 a Utility Agreement substantially similar to a form of Utility Agreement typically  
33 used by ADOT and the Utility Company on other ADOT projects shall be deemed  
34 acceptable for the purpose of Developer's assumption of such delegated  
35 obligations.
- 36 (h) Developer shall be solely responsible for the terms and conditions of all Utility  
37 Agreements into which it enters or for which it assumes obligations. Developer  
38 shall comply with and timely perform all obligations imposed on Developer by any  
39 Utility Agreement to which it is a party or which it assumes.

- 1 (i) Developer shall ensure that the Utility Adjustment Work is completed in  
2 accordance with the Contract Documents, regardless of the nature or provisions  
3 of the Utility Agreements and regardless of whether Developer or its  
4 Subcontractors, or the Utility Company or its contractors, performs the Utility  
5 Adjustment Work.

### 6 **7.4.3 Requirements**

7 Each Utility Adjustment (whether performed by Developer or by the Utility Company)  
8 shall comply with the Adjustment Standards, including applicable Changes in Adjustment  
9 Standards. If there is no Utility Memorandum of Understanding that provides terms or conditions  
10 to limit a Utility Company's Changes in Adjustment Standards, then Developer shall be solely  
11 responsible for negotiating any such terms and conditions in the corresponding Utility  
12 Agreement. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the  
13 applicable Utility Agreement(s), and all other requirements specified in Sections DR 430.2, DR  
14 430.3 and CR 430.3 of the Technical Provisions.

### 15 **7.4.4 Utility Adjustment Risk**

- 16 (a) Except with respect to Developer's rights to claim a Relief Event for Utility  
17 Company Delays pursuant to Section 16.4.3, for Inaccurate Utility Information  
18 pursuant to Section 16.4.4, or for certain Changes in Adjustment Standards  
19 pursuant to clause (l) of the definition of Relief Event, Developer shall not be  
20 entitled to an increase in the Contract Price, a Completion Deadline adjustment or  
21 any other Claim or Relief Event in connection with the Utility Adjustment Work,  
22 inaccuracy of the Utility Information or Utilities located within or outside the  
23 Project ROW or otherwise impacted by, or having an impact on, the Project or the  
24 Work.

- 25 (b) Developer shall:

26 (i) perform at its own cost (subject to payments out of the Contract Price) the  
27 Utility Adjustment Work itself, if permitted by the Utility Company (except  
28 that any assistance provided by any Developer-Related Entity to the Utility  
29 Company in the acquisition of Replacement Utility Property Interests shall  
30 be provided outside of the Work); or

31 (ii) reimburse (out of the Contract Price or otherwise) the Utility Company for  
32 its Utility Adjustment Work within the time and in the manner required by  
33 the applicable Utility Agreement.

34 However, Developer has no obligation to reimburse a Utility Company for Utility  
35 Adjustment costs for any Service Line Adjustment for which the affected property  
36 owner has been compensated in connection with Project ROW acquisition.

- 1 (c) Developer is solely responsible for collecting directly from the Utility Company any  
2 reimbursement due to Developer for Betterment costs or other costs incurred by  
3 Developer for which the Utility Company is responsible under applicable Law.
- 4 (d) For each Utility Adjustment, the eligibility of Utility Company costs (both indirect  
5 and direct) for reimbursement by Developer, as well as the determination of any  
6 Betterment or other costs due to Developer, shall be established in accordance  
7 with applicable Law and the applicable Utility Agreement(s).
- 8 (e) Developer shall reimburse (out of the Contract Price or otherwise) costs incurred  
9 by Utility Companies and billed to either ADOT or Developer for monitoring  
10 Developer's blasting activities (including test blasts).
- 11 (f) For each Utility Adjustment, Developer shall compensate the Utility Company for  
12 each Existing Utility Property Interest relinquished, to the extent ADOT would be  
13 required to do so by applicable Law or to the extent required by the applicable  
14 Utility Agreement and provided that ADOT has approved the Utility Company's  
15 claim for compensation. Developer is advised that in some cases reimbursement  
16 of the Utility Company's acquisition costs for a Replacement Utility Property  
17 Interest will satisfy this requirement.
- 18 (g) ADOT may declare a Developer Default under Section 21.1.1(h) if Developer  
19 breaches any covenant in this Section 7.4.4 respecting reimbursement of Utility  
20 Company costs.
- 21 (h) If for any reason Developer is unable to collect any amounts due to Developer  
22 from any Utility Company, then:
- 23 (i) ADOT will have no liability for such amounts;
- 24 (ii) Developer shall have no right to collect such amounts from ADOT or to  
25 offset such amounts against amounts otherwise owing from Developer to  
26 ADOT; and
- 27 (iii) Developer shall have no right to stop Work or to exercise any other  
28 remedies against ADOT on account of such failure to pay.
- 29 (i) If any Local Jurisdiction is participating in any portion of Utility Adjustment costs,  
30 Developer shall coordinate with ADOT and such Local Jurisdiction regarding  
31 accounting for and approval of those costs.
- 32 (j) Developer shall maintain a complete set of records for the costs of each Utility  
33 Adjustment (whether incurred by Developer or by the Utility Company), in a  
34 format compatible with the estimate attached to the applicable Utility Agreement  
35 and in detail sufficient to permit an audit. Developer shall obtain from the Utility  
36 Company a complete set of records of the Utility Company's costs incurred for

1 such Utility Adjustment Work. For both Utility Company costs and Developer  
2 costs, the totals for each cost category shall be shown in such manner as to permit  
3 comparison with the categories stated on the estimate. Developer also shall  
4 indicate in these records the source of funds used for each Utility Adjustment. All  
5 records with respect to Utility Adjustment Work shall comply with the record  
6 keeping and audit requirements of the Contract Documents and applicable Law,  
7 including 23 C.F.R. Part 645, Subpart A.

8 **7.4.5 FHWA Utility Requirements**

9 (a) Unless ADOT advises Developer otherwise:

10 (i) The Project will be subject to 23 C.F.R. Part 645 Subpart A (including its  
11 requirements as to plans, specifications, estimates, charges, tracking of  
12 costs, credits, billings, records retention, and audit) and FHWA's associated  
13 policies;

14 (ii) Utility Agreements for Utilities shall incorporate by reference 23 C.F.R Part  
15 645 Subparts A and B and assign the obligations arising thereunder;

16 (iii) Developer shall comply (and shall require the Utility Companies to comply)  
17 with 23 C.F.R Part 645 Subparts A and B as necessary for any Utility  
18 Adjustment costs to be eligible for reimbursement from any federal  
19 financing or funding; and

20 (iv) Each Utility Agreement shall include the requirement for the Utility  
21 Company to meet the Buy America requirements (as specified in 23 U.S.C  
22 313, 23 C.F.R § 635.410 and Exhibit 2-7 (Buy America Certification)), except  
23 to the extent such requirements establish an exemption for the particular  
24 Utility Adjustment. Each such Utility Agreement shall require a definitive  
25 statement to be provided by Developer, the Utility Company or contractor  
26 performing any relocation work about the origin of all products  
27 permanently incorporated into the Project and covered under the Buy  
28 America requirements.

29 (b) Developer acknowledges, however, that Developer will not have any share in any  
30 reimbursement from FHWA or other federal financing or funding that ADOT may  
31 receive on account of Utility Adjustments.

32 **7.4.6 Betterments and Utility Company Projects**

33 (a) Developer shall address any requests by Utility Companies that Developer design  
34 or construct Betterments or Utility Company Projects. Developer may, but is not  
35 obligated to, design and construct Betterments or Utility Company Projects. Any  
36 Betterment performed as part of a Utility Adjustment, whether by Developer or

1 by the Utility Company, shall be subject to the same standards and requirements  
2 as Utility Adjustments included in the Work, and shall be addressed in the  
3 appropriate Utility Agreement. Developer shall perform any work on a Utility  
4 Company Project only by separate contract outside of the Work, and such work  
5 shall be subject to Section 7.4.10.

6 (b) Under no circumstances shall Developer proceed with any Betterment or Utility  
7 Company Project that is incompatible with the Project in its final configuration or  
8 is not in compliance with applicable Law, the Governmental Approvals or the  
9 Contract Documents, including the Completion Deadlines. Developer shall be  
10 liable to ADOT for any Betterments or Utility Company Projects that Developer  
11 undertakes and that adversely affect the Project.

12 (c) Under no circumstances will Developer be entitled to an increase in the Contract  
13 Price, a Completion Deadline adjustment or any other Claim in connection with  
14 any Betterment or Utility Company Project, whether performed by Developer or  
15 by the Utility Company.

16 **7.4.7 Failure of Utility Companies to Cooperate**

17 (a) Developer shall use diligent efforts to obtain the cooperation of each Utility  
18 Company as necessary for Utility Adjustments. Developer shall notify ADOT  
19 immediately if Developer becomes aware of any failure or refusal of a Utility  
20 Company to cooperate that, if it continues, could ripen into a Utility Company  
21 Delay, including if:

22 (i) Developer is unable (or anticipates that it will be unable), after diligent  
23 efforts, to reach agreement with a Utility Company on a necessary Utility  
24 Agreement within a reasonable time;

25 (ii) Developer reasonably believes for any other reason that any Utility  
26 Company will not undertake or permit a Utility Adjustment in a manner  
27 consistent with the timely completion of the Project or in accordance with  
28 Law, the Governmental Approvals or the Contract Documents;

29 (iii) Developer becomes aware that any Utility Company is not cooperating in  
30 a timely manner to provide agreed-upon or necessary work, reviews or  
31 approvals; or

32 (iv) Any other dispute arises between Developer and a Utility Company with  
33 respect to the Project, despite Developer's diligent efforts to obtain such  
34 Utility Company's cooperation or otherwise resolve such dispute.

35 (b) Developer's notice may include a request that ADOT assist in resolving the dispute  
36 or in otherwise obtaining the Utility Company's timely cooperation. Developer

1 shall provide ADOT with such information as ADOT requests regarding the Utility  
2 Company's failure to cooperate and the effect of any resulting delay on the Project  
3 Schedule. After delivering to ADOT any notice or request for assistance, Developer  
4 shall continue to use diligent efforts to pursue the Utility Company's cooperation.

5 (c) If Developer requests ADOT's assistance pursuant to Section 7.4.7(b), then, the  
6 following provisions shall apply:

7 (i) Developer shall provide evidence reasonably satisfactory to ADOT that: (A)  
8 the subject Utility Adjustment is necessary; (B) the time for completion of  
9 the Utility Adjustment in the Project Schedule was, in its inception, a  
10 reasonable amount of time for completion of such work, including  
11 scheduling sufficient time for Utility Company reviews of Developer's  
12 design submittals; (C) Developer has made diligent efforts to obtain the  
13 Utility Company's cooperation; and (D) the Utility Company is not  
14 cooperating as evidenced by any circumstance described in Section  
15 7.4.7(a).

16 (ii) Following ADOT's receipt of satisfactory evidence, ADOT will take  
17 reasonable measures to assist Developer in obtaining the cooperation of  
18 the Utility Company or resolving the dispute; provided, however, that  
19 ADOT will have no obligation to prosecute eminent domain or other legal  
20 proceedings, or to exercise any other remedy available to it under  
21 applicable Law or existing contract, unless ADOT elects to do so in its sole  
22 discretion.

23 (iii) If ADOT holds contractual or property rights that might be used to enforce  
24 the Utility Company's obligation to cooperate, and if ADOT elects in its  
25 good faith discretion not to exercise those rights, and if such rights are  
26 assignable, then ADOT may assign those rights to Developer upon  
27 Developer's request; provided, however, that such assignment shall be  
28 without any representation or warranty as to the enforceability or  
29 effectiveness of such rights.

30 (iv) Any assistance ADOT provides shall not relieve Developer of its sole  
31 responsibility for satisfactory compliance with its obligations respecting  
32 Utility Adjustment Work and timely completion thereof, except as  
33 otherwise expressly set forth herein.

34 (d) If ADOT objects in writing to a request for assistance made pursuant to Section  
35 7.4.7(b) based on Developer's failure to satisfy the conditions to assistance  
36 described in Section 7.4.7(a), then Developer shall take such action as is  
37 appropriate to satisfy the condition(s) and shall then have the right to submit  
38 another request for assistance on the same subject matter. If ADOT objects in  
39 writing to a request for assistance made pursuant to Section 7.4.7(b) based on

1 Developer's failure to satisfy the conditions to assistance described in Section  
2 7.4.7(c)(i), then Developer shall take such action as Developer deems advisable  
3 during the ten days following receipt of ADOT's objection to obtain the Utility  
4 Company's cooperation and shall then have the right to submit another request  
5 for assistance on the same subject matter. Notwithstanding the foregoing, no  
6 resubmittal will be accepted unless all of ADOT's objections have been addressed  
7 in accordance with the preceding two sentences. This process shall be followed  
8 until Developer succeeds in obtaining the Utility Company's cooperation or in  
9 otherwise resolving the dispute or until ADOT determines, based on evidence  
10 Developer presents, that the conditions to assistance have been satisfied.  
11 Developer shall have the right to submit a dispute concerning the reasonableness  
12 of ADOT's determination for resolution under the Dispute Resolution Procedures.

13 (e) In certain cases where a Utility Company is not cooperating with Developer or  
14 ADOT, ADOT may, in its sole discretion and where applicable Law authorizes ADOT  
15 to take unilateral action, issue a Directive Letter directing Developer to proceed  
16 with a Utility Adjustment without a Utility Agreement or other written consent by  
17 the Utility Company. If ADOT directs Developer to perform work pursuant to this  
18 Section 7.4.7(e), then Developer, without the right to an increase in the Contract  
19 Price, adjustment of a Completion Deadline or any other Claim, shall proceed with  
20 such work as if Developer has entered into a Utility Agreement providing for  
21 Developer to perform such work, and shall perform such work in accordance with  
22 applicable Adjustment Standards and the requirements of the Contract  
23 Documents otherwise applicable to Developer's performance of Utility  
24 Adjustment Work.

25 **7.4.8 Protection of ADOT Broadband Initiative for I-17 Facilities**

26 (a) Notwithstanding any contrary provision of the Contract Documents, Developer  
27 shall undertake Protection in Place of the facilities of the ADOT Broadband  
28 Initiative for I-17 within the Site and shall have no right to undertake any other  
29 method of Utility Adjustment or Betterment respecting such facilities.

30 (b) Protection in Place of such facilities shall include compliance with Section DR  
31 430.3.2 of the Technical Provisions.

32 (c) If any Developer-Related Entity cuts, damages or destroys any conduit, fiber or  
33 other component of the ADOT Broadband Initiative for I-17 within the Site, then:

34 (i) Developer shall immediately notify ADOT of the event;

35 (ii) Developer shall not undertake to perform repairs;

36 (iii) Developer shall fully cooperate with any third party or parties assigned to  
37 effect repairs, including providing such third party or parties with

1 immediate access to the affected facilities to effect investigation and  
2 repair;

3 (iv) Developer shall immediately suspend its Work in the vicinity of the  
4 affected facilities until such third party or parties have completed their  
5 investigation and repair and ADOT has authorized Developer to resume  
6 such Work; and

7 (v) Developer shall reimburse ADOT within 30 days after demand for all actual  
8 internal and third party costs ADOT incurs in connection with investigation  
9 and repair of the affected facilities.

10 **7.4.9 Security for Utility Adjustment Costs; Insurance**

11 (a) Developer shall satisfy all requirements in Utility Memoranda of Understanding  
12 and Utility Agreements to provide security for reimbursement of Utility  
13 Adjustment costs to which the Utility Company is entitled, in form, type and  
14 amount, and on terms provided by Utility Memoranda of Understanding and  
15 Utility Agreements.

16 (b) Developer shall satisfy all requirements in Utility Memoranda of Understanding  
17 and Utility Agreements to provide liability insurance for the protection of the  
18 Utility Company.

19 **7.4.10 Applications for Utility Permits**

20 (a) Utility Companies may apply to ADOT for utility permits and other agreements and  
21 approvals to install new Utilities that would cross or longitudinally occupy the  
22 Project ROW, or to modify, upgrade, relocate or expand existing Utilities within  
23 the Project ROW for reasons other than to accommodate the Project. The  
24 provisions of this Section 7.4.10 shall govern such Utility Company applications.

25 (b) For all Utility Company applications described in Section 7.4.10(a) and pending as  
26 of or submitted after the Effective Date, Developer shall:

27 (i) Furnish to the applicants the most recent pertinent Project design  
28 information or Record Drawings, as applicable;

29 (ii) Assist the applicants with information regarding the location of other  
30 proposed and existing Utilities; and

31 (iii) Use commercially reasonable efforts to coordinate work schedules with  
32 the applicants so that the applicants' activities do not interfere with the  
33 Project Schedule.

- 1 (c) Developer shall assist ADOT in deciding whether to approve a permit or other  
2 agreement or approval applied for by a Utility Company. Within ten Business Days  
3 after receiving an application for a utility permit or other agreement or approval,  
4 Developer shall analyze the application and provide to ADOT a recommendation  
5 (together with supporting analysis) as to whether it should be approved, denied,  
6 or approved subject to conditions. Developer shall limit the grounds for its  
7 recommendation of denial or conditions to approval to (i) the grounds (as ADOT  
8 communicates to Developer from time to time) on which ADOT is legally entitled  
9 to deny or condition approval of the application or (ii) demonstration that  
10 approval of the permit would entail a location and timing of work in the Project  
11 ROW by the Utility Company that is likely to result in unavoidable delay to the  
12 Critical Path.
- 13 (d) If Developer demonstrates such unavoidable delay to the Critical Path is likely to  
14 result but ADOT issues the permit, then such permit issuance shall be treated as  
15 an ADOT-Directed Change, provided that:
- 16 (i) Developer uses commercially reasonable efforts to coordinate work  
17 schedules with the permittee so that the permittee's activities do not  
18 interfere with Developer's Critical Path activities;
- 19 (ii) Such unavoidable delay to the Critical Path nevertheless actually results;  
20 and
- 21 (iii) Developer satisfies all other requirements for relief under Section 16.
- 22 (e) To the extent permitted by Law, ADOT will impose conditions in any approved  
23 permit or other agreement or approval:
- 24 (i) Prohibiting the Utility Company from interfering with Developer's  
25 schedule for D&C Work or Developer's performance of the D&C Work;
- 26 (ii) Requiring the Utility Company to compensate Developer for the adverse  
27 impact to Developer of any prohibited interference;
- 28 (iii) Requiring the Utility Company and its contractors to cooperate and  
29 coordinate with Developer and its Subcontractors; and
- 30 (iv) Requiring the Utility Company to adhere to Developer's on-site safety  
31 standards and procedures whenever the Utility Company or its  
32 subcontractors are in any active work zone of Developer or its  
33 Subcontractors.
- 34 (f) If Developer and ADOT disagree on the response to a utility application, such  
35 disagreement shall be resolved according to the Dispute Resolution Procedures;  
36 provided, however, that if Developer recommends against issuance of the permit

1 or other agreement or approval and ADOT determines issuance is appropriate or  
2 required, then:

3 (i) ADOT's determination shall control unless issuance is arbitrary and  
4 capricious and not required by Law;

5 (ii) ADOT may elect to issue the utility permit or other agreement or approval  
6 in advance of resolution of the Dispute, but if it is finally determined that  
7 such issuance was arbitrary and capricious and not required by Law, such  
8 issuance shall be deemed an ADOT-Directed Change (and therefore a  
9 potential Relief Event); and

10 (iii) If ADOT elects to delay issuance of a utility permit or other agreement or  
11 approval pending final resolution of the Dispute, Developer's indemnity  
12 under Section 23.1.1(j) shall be deemed to apply with respect to any  
13 applicant claim of wrongful delay or denial.

14 (g) No work or services required of Developer, and no accommodation of new Utilities  
15 or of modifications, upgrades, relocations or expansions of existing Utilities,  
16 pursuant hereto, shall entitle Developer to an increase in the Contract Price, a  
17 Completion Deadline adjustment or other Claim or relief, except to the extent  
18 provided otherwise in Section 7.4.10(d). Developer shall keep records of its costs  
19 related to new Utilities separate from other costs.

#### 20 **7.4.11 Assignment of Rights against Utility Companies**

21 If Developer is damaged or claims to be damaged by the wrongful actions or inactions of  
22 a Utility Company within the Project ROW, upon receipt of a written request from Developer,  
23 ADOT may, in its sole discretion, assign to Developer ADOT's rights of recovery, as such may exist,  
24 under any existing agreement between ADOT and a Utility Company, including any utility permits,  
25 utility relocation agreements, or other agreements.

### 26 **7.5 Use of Designated ADOT Property**

27 **7.5.1** ADOT will make the following property, for which it owns an easement from the  
28 BLM as set forth in the RIDs (for purposes of this Section 7.5, "the property"), available for a  
29 Developer's Temporary Work Area, including use for Developer's collocated office or field office,  
30 on the terms and conditions set forth in this Section 7.5:

Parcel APN	Description
800-20-061K	Located northeast of the Velda Rose Road traffic interchange off Velda Rose Road. See location maps in "ADOT Parcel in Black Canyon City.PDF" in the Reference Information Documents.

1           **7.5.2**     Developer may exercise its right to use the property for a Developer’s Temporary  
2 Work Area by delivering to ADOT written notice electing to use the property. The written notice  
3 shall identify the date Developer is willing to take possession and use. Developer is prohibited  
4 from using the property for (a) materials production or processing or (b) any other use prohibited  
5 by the easement. Developer is also prohibited from using the existing buildings on the property.

6           **7.5.3**     If Developer elects to use the property, ADOT will conduct an inspection of the  
7 property to document pre-existing conditions before Developer takes use and occupancy.  
8 Developer shall review and comment on the pre-existing conditions documentation, and the  
9 Parties shall sign such documentation, after resolution of any comments, to create a record of  
10 pre-existing conditions. Developer shall be obligated to return the property to ADOT upon  
11 cessation of its use and possession in a condition at least equal to the pre-existing conditions as  
12 set forth in the signed documentation of pre-existing conditions.

13           **7.5.4**     Developer shall be obligated to vacate the property and return possession to  
14 ADOT not later than the Final Acceptance Date, unless Section 7.5.5 applies.

15           **7.5.5**     Developer may elect to use the property for offices or a maintenance yard during  
16 the O&M Period beyond the Final Acceptance Date. Developer may exercise its right to use the  
17 property for such purposes by delivering to ADOT written notice electing to use the property by  
18 not later than 60 days prior to the Final Acceptance Date. If Developer is not then using the  
19 property pursuant to Section 7.5.2, then the written notice also shall identify the date Developer  
20 is willing to take possession and use. The prohibitions on use of the property set forth in Section  
21 7.5.2 shall apply during the O&M Period.

22           **7.5.6**     Developer shall take the property as is, with all faults, defects, and conditions,  
23 known or unknown. ADOT shall have no obligation to provide utility services to, or maintain utility  
24 services for, the property. Developer shall have the responsibility to maintain the property in a  
25 good and safe condition and in accordance with all Laws and Governmental Approvals.

26           **7.5.7**     For guidance in determining the procedures for granting use of the property,  
27 documenting the rights of use, and determining terms and conditions, ADOT will refer to Chapter  
28 3, “Renting and Leasing Operations” in the 2018 ADOT Infrastructure Delivery and Operations  
29 Division, Right of Way Procedures Manual, Property Management Section, Unit 4947, which is  
30 included in the Reference Information Documents.



1           **8.1.7**    Developer may proceed, at its sole risk, with final design or construction of  
2 Elements or portions of the Project before the final design of the entire Project has been  
3 completed. Developer shall be solely responsible for correcting any Nonconforming Work at its  
4 sole expense and at the direction of ADOT.

5           **8.1.8**    Developer is responsible for the safety and security of the Project and the  
6 workers and the public thereon during all D&C Period construction and other activities under the  
7 control of any Developer-Related Entity, as more particularly provided in Section GP 110.09 of  
8 the Technical Provisions.

9           **8.2     Performance, Design and Construction Standards; Deviations**

10          **8.2.1**    Developer shall construct the Project and Utility Adjustments included in the  
11 Construction Work as designed, free from Defects in construction. Further, Developer shall  
12 furnish all aspects of Design Work and all Design Documents and shall perform the Construction  
13 Work in accordance with the following:

- 14           (a)     the Basic Configuration;
- 15           (b)     Good Industry Practice;
- 16           (c)     the requirements, terms and conditions set forth in the Contract Documents  
17 applicable to the D&C Work, including the Applicable Standards and approved  
18 Project Plans and approved updates and amendments thereof;
- 19           (d)     the Project Schedule;
- 20           (e)     all Laws (including Environmental Laws and Changes in Law);
- 21           (f)     the requirements, terms and conditions set forth in all Governmental Approvals;  
22 and
- 23           (g)     the Federal Requirements.

24          **8.2.2**    Developer also shall construct the Project and Utility Adjustments in accordance  
25 with (a) the approved RFC Submittals, and (b) the Construction Documents, in each case taking  
26 into account the Project ROW limits and other constraints affecting the Project.

27          **8.2.3**    The Project design and construction shall be subject to certification pursuant to  
28 the procedure contained in the Quality Management Plan.

29          **8.2.4**    The Construction Materials shall be of good quality and new when installed.  
30 Equipment furnished for the Project shall incorporate the most current technology and design  
31 and be in good working condition.

32          **8.2.5**    Developer may apply for ADOT approval of Deviations from applicable Technical

1 Provisions regarding the design or construction of the Project. The Deviation approval process  
2 shall be as follows:

3 (a) All applications for Deviations shall be in writing. Where Developer applies for a  
4 Deviation as part of the submittal of a component plan of the Project Management  
5 Plan, Developer shall specifically identify and label the proposed Deviation.

6 (b) ADOT will consider, in its sole discretion, but have no obligation to approve, any  
7 such application. Developer shall bear the burden of establishing that the  
8 Deviation sought constitutes sound and safe engineering consistent with Good  
9 Industry Practice, achieves ADOT's applicable safety standards and criteria, and  
10 satisfies the purpose or intent of the applicable Technical Provisions.

11 (c) No Deviation shall be deemed approved or be effective unless and until stated  
12 expressly in a writing signed by ADOT's Authorized Representative. ADOT's  
13 affirmative approval of a component plan of the Project Management Plan shall  
14 constitute: (i) approval of the Deviations expressly identified and labeled as  
15 Deviations therein, unless ADOT takes exception to any such Deviation, and (ii)  
16 disapproval of any Deviations not expressly identified and labeled as Deviations  
17 therein.

18 (d) ADOT's lack of issuance of an approval for any Deviation within ten Business Days  
19 after Developer applies therefor shall be deemed a disapproval of such  
20 application.

21 (e) ADOT's denial or disapproval of a requested Deviation shall be final and not  
22 subject to the Dispute Resolution Procedures.

23 **8.2.6** The approval of a Deviation by ADOT shall not relieve Developer of its obligations  
24 with respect to any other component or requirement of the Contract Documents, and shall not  
25 operate as a waiver by ADOT of the right to seek relief from Developer, including by asserting a  
26 Claim against Developer, for any failure of Developer's design or construction to comply with any  
27 other requirement of the Contract Documents. Developer shall be responsible for ensuring that  
28 any Deviation does not affect Developer's ability to comply with any other requirement of the  
29 Contract Documents.

30 **8.2.7** Developer shall be responsible for all costs associated with implementation of a  
31 Deviation. Developer shall not be entitled to an increase in the Contract Price, Completion  
32 Deadline adjustment or any other Claim arising out of an approved Deviation or Developer's  
33 inability to comply with any other provision of the Contract Documents due to an approved  
34 Deviation.

35 **8.2.8** If an approved Deviation reduces Developer's cost of performing the Work,  
36 ADOT shall be entitled to 100% of such cost savings. ADOT will obtain its share of the cost savings  
37 in the manner described in Section 17.1.6(c). If an approved Deviation results in time savings,

1 such time savings shall be incorporated into the Project Schedule and taken into account in  
2 determining available Float.

3 **8.2.9** Except as set forth in Section 8.2.5, any changes to the Technical Provisions that  
4 materially affect the Design Work or Construction Work prior to the Project Substantial  
5 Completion Date shall be subject to the Supplemental Agreement process in accordance with  
6 Section 17.

### 7 **8.3 Changes in Basic Configuration**

8 **8.3.1** Developer shall not make any change in the Basic Configuration of the Project,  
9 except as approved by ADOT in its sole discretion and authorized by a Supplemental Agreement  
10 in accordance with Section 17. Except as provided in Section 8.3.2, a Supplemental Agreement is  
11 required regardless of the reason underlying the change and regardless of whether the change  
12 increases, decreases or has no effect on Developer's costs.

13 **8.3.2** No Supplemental Agreement shall be required for any non-material changes in  
14 the Basic Configuration that ADOT approves in writing as part of the design review process, unless  
15 the proposed change constitutes a Change Request described in Section 17.2.3. Developer  
16 acknowledges and agrees that constraints set forth in the NEPA Approval, Technical Provisions  
17 and other Contract Documents, as well as Site conditions and the Schematic Design, will impact  
18 Developer's ability to make non-material changes in the Basic Configuration.

19 **8.3.3** If a Change Request results in a change in the Basic Configuration, any cost or  
20 time savings that result from such Change Request shall be treated in accordance with Sections  
21 17.2.6 and 17.2.7.

### 22 **8.4 Design Requirements; Responsibility for Design**

#### 23 **8.4.1 Design Implementation and Submittals**

24 (a) Developer, through the qualified and licensed design professionals identified in  
25 Exhibit 8 (Key Subcontractors and Key Personnel) and the Project Management  
26 Plan, shall prepare Plans and specifications in accordance with the Contract  
27 Documents. Developer shall cause the engineers of record, as applicable, for the  
28 Project to sign and seal all RFC Submittals.

29 (b) Developer shall deliver to ADOT accurate and complete duplicates of all interim,  
30 revised and final Design Documents (including the RFC Submittals), Plans and  
31 Construction Documents within seven days after Developer completes  
32 preparation thereof. Developer shall construct the Project in accordance with the  
33 RFC Submittals and the Construction Documents. Developer may modify the RFC  
34 Submittals and Construction Documents, subject to ADOT's review and comment  
35 and resolution of ADOT comments respecting the modifications in advance of  
36 performance of the applicable D&C Work.

1           **8.4.2    Developer Responsibility for Design**

2           Developer agrees that it has full responsibility for the design of the Project and that  
3 Developer will furnish the design of the Project, regardless of the fact that aspects of the  
4 Schematic Design have been provided to Developer as a preliminary basis for Developer’s design.  
5 Developer specifically acknowledges and agrees that:

- 6           (a)    Developer is not entitled to rely on: (i) the Schematic Design; or (ii) any other  
7               documents or information provided by ADOT, except to the extent specifically  
8               permitted in the Contract Documents;
  
- 9           (b)    Developer is responsible for correcting any Errors in the Schematic Design through  
10               the design or construction process;
  
- 11          (c)    Developer shall not be entitled to any increase in the Contract Price, a Completion  
12               Deadline adjustment or any other Claim arising from Errors in the Schematic  
13               Design, except only for the right to a Supplemental Agreement with respect to  
14               Necessary Schematic ROW Changes as set forth in Section 16.4.15, and subject to  
15               the requirements and limitations of Section 16;
  
- 16          (d)    Developer’s warranties and indemnities hereunder cover Errors in the Project  
17               even though they may arise from or be related to Errors in the Schematic Design;  
18               and
  
- 19          (e)    Developer is responsible for verifying all calculations and quantity takeoffs  
20               contained in the RFP Documents or otherwise provided by ADOT. Developer shall  
21               not be entitled to an increase in the Contract Price, a Completion Deadline  
22               adjustment or any other Claim based on an Error in any calculations or quantity  
23               takeoffs contained in the RFP Documents or otherwise provided by ADOT.

24           **8.4.3    Changes to Schematic Design and Schematic ROW**

- 25          (a)    Developer acknowledges and agrees that the requirements and constraints set  
26               forth in the Contract Documents and in the Governmental Approvals, as well as  
27               Site conditions, will impact Developer’s ability to revise the concepts contained in  
28               the Schematic Design. Developer, however, may modify the Schematic Design  
29               without ADOT’s prior written approval if the proposed modification:
  - 30               (i)    Meets the requirements of the Technical Provisions;
  - 31               (ii)   Requires no revision, modification or amendment to the NEPA Approval,  
32               as determined in accordance with Section DR 420.2.6.1 of the Technical  
33               Provisions;
  - 34               (iii)   Does not constitute a Design Exception or Design Variance; and

- 1 (iv) Does not deviate from the design concepts included in the Proposal.
- 2 (b) Developer may rely on the Schematic ROW limits, as shown on the Schematic  
3 Design, and that it is feasible to design and develop the Basic Configuration within  
4 said Schematic ROW limits. Accordingly, Developer shall have the right to certain  
5 relief due to Necessary Schematic ROW Changes, to the extent provided in Section  
6 16.4.15; provided, however that Developer acknowledges that “feasible to design  
7 and develop the Basic Configuration” is not intended to mean or be limited to  
8 Developer’s design approach set forth in its Proposal or Developer’s preferred  
9 design approach.
- 10 (c) Developer acknowledges that the Schematic Design is preliminary and subject to  
11 refinement through the Final Design process, and that Developer is not entitled to  
12 an increase in the Contract Price, a Completion Deadline adjustment or any other  
13 Claim in connection with changes in the Schematic Design, except to the extent  
14 provided for Necessary Schematic ROW Changes under Section 16.4.15.

## 15 **8.5 Cooperation with Other Contractors**

### 16 **8.5.1 Developer Duty of Cooperation**

- 17 (a) Developer acknowledges that ADOT and other Persons may award contracts for  
18 construction and other work at or near the Site. A list of such future contracts and  
19 projects is contained in Table 110-1 in Section GP 110.01.2.2.1 of the Technical  
20 Provisions.
- 21 (b) Developer shall, and shall cause the Developer-Related Entities to, cooperate and  
22 coordinate the D&C Work with other contractors, whether the contractors work  
23 for ADOT or other Persons, whose projects or work may affect the Project or the  
24 D&C Work. Developer shall schedule and sequence the D&C Work as reasonably  
25 necessary to accommodate the projects and work of such contractors. Further,  
26 Developer shall conduct its D&C Work and perform its obligations under the  
27 Contract Documents without interfering with or hindering the progress,  
28 completion or operation of the projects or work being performed by other  
29 contractors. Without limiting the foregoing, Developer shall comply with Section  
30 105.09 of the ADOT Standard Specifications.
- 31 (c) Developer shall closely coordinate and interface with the ADOT contractor  
32 responsible for installation of the ADOT Broadband Initiative for I-17 facilities to  
33 accurately locate such facilities before performing Construction Work in the  
34 vicinity of such facilities, in compliance with Section GP 110.01.2.2.1 of the  
35 Technical Provisions.
- 36 (d) ADOT agrees to include or incorporate Section 105.09 of the ADOT Standard  
37 Specifications in its contract with the contractor for the ADOT Broadband Initiative

1 for I-17 facilities and in contracts with other contractors entered into subsequent  
2 to the Effective Date.

3 **8.5.2 Closures and Interference by Other Contractors**

4 (a) After Developer completes training as provided in Section DR 462.3.3.1 of the  
5 Technical Provisions, ADOT will make its Event Reporting System available to  
6 Developer electronically, with read only access, so that Developer can track  
7 Closure reservations by ADOT’s other contractors. Developer understands and  
8 acknowledges that the reservation of Closures via the Event Reporting System is  
9 on a first-come, first-served basis, that ADOT will protect the priority of Closure  
10 reservations based on the time reservations are entered into the Event Reporting  
11 System, absent Emergency or other unusual circumstance and except as provided  
12 below, and that Closures by other contractors elsewhere may constrain feasibility  
13 of Closures by Developer on the Project. Accordingly:

14 (i) ADOT will protect from interference by ADOT’s other contractors, and  
15 prioritize over conflicting Closures requested by such other contractors,  
16 planned Closures that Developer reserves on the Event Reporting System  
17 prior to ADOT’s other contractors, provided that in any event Closures  
18 required by the contractor for constructing the ADOT Broadband Initiative  
19 for I-17 facilities shall have priority over Developer’s planned Closures; and

20 (ii) Developer shall have no right to ADOT’s approval of Closures that cannot  
21 be accommodated because of conflict with prior Closure reservations by  
22 other contractors on the Event Reporting System.

23 (b) Provided that Developer adheres to its Project Schedule as disclosed to ADOT, and  
24 excluding the contractor for the ADOT Broadband Initiative for I-17, ADOT will  
25 manage ADOT’s other contractors to avoid their working simultaneously in  
26 Developer’s work zones.

27 (c) Developer shall comply with other restrictions concerning Closures set forth in  
28 Section DR 462.3.3 of the Technical Provisions.

29 **8.5.3 Coordination with Utility Companies and Adjacent Property Owners**

30 Developer shall coordinate with Utility Companies and owners of property adjoining the  
31 Project, and with their respective contractors, as more particularly described in the Contract  
32 Documents.

1 **8.6 Project Substantial Completion; Punch List; South Segment Substantial Completion;**  
2 **Final Acceptance**

3 **8.6.1 Project Substantial Completion**

4 (a) Except as provided in Section 8.6.2, the Project shall not be opened to vehicular  
5 traffic, and the O&M Period shall not commence, until ADOT issues to Developer  
6 a Certificate of Project Substantial Completion. Subject to Section 8.6.1(b) below,  
7 ADOT will issue a Certificate of Project Substantial Completion on the date that all  
8 the following conditions precedent to Project Substantial Completion have been  
9 met at all locations on the Site:

10 (i) All major safety features are installed and functional. For purposes of this  
11 clause (a)(i), such major safety features include shoulders, guard rails,  
12 striping and delineations, concrete traffic barriers, bridge railings, cable  
13 safety systems, metal beam guard fences, safety end treatments, terminal  
14 anchor sections and crash attenuators;

15 (ii) All required illumination is installed and functional;

16 (iii) All required signs are installed and functional and relocation of existing  
17 signs is completed;

18 (iv) The need for temporary traffic controls or for Closures at any time has  
19 ceased, except for (A) any then required for O&M Work, so long as  
20 Developer has complied with the notice requirements set forth in Section  
21 8.6.1(b) and such need for controls or Closures is not due to any act or  
22 failure to act by any Developer-Related Entity, and (B) temporary Closures  
23 during hours of low traffic volume in accordance with and as permitted by  
24 the Transportation Management Plan solely to complete Punch List items;

25 (v) All lanes of traffic (including ramps, interchanges, overpasses,  
26 underpasses, other crossings, frontage roads and the Flex Lanes) set forth  
27 in the Design Documents are in their final configuration and traffic can  
28 move unimpeded through the Project at the normal, posted speed;

29 (vi) Developer has updated Attachment 500-1 of the Technical Provisions at  
30 least 90 days prior to Project Substantial Completion as required by Section  
31 OMR 400.1 of the Technical Provisions, and each Element meets the Target  
32 as set forth in such updated Attachment 500-1 of the Technical Provisions;

33 (vii) The Flex Lanes System and all its components are installed and functional,  
34 and all required testing has been successfully completed in accordance  
35 with Section CR 466 of the Technical Provisions;

- 1 (viii) Developer has otherwise completed the D&C Work in accordance with the  
2 Contract Documents and Design Documents, such that the Project is in a  
3 condition that it can be used for safe vehicular travel in all lanes at the  
4 normal, posted speed and at all points of entry and exit, subject only to  
5 Punch List items and other items of D&C Work that do not affect the ability  
6 to safely (A) open for normal use by the traveling public and (B) operate  
7 the Flex Lanes in both directions;
- 8 (ix) Developer has satisfied all O&M Conditions Precedent as provided in  
9 Section 8.6.4; and
- 10 (x) All aesthetic and landscaping features for the Project have been completed  
11 in accordance with Sections DR 450 and CR 450 of the Technical Provisions  
12 and the Plans and designs prepared in accordance therewith.
- 13 (b) If Developer elects to achieve South Segment Substantial Completion and ADOT  
14 issues a Certificate of South Segment Substantial Completion prior to Project  
15 Substantial Completion, ADOT will issue a Certificate of Project Substantial  
16 Completion on the date that all conditions precedent listed in Sections 8.6.1(a)(i)  
17 through (x) have been met at all locations on the Site other than the portion of  
18 the South Segment that was in its final configuration at the time of South Segment  
19 Substantial Completion.
- 20 (c) The procedures for notification of Project Substantial Completion are as follows.
- 21 (i) Developer shall provide ADOT with not less than 60 days prior Notice of  
22 the date Developer determines it will satisfy all conditions to Project  
23 Substantial Completion. During such 60-day period, Developer and ADOT  
24 will meet and confer and exchange information as needed for ADOT to  
25 determine whether Developer will achieve Project Substantial Completion  
26 at the close of the 60-day period.
- 27 (ii) During such 60-day period, ADOT will conduct an inspection of the Project  
28 and its components, a review of the applicable RFC Submittals and  
29 Construction Documents and such other investigation as may be necessary  
30 to evaluate whether Project Substantial Completion is achieved.
- 31 (d) Developer shall provide ADOT a subsequent Notice when Developer determines  
32 it has satisfied all conditions to Project Substantial Completion. Within five days  
33 after expiration of the 60-day period and ADOT's receipt of such Notice, ADOT will  
34 either: (i) issue the Certificate of Project Substantial Completion; or (ii) notify  
35 Developer that one or more conditions to achieving Project Substantial  
36 Completion have not been satisfied and provide reasons.

- 1 (e) If ADOT provides Notice that one or more conditions have not been satisfied and  
2 Developer does not dispute ADOT’s assessment, then the processes set forth in  
3 clause (c) above shall be repeated until (i) ADOT issues a Certificate of Project  
4 Substantial Completion, or (ii) the Parties’ disagreement either as to (A) whether  
5 one or more criteria for Project Substantial Completion have been met or (B) the  
6 date of Project Substantial Completion is referred to and resolved according to the  
7 Dispute Resolution Procedures.

8 **8.6.2 South Segment Substantial Completion**

- 9 (a) At its option, Developer may achieve South Segment Substantial Completion in  
10 advance of Project Substantial Completion. Developer shall continue to bear all  
11 responsibilities for traffic management, safety and risk of damage or destruction  
12 under Section 13.3.1 respecting the South Segment, until ADOT issues to  
13 Developer a Certificate of South Segment Substantial Completion or a Certificate  
14 of Project Substantial Completion. Terms for cessation of Developer’s  
15 responsibility for Maintenance During Construction respecting the South Segment  
16 are set forth in Section 8.11.1(a). Once ADOT issues a Certificate of South Segment  
17 Substantial Completion or a Certificate of Project Substantial Completion, ADOT  
18 shall have the right to open the South Segment to vehicular traffic.

- 19 (b) ADOT will issue a Certificate of South Segment Substantial Completion on the date  
20 that:

21 (i) All the conditions precedent set forth in Section 8.6.1 have been met at all  
22 locations on the South Segment; provided, however, that the provisions  
23 set forth in Sections 8.6.1(a)(iv)(A), (a)(v) (with respect to the Flex Lanes  
24 only), (a)(vii), (a)(viii)(B) and (a)(ix) shall not apply;

25 (ii) All Punch List items respecting the South Segment have been completed  
26 and delivered to the reasonable satisfaction of ADOT;

27 (iii) All Utility Adjustment Work and other Work that Developer is obligated to  
28 perform for or on behalf of third parties with respect to the South Segment  
29 has been accepted by such third parties; and

30 (iv) All personnel, equipment, waste materials, rubbish and temporary  
31 facilities of each Developer-Related Entity have been removed from the  
32 Project ROW for the South Segment, Developer has restored and repaired  
33 all damage or injury arising from such removal to the satisfaction of ADOT,  
34 and the Site for the South Segment is in good working order and condition.

- 35 (c) If Developer elects to request a Certificate of South Segment Substantial  
36 Completion, it shall initiate the request by delivering a Notice pursuant to Section  
37 8.6.1(c)(i) stating the date Developer determines it will satisfy all conditions to

1 South Segment Substantial Completion. Thereafter, the Parties shall follow the  
2 same terms and procedures set forth in Sections 8.6.1(c), (d) and (e) as they relate  
3 to the South Segment.

- 4 (d) Not later than 100 days after ADOT issues the South Segment Certificate of  
5 Substantial Completion, Developer shall deliver to ADOT:
- 6 (i) the Final Design Documents Submittal for the South Segment required by  
7 Section GP 110.10.2.6.7 of the Technical Provisions; and
  - 8 (ii) a complete, indexed set of all Proprietary Intellectual Property pertaining  
9 to the South Segment pursuant to Section 25.7.1(b).
- 10 (e) If Developer does not meet the deadline set forth in Section 8.6.2(d), then ADOT  
11 shall have the right to withhold 6% from each payment due thereafter until  
12 Developer delivers the required documentation. ADOT will pay the withheld  
13 amounts, without interest, within 20 days after it receives all such documentation.

#### 14 **8.6.3 Punch List**

15 The Project Management Plan shall establish procedures and schedules for preparing a  
16 Punch List and completing Punch List work. Such procedures and schedules shall conform to the  
17 following provisions.

- 18 (a) The schedule for preparation of the Punch List shall be consistent and coordinated  
19 with the inspections to verify that Developer has achieved Project Substantial  
20 Completion as set forth in Section 8.6.1 or South Segment Substantial Completion  
21 as set forth in Section 8.6.2, as applicable.
- 22 (b) Developer shall prepare and maintain the Punch List and deliver to ADOT a true  
23 and complete copy of it, and each modification of it, as soon as prepared.  
24 Developer shall provide ADOT not less than five days' prior Notice of the date  
25 when Developer will commence Punch List field inspections and Punch List  
26 preparation. ADOT may, but is not obligated to, participate in the development of  
27 the Punch List. If ADOT participates in the development of the Punch List, each  
28 Party shall have the right to add items to the Punch List, but neither shall remove  
29 any item added by the other Party without such other Party's express permission.
- 30 (c) The Punch List shall solely consist of items of D&C Work requiring correction, fine-  
31 tuning, adjustment, or completion. The Punch List cannot contain any items of  
32 D&C Work that Developer is performing for the first time, regardless of whether  
33 Developer contends that the item of D&C Work does not need to be commenced  
34 to achieve the conditions to Project Substantial Completion or South Segment  
35 Substantial Completion.

1 (d) Periodically, as Developer finishes work on Punch List items, ADOT will coordinate  
2 with Developer to inspect such items to verify they are completed and delivered  
3 in accordance with the Contract Documents.

4 **8.6.4 O&M Conditions Precedent**

5 Project Substantial Completion is subject to and conditioned upon satisfaction of the  
6 following O&M Conditions Precedent:

7 (a) Developer demonstrates to ADOT’s reasonable satisfaction that Developer has  
8 completed training of operations and maintenance personnel, which  
9 demonstration shall consist of:

10 (i) Delivery to ADOT of a written certificate, in form acceptable to ADOT,  
11 executed by Developer that it and its Subcontractors are fully staffed with  
12 such trained personnel and are ready, willing and able to perform the O&M  
13 Work in accordance with the terms and conditions of the Contract  
14 Documents and Project Management Plan pertaining to the O&M Period;  
15 and

16 (ii) Delivery to ADOT of training records and course completion certificates  
17 issued to each of the subject personnel;

18 (b) ADOT has approved the Operations and Maintenance Management Plan,  
19 Operations and Maintenance Quality Management Plan, Operations and  
20 Maintenance Safety Management Plan, Environmental Management Plan,  
21 Operations Manual and generic Traffic Control Plans in accordance with  
22 Sections 10.2 and 10.10.1 and Section OMR 400.2.1 of the Technical Provisions;

23 (c) Developer has received, and paid all associated fees for, all applicable  
24 Governmental Approvals and other third-party approvals required for entry onto  
25 the Project and performance of the O&M Work, such Governmental Approvals  
26 and other third-party approvals are in full force and effect, and there exists no  
27 uncured material violation of the terms and conditions of any such Governmental  
28 Approval or other third-party approvals;

29 (d) All Insurance Policies required during the O&M Period have been obtained and  
30 are in full force and effect and Developer has delivered to ADOT verification  
31 thereof as required under Section 13;

32 (e) Any security for Developer’s performance and payment obligations in connection  
33 with the O&M Work under this Agreement, including the O&M Performance Bond  
34 and O&M Payment Bond required under Section 12.2 and any O&M Guaranty  
35 required under Section 12.7, have been obtained, are in full force and effect and  
36 Developer has delivered the same to ADOT; and

1 (f) Developer has satisfied any other requirements or conditions for commencement  
2 of the O&M Work after Project Substantial Completion set forth in the Technical  
3 Provisions.

4 **8.6.5 Final Acceptance**

5 (a) ADOT will issue a Certificate of Final Acceptance at such time as all of the following  
6 conditions have been satisfied in respect of the Project:

7 (i) ADOT has issued

8 (1) a Certificate of Project Substantial Completion pursuant to Section  
9 8.6.1(a); or

10 (2) a Certificate of South Segment Substantial Completion pursuant to  
11 Section 8.6.2 and a Certificate of Project Substantial Completion  
12 pursuant to Section 8.6.1(b);

13 (ii) All Punch List items shall have been completed and delivered to the  
14 reasonable satisfaction of ADOT;

15 (iii) ADOT has received the As-Built Schedule for the Project required by  
16 Section GP 110.06.2.12 of the Technical Provisions;

17 (iv) ADOT has received a complete set of the Record Drawings in form and  
18 content required by Section GP 110.10.2.7.4 of the Technical Provisions,  
19 the Electronic Document Management System records required by Section  
20 GP 110.04.2 of the Technical Provisions, and a complete, indexed set of all  
21 Proprietary Intellectual Property pursuant to Section 25.7.1(b);

22 (v) All Utility Adjustment Work and other Work that Developer is obligated to  
23 perform for or on behalf of third parties with respect to the Project has  
24 been accepted by such third parties, ADOT has received all Record  
25 Drawings for the Utility Adjustment Work, ADOT has received all  
26 completed permits for the Utility Adjustment Work, and Developer has  
27 paid for all work by third parties that Developer is obligated to pay for,  
28 other than disputed amounts and amounts owed to Utility Companies that  
29 have not yet been invoiced to Developer, provided that Developer has  
30 made diligent efforts to obtain invoices therefor;

31 (vi) Developer has submitted to ADOT the DBE Certification of Final Payments,  
32 Construction and Professional Services, together with a Summary of Final  
33 Payments for Construction and a Summary of Final Payments for  
34 Professional Services, as required by Section 20 of Exhibit 6 (ADOT's DBE  
35 Special Provisions);

- 1 (vii) All component parts, plans and documentation of the Project  
2 Management Plan required to be prepared, submitted and approved prior  
3 to Final Acceptance have been so prepared, submitted and approved;
- 4 (viii) All Submittals required by the Project Management Plan or Contract  
5 Documents to be submitted to and approved by ADOT prior to Final  
6 Acceptance have been submitted to and approved by ADOT, in the form  
7 and with the content required by the Project Management Plan or  
8 Contract Documents;
- 9 (ix) All personnel, equipment, waste materials, rubbish and temporary  
10 facilities of each Developer-Related Entity have been removed from the  
11 Project ROW, Developer has restored and repaired all damage or injury  
12 arising from such removal to the satisfaction of ADOT, and the Site is in  
13 good working order and condition;
- 14 (x) Developer has delivered to ADOT a certification representing that there  
15 are no outstanding Claims (for purposes of this certification, the term  
16 "Claim" shall include all facts which may give rise to a Claim) of Developer  
17 or claims or stop notices of any Subcontractor, Supplier, laborer, Utility  
18 Company or other Persons with respect to the D&C Work, other than:
- 19 (1) Any previously submitted unresolved claims of Developer and any  
20 Claims or stop notices of a Subcontractor, Supplier, laborer, Utility  
21 Company or other Persons being contested by Developer (in which  
22 case the certification shall include a list of all such matters with  
23 such detail as is requested by ADOT and, with respect to all claims  
24 or stop notices of a Subcontractor, Supplier, laborer, Utility  
25 Company and other Person, shall include a representation by  
26 Developer that it is diligently and in good faith contesting such  
27 matters by appropriate legal proceedings which shall operate to  
28 prevent the enforcement or collection of the same); and
- 29 (2) Amounts owed to Utility Companies that have not yet been  
30 invoiced to Developer, provided Developer has made diligent  
31 efforts to obtain invoices therefor;
- 32 (xi) Developer has paid in full all Liquidated Damages (including  
33 Noncompliance Charges) that are owing to ADOT pursuant to this  
34 Agreement and are not in Dispute, and has provided to ADOT security for  
35 the full amount of Liquidated Damages that may then be the subject of an  
36 unresolved Dispute;
- 37 (xii) There exist no uncured Developer Defaults other than those that would be  
38 cured by the achievement of Final Acceptance;

- 1 (xiii) ADOT has received from Developer and accepted the Final DBE Utilization  
2 Summary Report as required by Section 18.02.4 of Exhibit 6 (ADOT's DBE  
3 Special Provisions);
- 4 (xiv) Developer has submitted all ITS Certifications to ADOT as required by  
5 Section CR 466.3.5 of the Technical Provisions;
- 6 (xv) ADOT has received from Developer and accepted the Final OJT Summary  
7 Report, and, if applicable, Good Faith Effort documentation, as required by  
8 Section 7.0 of Exhibit 7 (ADOT's OJT Special Provisions); and
- 9 (xvi) All of Developer's other obligations under the Contract Documents (other  
10 than obligations which by their nature are required to be performed after  
11 Final Acceptance) shall have been satisfied in full or waived by ADOT.
- 12 (b) Developer shall provide ADOT with 30 days' prior Notice of the date when  
13 Developer expects to satisfy all conditions to Final Acceptance. During the 30-day  
14 period following receipt of such Notice, Developer and ADOT will meet and confer  
15 and exchange information on a regular cooperative basis with the goal being the  
16 orderly, timely inspection and review of the Project and the Record Drawings, and  
17 ADOT's issuance of a Certificate of Final Acceptance.
- 18 (c) During such 30-day period, ADOT will conduct an inspection of the remaining  
19 Punch List items, a review of the Record Drawings and such other investigation as  
20 may be necessary to evaluate whether the conditions to Final Acceptance are  
21 satisfied.
- 22 (d) Within five Business Days after expiration of such 30-day period, ADOT will either  
23 (i) issue a Certificate of Final Acceptance for the Project or (ii) notify Developer  
24 that one or more conditions to achieving Final Acceptance have not been satisfied.
- 25 (e) If ADOT provides Notice that one or more conditions have not been satisfied and  
26 Developer does not dispute ADOT's assessment, then the processes set forth in  
27 clauses (b) through (d) above shall be repeated until (i) ADOT issues a certificate  
28 that Final Acceptance has been achieved, or (ii) the Parties' disagreement as to  
29 whether one or more conditions precedent have been met or the date of Final  
30 Acceptance is referred to, and resolved according to, the Dispute Resolution  
31 Procedures.
- 32 (f) ADOT will not separately certify Final Acceptance of the South Segment in advance  
33 of a Certificate of Final Acceptance for the Project. For clarity, ADOT will issue a  
34 single Certificate of Final Acceptance for the entire Project.

1 **8.7 Nonconforming and Defective Work**

2 **8.7.1** If Nonconforming Work is discovered, ADOT will have the right, exercisable in its  
3 sole discretion, to direct Developer, at Developer’s sole cost and without Claim of any kind  
4 against ADOT, to rectify the Nonconforming Work so that it complies with the Contract  
5 Documents. For the avoidance of doubt, (a) ADOT's sole discretion applies to its decision whether  
6 to require rectification of Nonconforming Work, and (b) whether Nonconforming Work has  
7 occurred is not a matter within ADOT’s sole discretion.

8 **8.7.2** If, at Developer’s request, ADOT elects to accept Nonconforming Work, then the  
9 following provisions shall apply.

10 (a) ADOT shall be entitled to compensation from Developer in the amount equal to  
11 the greater of:

12 (i) (A) 100% of the cost savings, if any, of Developer associated with its failure  
13 to perform the D&C Work in accordance with requirements of the Contract  
14 Documents (in addition to any other adjustment of the Contract Price);  
15 plus (B) the net present value of 100% of any increase in costs, including  
16 future operation, maintenance, replacement and other costs, attributable  
17 to the Nonconforming Work that ADOT will incur during the reasonably  
18 expected design life (absent the Nonconforming Work) of the affected  
19 Elements; or

20 (ii) the amount of the D&C Price allocated to the Nonconforming Work.

21 (b) In determining Developer’s cost savings, the Parties shall take into account all  
22 avoided costs of Developer, including avoided design, material, equipment, labor,  
23 construction, testing, commissioning, acceptance and overhead costs and avoided  
24 costs due to time savings.

25 (c) Net present value shall be determined by using as the discount rate the then-  
26 applicable yield on U.S. Treasury bonds having a tenor of seven years, as most  
27 recently issued as of the date ADOT issues its Notice to Developer of the  
28 Nonconforming Work.

29 (d) ADOT will have the right to deduct such compensation from any sums owed by  
30 ADOT to Developer pursuant to this Agreement.

31 **8.7.3** Subject to Sections 22.9 and 22.10, nothing contained in the Contract  
32 Documents shall in any way limit the right of ADOT to assert claims for damages resulting from  
33 patent or latent Defects in the D&C Work for the period of limitations prescribed by applicable  
34 Law, and the foregoing shall be in addition to any other rights or remedies ADOT may have

1 hereunder or under Law. This Section 8.7 shall have no effect on ADOT’s right to declare a  
2 Developer Default under Section 21.1.1 for any Nonconforming Work.

3 **8.8 Hazardous Materials Management**

4 **8.8.1** Without limiting ADOT’s role or responsibilities set forth in Sections 8.8.5, 8.8.7  
5 and 16.4.5, and except as provided otherwise below, commencing with NTP 2 and continuing  
6 until the end of the D&C Period, Developer shall undertake Hazardous Materials Management of  
7 all Hazardous Materials and Recognized Environmental Conditions, including contaminated  
8 groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous  
9 Materials Management Plan, and all applicable provisions of the Contract Documents.

10 **8.8.2** Developer shall have the following duties to avoid or mitigate adverse financial  
11 and schedule impacts of Hazardous Materials and Recognized Environmental Conditions.

12 (a) Without additional cost to ADOT, Developer shall adopt, using Good Industry  
13 Practice, design and construction techniques for the Project that to the maximum  
14 extent possible avoid the need for Hazardous Materials Management.

15 (b) If, having met its obligation under Section 8.8.2(a), Developer is unable to avoid  
16 Hazardous Materials or Recognized Environmental Conditions, Developer shall  
17 use Good Industry Practice, including design modifications and construction  
18 techniques, to minimize costs of Hazardous Materials Management, including  
19 minimization of ADOT’s long-term costs for Hazardous Materials Management.

20 (c) Where Hazardous Materials Management is unavoidable or is required by  
21 applicable Law, Developer shall utilize appropriately trained and licensed  
22 personnel to conduct the Hazardous Materials Management activities.

23 **8.8.3** If at any time during the Term Developer encounters Hazardous Materials or  
24 Recognized Environmental Conditions in connection with the Project, the Site or Work, Developer  
25 shall promptly notify ADOT of such fact. If the Hazardous Materials or Recognized Environmental  
26 Conditions are in an amount, type, quality or location that would require reporting or notification  
27 to any Governmental Entity or other Person or taking any preventive or remedial action, in each  
28 case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan  
29 or any applicable provision of the Contract Documents, Developer shall promptly notify ADOT in  
30 writing and advise ADOT of any obligation to notify State or federal agencies under applicable  
31 Law. If ADOT discovers Hazardous Materials or Recognized Environmental Conditions in  
32 connection with the Project, the Site or the Work, ADOT will promptly notify Developer in writing  
33 of such fact.

1           **8.8.4** The rights of ADOT to step in and carry out the Hazardous Materials  
2 Management obligations of Developer are as set forth in below.

3           (a) If, within a reasonable time after discovery of Hazardous Materials or Recognized  
4 Environmental Conditions, taking into consideration the nature and extent of the  
5 contamination, the type and extent of action required and the potential impact  
6 upon Developer's schedule to perform the D&C Work, Developer has not  
7 undertaken the Hazardous Materials Management required of it under Section  
8 8.8.1, ADOT may provide Developer with Notice that ADOT will undertake the  
9 Hazardous Materials Management itself. ADOT thereafter may undertake the  
10 Hazardous Materials Management actions it deems necessary and appropriate.  
11 Without limiting ADOT's role or responsibilities set forth in Section 8.8.7,  
12 Developer shall reimburse to ADOT on a current basis within ten days of request  
13 therefor, the reasonable costs, including ADOT's Recoverable Costs, that ADOT  
14 incurs in carrying out such Hazardous Materials Management actions. ADOT will  
15 have no liability or responsibility to Developer arising out of ADOT's Hazardous  
16 Materials Management actions and such actions shall in no event constitute the  
17 basis of a Relief Event or other Claim or otherwise entitle Developer to an increase  
18 in the Contract Price or adjustment of a Completion Deadline.

19           (b) Notwithstanding Section 8.8.4(a), if Developer notifies ADOT that Developer  
20 desires to preserve claims against other potentially responsible parties, then  
21 ADOT will undertake all commercially reasonable efforts to preserve such claims  
22 consistent with either the National Oil and Hazardous Substances Pollution  
23 Contingency Plan, 40 C.F.R. § 300, or comparable State regulations and standards.

24           **8.8.5** Developer shall have no responsibility or obligation to engage in Hazardous  
25 Materials Management with respect to Release of Hazardous Materials onto the Project or  
26 Project ROW during the D&C Period from a vehicle operating or located within the Project ROW  
27 or from such vehicle's cargo, unless the vehicle is owned or operated by a Developer-Related  
28 Entity in the course of performing Work, provided that Developer shall be responsible for  
29 repairing damage to Project improvements caused by Release of Hazardous Materials from  
30 vehicles operating within the Project ROW. For purposes hereof, "vehicle" has the meaning set  
31 forth in A.R.S. § 28-101.

32           **8.8.6** Sections 16.4.5 and 16.6 address Developer's rights to compensation and  
33 Completion Deadline adjustment with respect to Hazardous Materials.

34           **8.8.7** Off-site disposal of Hazardous Materials is subject to the provisions set forth  
35 below.

36           (a) As between Developer and ADOT, ADOT will be considered the sole generator and  
37 arranger under 40 C.F.R. Part 262 and will sign manifests for the off-site disposal  
38 of Hazardous Materials other than for:

- 1 (i) Developer Release of Hazardous Materials;
- 2 (ii) Hazardous Materials that migrate from points of origin located outside the
- 3 boundaries of the Project ROW where the source of such Hazardous
- 4 Materials is a Developer-Related Entity in the course of performing Work;
- 5 (iii) Hazardous Materials that Developer handles and disposes of negligently;
- 6 and
- 7 (iv) Hazardous Materials present in or on Developer’s Temporary Work Areas.

8 Notwithstanding the foregoing, ADOT may elect, by Notice to Developer, to have  
9 another responsible party (instead of ADOT, and other than a Developer-Related  
10 Entity) assume generator and arranger status and liability, or sign manifests, for  
11 which ADOT is otherwise responsible under this Section 8.8.7(a). The foregoing  
12 shall not preclude or limit any rights or remedies that ADOT may have against  
13 Developer-Related Entities (other than Developer), Governmental Entities or  
14 other third parties, including prior owners, lessees, licensees and occupants of any  
15 parcel of land that is or becomes part of the Project ROW.

- 16 (b) ADOT has exclusive decision-making authority regarding selection of the
- 17 destination facility to which Hazardous Materials will be transported whenever it
- 18 acts as generator or arranger.
- 19 (c) To the extent permitted by applicable Law, as between ADOT and Developer,
- 20 ADOT will take and assume sole responsibility and liability for third party claims,
- 21 causes of action and Losses arising out of or resulting from the off-site disposal of
- 22 Hazardous Materials for which ADOT is the generator pursuant to Section 8.8.7(a),
- 23 specifically excluding liability for off-site disposal that ADOT elects to have a
- 24 responsible party assume as provided in Section 8.8.7(a). It is the intent of the
- 25 Parties that Developer have no exposure to any such third party claims, causes of
- 26 action and Losses
- 27 (d) As between Developer and ADOT, Developer shall be considered the sole
- 28 generator and arranger and shall sign manifests for the off-site disposal of
- 29 Hazardous Materials for:

- 30 (i) each Developer Release of Hazardous Materials;
- 31 (ii) Hazardous Materials that migrate from points of origin located outside the
- 32 boundaries of the Project ROW where the source of such Hazardous
- 33 Materials is a Developer-Related Entity in the course of performing Work;
- 34 (iii) Hazardous Materials that Developer handles or disposes of negligently;
- 35 and

1 (iv) Hazardous Materials present in or on Developer’s Temporary Work Areas.

2 The foregoing shall not preclude or limit any rights or remedies that Developer  
3 may have against any Governmental Entity or any other third parties, including  
4 existing or prior owners, lessees, licensees and occupants of any parcel of land  
5 that is or becomes part of the Project ROW, excluding, however, the State, ADOT  
6 and their respective agents.

7 (e) To the extent permitted by applicable Law, Developer shall indemnify, save,  
8 protect and defend ADOT from claims, demands, causes of action and Losses  
9 arising out of or resulting from the off-site disposal of Hazardous Materials for  
10 which Developer is considered the generator or arranger pursuant to Section  
11 8.8.7(d). The foregoing indemnity shall survive the expiration or termination of  
12 this Agreement.

### 13 **8.9 Title**

14 Developer warrants that it owns, or will own, and has, or will have, good and marketable title to  
15 all materials, equipment, tools and supplies furnished, or to be furnished, by it and its  
16 Subcontractors that become part of the Project or are purchased for ADOT for the operation,  
17 maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment,  
18 tools and supplies that are delivered to the Site shall pass to ADOT, free and clear of all Liens,  
19 upon the sooner of: (a) incorporation into the Project, or (b) payment by ADOT to Developer of  
20 invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Developer shall  
21 retain sole care, custody and control of such materials, equipment, tools and supplies and shall  
22 exercise due care with respect thereto until Project Substantial Completion or, with respect to  
23 such materials, equipment, tools and supplies that are necessary for Developer to satisfy its  
24 obligations under the Agreement, including South Segment Substantial Completion, until such  
25 obligations are satisfied or until Developer is terminated pursuant to Sections 21 or 26.

### 26 **8.10 Site Security**

27 Commencing upon issuance of NTP 2 and continuing thereafter throughout the D&C Period,  
28 Developer shall provide appropriate security for the Site, and shall take all reasonable  
29 precautions and provide protection to prevent Loss to the D&C Work and materials and  
30 equipment to be incorporated therein, as well as all other property at or on the Site, whether  
31 owned by Developer, ADOT, or any other Person; provided, however, that Developer’s  
32 obligations under this Section 8.10 shall cease with respect to the South Segment if and when  
33 ADOT issues a Certificate of South Segment Substantial Completion, except that Developer shall  
34 continue to be responsible under this Section 8.10 for the temporary transition zone within the  
35 South Segment until ADOT issues the Certificate of Project Substantial Completion. Developer  
36 shall comply with ADOT’s security requirements and protocols.

1 **8.11 Maintenance During Construction**

2 **8.11.1** Commencing upon issuance of NTP 2 and continuing thereafter during the D&C  
3 Period, Developer shall be responsible for Maintenance During Construction to the extent set  
4 forth in Section GP 110.12 of the Technical Provisions; provided, however, that:

5 (a) Developer’s responsibility for Maintenance During Construction respecting the  
6 South Segment shall cease if and when ADOT issues a Certificate of South Segment  
7 Substantial Completion in advance of the Certificate of Project Substantial  
8 Completion, except that Developer shall continue to be responsible for  
9 Maintenance During Construction of the temporary transition zone within the  
10 South Segment until ADOT issues the Certificate of Project Substantial  
11 Completion; and

12 (b) Developer’s maintenance responsibility for portions of such improvements owned  
13 by third parties shall extend until the control of and maintenance responsibility  
14 for such portions are officially transferred to the respective third parties.

15 **8.11.2** ADOT may determine that Maintenance During Construction in addition to that  
16 described in Section GP 110.12 of the Technical Provisions is required during the D&C Period for  
17 the portions of the Project ROW being used by the traveling public during the D&C Period, in  
18 order to ensure the safety of the traveling public. If ADOT orders any such additional  
19 Maintenance During Construction, Developer will be paid therefor through an ADOT-Directed  
20 Change and Supplemental Agreement. Such additional Maintenance During Construction may  
21 include, but is not limited to, additional sweeping, roadway and subgrade repair, safety feature  
22 repair, debris removal, repair of pedestrian features and other maintenance necessary to provide  
23 a smooth and safe traveled way. Notwithstanding the foregoing, Developer shall repair any  
24 damage caused by its operations and activities without the right to an increase in the Contract  
25 Price, a Completion Deadline adjustment or any other Claim.

26 **8.12 Aesthetics and Landscaping**

27 **8.12.1** Developer shall perform, or cause to be performed, all aesthetics and  
28 landscaping D&C Work for the Project, including landscape establishment, in accordance with  
29 Sections DR 450 and CR 450 of the Technical Provisions, as applicable.

30 **8.12.2** The Contract Price includes all costs of Developer relating to the aesthetics and  
31 landscaping D&C Work for the Project, including landscape establishment and costs of water  
32 supply during landscape establishment.

33 **8.12.3** With respect to landscape establishment:

34 (a) Developer shall meet, or cause to be met, the landscape establishment  
35 requirements, including plant watering, set forth in Section DR 450 and CR 450 of  
36 the Technical Provisions, as applicable.

1 (b) In addition to the regular plant inspections required under Section CR 450.3.4.3 of  
2 the Technical Provisions, on or about 360 days after Project Substantial  
3 Completion, ADOT and Developer will jointly inspect plant materials installed as  
4 part of the landscaping Work. No later than 20 Days after completing this  
5 Inspection, Developer shall prepare a written report describing what (if any) of  
6 such installed plant materials (i) died, (ii) failed to establish a root system  
7 reasonably expected for plant materials of a similar type, nature and maturity, and  
8 (iii) failed to show a growth habit reasonably expected for plant materials of a  
9 similar type, nature and maturity.

10 (c) If Developer elects to achieve South Segment Substantial Completion in advance  
11 of Project Substantial Completion, then:

12 (i) the Parties shall also follow the procedures set forth in Section 8.12.3(b)  
13 with respect to the South Segment; and

14 (ii) as a result, there will be two landscape establishment periods, one  
15 applicable to the South Segment and measured from the date of South  
16 Segment Substantial Completion, and the other applicable to the balance  
17 of the Project and measured from the Project Substantial Completion  
18 Date.

19 **8.13 Clayton Act Assignment**

20 Developer shall assign to ADOT all right, title and interest in and to all claims and causes of action  
21 it may have under Section 4 of the Clayton Act (15 U.S.C. § 15), arising from purchases of goods,  
22 services or materials pursuant to the Contract Documents or any Subcontract. This assignment  
23 shall become automatically effective when ADOT tenders Final D&C Payment to Developer,  
24 without further documentation or acknowledgment by the Parties.  
25

1           **SECTION 9.    TIME; NOTICES TO PROCEED; PROJECT SCHEDULE AND PROGRESS**

2    **9.1    Time of Essence**

3           **9.1.1**    Developer shall develop the Project in accordance with the time periods set forth  
4 in this Agreement. Except where this Agreement expressly provides for an extension of time, the  
5 time limitations set forth in the Contract Documents for Developer's performance of its  
6 covenants, conditions and obligations are of the essence, and Developer waives any right at law  
7 or in equity to tender or complete performance beyond the applicable time period, or to require  
8 ADOT to accept such performance. If Developer does not complete performance within the  
9 applicable time period, Developer shall remain responsible for completing the Project subject to  
10 ADOT's right to exercise any remedies available to it.

11           **9.1.2**    The time periods set forth in this Agreement for payments from one Party to the  
12 other Party are of the essence, and each Party waives any right at law or in equity to tender  
13 payment beyond the applicable time period, except to the extent of the cure periods provided in  
14 this Agreement.

15    **9.2    Notices to Proceed**

16           **9.2.1**    Authorization allowing Developer to proceed with D&C Work shall be provided  
17 through ADOT's issuance of NTPs. Developer acknowledges and agrees that:

- 18           (a)    ADOT has no obligation to issue an NTP for D&C Work under this Agreement;
- 19           (b)    Unless and until ADOT issues NTP 1, ADOT will have no liability to Developer under  
20 this Agreement except as provided otherwise in Section 26.4; and
- 21           (c)    ADOT's liability under this Agreement shall be limited to payment owing for D&C  
22 Work authorized under NTPs actually issued.

23           **9.2.2**    Refer to Sections 16.4.11 and 16.4.12 regarding Price adjustments to be made  
24 for certain delays in issuance of NTP 1 and NTP 2, respectively, and to Section 26.4 regarding  
25 Developer's right to terminate and Termination Compensation for certain delays in issuance of  
26 NTP 1.

27    **9.3    Issuance of NTP 1**

28    ADOT will issue NTP 1 within ten Business Days after the Effective Date. Issuance of NTP 1  
29 authorizes Developer to do only the following:

- 30           (a)    Mobilize, including establishing Developer's Temporary Work Areas, the  
31 collocated office and ADOT field office;
- 32           (b)    Prepare or continue preparing all component parts, plans and documentation of  
33 the Project Management Plan relevant to the D&C Work, including: (i) volumes I,

- 1 II and III of the Quality Management Plan, (ii) Environmental Management Plan,  
2 and (iii) Safety Management Plan;
- 3 (c) Prepare the Transportation Management Plan and Storm Water Pollution  
4 Prevention Plan;
- 5 (d) Prepare the Project Baseline Schedule;
- 6 (e) Prepare the Segment Limits Map;
- 7 (f) Prepare the Design Submittal Schedule;
- 8 (g) Prepare a Schedule of Values for pre-NTP 2 Design Work;
- 9 (h) Prepare the final DBE Utilization Plan;
- 10 (i) Prepare the final OJT Utilization Plan;
- 11 (j) Enter the Project ROW to which ADOT has made access available in order to  
12 conduct surveys and site investigations, including geotechnical, Hazardous  
13 Materials and Utilities investigations, subject to satisfying all applicable conditions  
14 to and limitations on surveying and Site investigation work in the Contract  
15 Documents;
- 16 (k) Assist with ADOT's ROW acquisition, and prepare and submit to ADOT the parcels  
17 that Developer requests ADOT to acquire for Temporary Construction Easements  
18 and Developer-Designated ROW;
- 19 (l) Commence negotiating Utility Agreements with Utility Companies;
- 20 (m) At Developer's option, commence Design Work, provided that (i) ADOT will not  
21 pay for or commence review of Design Documents until Developer satisfies all  
22 conditions precedent set forth in Section 9.5;
- 23 (n) Prepare the Basis of Design Report described in Section GP 110.01.1.2 of the  
24 Technical Provisions;
- 25 (o) Prepare the bulletin boards described in Section GP 110.05.1 of the Technical  
26 Provisions;
- 27 (p) Prepare the sample Vehicle Project Logo described in Section GP 110.05.4.3 of the  
28 Technical Provisions;
- 29 (q) Prepare the Existing Conditions Site Documentation described in Section GP  
30 110.11.1 of the Technical Provisions;

- 1 (r) Prepare the Utility Coordination Plan described in Section DR 430.2.2.1 of the  
2 Technical Provisions;
- 3 (s) Prepare the Plant Inventory described in Section DR 450.2.3 of the Technical  
4 Provisions;
- 5 (t) Prepare the Sign Inventory described in Section DR 460.2.3 of the Technical  
6 Provisions; and
- 7 (u) Prepare the ITS Inventory described in Section DR 466.2.3 of the Technical  
8 Provisions.

9 **9.4 Issuance of NTP 2**

10 **9.4.1** ADOT anticipates issuing NTP 2 when all of the following conditions have been  
11 satisfied:

- 12 (a) If applicable under this Agreement, each D&C Guaranty in favor of ADOT required  
13 under Section 12.7 has been executed and delivered to ADOT and are in full force  
14 and effect;
- 15 (b) All Insurance Policies required in connection with the D&C Work have been  
16 obtained and are in full force and effect, and Developer has delivered to ADOT  
17 written binding verifications of coverage from the relevant issuers of such  
18 Insurance Policies;
- 19 (c) Developer has developed and delivered to ADOT, and ADOT has approved, in  
20 accordance with Section 5.4, the component parts, plans and documentation of  
21 the Project Management Plan designated “Required Prior to NTP 2” in Table 110-  
22 5 of Section GP 110.03 of the Technical Provisions;
- 23 (d) Developer has developed and delivered to ADOT the Collocated Office Layout Plan  
24 and all ADOT comments thereon have been resolved, and Developer has  
25 completed the improvements for, and made available to ADOT for occupancy, the  
26 ADOT office space in the collocated office space;
- 27 (e) Developer has developed and delivered to ADOT the Field Office Layout Plan and  
28 all ADOT comments thereon have been resolved, and Developer has completed  
29 the improvements for, and made available to ADOT for occupancy, the ADOT field  
30 office space;
- 31 (f) Developer has developed and delivered to ADOT the Network Administration Plan  
32 and all ADOT comments thereon have been resolved;
- 33 (g) Developer has developed and delivered to ADOT and ADOT has approved the  
34 Project Baseline Schedule;

- 1 (h) Developer has developed and delivered to ADOT and ADOT has approved the  
2 Segment Limits Map;
- 3 (i) Developer has developed and delivered to ADOT and ADOT has approved the  
4 Design Submittal Schedule;
- 5 (j) Developer has developed and delivered to ADOT and ADOT has approved the Basis  
6 of Design Report;
- 7 (k) Developer has developed and delivered to ADOT and ADOT has approved the draft  
8 SWPPP;
- 9 (l) Developer has developed and delivered to ADOT the Transportation Management  
10 Plan and all ADOT comments thereon have been resolved;
- 11 (m) Developer has developed and delivered to ADOT the Utility Coordination Plan and  
12 all ADOT comments thereon have been resolved;
- 13 (n) Developer has developed and delivered to ADOT the Plant Inventory and all ADOT  
14 comments thereon have been resolved;
- 15 (o) Developer has developed and delivered to ADOT and ADOT has approved the final  
16 DBE Utilization Plan;
- 17 (p) Developer has developed and delivered to ADOT and ADOT has approved the final  
18 OJT Utilization Plan;
- 19 (q) Developer has developed and delivered to ADOT and ADOT has approved the  
20 Vehicle Project Logo;
- 21 (r) Developer has developed and delivered to ADOT the Sign Inventory;
- 22 (s) Developer has developed and delivered to ADOT the ITS Inventory;
- 23 (t) The Parties have conducted the initial partnering workshop as set forth in Section  
24 24.1.2(b)(i);
- 25 (u) All representations and warranties of Developer set forth in Section 4 shall be and  
26 remain true and correct in all material respects;
- 27 (v) There exists no uncured Developer Default for which Developer has received  
28 Notice from ADOT;
- 29 (w) Developer has conducted field meetings with ADOT to review and document the  
30 preconstruction condition of the existing lighting system, FMS and drainage

1 system in accordance with Section GP 110.12 of the Technical Provisions and has  
2 resolved all issues identified; and

3 (x) Developer has satisfied any other requirements or conditions for commencing  
4 Design Work or any other Work authorized by NTP 2 set forth in the Technical  
5 Provisions.

6 **9.4.2** Issuance of NTP 2 authorizes Developer to perform D&C Work not authorized  
7 under Section 9.3, and related activities pertaining to the Project.

8 **9.5 Conditions to Design Work Review and Payment**

9 **9.5.1** Notwithstanding any contrary provision of Section 5.1.2, ADOT will have no  
10 obligation to commence its review of, or pay Developer for, any Design Work until all of the  
11 following conditions precedent have been satisfied:

12 (a) ADOT has issued NTP 1;

13 (b) ADOT has received and approved, as provided in the Technical Provisions, the  
14 Professional Services Quality Management Plan, final DBE Utilization Plan with  
15 respect to Developer’s plan to meet the Professional Services DBE Goal, the Design  
16 Submittal Schedule, a Schedule of Values for the pre-NTP 2 Design Work, and the  
17 Basis of Design Report; and

18 (c) ADOT has received from Developer all the Professional Services DBE Intended  
19 Participation Affidavit Summaries then required under Section 12.02 of the DBE  
20 Special Provisions.

21 **9.5.2** ADOT may reject, without review, any Design Document submitted to ADOT  
22 before the date that the conditions precedent set forth in Section 9.5.1 are satisfied. All time  
23 periods available to ADOT for review or approval of any Design Document submitted to ADOT  
24 shall not commence running until Developer satisfies the conditions set forth in Section 9.5.1.

25 **9.6 Conditions to Commencement of Construction**

26 **9.6.1 Construction Work Generally**

27 Developer shall not commence or permit commencement of Construction Work until  
28 ADOT issues NTP 2 and all of the following conditions have been satisfied:

29 (a) All Governmental Approvals necessary to begin Construction Work in the  
30 applicable portion of the Project have been obtained, and Developer has furnished  
31 to ADOT fully executed copies of such Governmental Approvals;

- 1 (b) Developer has satisfied for the applicable portion of the Project all applicable pre-  
2 construction requirements contained in the Environmental Approvals and other  
3 Governmental Approvals;
- 4 (c) ADOT has (i) obtained an order for immediate possession, (ii) closed the  
5 acquisition of the parcel, or (iii) otherwise obtained permanent right of entry  
6 through settlement, negotiation, the condemnation process or otherwise for  
7 Project ROW necessary to commence construction of the applicable portion of the  
8 Project;
- 9 (d) Developer has caused to be developed and delivered to ADOT, and ADOT has  
10 approved, in accordance with Section 5.4, the component parts, plans and  
11 documentation of the Project Management Plan designated as “Required Prior to  
12 NTP 2” in Table 110-5 of Section GP 110.03 of the Technical Provisions;
- 13 (e) Developer has submitted to ADOT an OJT Schedule containing all the information  
14 specified in Section 7.0 of Exhibit 7 (ADOT’s OJT Special Provisions);
- 15 (f) Developer has erected in a location approved by ADOT the bulletin boards  
16 described in Section GP 110.05.1 of the Technical Provisions;
- 17 (g) Developer has delivered to ADOT all Submittals relating to the applicable  
18 Construction Work required by the Project Management Plan or Contract  
19 Documents, in the form and with the content required by the Project  
20 Management Plan or Contract Documents;
- 21 (h) Developer has adopted written policies establishing ethical standards of conduct  
22 for all Developer-Related Entities, including Developer’s supervisory and  
23 management personnel in dealing with (i) ADOT and the General Engineering  
24 Consultant and (ii) employment relations, in accordance with Section 11.8; and
- 25 (i) Developer has provided to ADOT at least ten days advance written notification of  
26 the date Developer determines that it will satisfy all of the conditions set forth in  
27 this Section 9.6.1.

28 **9.6.2 Utility Adjustments**

29 Developer shall not commence or permit or suffer commencement of construction of a  
30 Utility Adjustment included in the Construction Work until ADOT issues NTP 2, all of the  
31 conditions set forth in Section 9.6.1 that are applicable to the Utility Adjustment (reading such  
32 provisions as if they referred to the Utility Adjustment) have been satisfied, and the following  
33 additional requirements have been satisfied:

- 34 (a) Except as otherwise provided in Section 7.4.7(e), the Utility Adjustment is covered  
35 by an executed Utility Agreement;

1 (b) Developer has submitted to ADOT the Submittals described in Sections DR 430  
2 and CR 430 of the Technical Provisions concerning the Utility Adjustment; and

3 (c) Developer has obtained ADOT review and approval of any other matters  
4 respecting the Utility Adjustment that are required under any applicable federal  
5 requirements.

6 **9.7 Completion Deadlines**

7 **9.7.1 Project Substantial Completion Deadline**

8 Developer shall achieve Project Substantial Completion not later than the Project  
9 Substantial Completion Deadline.

10 **9.7.2 Final Acceptance Deadline**

11 Developer shall achieve Final Acceptance of the Project not later than the Final  
12 Acceptance Deadline.

13 **9.7.3 No Completion Deadline Adjustment**

14 Except as otherwise specifically provided in Sections 0 and 17, ADOT shall have no  
15 obligation to adjust a Completion Deadline and Developer shall not be relieved of its obligation  
16 to comply with the Project Schedule and to achieve Project Substantial Completion and Final  
17 Acceptance of the Project by the applicable Completion Deadlines.

18 **9.8 Scheduling of Design, Construction and Payment**

19 **9.8.1 Project Schedule**

20 Developer shall undertake and complete the Work in accordance with the Project  
21 Schedule prepared in conformance with Section GP 110.06 of the Technical Provisions. The  
22 Parties shall use the Project Schedule for planning and monitoring the progress of the Work and  
23 as the basis for determining the amount of monthly progress payments to be made to Developer.

24 **9.8.2 Float**

25 All Float contained in the Project Schedule, as shown in the Preliminary Project Baseline  
26 Schedule or as generated thereafter, shall be a shared, jointly owned Project resource available  
27 to either Party or both Parties as needed to absorb delay caused by Relief Events or any other  
28 event. All Float and corresponding Controlling Work Items shall be shown as such in the Project  
29 Schedule on each affected schedule path. ADOT will have the right to examine the identification  
30 of (or failure to identify) Float and Controlling Work Items on the Project Schedule in determining  
31 whether to approve the Project Schedule. Once identified, Developer shall monitor, account for  
32 and maintain Float in accordance with critical path methodology and Section GP 110.06.2.2F of  
33 the Technical Provisions.

1 **9.9 Recovery Schedule**

2 **9.9.1** If at any time the Work on any Critical Path item is delayed for a period that  
3 exceeds the time set forth in Section GP 110.06.2.10 of the Technical Provisions (including delays  
4 for which Developer may be entitled to a Completion Deadline adjustment under Section 16),  
5 then Developer shall prepare and submit to ADOT for review and approval a Recovery Schedule  
6 meeting the requirements set forth in Section GP 110.06.2.10 of the Technical Provisions. In  
7 addition, if Developer fails to meet any Completion Deadline, as the same may be extended  
8 pursuant to this Agreement, then Developer shall prepare and submit to ADOT for review and  
9 approval a Recovery Schedule meeting the requirements set forth in Section GP 110.06.2.10 of  
10 the Technical Provisions and demonstrating Developer’s proposed plan to achieve Project  
11 Substantial Completion and Final Acceptance with as little additional delay as possible.

12 **9.9.2** Except as otherwise provided in Section 16, all costs incurred by Developer in  
13 preparing, implementing and achieving the Recovery Schedule shall be borne by Developer and  
14 shall not result in a change to the Contract Price.

15 **9.9.3** If Developer fails to provide an acceptable Recovery Schedule as required herein  
16 and in Section GP 110.06.2.10 of the Technical Provisions, then, in addition to any other rights  
17 and remedies in favor of ADOT arising out of such failure, ADOT will have the right to withhold  
18 5% of progress payments until such time as Developer has prepared and ADOT has approved  
19 such Recovery Schedule. Payment of any such amounts withheld by ADOT shall be due from  
20 ADOT to Developer not later than the Developer Cycle Key Date first occurring after the date  
21 ADOT approves the corresponding Recovery Schedule. Any failure or delay in Developer’s  
22 submittal or ADOT’s approval of a Recovery Schedule shall not entitle Developer to an increase  
23 in the Contract Price, any Completion Deadline adjustment or any other Claim under the Contract  
24 Documents.  
25



- 1 (c) Training of ADOT staff in the operation of the Flex Lanes System;
- 2 (d) Coordination and cooperation, and requiring its Developer-Related Entities to  
3 coordinate and cooperate, with ADOT in its performance of functions and services  
4 respecting the Project during the Term that are not the responsibility of Developer  
5 under this Agreement, and with third parties with statutory duties or functions in  
6 relation to the Project;
- 7 (e) The maintenance, compliance with and renewal of Governmental Approvals  
8 necessary and incidental to the foregoing activities; and
- 9 (f) The other O&M Work set forth in Section OMR 400.1 of the Technical Provisions.

10 **10.1.4** During the O&M Period, Developer shall provide an O&M Manager approved by  
11 ADOT who:

- 12 (a) will have full responsibility for the prosecution and quality management of the  
13 O&M Work;
- 14 (b) must attend (either in person or by telephone or other electronic means of  
15 communication) the monthly and annual meetings as provided in Section GP  
16 110.02.8 and Sections OMR 400.3.3C and 400.3.3D of the Technical Provisions;
- 17 (c) will act as agent and be a single point of contact in all matters on behalf of  
18 Developer; and
- 19 (d) must be available and on-call to respond telephonically to ADOT or ADOT's  
20 Authorized Representatives within 30 minutes after telephonic contact.

21 **10.1.5** Developer shall, at its sole cost and expense, comply with Section OMR 400.2 of  
22 the Technical Provisions during the O&M Period.

23 **10.1.6** Attachment 500-1 of the Technical Provisions sets forth minimum Performance  
24 Requirements related to the O&M Work. Developer's failure to comply with such requirements  
25 shall entitle ADOT to the rights and remedies set forth in the Contract Documents, including the  
26 assessment of Noncompliance Charges, deductions from payments otherwise owed to  
27 Developer, and termination for uncured Developer Default.

28 **10.1.7** In addition to performing all other requirements of the Contract Documents,  
29 Developer shall cooperate with ADOT and Governmental Entities with jurisdiction in all matters  
30 relating to the O&M Work, including their review, inspection and oversight of the operation and  
31 maintenance of the Project.

1 **10.2 Project Plans and Manual for O&M Period**

2 **10.2.1** Developer shall submit to ADOT the drafts of the Operations and Maintenance  
3 Management Plan, Operations and Maintenance Quality Management Plan, Operations and  
4 Maintenance Safety Management Plan, Environmental Management Plan and Operations  
5 Manual described in Section OMR 400.2.1 of the Technical Provisions, and generic Traffic Control  
6 Plans described in Section 10.10.1, not less than 120 days prior to the date set forth in the Project  
7 Schedule for Project Substantial Completion. ADOT will review and provide comments to  
8 Developer within 30 days after receiving such draft plans. Developer’s cost to prepare and obtain  
9 approval of such Project Plans is deemed to be included in the D&C Price.

10 **10.2.2** Not later than 15 days after ADOT delivers its comments to Developer on the  
11 drafts of the Operations and Maintenance Management Plan, Operations and Maintenance  
12 Quality Management Plan, Operations and Maintenance Safety Management Plan,  
13 Environmental Management Plan, Operations Manual and generic Traffic Control Plans,  
14 Developer and ADOT will meet to address the comments. Developer shall resolve all comments  
15 to the satisfaction of ADOT in its good faith discretion and submit the final versions of such  
16 Project Plans and Manual for ADOT’s approval in its good faith discretion not less than 30 days  
17 prior to the date set forth in the Project Schedule for Project Substantial Completion. ADOT’s  
18 approval of the final versions of the Operations and Maintenance Management Plan, Operations  
19 and Maintenance Quality Management Plan, Operations and Maintenance Safety Management  
20 Plan, Environmental Management Plan, Operations Manual and generic Traffic Control Plans  
21 shall be one of the O&M Conditions Precedent, as set forth in Section 8.6.4.

22 **10.2.3** Developer shall submit revisions to the Operations and Maintenance  
23 Management Plan, Operations and Maintenance Quality Management Plan, Operations and  
24 Maintenance Safety Management Plan, Environmental Management Plan, Operations Manual  
25 and generic Traffic Control Plans, as required and not less than annually, prior to the annual O&M  
26 Work meeting as described in Section OMR 400.3.3D of the Technical Provisions.

27 **10.3 Non-Routine Maintenance Work**

28 **10.3.1** Developer shall diligently perform and complete Non-Routine Maintenance  
29 Work as and when required, including as and when required to comply with the Applicable  
30 Standards and Performance Requirements triggering Non-Routine Maintenance Work set forth  
31 in Section OMR 200.2 and Attachment 500-1 of the Technical Provisions.

32 **10.3.2** Developer is not obligated to conduct monitoring, inspection or surveillance of  
33 the O&M Elements in order to determine whether Non-Routine Maintenance Work is necessary.  
34 If, however, in the course of performing O&M Work or inspections pursuant to Section OMR  
35 400.3 of the Technical Provisions Developer discovers or has reason to suspect the existence of  
36 a condition that requires Non-Routine Maintenance Work, Developer shall promptly report such  
37 discovery or suspicion to ADOT.

38 **10.3.3** ADOT may, but is not obligated to, conduct remote and in-the-field monitoring,

1 inspection and surveillance of the O&M Elements at such frequencies as ADOT determines in its  
2 sole discretion. Developer shall cooperate with ADOT to accommodate ADOT’s monitoring,  
3 inspection and surveillance of the O&M Elements.

4 **10.3.4** Within ten Business Days after discovering a condition or situation requiring  
5 Non-Routine Maintenance Work with an estimated cost of \$250,000 or more, whether through  
6 written notice from ADOT or its own discovery, Developer shall submit to ADOT a work plan and  
7 schedule for undertaking the Non-Routine Maintenance Work. Depending on the circumstances,  
8 ADOT may grant extensions of time to submit a work plan and schedule. The work plan and  
9 schedule shall describe the proposed Non-Routine Maintenance Work in reasonable detail,  
10 describe how the planned Non-Routine Maintenance Work will restore compliance with  
11 Applicable Standards and Performance Requirements, set forth any proposed Closures, set forth  
12 a schedule for completing the work, and set forth such other information and analysis as ADOT  
13 reasonably requests. The work plan and schedule shall be subject to ADOT approval in its good  
14 faith discretion.

15 **10.3.5** No work plan or schedule is required for Non-Routine Maintenance Work with  
16 an estimated cost less than \$250,000. Developer shall perform and complete such Non-Routine  
17 Maintenance Work on a schedule consistent with applicable required temporary and permanent  
18 response times set forth in Attachment 500-1 of the Technical Provisions.

19 **10.3.6** Notwithstanding Sections 10.3.4 and 10.3.5, if Non-Routine Maintenance Work  
20 is necessary to end a Closure within the O&M Limits or to deal with an Incident or Emergency,  
21 Developer shall immediately undertake all interim or permanent Non-Routine Maintenance  
22 Work that is necessary to open the roadway or mitigate the Incident or Emergency as soon as  
23 possible. Developer shall immediately notify ADOT’s Northwest District permit office of any Non-  
24 Routine Maintenance Work being undertaken to deal with an Emergency.

25 **10.3.7** With respect to Non-Routine Maintenance Work in response to an Emergency:

26 (a) Developer shall solicit competitive bids for such work if FHWA or FEMA  
27 regulations, policies or procedures require competitive bidding in order to obtain  
28 reimbursement for eligible costs;

29 (b) ADOT will provide oversight relating to such Emergency-related Non-Routine  
30 Maintenance Work in accordance with the Contract Documents; and

31 (c) Developer shall ensure that such repair work is performed in accordance with the  
32 Contract Documents and State and federal Law applicable to such Emergency-  
33 related Non-Routine Maintenance Work, including the requirements of the FHWA  
34 Emergency Relief Manual as most recently published by FHWA  
35 (<http://www.fhwa.dot.gov/reports/erm/>). Further, Developer shall maintain  
36 estimates, cost records and supporting documentation in accordance with such  
37 Laws, and in a form and content to enable ADOT to seek reimbursement for  
38 eligible costs from FHWA or FEMA, if applicable.

1           **10.3.8** Notwithstanding any contrary provision of this Section 10.3, Developer shall not  
2 be obligated to perform Non-Routine Maintenance Work to correct damage to O&M Elements  
3 that results from an Incident or Emergency or response thereto if:

4           (a) The Incident or Emergency occurs during the last 30 days of the Term; and

5           (b) Even with diligent efforts, Developer would not be able to complete the necessary  
6 maintenance and repairs by the end of the Term.

7 The foregoing provision shall not, however, excuse Developer from undertaking as soon as  
8 possible interim Non-Routine Maintenance Work that is necessary to open the roadway or  
9 mitigate an Incident or Emergency.

10           **10.3.9** Developer shall deliver to ADOT weekly progress reports on Non-Routine  
11 Maintenance Work until such Work is completed. The weekly progress reports shall contain such  
12 information as ADOT reasonably requests.

13           **10.3.10** Developer shall deliver to ADOT a written report of the Non-Routine  
14 Maintenance Work performed in the immediately preceding year as part of the Annual O&M  
15 Work Report required under Section OMR 400.3.3B of the Technical Provisions. The report shall  
16 describe:

17           (a) by location, the O&M Element for which Non-Routine Maintenance Work was  
18 performed;

19           (b) the type of Non-Routine Maintenance Work performed;

20           (c) each specific item replaced;

21           (d) any warranty information associated with any replacement item;

22           (e) the dates of commencement and completion of such Non-Routine Maintenance  
23 Work;

24           (f) the total cost incurred in the immediately preceding year and cumulatively in the  
25 O&M Period through the end of the immediately preceding year on Non-Routine  
26 Maintenance Work to correct damage to O&M Elements that results from an  
27 Incident or Emergency or response thereto, calculated as set forth in Section  
28 15.6.4; and

29           (g) such other information as ADOT reasonably requests.

## 30 **10.4 O&M Changes**

31           **10.4.1** ADOT shall have the right, in its sole discretion, to adopt at any time O&M  
32 Changes; and Developer acknowledges it must comply with all O&M Changes. ADOT shall provide

1 Developer with prompt Notice of such O&M Changes, whereupon they shall constitute  
2 amendments, and become part of the Technical Provisions and replace and supersede provisions  
3 of the Technical Provisions that would otherwise have been inconsistent with the change. ADOT  
4 will use reasonable efforts to identify any superseded provisions in its Notice to Developer.

5 **10.4.2** Developer shall implement an O&M Change only after ADOT issues a  
6 Supplemental Agreement or Directive Letter therefor pursuant to Section 17. If an O&M Change  
7 requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any  
8 O&M Element during the O&M Period, or requires construction or installation of new  
9 improvements, Developer shall perform the major repair, reconstruction, rehabilitation,  
10 restoration, renewal or replacement or the new improvement work according to the schedule  
11 therefor adopted in the Supplemental Agreement for such work. If an O&M Change requires  
12 implementation not entailing such work, Developer shall implement it from and after the date  
13 ADOT issues the Supplemental Agreement.

14 **10.4.3** For clarity, if Developer has notice or knows of the O&M Change on or prior to  
15 the date Developer commences operation, maintenance, routine repair or routine replacement  
16 of damaged, worn or obsolete components or materials of the O&M Elements, then Developer  
17 shall comply with such O&M Change in carrying out such operation, maintenance, routine repair  
18 or replacement.

19 **10.5 Deviations**

20 **10.5.1** Developer may submit a written request for ADOT approval of Deviations from  
21 applicable Technical Provisions regarding the O&M Work. Where Developer requests a Deviation  
22 as part of the submittal of a component plan of the Operations and Maintenance Management  
23 Plan, Developer shall specifically identify and label the Deviation.

24 **10.5.2** ADOT will consider in its sole discretion, but have no obligation to approve, any  
25 such request, and Developer shall bear the burden of persuading ADOT that the Deviation sought  
26 constitutes sound and safe practices consistent with Good Industry Practice and achieves or  
27 substantially achieves ADOT's applicable safety requirements.

28 **10.5.3** No Deviation shall be deemed approved or be effective unless and until  
29 approved in a writing signed by ADOT's Authorized Representative. ADOT's affirmative written  
30 approval of a component plan of the Operations and Maintenance Management Plan shall  
31 constitute: (a) approval of the Deviations expressly identified and labeled as Deviations therein,  
32 unless ADOT takes exception to any such Deviation; and (b) disapproval of any Deviations not  
33 expressly identified and labeled as Deviations therein.

34 **10.5.4** If ADOT does not issue a written Deviation within ten Business Days after its  
35 receipt of Developer's request for a Deviation, such request shall be deemed disapproved.  
36 ADOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute  
37 Resolution Procedures.

1           **10.5.5** ADOT may elect to process the application as a Change Request under Section 17  
2 rather than as an application for a Deviation.

3   **10.6 Safety and Security**

4           **10.6.1 Safety**

5           Developer is responsible for the safety and security of the O&M Limits and the workers  
6 and the public thereon during all construction, operation and maintenance activities under the  
7 control of any Developer-Related Entity.

8           **10.6.2 Policing**

9           (a) Developer acknowledges that the Arizona Department of Public Safety, the City of  
10 Phoenix Police Department, Maricopa County Sheriff's Department and Yavapai  
11 County Sheriff's Department are empowered to enforce all applicable Laws and to  
12 enter the Project and Project ROW at any and all times to carry out their law  
13 enforcement duties. No provision of this Agreement is intended to surrender,  
14 waive or limit any police powers of the Arizona Department of Public Safety, the  
15 City of Phoenix Police Department, Maricopa County Sheriff's Department,  
16 Yavapai County Sheriff's Department or any other Governmental Entity with  
17 jurisdiction to provide traffic patrol, traffic law enforcement and other police and  
18 public safety services, and all such powers are hereby expressly reserved.

19           (b) Neither Party will have any liability or obligation to the other Party resulting from,  
20 arising out of or relating to the failure, negligence or misconduct in providing  
21 police and public safety services by the Arizona Department of Public Safety, the  
22 City of Phoenix Police Department, Maricopa County Sheriff's Department,  
23 Yavapai County Sheriff's Department or any other Government Entity with  
24 jurisdiction to provide traffic patrol, traffic law enforcement and other police and  
25 public safety services.

26           (c) ADOT and third parties with responsibility for traffic regulation and enforcement  
27 shall have the right to install, operate, maintain and replace cameras or other  
28 equipment on the Project that relate to traffic regulation or enforcement.  
29 Developer shall coordinate and cooperate, and require its Subcontractors to  
30 coordinate and cooperate, with any such installation, maintenance and  
31 replacement activities.

32           **10.6.3 Incident and Emergency Response**

33           (a) Developer shall comply with all applicable Laws and all rules, directives and  
34 guidance of the U.S. Department of Homeland Security and comparable State  
35 agency.

36           (b) Developer shall coordinate and cooperate with all Governmental Entities

1 providing security, first responder and other public emergency response services.

2 (c) Developer shall perform and comply with the provisions of Section OMR 400.4 of  
3 the Technical Provisions concerning Incident and Emergency response, safety and  
4 security.

## 5 **10.7 Hazardous Materials**

6 **10.7.1** Developer shall not be required to engage in Hazardous Materials Management  
7 with respect to Release of Hazardous Materials onto the Project or Project ROW at any time  
8 during the O&M Period except (a) for completing any Hazardous Materials Management  
9 obligations that may first arise during the D&C Period and (b) with respect to any Developer  
10 Release of Hazardous Materials. The provisions of Section 8.8 in respect of Hazardous Materials  
11 Management shall apply throughout the O&M Period to any instances described in clauses (a)  
12 and (b) above.

13 **10.7.2** Developer’s obligations with respect to Hazardous Materials set forth in Sections  
14 8.8.3 and 8.8.7 shall apply during the O&M Period.

## 15 **10.8 Utility Accommodation**

16 **10.8.1** It is anticipated that from time to time during the course of the O&M Period,  
17 Utility Companies will apply for additional utility permits to install new Utilities that would cross  
18 or longitudinally occupy the O&M Limits, or to modify, repair, upgrade, relocate or expand  
19 existing Utilities within the O&M Limits. ADOT will provide Developer reasonable advance  
20 written notice of any such Utility work within the O&M Limits.

21 **10.8.2** Developer shall (a) reasonably accommodate Utility Company construction of  
22 new Utilities or modifications, upgrades, relocations or expansions of existing Utilities, (b)  
23 coordinate and cooperate with the applicable Utility Company and its contractors, and (c) adjust  
24 its work schedules to avoid or minimize interference with such Utility work. No work or services  
25 required of Developer, and no accommodation of new Utilities or of modifications, upgrades,  
26 relocations or expansions of existing Utilities, pursuant hereto shall entitle Developer to an  
27 increase in the O&M Price or other Claim or relief.

## 28 **10.9 Accommodation of Third-Party Signage and Lighting**

29 **10.9.1** In addition to the warning, regulatory, and guide signs within the O&M Limits,  
30 Developer shall accommodate within the O&M Limits third-party signs, including logo type signs  
31 and “Adopt a Highway” signs. Developer shall coordinate and cooperate with any third party  
32 performing such work. ADOT will retain sole authority for approving installation of these signs.  
33 All costs associated with fabricating, installing and maintaining third-party signs shall be borne  
34 by the sign applicant. Developer shall not be responsible for maintenance of third-party signs.

35 **10.9.2** All third-party requests for lighting within the O&M Limits shall be subject to  
36 ADOT approval, and ADOT retains sole authority for approving installation of such lighting.

1 Developer shall not be responsible for operations or maintenance of such lighting.

2 **10.9.3** No work or services required of Developer, and no accommodation of third party  
3 signage or lighting within the O&M Limits, pursuant hereto shall entitle Developer to an increase  
4 in the O&M Price or other Claim or relief.

5 **10.10 Traffic Management**

6 **10.10.1 Traffic Control Plans**

7 (a) Developer shall prepare generic Traffic Control Plans for use during the O&M  
8 Period, in accordance with the requirements set forth in Section DR 462.3.2 of the  
9 Technical Provisions and the applicable requirements of the Transportation  
10 Management Plan. Developer shall prepare generic Traffic Control Plans for  
11 shoulder, mainline single lane, mainline full, Flex Lanes, ramp full and crossroad  
12 Closures. Prior to implementing traffic control during the O&M Period, Developer  
13 shall submit the generic Traffic Control Plans to ADOT for review and comment,  
14 and shall modify the submitted generic Traffic Control Plans as necessary to  
15 resolve ADOT's comments.

16 (b) If no generic Traffic Control Plan is suitable or sufficient to safely implement a  
17 particular Closure, then Developer shall prepare and submit to ADOT an individual  
18 Traffic Control Plan for such Closure prior to commencing the Closure. Developer  
19 shall prepare the individual Traffic Control Plan in accordance with the  
20 requirements set forth in Section DR 462.3.2 of the Technical Provisions. The  
21 individual Traffic Control Plan may be a modified generic Traffic Control Plan in  
22 order to address the particular circumstances of the Closure.

23 (c) Developer shall implement the generic and individual Traffic Control Plans in  
24 connection with all full and partial Closures during the O&M Period, to promote  
25 safe and efficient operation of the Flex Lanes.

26 **10.10.2 Traffic Operation Restrictions**

27 (a) Section 8.5.2(a) (concerning reservation of Closures on ADOT's Event Reporting  
28 System) shall apply during the O&M Period for planned O&M Work requiring  
29 Closures. Accordingly, ADOT's approval of the timing of planned Closures pursuant  
30 to Section 8.5.2(a) is a condition precedent to commencement of the  
31 corresponding O&M Work. For Non-Routine Maintenance Work requiring  
32 Closures, Developer shall first notify ADOT as set forth in Sections DR 462.3.3 and  
33 OMR 400.2.7 of the Technical Provisions.

34 (b) When performing O&M Work, Developer shall keep the number of Closures to a  
35 minimum and shall keep each Lane Closure to the shortest time necessary for safe  
36 and efficient operations. The requirements for and restrictions on Closures are set

1                   forth in Sections DR 462.3.3 and OMR 400.2.7 of the Technical Provisions. If  
2                   Developer violates such requirements and restrictions, Developer shall be subject  
3                   to Liquidated Damages in accordance with Section 22.3 and other remedies as set  
4                   forth in this Agreement.

5                   (c)     ADOT has the authority to deny a Closure in the case of an Emergency, evacuation,  
6                   a special event or any other public activities.

7                   (d)     ADOT will have at all times, without obligation or liability to Developer, the right  
8                   to: (a) issue Directive Letters to Developer regarding traffic management and  
9                   control (with which Developer shall comply), or directly assume traffic  
10                  management and control of the Project during any period that ADOT determines  
11                  such action will be in the public interest as a result of an Emergency or natural  
12                  disaster; and (b) provide on the Project, via message signs or other means  
13                  consistent with Good Industry Practice, traveler and driver information, and other  
14                  public information (e.g., AMBER alerts).

## 15     **10.11 Coordination of Operation and Maintenance with ADOT**

16                  **10.11.1** Developer recognizes and acknowledges that upon Project Substantial  
17     Completion ADOT will control:

18                  (a)     All operation and maintenance of the Project outside the O&M Limits;

19                  (b)     Monitoring of traffic within the O&M Limits;

20                  (c)     Inspection of the Flex Lanes for determining when it is safe to initiate the Flex  
21     Lanes Direction Change;

22                  (d)     Decisions on when to implement the Flex Lanes Direction Change;

23                  (e)     Operation of ITS, including the Flex Lanes System; and

24                  (f)     Incident and Emergency detection and response within the O&M Limits, except  
25     for Developer’s obligation to carry out Non-Routine Maintenance Work to repair  
26     damage to the O&M Elements resulting from an Incident or Emergency or  
27     response thereto.

28                  **10.11.2** Developer and ADOT will cooperate and coordinate regarding their respective  
29     responsibilities in order to minimize disruptions of traffic on and adjacent to the Project and  
30     ensure that such responsibilities are carried out in accordance with then-current operations and  
31     maintenance standards and then-current traffic management standards, practices and  
32     procedures.

33                  **10.11.3** Any interference with or disruption of traffic because of activities on, or the  
34     management, operation, maintenance, expansion or improvement of, any portion of the Project

1 that is not included in the O&M Limits shall not entitle Developer to any Claim, Supplemental  
2 Agreement or relief from withholdings from or deductions to the O&M Price; provided, however,  
3 that if Developer is prevented from implementing a Closure to perform O&M Work that was  
4 previously approved by ADOT due solely to ADOT's traffic management activities on any portion  
5 of the Project that is not included in the O&M Limits, the applicable cure period for any resulting  
6 Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable  
7 of being cured within the applicable cure period. The extension shall be for a reasonable period  
8 of time under the circumstances, taking into account the scope of the efforts necessary to cure,  
9 the effect of ADOT's traffic management activities on Developer's ability to cure, availability of  
10 temporary remedial measures, and need for rapid action due to impact of the Noncompliance  
11 Event on safety or traffic movement.

## 12 **10.12 Developer O&M Reporting**

13 Developer shall prepare and submit to ADOT Monthly O&M Work Reports, Annual O&M Work  
14 Reports and other reports relating to the O&M Work as required by Section OMR 400.3.3 of the  
15 Technical Provisions. Developer shall submit all reports relating to the O&M Work in the form,  
16 with the content and within the time required under the Contract Documents.

## 17 **10.13 Safety Compliance**

18 **10.13.1** ADOT is entitled from time to time to issue Safety Compliance Orders to  
19 Developer with respect to the Project (both within and outside the O&M Limits).

20 **10.13.2** ADOT will use good faith efforts to inform Developer at the earliest practicable  
21 time of any circumstance or information relating to the Project that in ADOT's reasonable  
22 judgment is likely to result in a Safety Compliance Order. Except in the case of Emergency, ADOT  
23 will consult with Developer prior to issuing a Safety Compliance Order concerning the risk to  
24 public or worker safety, alternative compliance measures, cost impacts, and the availability of  
25 Developer resources to fund the Safety Compliance work.

26 **10.13.3** Subject to conducting such prior consultation (unless excused in the case of  
27 Emergency), ADOT may issue Safety Compliance Orders to Developer at any time from and after  
28 the Effective Date provided the Safety Compliance work can reasonably be completed during the  
29 Term.

30 **10.13.4** Developer shall implement each Safety Compliance Order as expeditiously as  
31 reasonably possible following its issuance. Developer shall diligently prosecute the work  
32 necessary to achieve such Safety Compliance until completion. In no event shall Developer be  
33 entitled to claim that any Force Majeure Event relieves Developer from compliance with any  
34 Safety Compliance Order except where Developer's compliance with such Safety Compliance  
35 Order is delayed due to an ongoing Force Majeure Event and only so long as such Force Majeure  
36 Event is continuing.

37 **10.13.5** Issuance by ADOT of a Safety Compliance Order shall be deemed an ADOT-

1 Directed Change, and Developer shall be entitled to the corresponding additional compensation  
2 or Completion Deadline adjustment in accordance with the terms of Section 16; provided,  
3 however, that for any Safety Compliance Order that is caused by or arises out of a Developer Act,  
4 including Nonconforming Work, Noncompliance Events and Developer Defaults, such Safety  
5 Compliance Order shall be completed by Developer at its sole cost and Developer shall not be  
6 entitled to any additional compensation or Completion Deadline adjustment.

7 **10.14 Handback**

8 **10.14.1** Prior to the end of the O&M Period, Developer shall diligently perform and  
9 complete all Work and improvements necessary to render all O&M Elements in a condition at  
10 the end of the Term that meets the standards and requirements set forth in Section OMR 501 of  
11 the Technical Provisions.

12 **10.14.2** The Parties shall conduct Inspections of the O&M Elements and prepare a punch  
13 list of the required Work at the time and according to the terms and procedures specified in  
14 Section OMR 501.2 of the Technical Provisions.

15 **10.14.3** Developer shall perform all Work required pursuant to this Section 10.14 and  
16 Section OMR 501 of the Technical Provisions at no additional charge to ADOT beyond that in the  
17 O&M Price.

18 **10.15 Requirements Applicable to Design and Construction Work**

19 To the extent that Developer performs any material reconstruction work as part of the O&M  
20 Work, Developer shall comply with the requirements and specifications for D&C Work set forth  
21 in the Technical Provisions and in the applicable sections of this Agreement, except as otherwise  
22 set forth herein or approved in advance by ADOT.

23 **10.16 Future Improvements**

24 The scope of this Agreement is limited to the performance of the Work set out in the Contract  
25 Documents and does not pertain to the development, design, construction, operation or  
26 maintenance of any Project reconfiguration, expansion or extension. Developer acknowledges  
27 that any Project reconfiguration, expansion or extension shall be undertaken by ADOT in its sole  
28 discretion and that contracts for the design, construction, operation, maintenance or  
29 rehabilitation of any such Project reconfiguration, expansion or extension may be awarded to  
30 Persons other than Developer pursuant to such process as ADOT may determine.  
31 Notwithstanding the foregoing, Developer shall perform its obligations under this Agreement and  
32 work cooperatively with ADOT with a view to minimizing the cost to ADOT of integrating and  
33 coordinating such work with the Work.

1                                   **SECTION 11.    SUBCONTRACTING AND LABOR PRACTICES**

2    **11.1    Non-Discrimination; Equal Employment Opportunity**

3                    **11.1.1**    Developer shall comply, and shall cause the Developer-Related Entities to  
4    comply, with all applicable state and federal civil rights laws.

5                    **11.1.2**    Developer shall not, and shall cause the Developer-Related Entities not to,  
6    discriminate on the basis of race, age, color, religion, sex or national origin in the performance of  
7    the Work under the Contract Documents.

8                    **11.1.3**    Developer and the Developer-Related Entities will not discriminate against any  
9    employee or applicant for employment because of race, age, color, religion, sex or national origin.  
10   Developer will take affirmative action to ensure that applicants are employed and that  
11   employees are treated during employment without regard to their race, age, color, religion, sex  
12   or national origin. Such action shall include, but is not limited to, the following: employment,  
13   upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination,  
14   rates of pay or other forms of compensation, and selection for training, including apprenticeship.  
15   Developer shall post in conspicuous places, available to employees and applicants for  
16   employment, notices setting forth the provisions of this non-discrimination clause.

17                   **11.1.4**    Developer shall include Sections 11.1.1, 11.1.2 and 11.1.3 in every Subcontract.  
18   Developer shall additionally require that all Subcontractors include Sections 11.1.1, 11.1.2 and  
19   11.1.3 in each further subcontract (with appropriate changes in the names of the parties), so that  
20   such provisions will be binding upon each Subcontractor and every entity that performs any Work  
21   on the Project.

22    **11.2    DBE Requirements and Small Business Concerns**

23                    **11.2.1**    ADOT has established goals for DBE utilization (“**DBE Goals**”) for different parts  
24   of the D&C Work on the Project. DBE Goals for the Project, which Developer commits to achieve  
25   or use Good Faith Efforts to achieve, are calculated and shall be credited in relation to the portion  
26   of the total D&C Price, allocated to the following components of the Work:

27                    (a)    Professional Services DBE Goal – 10.16% of the total D&C Price allocated to  
28                    Professional Services, consisting of the portion of the D&C Price from Parts A and  
29                    B of Exhibit 2-4.1 (D&C Price Breakdown) other than “Initial Core Office Lease and  
30                    Equipment” in Part A of Exhibit 2-4.1 (D&C Price Breakdown); and

31                    (b)    Construction DBE Goal – 10.88% of the total D&C Price allocated to Construction  
32                    Work, consisting of the portion of the D&C Price in Part C of Exhibit 2-4.1 (D&C  
33                    Price Breakdown) and “Initial Core Office Lease and Equipment” in Part A of Exhibit  
34                    2-4.1 (D&C Price Breakdown).

35                    **11.2.2**    For purposes of Sections 11.2.1(a) and 11.2.1(b), the D&C Price shall be allocated  
36   between Professional Services and Construction Work according to the allocations in the ADOT-

1 approved Project Baseline Schedule; and the sum of such allocations shall equal the total D&C  
2 Price.

3 **11.2.3** ADOT strongly encourages Developer to use additional DBEs above the DBE  
4 Goals in an effort to help ADOT meet its overall DBE goals and help ADOT meet the maximum  
5 feasible portion of its DBE goals through race neutral means as outlined in 49 C.F.R. Part 26.

6 **11.2.4** ADOT's DBE Special Provisions, applicable to the Project, are set forth in Exhibit  
7 6 (ADOT's DBE Special Provisions). The purpose of ADOT's DBE Special Provisions is to ensure that  
8 DBEs shall have an equal opportunity to participate in the performance of contracts financed in  
9 whole or in part with federal funds. Developer shall comply with all applicable requirements set  
10 forth in ADOT's DBE Special Provisions and the provisions in Developer's approved DBE Utilization  
11 Plan.

12 **11.2.5** Within 30 days after issuance of NTP 1, Developer shall (1) revise and convert its  
13 Preliminary DBE Utilization Plan, included in Developer's Proposal, into a more detailed, final DBE  
14 Utilization Plan and (2) submit it to ADOT for approval in ADOT's good faith discretion.

15 (a) The final DBE Utilization Plan shall affirmatively respond to ADOT's comments on  
16 and revisions to the draft final DBE Utilization Plan.

17 (b) The final DBE Utilization Plan shall include the following components:

18 (i) Updated Proposal Forms H-3 and H-4 listing additional DBEs secured to  
19 work on the Project, including a complete list of all DBE Professional  
20 Services firms identified to meet the Professional Services DBE Goal;

21 (ii) Professional Services DBE Intended Participation Affidavits Individual, from  
22 each DBE identified to work on the Project's Design Work;

23 (iii) DBE Subcontractor Intended Participation Affidavits, in the form attached  
24 to Exhibit 6 (ADOT's DBE Special Provisions), for each DBE identified to  
25 work on the Project's Construction Work;

26 (iv) Updated Proposal Forms H-6 and H-7 identifying additional scopes of Work  
27 for future DBE participation, with more detailed information;

28 (v) Expanded descriptions of the types of proactive DBE and small business  
29 bid-specific marketing, recruitment, outreach and community  
30 engagement efforts that Developer will implement while preparing for and  
31 undertaking the D&C Work in order to include DBEs and small businesses  
32 on the Project. Include processes for timely communications and outreach  
33 methods that Developer will use, and a process that Developer will use to  
34 keep track of potential DBEs, small businesses and other Subcontractors  
35 on the Project. Include proposed innovative methods for (A) involving new  
36 and emerging DBEs, and (B) identifying firms that might potentially be

- 1 certified as DBEs and assisting them to become DBE-certified and be  
2 involved in the Project. Discuss how these efforts will flow through tiers of  
3 Subcontractors on the Project;
- 4 (vi) Description of efforts Developer has made and will make to recruit and  
5 utilize non-engineering design and construction related DBE firms such as  
6 graphic design and printing, marketing, outreach, training, employment  
7 services and catering companies to help meet the DBE Goals for the D&C  
8 Work;
- 9 (vii) Description of proposed DBE capacity-building efforts to be implemented  
10 throughout the D&C Work, including methods to assist DBEs with record-  
11 keeping and compliance, bonding, financing, access to supplies and other  
12 capabilities;
- 13 (viii) Description of the estimated DBE participation schedule for each segment  
14 of the D&C Work that Developer identifies pursuant to the Preliminary  
15 Project Baseline Schedule, including anticipated Subcontracts and  
16 estimated dollar amounts to be awarded to DBEs in each segment. Include  
17 a table or diagram of an estimated schedule that illustrates projected work  
18 sequencing of DBE utilization in each segment;
- 19 (ix) Description of processes and procedures that Developer will use to  
20 monitor, track, document and report DBE progress and DBE utilization, and  
21 to maintain and adjust the DBE participation schedule to help ensure  
22 achievement of the DBE Goals. Include time intervals at which Developer  
23 will employ these processes and procedures;
- 24 (x) Description of specific measures that Developer will undertake throughout  
25 the duration of the D&C Work to achieve the DBE Goals, including training  
26 workshops, technical and financial assistance, support services,  
27 mentor/protégé relationships, recruiting and encouraging potential DBEs  
28 to obtain certification, etc. Include a proposed schedule of  
29 events/activities;
- 30 (xi) Description of Developer's data collection and monitoring systems. Include  
31 how Developer will track DBE recruitment and awards during each  
32 segment of the D&C Work, and how Developer will report DBE payments  
33 and utilization to ADOT. Describe the expected frequency and  
34 comprehensiveness of the efforts;
- 35 (xii) Description of how Developer will manage DBEs and small business  
36 Subcontractors on the Project, including processes for project  
37 management, technical performance reviews, feedback and dispute  
38 resolution to resolve issues that may arise;

1 (xiii) Description of other procedures and processes for meeting DBE  
2 requirements, such as documenting and submitting affidavits for  
3 additional DBEs committed to the Project to meet or exceed the DBE Goals,  
4 prompt pay requirements and substitution/replacement of DBEs; and

5 (xiv) Description of any other innovative or additional Good Faith Efforts  
6 activities already undertaken or ones Developer plans to undertake that  
7 are not listed above or listed in 49 C.F.R. Part 26.

8 (c) The approved DBE Utilization Plan shall be considered a Contract Document, with  
9 an order of precedence as provided by Section 1.1.2.

10 **11.2.6** Developer shall provide information and documentation that demonstrates its  
11 continued Good Faith Efforts throughout the D&C Period to meet the DBE Goals in accordance  
12 with 49 C.F.R. Part 26, Appendix A and the ADOT-approved DBE Utilization Plan. The efforts  
13 employed must at a minimum include those that one could reasonably expect a contractor to  
14 take if the contractor were actively and aggressively trying to obtain DBE participation sufficient  
15 to meet the DBE Goals (See 49 C.F.R. Part 26, Appendix A).

16 **11.2.7** Developer shall not cancel or terminate any Subcontract with a DBE firm except  
17 in accordance with all requirements and provisions applicable to cancellation or termination of  
18 Subcontracts with DBE firms set forth in Exhibit 6 (ADOT's DBE Special Provisions).

19 **11.2.8** For purposes of measuring achievement of or Good Faith Efforts to achieve the  
20 DBE Goals, the dollar amount of Supplemental Agreements or Directive Letters that:

21 (a) Is attributable to an increase in the scopes of Work in DBE Subcontracts or  
22 intended for performance by DBE Subcontractors shall be added to the base D&C  
23 Price;

24 (b) Is attributable to a reduction in the scopes of Work in DBE Subcontracts or  
25 intended for performance by DBE Subcontractors shall be subtracted from the  
26 base D&C Price; and

27 (c) Is not related to the scopes of D&C Work in DBE Subcontracts or intended for  
28 performance by DBE Subcontractors shall not be added to or subtracted from the  
29 base D&C Price.

30 **11.2.9** Developer shall carry out, and shall cause the Subcontractors to carry out,  
31 applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT assisted  
32 contracts. Failure by Developer to carry out these requirements is a material breach of this  
33 Agreement, which may result in such remedies available under applicable Law as ADOT deems  
34 appropriate (subject to Developer's rights to notice and opportunity to cure set forth in this  
35 Agreement). Remedies ADOT deems appropriate are more particularly provided in this  
36 Agreement, which may include:

- 1 (a) Withholding certain monthly progress payments;
- 2 (b) Assessing sanctions set forth in Exhibit 6 (ADOT’s DBE Special Provisions);
- 3 (c) Liquidated Damages;
- 4 (d) Termination of this Agreement; and
- 5 (e) Disqualifying Developer and its Affiliates from future bidding as non-responsible.

6 **11.2.10** Pursuant to 49 C.F.R. Part 26.39 ADOT’s DBE program includes an element to  
7 incorporate contracting requirements to facilitate participation by Small Business Concerns in  
8 federally funded contracts. SBCs are for-profit businesses registered to do business in the State  
9 and that meet the U.S. Small Business Administration size standards for average annual revenue  
10 criteria for its primary North American Industry Classification System code. While the SBC  
11 component of ADOT’s DBE program does not require utilization goals on projects, ADOT strongly  
12 encourages Developer to utilize small businesses that are registered in AZ UTRACS, in addition to  
13 DBEs meeting the certification requirement. Visit AZ UTRACS at <https://utracs.azdot.gov/> to search  
14 for registered SBCs that can be used on the Project. SBC utilization on the Project must also be  
15 tracked and reported to ADOT on a monthly basis along with required DBE outreach efforts and  
16 utilization.

17 **11.3 On-the-Job Training**

18 **11.3.1** ADOT has established goals for OJT participation in the Construction Work (“**OJT**  
19 **Goals**”). The OJT Goals for the Project, which Developer commits to achieve or use Good Faith  
20 Efforts to achieve, are:

- 21 (a) Minimum of 10,800 OJT Trainee hours on the Project, with a minimum required  
22 number of training hours of 600 for each OJT Trainee;
- 23 (b) Minimum of two OJT Trainees must each complete at least 2,000 hours on the  
24 Project in the same trade or work classification; and
- 25 (c) Minimum of one OJT Trainee must complete hours solely on the Project necessary  
26 to achieve Journeyman status (a minimum of 2,000 must be completed by this OJT  
27 Trainee solely on the Project).

28 **11.3.2** ADOT’s OJT Special Provisions, applicable to the Project, are set forth in Exhibit  
29 7 (ADOT’s OJT Special Provisions). The purpose of ADOT’s OJT Special Provisions is to ensure that  
30 inexperienced and untrained workers have a substantial opportunity to participate in the  
31 performance of the Construction Work through apprenticeships, training and similar measures  
32 to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all  
33 requirements set forth in the OJT Special Provisions and the provisions in Developer’s approved  
34 OJT Utilization Plan.

1           **11.3.3** Within 30 days after issuance of NTP 1, Developer shall: (a) revise and convert  
2 its Preliminary OJT Utilization Plan, included in the Proposal, into a more detailed, final OJT  
3 Utilization Plan; and (b) submit this plan to ADOT for approval in ADOT’s good faith discretion.  
4 Issuance of NTP 2 is conditioned on obtaining such ADOT approval.

5           (a)     The OJT Utilization Plan shall affirmatively respond to ADOT’s comments on and  
6           revisions to the draft final OJT Utilization Plan.

7           (b)     The OJT Utilization Plan shall include the following components:

8           (i)     Overview of Developer’s understanding of the Project’s OJT requirements,  
9           Developer’s commitment to meeting or using Good Faith Efforts to meet  
10           the OJT Goals and all other OJT requirements, and Developer’s overall OJT  
11           implementation strategy;

12           (ii)    Updated description of Developer’s OJT team/staff that will be working on  
13           the Project. Include names, experience and responsibilities of Developer’s  
14           OJT compliance team members (including the DBE/OJT Outreach and  
15           Compliance Manager included in the Proposal) responsible for  
16           implementing and complying with the OJT Utilization Plan and all OJT  
17           requirements. Include an updated description of how the DBE/OJT  
18           Outreach and Compliance Manager and his/her staff plans to work with  
19           the Compliance Oversight Committee;

20           (iii)   Description of the types of proactive OJT marketing, recruitment, outreach  
21           and community engagement efforts Developer made prior to the Effective  
22           Date and will make throughout the D&C Period to secure the participation  
23           of women, minority, veteran and disadvantaged trainees for the Project.  
24           Include information about Developer’s OJT Trainee screening, hiring and  
25           processes to retain OJT Trainees;

26           (iv)    Description of specific Good Faith Efforts measures that Developer will  
27           undertake throughout the D&C Period to achieve the OJT Goals;

28           (v)     Description of Developer’s OJT program, which Developer will use to train  
29           and educate minority, women and disadvantaged individuals in various  
30           construction related crafts during each segment of the Construction Work,  
31           as such segment is identified in the Preliminary Project Baseline Schedule.  
32           Developer’s OJT program shall include training goals and details for on-site  
33           and off-site training, estimated training schedule time frames specific to  
34           each job classification, number of OJT Trainees per classification and the  
35           estimated start dates for each classification;

36           (vi)    An estimated OJT participation schedule for each phase/segment of the  
37           Construction Work, and a description of processes and procedures

1 Developer will use to document changes/adjustments to the OJT  
2 participation schedule to achieve the OJT Goals. Include time intervals at  
3 which these processes and procedures will be employed; and

4 (vii) Description of Developer’s data collection and monitoring systems,  
5 including tracking of OJT Trainee recruits and reporting of OJT hours and  
6 trainee completion/graduation/termination to ADOT for each  
7 phase/segment of the Construction Work. Include information about the  
8 expected frequency and comprehensiveness of these efforts.

9 (c) The approved OJT Utilization Plan shall be considered a Contract Document with  
10 an order of precedence as provided by Section 1.1.2.

11 **11.3.4** The foregoing shall not preclude the same individual OJT Trainees from satisfying  
12 each of the OJT Goals. Developer shall distribute the number of OJT Trainees among work  
13 classifications on the basis of Developer’s need and the availability of Journeyman persons in the  
14 various classifications. Developer will be credited for each OJT Trainee employed on the Project  
15 in an ADOT or State approved apprenticeship program.

16 **11.3.5** Developer shall complete and submit to ADOT the OJT documentation and  
17 reports as and when required under Section 923-3.01 of Exhibit 7 (ADOT’s OJT Special Provisions).  
18 Failure to submit the required documentation and reports within the specified deadline shall be  
19 cause to (a) deny credit for any work performed by the OJT Trainee prior to approval and (b)  
20 delay approval of Developer’s monthly progress payment.

21 **11.4 Subcontracts**

22 **11.4.1** Developer shall retain or cause to be retained only Subcontractors who are  
23 qualified, experienced and capable in the performance of the portion of the Work assigned.  
24 Developer shall ensure that each Subcontractor has at the time of execution of the corresponding  
25 Subcontract, and maintains at all times during performance of the assigned Work, all licenses  
26 required by applicable Laws and all Insurance Policies. Developer shall retain, employ and utilize  
27 the firms and organizations specifically listed in the Project Management Plan to fill the  
28 corresponding Subcontractor positions listed therein.

29 **11.4.2** Developer shall comply with the following Subcontractor reporting  
30 requirements.

31 (a) For each Subcontract (regardless of tier), Developer shall submit to ADOT a  
32 completed Professional Services Subcontractor Request Form (Exhibit 5-1) and  
33 Construction Work Subcontractor Request Form (Exhibit 5-2), as applicable,  
34 before the Subcontractor commences work.

35 (b) For each Subcontractor (regardless of tier) that performs Work, Developer shall  
36 submit to ADOT written notice of the Subcontractor’s start date not later than 48

1 hours before the Subcontractor commences work or, for those Subcontractors  
2 identified in the Proposal and starting on or within 48 hours of the Effective Date,  
3 not later than 48 hours after the start date.

4 (c) Except for DBE Subcontracts, Developer shall submit to ADOT a copy of each  
5 executed Subcontract (regardless of tier) not later than 60 days after the  
6 Subcontractor commences work. For each DBE Subcontractor, however,  
7 Developer shall submit to ADOT a copy of the executed Subcontract, not later than  
8 when required in Section 12.03 of Exhibit 6 (ADOT’s DBE Special Provision).

9 (d) For each Subcontractor (DBE and non-DBE), Developer shall comply with the  
10 prompt payment requirements and payment and payroll reporting requirements  
11 set forth in Sections 15.9 and 15.10.

12 **11.4.3** The following requirements shall apply to Subcontracts.

13 (a) Developer shall, prior to soliciting any bids for performance of work or labor or  
14 rendering of services relating to the design, construction, operation or  
15 maintenance of the Project, submit to ADOT for its review and comment a  
16 procedure for the conduct of the bidding process applicable to Subcontracts.  
17 Developer may use procedures set forth in the ADOT Standard Specifications or  
18 may submit alternative procedures to ADOT for approval in ADOT’s sole  
19 discretion. Developer shall not enter into any Subcontract except in accordance  
20 with the foregoing procedure; provided that this clause (a) shall not apply to  
21 Subcontracts entered into between Developer and a Subcontractor identified in  
22 Developer’s Proposal and listed in Exhibit 8-1 (Key Subcontractors).

23 (b) As soon as Developer identifies a potential Subcontractor for a potential  
24 Subcontract, but in no event later than five days after executing the Subcontract,  
25 Developer shall provide in writing to ADOT the Subcontractor’s name, address,  
26 phone number and license number with the Arizona Registrar of Contractors, the  
27 name of the Subcontractor’s authorized representative, and a description of work  
28 to be performed by such Subcontractor.

29 (c) Within each executed Subcontract, Developer shall clearly and expressly identify  
30 where each of the requirements set forth in Section 11.4.5 are located.

31 **11.4.4** The following additional requirements shall apply to Key Subcontractors.

32 (a) Developer shall not terminate a Key Subcontract, or permit or suffer any  
33 substitution or replacement of a Key Subcontractor (as applicable), unless the Key  
34 Subcontractor:

35 (i) Is no longer in business, is unable to fulfill its legal, financial, or business  
36 obligations, or can no longer meet the terms of the teaming agreement

- 1 with Developer;
- 2 (ii) Voluntarily removes itself from Developer's team;
- 3 (iii) Fails to provide a sufficient number of qualified personnel to fulfill the  
4 duties identified during the Proposal stage;
- 5 (iv) Fails to timely cure a material default under the applicable Key  
6 Subcontract; or
- 7 (v) Solely for any Key Subcontractor for which a teaming agreement instead  
8 of a Subcontract was provided as of the Effective Date, such Key  
9 Subcontractor fails to negotiate in good faith a Subcontract in a timely  
10 manner in accordance with provisions established in such teaming  
11 agreement.
- 12 (b) Each proposed substitute or replacement Key Subcontractor shall be subject to  
13 ADOT's prior written approval. Developer shall submit to ADOT the name of and  
14 contact information for the proposed substitute or replacement Key  
15 Subcontractor, information on its experience and suitability for the scope of work  
16 under the proposed Subcontract, the proposed Key Subcontract, and such other  
17 information as ADOT may request.
- 18 (c) In the case of the Key Subcontract with the Lead O&M Firm, ADOT's prior approval  
19 shall be within ADOT's good faith discretion; and if Developer intends to self-  
20 perform the O&M Work, Developer shall obtain ADOT's prior written approval in  
21 ADOT's good faith discretion of the personnel proposed who will direct, supervise,  
22 manager or administer its performance of the O&M Work. If Developer has not  
23 obtained ADOT's prior written approval pursuant to this clause (c) within six  
24 months after the Effective Date, then ADOT may elect, in its sole discretion, to:
- 25 (i) Withhold 5% of the D&C Draw Request for the next month;
- 26 (ii) If applicable, withhold 10% of the D&C Draw Request for the immediately  
27 following month; and
- 28 (iii) If applicable, withhold 100% of all further D&C Draw Requests,  
29 until Developer obtains ADOT's prior written approval. Payment of any such  
30 amounts withheld by ADOT shall be due from ADOT to Developer, without  
31 interest, not later than the Developer Cycle Key Date first occurring after the date  
32 ADOT issues its approval.
- 33 (d) If Developer makes changes to a Key Subcontractor in violation of clause (a), then,  
34 in addition to any other remedies available to ADOT, Developer shall pay to ADOT  
35 100% of (i) any cost incurred by ADOT as a result of such change and (ii) any cost

1 savings to Developer resulting from such change. ADOT may bar any proposed  
2 Key Subcontractor from the Site and from performing any Work until ADOT has  
3 approved of the Key Subcontractor in writing.

4 **11.4.5** Each Subcontract shall:

5 (a) set forth a standard of professional responsibility or a standard for commercial  
6 practice equal to the requirements of the Contract Documents and Good Industry  
7 Practice for work of similar scope and scale and shall set forth effective procedures  
8 for claims and change orders;

9 (b) require the Subcontractor to carry out its scope of Work in accordance with the  
10 Contract Documents, the Governmental Approvals and applicable Law, including  
11 the applicable requirements of the DBE Utilization Plan;

12 (c) expressly include Form FHWA-1273, except to the extent provided otherwise in  
13 Part I, General, of Form FHWA-1273;

14 (d) expressly include the general wage decisions applicable to the Project and set  
15 forth in Attachment 3 to Exhibit 4 (Federal Requirements) (Federal Prevailing  
16 Wage Rates), except to the extent provided otherwise in Part I, General, of Form  
17 FHWA-1273 or in Section 11.10.1;

18 (e) without cost to Developer or ADOT, expressly permit assignment to ADOT or its  
19 successor, assign or designee of all Developer's rights under the Subcontract,  
20 contingent only upon delivery of request from ADOT following termination of this  
21 Agreement, allowing ADOT or its successor, assign or designee to assume the  
22 benefit of Developer's rights (including the benefit of all Subcontractor warranties,  
23 indemnities, guaranties and professional responsibility), with liability only for  
24 those remaining obligations of Developer accruing after the date of assumption;

25 (f) expressly state that any acceptance of assignment of the Subcontract to ADOT or  
26 its successor, assign or designee shall not operate to make the successor, assignee  
27 or designee responsible or liable for any breach of the Subcontract by Developer  
28 or for any amounts due and owing under the Subcontract for work or services  
29 rendered prior to assumption (but without restriction on the Subcontractor's  
30 rights under the Subcontract to suspend work or demobilize due to Developer's  
31 breach);

32 (g) expressly include (i) a covenant to recognize and attorn to ADOT upon receipt of  
33 notice from ADOT that it has exercised its rights under this Agreement, without  
34 necessity for consent or approval from Developer or to determine whether ADOT  
35 validly exercised its rights, and (ii) Developer's covenant to waive and release any  
36 claim or cause of action against the Subcontractor arising out of or relating to its  
37 recognition and attornment in reliance on any such notice;

- 1 (h) not be assignable by the Subcontractor to any Person other than ADOT (or its  
2 successor, assignee or designee) without Developer's prior consent;
- 3 (i) expressly require that the Subcontractor will: (i) maintain usual and customary  
4 Books and Records for the type and scope of business operations in which it is  
5 engaged (e.g., constructor, equipment Supplier, designer, operator, service  
6 provider etc.); (ii) permit audit thereof with respect to the Project or Work by each  
7 of Developer and ADOT pursuant to Section 25.5 and; (iii) provide progress reports  
8 to Developer appropriate for the type of work it is performing sufficient to enable  
9 Developer to provide the reports it is required to furnish ADOT under this  
10 Agreement;
- 11 (j) include the right of Developer to terminate the Subcontract in whole or in part  
12 upon any Termination for Convenience of this Agreement without liability of  
13 Developer or ADOT for the Subcontractor's lost profits or business opportunity,  
14 except, if applicable, the lost profit represented by the element of Termination  
15 Compensation under Section 26.2.1(c);
- 16 (k) expressly require the Subcontractor to participate in meetings between Developer  
17 and ADOT, upon ADOT's request, concerning matters pertaining to such  
18 Subcontract or the work thereunder, provided that all direction to such  
19 Subcontractor shall be provided by Developer, and provided further that nothing  
20 in this clause (k) shall limit the authority of ADOT to give such direction or take  
21 such action which, in its sole opinion, is necessary to remove an immediate and  
22 present threat to the safety of life or property;
- 23 (l) include an agreement by the Subcontractor to give evidence in any dispute  
24 resolution proceeding pursuant to Section 24, if such participation is requested by  
25 either ADOT or Developer;
- 26 (m) expressly include a provision prohibiting cross-contract offset between the parties  
27 thereto, meaning that if a Subcontractor is performing work on multiple contracts  
28 for the other party to the Subcontract or such other party's affiliates, the other  
29 party or its affiliate shall not withhold any payment from the Subcontractor on its  
30 Subcontract because of disputes or claims on another contract;
- 31 (n) expressly include Sections 11.1.1 through 11.1.4 (with appropriate changes in the  
32 names of the parties);
- 33 (o) expressly include in every Subcontract (including purchase orders and in every  
34 Subcontract of any Developer-Related Entity for the Work), provisions to  
35 effectuate the DBE requirements and require that they be included in all  
36 Subcontracts at lower tiers, so that such provisions will be binding upon each  
37 Subcontractor. All Subcontracts of any tier, including those with DBE firms, and all  
38 contracts with Suppliers, shall require compliance with 49 C.F.R. Part 26 and

- 1 include Exhibit 6 (ADOT’s DBE Special Provision). The requirements of this clause  
2 (o) shall not apply to Subcontracts at any tier with ADOT or Governmental Entities;
- 3 (p) expressly include in every Subcontract for Construction Work (including purchase  
4 orders and in every Subcontract of any Developer-Related Entity for Construction  
5 Work), provisions to effectuate the OJT requirements, and require that they be  
6 included in all Subcontracts at lower tiers, so that such provisions will be binding  
7 upon each such Subcontractor. All Subcontracts for Construction Work of any tier,  
8 including those with DBE firms, shall include Exhibit 7 (ADOT’s OJT Special  
9 Provisions) and require compliance with the provisions of Form FHWA-1273, 23  
10 U.S.C. § 140(a) and 23 C.F.R. §230.111. The requirements of this clause (p) shall  
11 not apply to Subcontracts at any tier with ADOT or Governmental Entities;
- 12 (q) expressly require the Subcontractor to make payments to its lower tier  
13 Subcontractors, and be liable for interest payments to such Subcontractors, as set  
14 forth in Sections 15.9.1 and 15.9.2, respectively;
- 15 (r) contain no waiver of the prompt payment protections for the Subcontractor  
16 provided under Section 15.9 and A.R.S. § 28-411C, D and E;
- 17 (s) expressly provide that all claims and charges of the Subcontractor and its  
18 Subcontractors at any tier shall not attach to any interest of ADOT in the Project  
19 or the Project ROW;
- 20 (t) expressly include a covenant, expressly stated to survive termination of the  
21 Subcontract, to promptly execute and deliver to ADOT a new contract between  
22 the Subcontractor and ADOT on the same terms and conditions as the  
23 Subcontract, in the event: (i) the Subcontract is rejected by Developer in  
24 bankruptcy or otherwise wrongfully terminated by Developer; and (ii) ADOT  
25 delivers request for such new contract following such rejection or termination of  
26 this Agreement;
- 27 (u) expressly include the provision set forth in Section 25.3.3;
- 28 (v) expressly include the provisions set forth in Section 26.3;
- 29 (w) be consistent in all other respects with the terms and conditions of the Contract  
30 Documents to the extent such terms and conditions are applicable to the scope of  
31 work of the Subcontractor, and include all provisions required by this Agreement;  
32 and
- 33 (x) expressly include paragraphs 1 through 5 of Attachment 6 to Exhibit 4 (Federal  
34 Requirements) (Appendix A to DOT Standard Title VI Assurances and Non-  
35 Discrimination Provisions: Contractor Assurances).

1           **11.4.6** Each Key Subcontract also shall expressly include the provision set forth in  
2 Section 25.3.2.

3           **11.4.7** Without the prior written consent of ADOT in its sole discretion, Developer shall  
4 not:

5           (a) amend any Subcontract with respect to any of the matters described in Sections  
6 11.4.5 and 11.4.6; or

7           (b) include in any Subcontract any terms or conditions that may have adverse impact  
8 on the Contract Documents or Developer’s ability to comply with the Contract  
9 Documents.

10           **11.4.8** Developer shall not enter into any Subcontracts with any Person then debarred  
11 or suspended from submitting bids by any agency of the State or the U.S. federal government.

12           **11.4.9 Additional Requirements for Subcontracts for O&M Work**

13           (a) Before entering into any Subcontract for O&M Work or any supplement or  
14 amendment thereto, Developer shall submit a true and complete copy of the  
15 proposed Subcontract to ADOT for review and comment. ADOT may disapprove  
16 only if such proposed Subcontract for the O&M Work (i) does not comply, or is  
17 inconsistent, in any material respect with the applicable requirements of the  
18 Contract Documents, including that it does not comply or is inconsistent with this  
19 Section 11 or with the applicable requirements of Section 25.4 regarding  
20 maintenance of Books and Records, does not incorporate the applicable Federal  
21 Requirements set forth in Exhibit 4 (Federal Requirements), or is inconsistent with  
22 the requirements of the relevant scope of Work, (ii) increases ADOT’s liability or  
23 (iii) adversely affects ADOT’s step-in rights.

24           (b) The Subcontract for O&M Work also shall expressly require the services of the  
25 Lead O&M Firm not be assignable by the Lead O&M Firm without Developer’s and  
26 ADOT’s prior written consent.

27           **11.5 Responsibility for Developer-Related Entities**

28 The retention of Subcontractors by Developer will not relieve Developer of its responsibility  
29 hereunder or for the quality of the Work or materials provided by it. Developer shall supervise  
30 and be responsible for the acts, omissions, negligence, intentional misconduct, or breach of  
31 applicable Law, contract or Governmental Approval by any Developer-Related Entity, as though  
32 Developer directly employed all such Persons. No Subcontract entered into by Developer will  
33 impose any obligation or liability upon ADOT to any such Subcontractor or any of its employees.  
34 Nothing in this Agreement creates any contractual relationship between ADOT and any  
35 Subcontractor.

1 **11.6 Key Personnel**

2 **11.6.1 Availability of Key Personnel**

3 (a) Except as provided in Section 11.6.3(a), (i) Developer represents, warrants and  
4 covenants that all Key Personnel are and will be available at the respective times,  
5 and will perform the respective roles, identified for them in Exhibit 8 (Key  
6 Subcontractors and Key Personnel) and Section GP 110.08.2 of the Technical  
7 Provisions, and (ii) Developer shall not replace or permit replacement of any  
8 individual filling a Key Personnel position without ADOT’s prior written approval.

9 (b) Developer shall cause the individuals filling Key Personnel positions to maintain  
10 active involvement in the prosecution and performance of the Work sufficient for  
11 satisfactory performance of the tasks to be performed by such Key Personnel.  
12 Developer shall cause each Key Personnel to comply with the required time  
13 commitments specified in Section GP 110.08.2 of the Technical Provisions. ADOT  
14 has the right to require a greater time commitment, up to full time commitment,  
15 from any individual filling a Key Personnel position during the D&C Period or O&M  
16 Period, as applicable, if ADOT, in its good faith discretion, determines such  
17 additional commitment of time is necessary for satisfactory prosecution and  
18 performance of the Work.

19 (c) ADOT must be able to contact any Key Personnel or an on-call back up individual  
20 with fully delegated authority 24 hours a day, seven days a week. Developer shall  
21 provide to ADOT phone, e-mail addresses and mobile telephone numbers for all  
22 Key Personnel and all such back-up individuals.

23 **11.6.2 Liquidated Damages for Key Personnel**

24 (a) If individuals filling certain Key Personnel positions (i) are not performing the roles  
25 identified for those individuals in Section GP 110.08.2 of the Technical Provisions,  
26 (ii) do not maintain active involvement in the prosecution and performance of the  
27 Work, or (iii) do not commit the amount of time specified in Section GP 110.08.2  
28 of the Technical Provisions for the particular Key Personnel role, Developer  
29 acknowledges that ADOT, the Work, and the Project will suffer significant and  
30 substantial Losses due to the unavailability of that individual.

31 (b) Developer and ADOT acknowledge that it is impracticable and extremely difficult  
32 to determine the actual Losses that would accrue to ADOT in the event of such  
33 unavailability of Key Personnel. Accordingly, and subject to Section 11.6.3, if at  
34 any time an individual filling a Key Personnel position shown in the table below is  
35 (i) not performing the role identified for that individual in Section GP 110.08.2 of  
36 the Technical Provisions, (ii) not actively involved in the prosecution and  
37 performance of the Work (regardless of whether the individual is replaced by  
38 another individual approved by ADOT), or (iii) not committing the amount of time

1 specified in Section GP 110.08.2 of the Technical Provisions for the particular Key  
 2 Personnel role, Developer shall pay ADOT Liquidated Damages in the amount set  
 3 forth in the table below based on the individual's Key Personnel position.  
 4

Key Personnel Position	Liquidated Damages
Project Manager	\$200,000
Construction Manager	\$150,000
Design Manager	\$150,000
Maintenance of Traffic Manager	\$50,000
Quality Manager	\$10,000
Safety Manager	\$10,000
Public Relations Manager	\$0
DBE/OJT Outreach and Compliance Manager	\$0

5 (c) Developer understands and agrees that any Liquidated Damages payable under  
 6 clause (b) above are not a penalty and that such sums are reasonable under the  
 7 circumstances existing as of the Effective Date. The Parties have agreed to the  
 8 Liquidated Damages under this Section 11.6.2 in order to fix and limit Developer's  
 9 costs and to avoid later disputes over what amounts of damages that ADOT has  
 10 suffered and are properly chargeable to Developer.

11 **11.6.3 Limitations on Liquidated Damages for Unavailability of Key Personnel**

12 (a) Developer shall not be liable for Liquidated Damages under Section 11.6.2 under  
 13 the following conditions:

14 (i) Developer removes or replaces an individual filling a Key Personnel  
 15 position with ADOT's written consent, which shall be provided or withheld  
 16 in ADOT's sole discretion, or at ADOT's written direction; or

17 (ii) An individual filling a Key Personnel position is unavailable because of  
 18 death, retirement, injury or termination of employment with the  
 19 applicable Developer-Related Entity (except where the individual moves to  
 20 an Affiliated entity in which case the Liquidated Damages under Section  
 21 11.6.2 will be assessed);

1 provided, however, that in each such case, Developer shall, within 15 days of the  
2 individual becoming unavailable, propose to ADOT a replacement individual for  
3 the Key Personnel position, which individual shall be subject to ADOT's approval.  
4 In determining whether to approve, ADOT may take into consideration the  
5 experience target, and will determine whether Developer has satisfied the  
6 requirements, for the Key Personnel position specified in Section GP 110.08.2 of  
7 the Technical Provisions. Developer shall be liable for the Liquidated Damages  
8 specified in Section 11.6.2 if Developer does not propose an individual that meets  
9 the requirements of the Key Personnel position within the time specified in this  
10 clause (a).

11 (b) Developer may replace the individual filling a Key Personnel position for the D&C  
12 Period with another individual approved by ADOT one time for each such Key  
13 Personnel position without incurring Liquidated Damages under Section 11.6.2,  
14 but only if:

15 (i) Developer has completed at least 70% of the D&C Work;

16 (ii) the D&C Work is progressing on schedule and no delay will result from such  
17 replacement;

18 (iii) there exist no uncured Developer Defaults; and

19 (iv) the Key Personnel position being replaced shall not be vacated at any given  
20 point in time due to such replacement.

21 Subsequent replacements of individuals filling any such position shall be subject  
22 to Liquidated Damages under Section 11.6.2. Replacement of an individual filling  
23 a Key Personnel position due to unavailability, as set forth in clause (a) above shall  
24 not be considered a prior replacement that would preclude a substitution under  
25 this clause (b).

26 (c) If an individual filling a Key Personnel position is unavailable because ADOT does  
27 not issue NTP 1 within 180 days after the Proposal Due Date, through no  
28 Developer Act, then Developer shall have 30 days after issuance of NTP 1 to  
29 identify a replacement for such Key Personnel position without incurring  
30 Liquidated Damages under Section 11.6.2. Developer shall use diligent efforts to  
31 identify a replacement that meets the applicable targets for Key Personal  
32 qualifications set forth in Section GP 110.08 of the Technical Provisions. Upon  
33 ADOT's approval of the replacement individual(s), such individual(s) shall be  
34 considered Key Personnel under this Agreement, including for purposes of Section  
35 11.6.2 relative to Liquidated Damages.

#### 36 **11.6.4 Liquidated Damages for Failure to Timely Replace Key Personnel**

1 (a) In addition to any Liquidated Damages that may apply under Section 11.6.2,  
2 Developer shall pay ADOT Liquidated Damages in the amount of \$2,000 for each  
3 day that any Key Personnel position is not replaced, commencing on the 60<sup>th</sup> day  
4 that the Key Personnel position remains unfilled and ending on the day that  
5 Developer fills the Key Personnel position in accordance with this Agreement. The  
6 Liquidated Damages payable under this Section 11.6.4 shall be applicable  
7 regardless of the reason for the departure of the individual previously filling the  
8 Key Personnel role, and regardless of whether Liquidated Damages are applicable  
9 under Section 11.6.2 or excused under Section 11.6.3(a).

10 (b) Developer understands and agrees that any Liquidated Damages payable under  
11 this Section 11.6.4 are not a penalty and that such sums are reasonable under the  
12 circumstances existing as of the Effective Date. The Parties have agreed to  
13 Liquidated Damages under this Section 11.6.4 to fix and limit Developer's costs  
14 and to avoid later disputes over the amount of damages that ADOT has suffered  
15 and are properly chargeable to Developer due to Developer's failure to timely  
16 replace Key Personnel members.

17 **11.6.5 Liquidated Damages for Unavailability of On-Call Key Personnel**

18 (a) If ADOT delivers a telephonic message pursuant to Section 11.6.1(c) indicating that  
19 the matter is urgent and ADOT does not receive an appropriate response from  
20 Developer within 30 minutes or any longer time period that ADOT indicates in its  
21 message, then Developer shall be liable for Liquidated Damages in the amount of  
22 \$500 per hour or pro rata portion thereof that Developer is late in appropriately  
23 responding.

24 (b) Developer understands and agrees that any Liquidated Damages payable under  
25 this Section 11.6.5 are not a penalty and that such sums are reasonable under the  
26 circumstances existing as of the Effective Date. The Parties have agreed to  
27 Liquidated Damages under this Section 11.6.5 to fix and limit Developer's costs  
28 and to avoid later disputes over the amount of damages that ADOT has suffered  
29 and are properly chargeable to Developer due to Developer's failure to make the  
30 on-call Key Personnel available to ADOT.

31 **11.7 Subcontracts with Affiliates**

32 **11.7.1** Developer shall have the right to have Work and related services performed by  
33 Affiliates only in accordance with the following terms and conditions (in addition to all other  
34 general requirements for Subcontracts set forth in this Agreement):

35 (a) Developer shall execute a written Subcontract with the Affiliate;

36 (b) The Subcontract shall comply with all applicable provisions of this Section 11, and  
37 be in form and substance substantially similar to Subcontracts then being used by

1 Developer or Affiliates for similar Work or services with non-Affiliated  
2 Subcontractors;

3 (c) The Subcontract shall set forth the scope of work and services and all the pricing,  
4 terms and conditions respecting the scope of work and services;

5 (d) The pricing, scheduling and other terms and conditions of the Subcontract shall  
6 be no less favorable to Developer than those that Developer could reasonably  
7 obtain in an arm's length, competitive transaction with a Subcontractor that is not  
8 an Affiliate of Developer. Developer shall bear the burden of proving compliance  
9 with this clause (d); and

10 (e) No Affiliate shall be engaged to perform any Work or services that any Contract  
11 Documents or the Project Management Plan or any component part, plan or other  
12 documentation thereunder require to be performed by an independent party or  
13 a party that is not an Affiliate of Developer.

14 **11.7.2** In addition to compliance with Section 11.4.2, before entering into a written  
15 Subcontract with an Affiliate or any supplement or amendment thereto, Developer shall submit  
16 a true and complete copy of the proposed Subcontract to ADOT for review and comment. ADOT  
17 will have 20 days after receipt to deliver its comments to Developer, and ADOT may in its sole  
18 discretion condition its approval of the Subcontract or any supplement or amendment thereto  
19 on Developer's compliance with ADOT's comments. This Section 11.7.2 shall not apply to  
20 Subcontracts entered into prior to the Proposal Due Date between Developer and Affiliates  
21 identified in Developer's Proposal.

22 **11.7.3** Developer shall make no payments to Affiliates for work or services in advance  
23 of provision of such work or services, except for reasonable mobilization payments or other  
24 payments consistent with arm's length, competitive transactions of similar scope. ADOT shall not  
25 be liable to Developer for any payments made in violation of this Section 11.7.3.

## 26 **11.8 Labor Standards**

27 **11.8.1** Developer shall, at all times, comply, and require by Subcontract that all  
28 Subcontractors and Suppliers comply, with all applicable federal and State labor, occupational  
29 safety and health standards, rules, regulations and federal and State orders.

30 **11.8.2** If any individual employed by Developer or any Subcontractor is not performing  
31 the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such  
32 Subcontractor to, remove such individual and such individual shall not be re-employed on the  
33 Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if  
34 Developer fails to ensure that skilled and experienced personnel are furnished for the proper  
35 performance of the Work, then ADOT may suspend the affected portion of the Work by delivery  
36 of notice of such suspension to Developer. Such suspension shall be considered a suspension for  
37 cause and shall in no way relieve Developer of any obligation contained in the Contract

1 Documents or entitle Developer to an increase in the Contract Price, a Completion Deadline  
2 adjustment or any other Claim hereunder.

3 **11.9 Ethical Standards**

4 **11.9.1** Within 90 days after the Effective Date, Developer shall adopt written policies  
5 establishing ethical standards of conduct applicable to all Developer-Related Entities, including  
6 Developer’s supervisory and management personnel, in dealing with: (1) ADOT and the General  
7 Engineering Consultant; and (2) employment relations. Such policy shall be subject to review and  
8 comment by ADOT prior to adoption. Such policy shall include standards of ethical conduct  
9 concerning the following:

- 10 (a) Restrictions on gifts and contributions to, and lobbying of, ADOT, the Arizona State  
11 Transportation Board, the General Engineering Consultant and any of the  
12 respective commissioners, directors, officers and employees of any of the  
13 foregoing;
- 14 (b) Protection of employees from unethical practices in selection, use, hiring,  
15 compensation or other terms and conditions of employment, or in promotion and  
16 termination of employees;
- 17 (c) Protection of employees from retaliatory actions (including discharge, demotion,  
18 suspension, threat, harassment, pay reduction or other discrimination in the  
19 terms and conditions of employment) in response to reporting of illegal (including  
20 the making of a false claim), unethical or unsafe actions or failures to act by any  
21 Developer-Related Entity;
- 22 (d) Restrictions on directors, members, officers or supervisory or management  
23 personnel of any Developer-Related Entity engaging in any transaction or activity,  
24 including receiving or offering a financial incentive, benefit, loan or other financial  
25 interest, that is, or to a reasonable person appears to be, in conflict with or  
26 incompatible with the proper discharge of duties or independence of judgment or  
27 action in the performance of duties, or adverse to the interests of the Project or  
28 employees;
- 29 (e) Restrictions on use of office or job position for a purpose that is, or would to a  
30 reasonable person appear to be, primarily for the private benefit of a director,  
31 member, officer or supervisory or management person, rather than primarily for  
32 the benefit of Developer or the Project, or primarily to achieve a private gain or  
33 an exemption from duty or responsibility for a director, member, officer or  
34 supervisory or management person; and
- 35 (f) Restrictions on directors, members, officers or employees of any Developer-  
36 Related Entity performing any of the Work if the performance of such services

1 would be prohibited under ADOT’s published conflict of interest rules and policies  
2 applicable to the Project, or would be prohibited under applicable Laws.

3 **11.9.2** Developer shall cause its directors, members, officers and supervisory and  
4 management personnel, and include contract provisions requiring those of all other Developer-  
5 Related Entities, to adhere to and enforce the adopted policy on ethical standards of conduct.  
6 Developer shall establish systems and procedures to promote and monitor compliance with the  
7 policy.

## 8 **11.10 Prevailing Wages**

9 **11.10.1** Developer shall pay or cause to be paid to all applicable workers employed by it  
10 or its Subcontractors performing Construction Work or Non-Routine Maintenance Work that  
11 entails construction activity not less than the wage rates and benefits prevailing in the locality as  
12 predetermined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. §§ 276a et seq.)  
13 and regulations (29 C.F.R. Part 5) promulgated thereunder, as provided in Attachment 3 to Exhibit  
14 4 (Federal Requirements) (Federal Prevailing Wage Requirements) (“**Federal Prevailing Wage**  
15 **Rates**”); provided, however, that the minimum prevailing wage rates and benefits that the Lead  
16 O&M Firm shall be required to pay to all applicable workers performing construction activities (if  
17 any) shall be the lesser of: (a) the federal prevailing wage rate and benefits in effect on the  
18 commencement date of the O&M Period then in effect and (b) the Federal Prevailing Wage Rates  
19 multiplied by a fraction the numerator of which is the CPI most recently published prior to the  
20 commencement date of the O&M Period and the denominator of which is the Base CPI.  
21 Developer shall comply and cause its Subcontractors to comply with all Laws pertaining to federal  
22 prevailing wage rates and benefits. For the purpose of applying such Laws, the Project shall be  
23 treated as a public work paid for in whole or in part with public funds. The foregoing shall not  
24 apply to Routine Maintenance.

25 **11.10.2** It is Developer’s sole responsibility to determine the wage rates required to be  
26 paid. If rates of wages and benefits change while this Agreement is in effect, Developer shall bear  
27 the cost of such changes and shall not be entitled to an increase in the Contract Price or  
28 adjustment of a Completion Deadline, and shall have no other Claim against ADOT on account of  
29 such changes. Without limiting the foregoing, no Claim will be allowed that is based upon  
30 Developer’s lack of knowledge or a misunderstanding of any such requirements or Developer’s  
31 failure to include in the Contract Price adequate increases in such wages over the duration of this  
32 Agreement.

33 **11.10.3** Developer shall comply and cause its Subcontractors to comply with all Laws  
34 regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements  
35 and of prevailing wage rates.

## 36 **11.11 Immigration Law**

37 **11.11.1** Pursuant to A.R.S. § 41-4401, Developer:

- 1 (a) Warrants that it is in compliance with all federal immigration Laws that relate to  
2 their employees and with A.R.S. § 23-214, subsection A;
- 3 (b) Shall require all Subcontractors to warrant that they are in compliance with all  
4 federal immigration Laws that relate to their employees and with A.R.S. § 23-214,  
5 subsection A;
- 6 (c) Acknowledges and agrees that ADOT has the legal right to inspect the Books and  
7 Records of Developer and any Subcontractor to ensure that Developer and its  
8 Subcontractors are in compliance with the foregoing warranties; and
- 9 (d) Acknowledges and agrees that a breach by Developer of this Section 11.11 or a  
10 breach by any Subcontractor of the aforementioned warranty shall be deemed a  
11 material breach that is subject to penalties and ADOT may, at its sole discretion,  
12 terminate the Agreement.

13 **11.11.2** ADOT may, at any time, without prior notice, inspect the documentation of any  
14 Developer or Subcontractor employee who works on the Project to ensure that Developer or  
15 such Subcontractor is complying with the foregoing warranty.

16 **11.12 Uniforms**

17 Any uniforms, badges, logos and other identification worn by personnel of Developer-Related  
18 Entities shall bear colors, lettering, design or other features to ensure clear differentiation from  
19 those of ADOT and its employees.

1                   **SECTION 12. PERFORMANCE AND PAYMENT BONDS; GUARANTIES**

2   **12.1 Provision of Bonds during D&C Period**

3 Developer shall provide to ADOT performance and payment bonds securing Developer’s  
4 obligations during the D&C Period, and Developer shall maintain such bonds in full force and  
5 effect as described in this Section 12.1.

6           **12.1.1 D&C Performance Bond**

7           (a) On or before the Effective Date, Developer shall have delivered to ADOT the D&C  
8 Performance Bond in the amount of \$150,000,000.

9           (b) ADOT will provide a release of the D&C Performance Bond on the date that is one  
10 year after Final Acceptance, provided that (and upon such date thereafter that) all  
11 of the following have occurred:

12                   (i) There exists no disputed Claim by ADOT against Developer relating to the  
13 D&C Work or other obligations of Developer arising during the D&C Period;

14                   (ii) There exists no Developer Default; and

15                   (iii) No event has occurred that with the giving of notice or passage of time, or  
16 both, would constitute a Developer Default.

17           **12.1.2 D&C Payment Bond**

18           (a) On or before the Effective Date, Developer shall have delivered to ADOT the D&C  
19 Payment Bond in the amount of \$150,000,000.

20           (b) ADOT will provide a release of the D&C Payment Bond upon:

21                   (i) Receipt of (i) evidence satisfactory to ADOT that all Persons eligible to file  
22 a claim against the D&C Payment Bond have been fully paid, and  
23 (ii) unconditional releases of claims and stop notices from all  
24 Subcontractors who filed preliminary notices of claims against the D&C  
25 Payment Bond (or evidence satisfactory to ADOT that any such claims and  
26 stop notices have been secured by a separate bond(s) issued by a Surety  
27 that meets the requirements of Section 12.3); and

28                   (ii) Expiration of the statutory period for Subcontractors to file a claim against  
29 the D&C Payment Bond, if no claims have been filed.

30   **12.2 Provision of Bonds during O&M Period**

31 As an O&M Condition Precedent pursuant to Section 8.6.4, Developer shall provide to ADOT

1 O&M Bonds securing Developer’s performance and payment obligations during the O&M Period,  
 2 and Developer shall maintain such O&M Bonds in full force and effect in accordance with this  
 3 Section 12.2.

4 **12.2.1 O&M Performance Bond**

5 (a) Developer shall deliver to ADOT, as an O&M Condition Precedent, and shall  
 6 maintain in place for the duration of the O&M Period an O&M Performance Bond  
 7 in the form attached hereto as Exhibit 9-1 (Form of O&M Performance Bond) and  
 8 in compliance with the provisions set forth herein.

9 (b) The O&M Performance Bond shall take effect as of the Project Substantial  
 10 Completion Date and shall either (i) cover the entire O&M Period or (ii) cover the  
 11 first two years of the O&M Period and thereafter be renewed on an annual basis.

12 (c) The amount of the O&M Performance Bond shall equal 50% of the total escalated  
 13 amounts of Annual O&M Payments scheduled for the O&M Period, as set forth in  
 14 Exhibit 2-4.2 (O&M Price Breakdown), and shall secure performance of all  
 15 Developer’s obligations during the O&M Period. For clarity, if Developer chooses  
 16 to provide an O&M Performance Bond pursuant to Section 12.2.1(b)(ii), each Bond  
 17 nevertheless shall be in the full amount set forth in the preceding sentence.

18 (d) To calculate the escalated amounts of the Annual O&M Payments described in  
 19 Section 12.2.1(c), the corresponding payments set forth in Exhibit 2-4.2 (O&M  
 20 Price Breakdown) for the O&M Period shall be escalated to the date that is 60 days  
 21 prior to the first date the O&M Performance Bond is required, using CPI, in the  
 22 same manner as applied to the O&M Price in Section 15.6.2(a) (i.e., by multiplying  
 23 by the CPI Adjustment Formula), and then at an annual rate of 3% for each  
 24 succeeding year. The following table applies such escalation terms to determine  
 25 the amount of the O&M Performance Bond, represented by factor “P”.  
 26

Required O&M Performance Bond Amount			
O&M Payments from <u>Exhibit 2-4.2</u>	Year 1 O&M Payment (A)	Year 2 O&M Payment (D)	Year 3 O&M Payment (G)
Escalation Factor	CPI Adjustment Formula (B)	CPI Adjustment Formula x 1.030 (E)	CPI Adjustment Formula x 1.061 (H)
Adjusted Annual Amount	C=(A x B)	F=(D x E)	I=(G x H)

<b>Required O&amp;M Performance Bond Amount</b>	$P = 50\% \times (C+F+I)$
---	---------------------------

- 1 (e) ADOT will provide a release of the O&M Performance Bond on the later of:
- 2 (i) The date that is one year after the end of the term of the O&M
- 3 Performance Bond; or
- 4 (ii) The date that all outstanding Developer Defaults, and Claims made against
- 5 Developer within one year after the end of the term of the O&M
- 6 Performance Bond, arising out of the failure to perform obligations
- 7 guaranteed by the O&M Performance Bond, have been finally resolved.

8 For clarity, the foregoing provides a tail period for notifying the Surety of claims, but does not

9 extend the O&M Performance Bond to Developer obligations to be performed beyond the end

10 of the term of the O&M Performance Bond.

11 **12.2.2 O&M Payment Bond**

- 12 (a) Developer shall deliver to ADOT, as an O&M Condition Precedent, a payment bond
- 13 in the same amount, at the same time, and for the same term as required for the
- 14 corresponding O&M Performance Bond pursuant to Section 12.2.1 in the form
- 15 attached hereto as Exhibit 9-3 (Form of O&M Payment Bond).
- 16 (b) ADOT will provide a release of an O&M Payment Bond upon the first to occur of:
- 17 (i) Receipt of (i) evidence satisfactory to ADOT that all Persons eligible to file
- 18 a claim against the O&M Payment Bond have been fully paid, and
- 19 (ii) unconditional releases of claims and stop notices from all
- 20 Subcontractors who filed a preliminary notice of a claim against the O&M
- 21 Payment Bond (or evidence satisfactory to ADOT that any such claims and
- 22 stop notices have been separately bonded around); or
- 23 (ii) Expiration of the statutory period for Subcontractors to file a claim against
- 24 the O&M Payment Bond, if no claims have been filed; provided, however,
- 25 that if no statute applies, then this clause (ii) shall be disregarded.

26 For clarity, the foregoing provides a tail period for notifying the Surety of claims, but does not

27 extend the O&M Payment Bond to Developer payment obligations first arising beyond the end

28 of the bond term.

1 **12.3 Surety Qualifications**

2 **12.3.1** Each Project Bond shall be issued by a Surety that is:

- 3 (a) licensed and authorized to do business in the State;
- 4 (b) listed on the “Department of the Treasury’s Listing of Approved Sureties  
5 (Department Circular 570)” (found at  
6 [www.fiscal.treasury.gov/fsreports/ref/suretybnd/c570.htm](http://www.fiscal.treasury.gov/fsreports/ref/suretybnd/c570.htm)); and
- 7 (c) rated in one of the top two categories by at least two nationally-recognized rating  
8 agencies (Fitch Ratings, Moody’s Investor Service and Standard & Poor’s); or rated  
9 at least A minus (“A-”) or better and Class VIII or better according to A.M. Best and  
10 Company’s Financial Strength Rating and Financial Size Category, or as otherwise  
11 approved by ADOT in its sole discretion.

12 **12.3.2** If any Project Bond previously provided becomes ineffective, or if the Surety that  
13 provided the Project Bond no longer meets the foregoing requirements, Developer shall provide  
14 a replacement Project Bond in the same form and, if applicable, with the same multiple obligee  
15 rider, issued by a Surety meeting the foregoing requirements, or other assurance satisfactory to  
16 ADOT in its sole discretion. If any Project Bond is provided by co-Sureties and at least one of the  
17 co-Sureties meets the foregoing requirements and is liable for the full amount of such Project  
18 Bond, then no replacement bond shall be required so long as such co-Surety continues to meet  
19 the foregoing requirements and remains liable for the full amount of such Project Bond.

20 **12.4 Increase Due to Supplemental Agreements**

21 If the D&C Price or the O&M Price is increased in connection with a Supplemental Agreement,  
22 ADOT may, in its sole discretion, require a corresponding and proportionate increase in the  
23 amount of the relevant Project Bonds, or alternative security that will secure such increased  
24 amount in the D&C Price or the O&M Price, as applicable. A reduction in the Contract Price in  
25 connection with a Supplemental Agreement shall not result in any decrease to the amount of  
26 each Project Bond.

27 **12.5 Party Providing O&M Bonds; Multiple Obligees**

28 **12.5.1** Developer may elect to:

- 29 (a) Procure the O&M Bonds directly, so that they are security, as applicable, for  
30 Developer’s (i) performance obligations under the Contract Documents respecting  
31 the O&M Work, and (ii) Developer’s payment obligations to the designated  
32 Persons supplying labor or materials respecting the O&M Work; or
- 33 (b) Subject to Sections 12.5.2 and 12.5.3, deliver O&M Bonds from each Lead O&M  
34 Firm and other Subcontractors having a direct Subcontract with Developer for  
35 performance of any portion of the O&M Work, so that each such O&M Bond, as

1 applicable, is security for (i) performance of the Lead O&M Firm’s or such other  
2 Subcontractor’s obligations under its Subcontract for O&M Work, and (ii) payment  
3 to the designated Persons supplying labor or materials.

4 **12.5.2** If Developer makes the election under Section 12.5.1(b), then:

5 (a) Developer shall deliver to ADOT, as an O&M Condition Precedent, multiple obligee  
6 riders, in the forms attached as Exhibit 9-2 (Form of Multiple Obligee Rider for  
7 O&M Performance Bond) and Exhibit 9-4 (Form of Multiple Obligee Rider for O&M  
8 Payment Bond), respectively, in which ADOT is named as an additional obligee and  
9 all rights of Developer are subordinated to ADOT;

10 (b) The language of the bond form set forth in Exhibit 9-1 (Form of O&M Performance  
11 Bond) and Exhibit 9-3 (Form of O&M Payment Bond) shall be adjusted to reflect  
12 this election, but only as necessary to (i) identify the Subcontract for the O&M  
13 Work as the bonded contract, (ii) identify the Lead O&M Firm or other firm, as  
14 applicable, as the principal, and (iii) change the obligee to Developer; and

15 (c) Such bonds shall otherwise conform to the requirements set forth in this Section  
16 12.5.

17 **12.5.3** If Developer makes the election under Section 12.5.2 and there are two or more  
18 parties providing the O&M Bonds, then the aggregate sum of the O&M Bonds shall equal the  
19 required bond amount set forth in this Section 12 and the size of each bond shall be in proportion  
20 to the scope and cost of the O&M Work to be provided under each bonded Subcontract.

## 21 **12.6 No Relief of Liability**

22 Notwithstanding any other provision in the Contract Documents, performance by a Surety or  
23 Guarantor of any of the obligations of Developer under the Contract Documents shall not relieve  
24 Developer of any of its other obligations hereunder, including the payment of Liquidated  
25 Damages.

## 26 **12.7 Guaranties**

27 **12.7.1** Kiewit Infrastructure Group Inc. is the Guarantor guaranteeing Developer’s  
28 obligations under the Contract Documents as of the Effective Date and has provided a guaranty  
29 in accordance with the form attached as Exhibit 10-1 (Form of D&C Guaranty) (the “**D&C**  
30 **Guaranty**”). Developer shall cause Kiewit Infrastructure Group Inc. to execute and deliver the  
31 O&M Guaranty, in the form set forth in Exhibit 10-2 (Form of O&M Guaranty) (the “**O&M**  
32 **Guaranty**”), as of and as a condition to Project Substantial Completion.

33 **12.7.2** If at any time during the D&C Period, the total combined Tangible Net Worth of  
34 Developer and the Guarantor under the D&C Guaranty is less than \$75,000,000.00, Developer  
35 shall provide, not later than 30 days thereafter, one or more guaranties so that the combined  
36 Tangible Net Worth of Developer and the applicable Guarantors is at least \$75,000,000.00 at all

1 times during the D&C Period. This minimum Tangible Net Worth amount of \$75,000,000.00 shall  
2 be adjusted annually on the first anniversary of the Effective Date and continuing on each  
3 anniversary thereafter during the D&C Period to equal \$75,000,000.00 multiplied by a fraction  
4 the numerator of which is the CCI most recently published prior to the applicable anniversary  
5 and the denominator of which is the Base CCI, and then rounded to the nearest \$100,000.00.

6 **12.7.3** If at any time during the O&M Period, the total combined Tangible Net Worth of  
7 Developer and the Guarantor under the O&M Guaranty is less than \$30,000,000.00, Developer  
8 shall provide, not later than 30 days thereafter, one or more guaranties so that the combined  
9 Tangible Net Worth of Developer and the applicable Guarantors is at least \$30,000,000.00. This  
10 minimum Tangible Net Worth amount of \$30,000,000.00 shall be adjusted annually on the first  
11 anniversary of the Project Substantial Completion Date and continuing on each anniversary  
12 thereafter during the O&M Period to equal \$30,000,000.00 multiplied by a fraction the  
13 numerator of which is the CPI most recently published prior to the applicable anniversary and  
14 the denominator of which is the Base CPI, and then rounded to the nearest \$100,000.00.

15 **12.7.4** If Developer proposes (a) to assign or transfer Developer’s interest in or to the  
16 Contract Documents, (b) a Change of Control or (c) to change the form of its organization, then  
17 ADOT may, in its sole discretion, require a new, additional or replacement Guaranty or Guaranties  
18 as a condition to approving such transaction.

19 **12.7.5** Each joint venture member of Developer or any permitted assignee of Developer  
20 shall be held jointly and severally liable for any and all of the duties and obligations of Developer  
21 under the Contract Documents. In addition, ADOT may, in its sole discretion, require any or all  
22 joint venture members to execute and deliver a Guaranty.

23 **12.7.6** Each Guaranty shall be in the applicable form attached as Exhibit 10 (Guaranty  
24 Forms) together with appropriate evidence of authorization, execution, delivery and validity  
25 thereof, and shall guarantee the Guaranteed Obligations. Developer shall provide an opinion  
26 from the Guarantor’s legal counsel, in form and substance acceptable to ADOT, concerning due  
27 authorization, execution, delivery, validity and enforceability of each Guaranty.

28 **12.7.7** Developer may replace an existing Guaranty with a new Guaranty only with prior  
29 approval by ADOT.

30 **12.7.8** Any new, additional or replacement Guaranty shall be provided in the applicable  
31 form attached as Exhibit 10-1 (Form of D&C Guaranty) or Exhibit 10-2 (Form of O&M Guaranty)  
32 together with appropriate evidence of authorization, execution, delivery and validity thereof, and  
33 with legal opinions, and shall guarantee the Guaranteed Obligations. Any Guaranty being  
34 replaced shall remain in effect until the approved replacement Guaranty becomes effective.  
35

1                   **SECTION 13. INSURANCE; RISK OF LOSS; CLAIMS AGAINST THIRD PARTIES**

2   Developer shall procure and keep in effect the Insurance Policies, or cause them to be procured  
3   and kept in effect, and in each case, satisfy the requirements for such Insurance Policies set forth  
4   in this Section 13 and Exhibit 11 (Insurance Coverage Requirements).

5   **13.1   General Insurance Requirements**

6                   **13.1.1   Qualified Insurers**

7                   Each of the Insurance Policies required hereunder shall be procured from an insurer that,  
8   at the time coverage under the applicable Insurance Policy commences:

9                   (a)    is licensed or authorized to do business in the State pursuant to A.R.S. Title 20,  
10                   Chapter 2, Article 1, or is a surplus lines insurer approved and identified by the  
11                   director of the Arizona Department of Insurance pursuant to A.R.S., Title 20,  
12                   Chapter 2, Article 5;

13                   (b)   has a current policyholder’s management and financial size category rating of not  
14                   less than “A–, VII” according to A.M. Best and Company’s Insurance Reports Key  
15                   Rating Guide or, with respect only to worker’s compensation insurance, is duly  
16                   authorized to transact such insurance in the State; or

17                   (c)    is otherwise approved in writing by ADOT in its good faith discretion.

18                   **13.1.2   Premiums, Deductibles and Self-Insured Retentions**

19                   Developer shall timely pay, or cause to be paid, the premiums for all insurance required  
20   under this Agreement. Subject to Section 13.3, Section 15 and Section 16, Developer shall be  
21   responsible for, and ADOT will have no liability for, any deductibles, self-insured retentions, and  
22   amounts or damages in excess of the coverage provided, except to the extent of ADOT’s sole  
23   negligence or willful misconduct. If any required coverage is provided under a self-insured  
24   retention, Developer shall ensure that the entity responsible for the self-insured retention has  
25   an authorized representative issue a letter to ADOT, at the same time the insurance policy is to  
26   be procured, stating that it shall protect and defend ADOT to the same extent as if a commercial  
27   insurer provided coverage for ADOT.

28                   **13.1.3   Primary Coverage**

29                   Each Insurance Policy shall provide that the coverage thereof is primary and  
30   noncontributory coverage with respect to all named or additional insureds, except for coverage  
31   that by its nature cannot be written as primary. Any insurance or self-insurance beyond that  
32   specified in this Agreement that is maintained by an insured or any such additional insured shall  
33   be excess of such insurance and shall not contribute with it.

1           **13.1.4 Project-Specific Insurance**

2           Except as expressly provided otherwise in Exhibit 11 (Insurance Coverage Requirements),  
3 all Insurance Policies required hereunder shall be purchased specifically and exclusively for the  
4 Project and extend to all aspects of the Work, with coverage limits devoted solely to the Project.  
5 Insurance coverages under corporate insurance programs with dedicated Project-specific limits  
6 (except as otherwise provided in Exhibit 11 (Insurance Coverage Requirements)) and identified  
7 allocation of funds to the Project are acceptable, provided that they otherwise meet all  
8 requirements described in this Section 13 and Exhibit 11 (Insurance Coverage Requirements).

9           **13.1.5 Verification of Coverage; ADOT Right to Remedy Developer Failure to Insure**

10          (a)     At each time Developer is required to initially obtain or cause to be obtained each  
11 Insurance Policy (including insurance coverage required of Key Subcontractors),  
12 and thereafter not later than ten Business Days prior to the expiration date of each  
13 Insurance Policy, Developer shall deliver to ADOT an up-to-date certificate of  
14 insurance. Each required certificate must:

15               (i)     be in standard form;

16               (ii)    state the identity of all carriers, named insureds and additional insureds;

17               (iii)   state the type and limits of coverage, deductibles and cancellation  
18 provisions of the policy;

19               (iv)   include as attachments all applicable additional insured endorsements,  
20 including endorsements consistent with Sections 13.1.7 and 13.1.8; and

21               (v)    be signed by an authorized representative of the insurance company  
22 shown on the certificate or its agent or broker.

23          (b)     Each such certificate of insurance shall be accompanied by:

24               (i)     proof that the signer is an authorized representative or agent of the  
25 insurance companies named on the certificate;

26               (ii)    proof that the signer is authorized to bind such insurance companies to the  
27 coverage, limits and termination provisions shown on the certificate; and

28               (iii)   a letter signed by Developer confirming that the insurances represented in  
29 the certificate of insurance fully comply with all provisions of this  
30 Section 13 and Exhibit 11 (Insurance Coverage Requirements).

31          (c)     If Developer has not provided ADOT with the foregoing proof of coverage and  
32 payment within five days after ADOT delivers to Developer a written request  
33 therefor or Notice of a Developer Default under Section 21.1.1 and demand for

1 the foregoing proof of coverage, ADOT may, in addition to any other available  
2 remedy, without obligation or liability and without further inquiry as to whether  
3 such insurance is actually in force:

4 (i) Obtain such an Insurance Policy; and Developer shall reimburse ADOT for  
5 the cost thereof upon demand; and

6 (ii) Suspend all or any portion of the Work and close the Project until ADOT  
7 receives from Developer such proofs of coverage in compliance with this  
8 Section 13 (or until ADOT obtains an Insurance Policy, if it elects to do so).

9 (d) Developer shall provide ADOT with certified copies of all Insurance Policies and all  
10 endorsements thereto, including renewal Insurance Policies, within 90 days of  
11 their date of effectiveness, together with evidence of payment of any premium  
12 then due that is satisfactory to ADOT. ADOT reserves the right to request copies  
13 of Insurance Policies.

#### 14 **13.1.6 Subcontractor Insurance Requirements**

15 (a) Developer shall comply with the obligations regarding Subcontractor's insurance  
16 set forth in Exhibit 11 (Insurance Coverage Requirements). Developer shall cause  
17 each Subcontractor to provide to ADOT insurance coverage and proof of such  
18 coverage in the manner and in the form consistent with the requirements of this  
19 Agreement.

20 (b) If any Subcontractor fails to procure and keep in effect the insurance required of  
21 such Subcontractor specified in Exhibit 11 (Insurance Coverage Requirements),  
22 and ADOT asserts the same as a Developer Default hereunder, then Developer  
23 may, within the applicable cure period, cure such Developer Default by:

24 (i) Causing such Subcontractor to obtain the requisite insurance and  
25 providing to ADOT proof of insurance;

26 (ii) Procuring the requisite insurance for such Subcontractor and providing to  
27 ADOT proof of insurance; or

28 (iii) Terminating the Subcontractor and removing its personnel from the Site.

29 (c) ADOT may pursue the remedies available to it for a Developer Default if Developer  
30 fails to cure a Subcontractor's failure to procure and keep in effect the insurance  
31 required of such Subcontractor.

#### 32 **13.1.7 Policies with Insureds in Addition to Developer**

33 All Insurance Policies that are required to insure multiple named insureds or to insure  
34 additional insureds in addition to Developer shall comply with or be endorsed to comply with the

1 following provisions:

- 2 (a) The Insurance Policy shall be written or endorsed so that no acts or omissions of  
3 an insured shall terminate or otherwise adversely impact the coverage of the  
4 other insureds. Without limiting the foregoing, the policy shall be written or  
5 endorsed so that any failure on the part of a named insured to comply with  
6 reporting provisions or other conditions of the Insurance Policies, any breach of  
7 warranty, any action or inaction of a named insured or others, or any change in  
8 ownership of all or any portion of the Project shall not affect coverage provided  
9 to the other named insureds or additional insureds (and their respective  
10 members, directors, officers, employees, agents and, if applicable, ADOT  
11 Consultants); and
- 12 (b) All endorsements adding ADOT and the other additional insureds as required by  
13 the Contract Documents to the required Insurance Policies shall contain no  
14 limitations, conditions, restrictions or exceptions to coverage in addition to those  
15 that apply under the Insurance Policy generally, and shall state that the interests  
16 and protections of each such additional insured shall not be affected by any  
17 misrepresentation, act or omission of a named insured or any breach by a named  
18 insured of any provision in the policy that would otherwise result in forfeiture or  
19 reduction of coverage. Additional insureds under the policy shall continue to be  
20 named as additional insureds for a period of five years after Final Acceptance to  
21 ensure completed operations coverage.

22 **13.1.8 Additional Terms and Conditions**

- 23 (a) Each Insurance Policy shall be endorsed to state that coverage cannot be canceled,  
24 voided, suspended, adversely modified, or reduced in coverage or in limits  
25 (including for non-payment of premium) except after 30 days' prior notice (or ten  
26 days in the case of cancellation for non-payment of premium) by registered or  
27 certified mail, return receipt requested, has been given to, at a minimum, ADOT,  
28 Developer and the Lead O&M Firm; provided, however, that (i) no such notice  
29 from the insurer shall be required for reduction in limits due to claims payments,  
30 and (ii) if Developer establishes that an endorsement compliant with this clause  
31 (a) is not available as set forth in Section 13.1.13, Developer may obtain an  
32 endorsement that is as comparable as possible. The endorsement required by this  
33 clause (a) shall not include any limitation of liability of the insurer for failure to  
34 provide the required notice.
- 35 (b) The Insurance Policy for commercial general liability shall cover liability arising out  
36 of the acts or omissions of Developer's employees engaged in the Work as well as  
37 employees of Subcontractors if Subcontractors are covered by a Developer-  
38 controlled insurance program. If any Subcontractor is not covered by such  
39 Developer-controlled insurance program, then such Subcontractor shall provide  
40 commercial general liability insurance to cover liability arising out of the activities

1 of Subcontractor’s employees engaged in the Work.

2 (c) If Developer’s or any Subcontractor’s activities involve transportation of  
3 Hazardous Materials that require MCS 90 (as described below), the automobile  
4 liability Insurance Policy for Developer or such Subcontractor shall be endorsed to  
5 include for private, non-commercial vehicles Motor Carrier Act Endorsement-  
6 Hazardous Materials Clean Up (MCS-90) or equivalent and shall be endorsed to  
7 provide coverage for liability arising from release of pollutants (CA 99 48 –  
8 Pollution Liability – Broadened Coverage for Covered Autos – Business Auto,  
9 Motor Carrier and Truckers Coverage Form or equivalent).

10 (d) Each Insurance Policy shall provide coverage on an “occurrence” basis and not a  
11 “claims made” basis (with the exception of any pollution or professional liability  
12 Insurance Policies).

13 **13.1.9 Waivers of Subrogation**

14 ADOT waives all rights of recovery against the Developer-Related Entities, and Developer  
15 waives all rights of recovery against the Indemnified Parties, for any claims to the extent covered  
16 (i.e., not excluded) by insurance obtained pursuant to this Section 13, except such rights as they  
17 may have to the proceeds of such insurance. If Developer is deemed to self-insure a claim or loss  
18 under Section 13.2.4, then Developer’s waiver shall apply as if it carried the required insurance.  
19 Developer shall require all Subcontractors to provide similar waivers in writing each in favor of  
20 all other Persons enumerated above. Subject to Section 13.1.12, each policy, including workers’  
21 compensation if permitted under the applicable worker’s compensation insurance laws, shall  
22 include a waiver of any right of subrogation against the Indemnified Parties or the insurer’s  
23 consent to the insured’s waiver of recovery in advance of loss. However, no waiver of subrogation  
24 rights under any policy providing professional liability coverage to the insureds shall be required  
25 of any party.

26 **13.1.10 No Recourse for Premium or Other Insurance Payments**

27 Developer shall have no recourse against ADOT for payment of premiums or other  
28 amounts with respect to the insurance required to be provided by Developer hereunder, except  
29 to the extent of ADOT’s obligation to pay the Contract Price or to the extent such costs are  
30 recoverable as a Compensation Amount or as Termination Compensation.

31 **13.1.11 Support of Indemnifications**

32 The insurance coverage provided, or caused to be provided, hereunder by Developer shall  
33 not limit Developer’s indemnification and defense obligations under the Contract Documents.

34 **13.1.12 Insurer Insolvency and Inadequacy of Required Coverages**

35 (a) ADOT makes no representation that the minimum required insurer rating is  
36 sufficient to protect Developer from potential insurer insolvency.

1 (b) ADOT makes no representation that the coverage limits specified in the Contract  
2 Documents for any Insurance Policy or approved variances therefrom are  
3 adequate to protect Developer from or against its potential liabilities under the  
4 Contract Documents to ADOT or to any other Person. No such coverage limits or  
5 approved variances therefrom shall, in any way, affect or change ADOT's rights  
6 and remedies provided in the Contract Documents or otherwise at Law. Developer  
7 shall have no Claim or other recourse against ADOT on the basis of coverage limits  
8 specified for any Insurance Policy or approved variances therefrom.

9 **13.1.13 Unavailability of Required Coverages**

10 (a) If any Insurance Policy required to be maintained pursuant to this Section 13  
11 (including the limits, deductibles or any other terms under such Insurance Policy)  
12 ceases to be available on a commercially reasonable basis, Developer will provide  
13 Notice to ADOT accompanied by a letter from Developer's Insurance Advisor  
14 stating that such insurance is unavailable anywhere in the global market on a  
15 commercially reasonable basis. Developer shall deliver such Notice not later than  
16 30 days prior to the scheduled date for renewal of any such Insurance Policy. Upon  
17 ADOT's receipt of such Notice, Developer and ADOT shall immediately enter into  
18 good faith negotiations regarding the matters set forth in clause (b) below and  
19 regarding temporary adjustments to applicable insurance requirements in this  
20 Section 13 in order for Developer to place alternative insurance coverage.

21 (b) Developer will not be excused from satisfying the insurance requirements of this  
22 Section 13 merely because premiums for an Insurance Policy are higher than  
23 anticipated. To establish that the required coverages (or required terms of such  
24 coverages, including Insurance Policy limits) are not available on commercially  
25 reasonable terms, Developer will bear the burden of proving that either (i) the  
26 same is not available at all in the global insurance and reinsurance markets or (ii)  
27 the premiums for the same exceed 200% of the benchmark for the Insurance  
28 Policy as described in Section 13.1.14. For the purpose of clause (ii), the only  
29 increases in premiums that may be considered are those caused by changes in  
30 general market conditions in the insurance industry. No increase in insurance  
31 premiums attributable to particular conditions of the Project, or to claims or loss  
32 experience of any Developer-Related Entity or Affiliate, whether under an  
33 Insurance Policy or in connection with any unrelated work or activity of Developer-  
34 Related Entities or Affiliates, shall be considered.

35 (c) Developer shall not be entitled to any increase in the D&C Price, any extension of  
36 the Completion Deadlines, or any other Claim resulting from or arising out of the  
37 unavailability of any coverage or acceptable alternatives during the D&C Period.

38 (d) Except for premium increases that Developer is entitled to include in a  
39 Compensation Amount pursuant to Section 16, Developer shall bear the full risk

1 of any insurance premium increases for Insurance Policies required during the  
2 D&C Period, including increases:

3 (i) due to deductibles less than the maximum deductibles set forth in this  
4 Section 13 or Exhibit 11 (Insurance Coverage Requirements);

5 (ii) due to additional or extended coverages beyond those required under this  
6 Section 13 or Exhibit 11 (Insurance Coverage Requirements);

7 (iii) that result from market-based factors; and

8 (iv) that result from other factors.

9 (e) Developer shall be entitled to an increase in the O&M Price resulting from the  
10 unavailability of coverage and acceptable alternatives solely in the manner set  
11 forth in Section 13.1.14 for increased costs of the Insurance Policies required to  
12 be maintained at any time during the O&M Period pursuant to this Section 13 and  
13 Exhibit 11 (Insurance Coverage Requirements).

14 (f) ADOT will be entitled to a reduction in the D&C Price if it agrees to accept  
15 alternative Insurance Policies providing less than equivalent coverage during the  
16 D&C Period and Developer is not obligated to self-insure such risks. The amount  
17 of reduction of the D&C Price shall equal 115% of the reduction in premium that  
18 Developer obtains, using as a baseline the insurance quotes or estimates included  
19 in the DPDs (or based on other evidence of insurance premiums as of the Proposal  
20 Due Date if the DPDs do not provide adequate information). The Parties  
21 acknowledge that a 115% reduction is appropriate in order for ADOT to recover  
22 an approximation of Developer's markup on insurance premiums for indirect  
23 expenses, overhead and profit.

24 (g) ADOT will be entitled to a reduction in the O&M Price with respect to the  
25 Insurance Policies required to be maintained throughout the O&M Period in the  
26 manner set forth in Section 13.1.14.

27 **13.1.14 Insurance Premium Benchmarking**

28 (a) Solely with respect to Insurance Policies required to be maintained throughout  
29 the O&M Period under this Section 13 and Exhibit 11 (Insurance Coverage  
30 Requirements), ADOT and Developer will allocate the risk of significant increases  
31 in insurance premiums through an insurance benchmarking process as set forth in  
32 this Section 13.1.14.

33 (b) Not later than 45 days prior to the anticipated Project Substantial Completion  
34 Date, and not later than 45 days prior to each insurance renewal period thereafter,  
35 Developer shall submit a report ("**Insurance Review Report**") to ADOT that  
36 includes the following elements:

- 1 (i) Firm quotes from three established and recognized insurance providers for  
2 the Insurance Policies required under Exhibit 11 (Insurance Coverage  
3 Requirements) to be maintained during the O&M Period, without variation  
4 from required terms (“**Required Minimum O&M Insurance Policies**”);  
5 provided that Developer may provide only one quote in the initial  
6 Insurance Review Report. The quotes shall represent the current and fair  
7 market cost of providing the Required Minimum O&M Insurance Policies;
- 8 (ii) For any allocation to the Project of premiums for corporate policies, (A) a  
9 comprehensive explanation of the methodology applied to make the  
10 allocations, in compliance with clause (g) below, (B) detailed calculations  
11 that follow such methodology, and (C) written certification from an  
12 authorized officer of each of Developer and the corporate entity placing  
13 the policies certifying that the allocated amount has been fairly and  
14 accurately determined in compliance with clause (g) below; and
- 15 (iii) Except with respect to the initial Insurance Review Report, a  
16 comprehensive written explanation of any effect that Developer’s loss  
17 experience has had on the premiums for the Required Minimum O&M  
18 Insurance Policies. The explanation shall include: (A) an assessment by  
19 Developer’s Insurance Advisor addressing industry trends in premiums for  
20 the Required Minimum O&M Insurance Policies and analysis (if applicable)  
21 of any Project-specific reasons for the increase in premiums; and (B)  
22 detailed analysis of any claims (paid or reserved) since the last review  
23 period, with claim date(s), description of incident(s), claims amount(s), and  
24 the level of deductibles provided.
- 25 (c) ADOT retains the right to independently assess the accuracy of the information in  
26 the Insurance Review Report, and perform its own independent insurance review,  
27 which may include retaining advisors, obtaining independent quotes for the  
28 Required Minimum O&M Insurance Policies, performing its own calculation of  
29 corporate policy premium allocations consistent with clause (g) below, or  
30 performing its own assessment as to the impact of claims history on renewal costs.
- 31 (d) The “**Starting O&M Period Insurance Benchmarking Premiums**” shall be the  
32 higher of:
- 33 (i) Premium information obtained from the initial Insurance Review Report;  
34 or
- 35 (ii) Premium information included in the Detailed Pricing Documents.
- 36 (e) The Starting O&M Period Insurance Benchmarking Premiums shall be used in the  
37 benchmarking process for the remainder of the Term in accordance with the  
38 following procedures.

- 1 (i) ADOT will determine the change in premium costs on a coverage-by-  
2 coverage basis for the Required Minimum O&M Insurance Policies.
- 3 (ii) ADOT will use the Starting O&M Period Insurance Benchmarking Premiums  
4 to measure changes in premium costs at each renewal period for each of  
5 the Required Minimum O&M Insurance Policies. The Starting O&M Period  
6 Insurance Benchmarking Premiums shall be escalated based on the  
7 percentage increase, if any, in the CPI between the CPI most recently  
8 published prior to the Setting Date and the CPI most recently published  
9 prior to the beginning of the applicable insurance renewal period  
10 (“**Escalated Benchmark O&M Period Insurance Premiums**”).
- 11 (iii) For purposes of the benchmarking process described in this Section  
12 13.1.14, the premiums for the Required Minimum O&M Insurance Policies  
13 at each renewal shall be the lower of:
- 14 (1) Premium information obtained from the Insurance Review Report  
15 for the subject renewal period; or
- 16 (2) If ADOT reasonably deems appropriate, premium information  
17 obtained pursuant to clause (c) above.
- 18 (iv) Broker’s fees and agent’s commissions will not be considered as part of the  
19 benchmarking exercise described in this Section 13.1.14, and are the  
20 exclusive responsibility of Developer.
- 21 (v) In no event shall premium increases that are caused by Project-specific  
22 losses to the extent caused by matters within Developer’s control, changes  
23 in deductibles, switches from a corporate policy to a project-specific policy  
24 or vice versa, or other matters within the control of Developer or any  
25 Developer-Related Entity be subject to the benchmarking exercise or risk  
26 sharing described in this Section 13.1.14. Developer may voluntarily  
27 choose to procure an insurance package that varies from (but complies  
28 with) the Required Minimum O&M Insurance Policies (with for example  
29 lower deductibles, higher coverage limits, fewer exclusions, etc.), in which  
30 case both Parties recognize that: (A) the actual variations in Developer’s  
31 insurance premiums may not necessarily reflect the variations in the  
32 minimum insurance requirements; and (B) ADOT will disregard the actual  
33 insurance package and will rely upon the analysis from the Insurance  
34 Review Report and its own independent analysis of the effect on the  
35 minimum insurance requirements. Any insurance beyond the Required  
36 Minimum O&M Insurance Policies shall not be subject to the insurance  
37 benchmarking process and O&M Price adjustment described in this  
38 Section 13.1.14.

1 (vi) If ADOT elects to retain its own Insurance Advisor to analyze the extent of  
2 eligible premium increases, Developer shall cooperate in good faith with  
3 any reasonable requests for additional information from ADOT's Insurance  
4 Advisor. No later than 30 days after Developer's submission of the  
5 Insurance Review Report, ADOT will make its determination of the eligible  
6 premium increases subject to the risk-allocation described in clause (f)  
7 below. In the event of a dispute, ADOT's determination shall be subject to  
8 the Dispute Resolution Procedures.

9 (f) If the annual insurance premiums for the Required Minimum O&M Insurance  
10 Policies, as such premiums are determined pursuant to clauses (e) above, are in  
11 excess of 120% of the applicable Escalated Benchmark O&M Period Insurance  
12 Premiums, ADOT will increase the O&M Price for the applicable year an amount  
13 equal to 85% of such premiums that are in excess of 120% of the applicable  
14 Escalated Benchmark O&M Period Insurance Premiums until the next  
15 benchmarking period. If the annual insurance premiums for the Required  
16 Minimum O&M Insurance Policies, as such premiums may be adjusted pursuant  
17 to clauses (e) above, are below 80% of the applicable Escalated Benchmark O&M  
18 Period Insurance Premiums, ADOT will reduce the O&M Price for the applicable  
19 year in an amount equal to 85% of the difference between such premiums and  
20 80% of the applicable Escalated Benchmark Insurance Premiums until the next  
21 benchmarking period.

22 (g) If any insurance coverage is provided via dedicated Project-specific limits under  
23 corporate insurance programs, Developer shall account to ADOT for the portion  
24 of premiums allocated to the Project for the purpose of applying these insurance  
25 benchmarking provisions. Developer shall consistently apply the corporate  
26 methodology used for premium allocation to all calculations necessary to  
27 determine whether any increase or decrease in the O&M Price is to be made  
28 under this Section 13.1.14. If Developer switches from a project-specific policy to  
29 dedicated Project-specific limits under a corporate insurance program, then for  
30 purposes of applying these insurance benchmarking provisions ADOT shall have  
31 the right to approve the corporate methodology used for Developer's premium  
32 allocations to the Project, and thereafter all corporate conditions, facts and  
33 circumstances that are the approved basis for such premium allocations shall be  
34 assumed to hold constant at all times, without regard to changes over time in such  
35 conditions, facts and circumstances.

### 36 **13.1.15 Defense Costs**

37 No defense costs shall be included within or erode the limits of coverage of any of the  
38 Insurance Policies, except that:

39 (a) litigation and mediation defense costs may be included within the limits of  
40 coverage of professional and pollution liability policies;

1 (b) investigation and expert defense costs may also be included within the limits of  
2 coverage of professional liability policies; and

3 (c) other defense costs may be included within the limits of coverage of professional  
4 and pollution liability policies with ADOT’s prior written approval.

5 **13.1.16 Stacking of Policies**

6 Developer shall have the right to satisfy the requisite insurance coverage amounts for  
7 liability insurance through a combination of primary policies and umbrella or excess policies.  
8 Umbrella and excess policies shall comply with the required form of underlying policies and shall  
9 comply with all insurance requirements, terms and provisions set forth in this Agreement for the  
10 applicable type of coverage.

11 **13.1.17 Additional Insurance Policies**

12 If Developer carries insurance coverage in addition to that required under this  
13 Agreement, then Developer shall include ADOT and its members, directors, officers, employees,  
14 agents and ADOT Consultants as additional insureds thereunder, if and to the extent they have  
15 an insurable interest, unless ADOT grants an exception in writing. The additional insured  
16 endorsements shall be as described in Section 13.1.7(b); and Developer shall provide to ADOT  
17 the proofs of coverage and copy of the policy described in Section 13.1.5. The provisions of  
18 Sections 13.1.5, 13.1.7, 13.1.9, 13.1.10 and 13.2 shall apply to all such policies of insurance  
19 coverage.

20 **13.1.18 Contractor-Controlled Insurance Program**

21 Nothing in this Agreement, including in Exhibit 11 (Insurance Coverage Requirements), is  
22 intended or shall be construed to preclude use of a contractor-controlled insurance program to  
23 fulfill the insurance requirements under this Agreement.

24 **13.2 Prosecution of Claims and Denials of Coverage**

25 **13.2.1** Unless otherwise directed by ADOT in writing, Developer shall be responsible for  
26 reporting and processing all potential claims by ADOT or Developer against the Insurance Policies.  
27 Developer agrees to report timely to the insurer(s) under such Insurance Policies any and all  
28 matters that may give rise to an insurance claim by Developer or ADOT or another Indemnified  
29 Party, and to promptly and diligently pursue such insurance claims in accordance with the claims  
30 procedures specified in such Insurance Policies, whether for defense or indemnity or both.  
31 Developer shall enforce all legal rights against the insurer under the applicable Insurance Policies  
32 and applicable Laws to collect thereon, including pursuing necessary litigation and enforcement

1 of judgments, provided that, Developer shall be deemed to have satisfied this obligation if a  
2 judgment is not collectible after exhausting all lawful and diligent means.

3 **13.2.2** Developer shall immediately notify ADOT, and thereafter keep ADOT fully  
4 informed, of any incident, potential claim, claim or other matter of which Developer becomes  
5 aware that involves or could conceivably involve an Indemnified Party.  
6

1           **13.2.3** ADOT agrees to promptly notify the Arizona Department of Administration to,  
2 on behalf of ADOT, tender to the insurer under applicable Insurance Policies defense of claims  
3 against ADOT that may be covered under such Insurance Policies, and to cooperate with  
4 Developer as necessary for Developer to fulfill its duties hereunder.

5           **13.2.4** If in any instance Developer has not performed its obligations respecting  
6 insurance coverage set forth in this Agreement or is unable to enforce and collect any such  
7 insurance for failure to assert claims in accordance with the terms of the Insurance Policies or to  
8 prosecute claims diligently, then for purposes of determining Developer’s liability and the limits  
9 thereon or determining reductions in compensation due from ADOT to Developer on account of  
10 available insurance, Developer shall be treated as if it elected to self-insure up to the full amount  
11 of insurance coverage that would have been available had Developer performed such obligations  
12 and not committed such failure. Nothing in the Contract Documents shall be construed to treat  
13 Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy  
14 or insolvency of any insurer that at the time the Insurance Policy is written meets the rating  
15 qualifications set forth in this Section 13, provided that the loss of coverage due to such  
16 bankruptcy or insolvency could not have been avoided through Developer’s compliance with  
17 Section 13.6.

18           **13.2.5** If in any instance Developer has not promptly performed its obligation to report  
19 to applicable insurers and process any potential insurance claim tendered by ADOT or another  
20 Indemnified Party, then ADOT or the other Indemnified Party may, but is not obligated to:

- 21           (a)     notify Developer of ADOT’s or the other Indemnified Party’s intent to report or  
22                   tender the claim directly to the insurer; and
- 23           (b)     proceed with reporting and processing the claim if ADOT or the other Indemnified  
24                   Party does not receive from Developer, within five days after so notifying  
25                   Developer, written proof that Developer has reported the claim directly to the  
26                   insurer.

27 ADOT or the other Indemnified Party may dispense with such notice to Developer if ADOT or the  
28 other Indemnified Party has a good faith belief that reporting the claim to the applicable insurer  
29 is necessary to preserve the claim or is in the best interest of ADOT or the Indemnified Party.

30           **13.2.6** Developer shall deliver to ADOT a report, on a type of coverage basis , within 60  
31 days after cumulative payments made by the insurer(s) under any type of coverage with an  
32 aggregate limit exceed (a) 25% of the aggregate limit (inclusive of primary and excess policies),  
33 and (b) each additional 10% increment of the aggregate limit (inclusive of primary and excess  
34 policies) thereafter. The report shall identify the affected policy or policies and limit of coverage,  
35 state the amount and nature of each claim paid, and state the balance of the coverage limit  
36 remaining available.

37           **13.2.7** If any insurance carrier for an Insurance Policy denies coverage with respect to  
38 any claims of ADOT or other Indemnified Parties reported to such carrier, upon Developer’s

1 request, ADOT and, to the extent necessary, the other Indemnified Parties shall cooperate in  
2 good faith to establish whether and to what extent to contest, and how to fund the cost of  
3 contesting, the denial of coverage; provided that if the reported claim is a matter covered by an  
4 indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the  
5 denial of coverage. Developer shall not be entitled to an increase in the Contract Price, a  
6 Completion Deadline adjustment or any other Claim arising from such denial of coverage, nor  
7 shall Developer be relieved of any liability to ADOT or of its indemnity obligations to the  
8 Indemnified Parties.

9 **13.2.8** ADOT may, but is not obligated to, contest an insurance carrier’s denial of  
10 coverage where ADOT believes it is entitled to:

- 11 (a) Coverage that could reduce or reimburse in whole or in part a Compensation  
12 Amount or Termination Compensation;
- 13 (b) Defense or coverage against liability; or
- 14 (c) Coverage of harm or loss to ADOT property.

15 **13.3 Risk of Loss or Damage to Project; Use of Insurance Proceeds**

16 **13.3.1** Developer shall rebuild, repair, restore or replace all loss, damage or destruction  
17 occurring during the D&C Period to the Project, or to materials, equipment, supplies and  
18 maintenance equipment purchased for permanent installation in, or for use during construction,  
19 operations or maintenance of, the Project, whether within or outside the Project ROW,  
20 regardless of who has title thereto under the Contract Documents and regardless of the cause of  
21 the loss, damage or destruction; provided, however, that Developer shall not be responsible for  
22 rebuilding, repairing, restoring or replacing Project-related property:

- 23 (a) Within the South Segment, commencing upon the date ADOT issues a Certificate  
24 of South Segment Substantial Completion, if applicable; or
- 25 (b) That will be maintained by a third party, upon its acceptance of such property;

26 in each case unless such property is damaged due to Developer Act.

27 **13.3.2** Developer shall not be responsible for rebuilding, repairing, restoring or  
28 replacing loss, damage or destruction to the Project during the O&M Period, except:

- 29 (a) To the extent provided otherwise in the Contract Documents, including Section  
30 10.3; and
- 31 (b) That the foregoing does not affect or limit any lawful remedies that may be  
32 available to ADOT for defective design or construction by Developer or loss,  
33 damage or destruction to the Project resulting therefrom, including portions of  
34 the Project outside the O&M Limits.

1           **13.3.3** Developer shall ensure that ADOT (a) is named as loss payee under all builder’s  
2 risk Insurance Policies and (b) will have the exclusive right to receive claims payments from the  
3 insurers under such policies. ADOT will hold all insurance proceeds it receives as loss payee or  
4 otherwise for any insured loss under such Insurance Policies in a separate insurance proceeds  
5 account for the purposes of, and to be applied in accordance with, this Section 13.3.3. If loss,  
6 damage or destruction to the Project is deemed to be self-insured by Developer under Section  
7 13.2.4, then, within 30 days after ADOT’s written request, Developer shall pay to ADOT, as loss  
8 payee, the amount of insurance proceeds deemed owing. ADOT will hold and dispense such  
9 payment from Developer in the same manner it would hold proceeds from a third-party insurer.

10           **13.3.4** If the loss, damage or destruction to the Project is from a risk or event covered  
11 by a builder’s risk Insurance Policy or by deemed self-insurance under Section 13.2.4 and such  
12 loss, damage or destruction is not attributable to a Relief Event for which ADOT owes  
13 compensation to Developer under Section 16, then:

14           (a) ADOT will remit to Developer all claims payments paid to ADOT, as loss payee,  
15 from the insurer under the builder’s risk Insurance Policy within ten Business Days  
16 after ADOT receives each such payment; provided, however, that remittance of  
17 such insurance proceeds to Developer shall not be a condition precedent to  
18 Developer’s obligation to perform the repair or replacement Work and shall not  
19 be deemed approval or acceptance by ADOT of the repair or replacement Work;  
20 and

21           (b) Developer shall bear all costs, including delay and disruption costs, of repair or  
22 replacement Work not covered by available insurance proceeds, including the  
23 amount of deductibles or self-insured retentions and any costs in excess of  
24 insurance coverage limits.

25           **13.3.5** If the loss, damage or destruction to the Project is from a risk or event covered  
26 by a builder’s risk Insurance Policy or by deemed self-insurance under Section 13.2.4 and such  
27 loss, damage or destruction is attributable to a Relief Event, then:

28           (a) Subject to the terms and conditions of Section 16, ADOT will pay the applicable  
29 Compensation Amount for the repair or replacement Work to the Project  
30 performed by Developer, regardless of the amount of insurance proceeds or the  
31 timing of claims payments by the insurers, subject, however, to (i) any Claim  
32 Deductibles payable by Developer and (ii) ADOT’s right to set off such payment by  
33 any deemed self-insurance that Developer fails to pay to ADOT;

34           (b) If there are any insurance or deemed self-insurance proceeds available after  
35 paying or reimbursing ADOT for such Compensation Amount paid to Developer,  
36 ADOT will next apply such available insurance proceeds to reimburse Developer  
37 for its costs to repair or replace the items of property described in Section 13.3.8;  
38 and

1 (c) Developer shall bear all the costs described in Section 13.3.8 not covered under  
2 clause (b) above.

3 **13.3.6** Subject to Sections 13.3.1 and 13.3.2, if the loss, damage or destruction to the  
4 Project is from a risk or event that this Agreement does not require to be covered by a builder's  
5 risk Insurance Policy and such loss, damage or destruction is not attributable to a Relief Event for  
6 which ADOT owes compensation to Developer under Section 16, then Developer shall bear all  
7 schedule risk and all costs, including delay and disruption costs, for the repair or replacement  
8 Work to the Project, subject, however, to Developer's rights under Section 13.4.

9 **13.3.7** If the loss, damage or destruction to the Project is from a risk or event that this  
10 Agreement does not require to be covered by a builder's risk Insurance Policy and such loss,  
11 damage or destruction is attributable to a Relief Event, then:

12 (a) Subject to the terms and conditions of Section 16, ADOT will pay the applicable  
13 Compensation Amount for the repair or replacement Work to the Project  
14 performed by Developer, subject, however, to any Claim Deductibles payable by  
15 Developer; and

16 (b) Developer shall bear all the costs described in Section 13.3.8.

17 **13.3.8** Except to the extent there are available insurance proceeds as provided in  
18 Section 13.3.4 or 13.3.5(b), to the extent caused by ADOT's gross negligence, recklessness or  
19 willful misconduct, or as set forth in Section 13.3.9, Developer shall bear all costs, including Extra  
20 Work Costs and Delay Costs, to repair or replace, and shall not be entitled to an increase in the  
21 Contract Price or any other Claim arising from any loss, damage or destruction caused by a Relief  
22 Event or any other event to:

23 (a) Any tools, machinery, equipment, facilities, protective fencing, job trailers,  
24 scaffolding or other items of any Developer-Related Entity used in the  
25 performance of the Work but not intended for permanent installation into the  
26 Project;

27 (b) Any machinery, equipment, facilities, materials, inventory, supplies and other  
28 property of any Developer-Related Entity outside the Project ROW; or

29 (c) Any machinery, equipment, facilities, materials, inventory, supplies and other  
30 property of any Developer-Related Entity while in transit to the Site.

31 **13.3.9** Section 13.3.8 shall not preclude a Claim for a Completion Deadline extension  
32 where the subject loss, damage or destruction is caused by a Relief Event, subject to the  
33 applicable provisions of Section 16.

34 **13.3.10** Developer's rights, if any, to a Completion Deadline adjustment in the event of  
35 any loss, damage or destruction to the Project shall be limited to situations where such loss,

1 damage or destruction is caused by a Relief Event and shall be subject to the applicable provisions  
2 of Section 16.

### 3 **13.4 Claims Against Third Parties**

4 **13.4.1** Developer shall not pursue claims against third parties for damage caused to the  
5 Project that Developer is obligated to repair, including damage due to a vehicle collision,  
6 vandalism or other acts of damage or destruction by third parties. All rights to pursue third  
7 parties for such claims are reserved to ADOT.

8 **13.4.2** Developer shall provide reasonable assistance to ADOT regarding such claims.  
9 Such assistance shall include providing to ADOT on a monthly basis detailed documentation of  
10 actual costs Developer incurs to repair damage to the Project caused by third parties, including  
11 where such costs are not compensable under Section 15.6.4 or as a Relief Event.

### 12 **13.5 General Insurance Disclaimer**

13 Developer and each Subcontractor have the sole responsibility to acquire and maintain insurance  
14 coverage suitable for the Work to be performed under the Contract Documents, whether or not  
15 specified herein.

### 16 **13.6 Bankrupt Insurer**

17 If an insurer providing any of the Insurance Policies becomes the subject of bankruptcy  
18 proceedings, becomes insolvent, or is the subject of an order or directive limiting its business  
19 activities relating to or affecting the Insurance Policies given by any Governmental Entity,  
20 including the Arizona Department of Insurance, or has its rating lowered by A.M. Best and  
21 Company below A-, VII as required in Section 13.1.1, then Developer shall use its best efforts to  
22 promptly and at its own cost and expense secure alternative coverage in compliance with the  
23 insurance requirements contained in this Section 13 so as to avoid any lapse in insurance  
24 coverage.

**SECTION 14. WARRANTIES**

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Developer shall obtain manufacturer’s or producer’s warranties on all items, materials, products, equipment and supplies installed or incorporated into the Project, consistent with those provided as customary trade practice. The form of warranty or guaranty must include a provision that it may be transferred to ADOT without necessity for consent of the warranting party. Except with respect to the Flex Lanes, Developer shall assign, and cause all Subcontractors to assign, to ADOT all warranties received or otherwise acquired in connection with the items, materials, products, equipment and supplies installed or incorporated into the Project. With respect to the Flex Lanes, at the end of the Term Developer shall assign, and cause all Subcontractors to assign, to ADOT all such warranties that remain in effect. This Section 14 shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products, equipment or supplies where the warranty cannot be extended to ADOT using commercially reasonable efforts, in which case Developer shall prosecute any remedies available under such warranties for as long as such warranties may be valid throughout the Term. Upon notice from ADOT, Developer shall pursue any necessary remedies under such warranties to cause the repair of any defects in the warranted items, materials, products, equipment or supplies until such time as the applicable warranty expires.



1           **15.1.3 Payment Based on Progress**

2           ADOT will pay the D&C Price solely on the basis of progress of the D&C Work, subject to  
3 each cap on allowable payments for pre-NTP 2 Work set forth in Exhibit 2-4.1 (D&C Price  
4 Breakdown) prior to issuance of NTP 2. The Project Schedule shall provide for payment of the  
5 D&C Price on the basis of progress of the D&C Work.

6           **15.2 Invoicing and Payment for the D&C Price**

7           The following process shall apply to invoicing and payment of the D&C Price:

8           **15.2.1 NTP 1 Work**

9           (a) Any Design Work that Developer performs prior to satisfaction of the conditions  
10 precedent set forth in Section 9.5 shall be at Developer’s risk, as ADOT will have  
11 no obligation to pay for or review any Design Work prior to satisfaction of such  
12 conditions precedent.

13           (b) ADOT will pay Developer for work authorized by NTP 1 not more often than  
14 monthly based on approved D&C Draw Requests and subject to the maximum  
15 amounts payable for such Work prior to issuance of NTP 2 set forth in Exhibit 2-  
16 4.1 (D&C Price Breakdown), as follows:

17                   (i) For NTP 1 mobilization, in one installment with the first D&C Draw Request  
18 after NTP 1, as set forth in Section 15.2.9(b)(i);

19                   (ii) For each item that is a Submittal under “NTP 1 Work Effort” in Exhibit 2-  
20 4.1 (D&C Price Breakdown), other than Design Documents, (i) 50% of the  
21 amount shown for that Submittal in Exhibit 2-4.1 (D&C Price Breakdown)  
22 with the next D&C Draw Request after ADOT receives a complete draft of  
23 the Submittal, unless ADOT determines the draft is inadequate, and (ii) the  
24 remaining payment with the next D&C Draw Request after ADOT approves  
25 the final Submittal;

26                   (iii) For Design Work, monthly according to a D&C Draw Request for progress  
27 made and the approved Schedule of Values for pre-NTP 2 Design Work;

28                   (iv) For the premiums for bonds and insurance associated with NTP 1 Work, in  
29 accordance with Section 15.2.9(c); and

30                   (v) For all other items, monthly according to actual documented costs  
31 incurred and included in a D&C Draw Request, with any balance of the bid  
32 item total remaining at issuance of NTP 2 payable in the next D&C Draw  
33 Request thereafter.

34           (c) Invoices for work authorized by NTP 1 shall comply with the provisions of this

1            Section 15.2.1. Invoices for premiums for bonds and insurance for NTP 1 Work  
2 shall comply with the provisions of Section 15.2.9.

3            **15.2.2 Draft D&C Draw Request Package for D&C Work and Monthly Progress Meeting**

4            (a) On or about the 22<sup>nd</sup> day of each month following the issuance of NTP 1 and  
5 continuing through the D&C Draw Request for the Final D&C Payment, Developer  
6 shall deliver to ADOT a draft D&C Draw Request for the prior monthly period, in  
7 the form required by ADOT, together with drafts of all materials, reports,  
8 schedules, certifications and other submittals for that month listed in Section  
9 15.2.3(b).

10           (b) At each monthly progress meeting held pursuant to Section 5.10.2, Developer’s  
11 and ADOT’s Authorized Representatives shall ascertain the progress of the Work  
12 and verify the quantities for any unit priced Work. Each monthly progress meeting  
13 shall be attended by Developer and ADOT and its consultants. Developer’s and  
14 ADOT’s Authorized Representatives shall review the draft D&C Draw Request  
15 reflecting the value of Work completed as of the date of the progress meeting.  
16 They shall determine and calculate the value of Work completed:

17           (i) As provided in Section 15.2.1(b) for NTP 1 Work;

18           (ii) Based on quantities and unit prices for unit priced Work;

19           (iii) Based on time and materials for Force Account Work; and

20           (iv) For all other Work, based on the percentage completion of Project  
21 Schedule activities and the values distributed to such activities in the  
22 Monthly Progress Schedule for the prior monthly period.

23           (c) Developer’s and ADOT’s Authorized Representatives shall sign the draft D&C Draw  
24 Request, indicating the portions of it that have been approved and setting forth  
25 the proposed total payment amount, which shall be the approved value of the  
26 Work then completed less progress payments previously made.

27           (d) Concurrent with the delivery of the draft D&C Draw Request, Developer shall  
28 submit a draft current Monthly Progress Schedule for approval by ADOT, in its  
29 good faith discretion, that it meets the requirements set forth in Section GP  
30 110.06.2.7 of the Technical Provisions. To the extent ADOT provides any  
31 comments to the draft Monthly Progress Schedule, Developer shall incorporate  
32 such comments prior to submission of the Monthly Progress Schedule pursuant to  
33 Section 15.2.3(b)(i)(3).

1           **15.2.3 Delivery of D&C Draw Request for Payment of D&C Price**

2           (a)     Within seven days after each monthly progress meeting, Developer shall submit  
3                   to ADOT one electronic copy and two hard copies of a D&C Draw Request for the  
4                   Work performed under the Contract Documents during the immediately  
5                   preceding month, in a form acceptable to ADOT and meeting all the requirements  
6                   specified herein, except as otherwise approved by ADOT. Each D&C Draw Request  
7                   shall be based upon and use the amounts set forth in the approved draft D&C  
8                   Draw Request and may not include any amounts not approved by ADOT in the  
9                   monthly progress meeting reviewing such draft D&C Draw Request.

10          (b)     Each D&C Draw Request:

11           (i)     Must contain the following items:

12                   (1)     D&C Draw Request cover sheet;

13                   (2)     An updated Schedule Narrative as described in Section GP  
14                   110.06.2.4 of the Technical Provisions;

15                   (3)     A current Monthly Progress Schedule as described in Section GP  
16                   110.06.2.7 of the Technical Provisions;

17                   (4)     Certification by Developer that all D&C Work that is the subject of  
18                   the D&C Draw Request fully complies with the requirements of the  
19                   Contract Documents subject to any exceptions identified in the  
20                   certification;

21                   (5)     Monthly report of personnel hours;

22                   (6)     D&C Draw Request data sheet(s) and supporting documents, as  
23                   required by ADOT to support and substantiate the amount  
24                   requested (based on invoices, receipts and other evidence  
25                   establishing the number of units delivered for unit priced Work;  
26                   based on Section 1.2 of Exhibit 13 (Compensation Amount  
27                   Specifications) for Force Account Work; and based on the Project  
28                   Schedule for all other D&C Work) and, with respect to draws prior  
29                   to issuance of NTP 2, showing the maximum amounts payable  
30                   under Exhibit 2-4.1 (D&C Price Breakdown);

31                   (7)     DBE Monthly Utilization Progress Report in a format reasonably  
32                   satisfactory to ADOT as required in Section 18.02.2 of Exhibit 6  
33                   (ADOT's DBE Special Provisions);

- 1 (8) The monthly reports regarding OJT enrollment, schedule, progress,  
2 utilization and status, each in the form and content required by  
3 Exhibit 7 (ADOT's OJT Special Provisions);
- 4 (9) To the extent applicable, comparison of amounts for items of Work  
5 prior to NTP 2 to the maximum allowable amounts for such Work  
6 set forth in Exhibit 2-4.1 (D&C Price Breakdown);
- 7 (10) If the D&C Draw Request includes Utility Adjustment Work, a  
8 summary narrative of the Utility Adjustment Work performed  
9 during the applicable month, and for Utility Adjustment Work  
10 performed by a Utility Company, invoices and records showing that  
11 Developer has paid the Utility Company for such Utility Adjustment  
12 Work;
- 13 (11) Information showing all amounts for which ADOT is withholding  
14 payment, including outstanding items in the Noncompliance  
15 Reports and other bases for withholding payment under the  
16 Contract Documents, and the amount of payment withheld; and
- 17 (12) Such other items as ADOT reasonably requests; and
- 18 (ii) Shall be considered complete only if it:
- 19 (1) Describes in detail the status of completion as it relates to the  
20 Project Schedule;
- 21 (2) Sets forth separately and in detail the related payments that are  
22 then due in accordance with the Project Schedule, as of the end of  
23 the prior month;
- 24 (3) Sets forth in detail the amounts paid to Subcontractors and  
25 Suppliers (including those at lower tiers) from the payments made  
26 by ADOT to Developer with respect to the D&C Draw Request  
27 submitted two months prior;
- 28 (4) Includes affidavits of payment and unconditional waivers of claims  
29 in form satisfactory to ADOT executed by Developer and each  
30 Subcontractor with respect to all amounts paid in connection with  
31 the D&C Draw Request submitted two months prior; and
- 32 (5) Sets forth in detail the total amount due from Utility Companies for  
33 (A) Utility Betterments and (B) any other Work for which the Utility  
34 Company is responsible for the cost.

- 1 (c) Developer shall not be entitled to payment from ADOT for Utility Adjustment  
2 Work performed by a Utility Company until Developer has paid the Utility  
3 Company for such Utility Adjustment Work.
- 4 (d) Developer acknowledges that ADOT will obtain funding for portions of the Work  
5 from various sources, and agrees to segregate billings for all such Work in a format  
6 reasonably requested by ADOT and with detail and information as reasonably  
7 requested by ADOT.

8 **15.2.4 D&C Draw Request Cover Sheet Contents**

9 The D&C Draw Request cover sheet shall include (a) Project number and title, (b) D&C  
10 Draw Request number (numbered consecutively starting with “1”), (c) Total amount paid to  
11 Developer as of the date on which the D&C Draw Request is submitted, and (d) authorized  
12 signature, title of signer, and date of signature.

13 **15.2.5 Certification by Professional Services Quality Manager and Construction**  
14 **Quality Manager**

15 Each D&C Draw Request shall include a certificate signed and sealed by the Professional  
16 Services Quality Manager and the Construction Quality Manager, as appropriate, in a form  
17 acceptable to ADOT, certifying that:

- 18 (a) Except as specifically noted in the certification, all Work that is the subject of the  
19 D&C Draw Request, including that of Professional Services firms, Subcontractors,  
20 and Suppliers, has been checked or inspected by the Professional Services Quality  
21 Manager, with respect to Professional Services, and the Construction Quality  
22 Manager, with respect to the Construction Work;
- 23 (b) Except as specifically noted in the certification, all Work that is the subject of the  
24 D&C Draw Request conforms to the requirements of the Contract Documents;
- 25 (c) All of the measures and procedures provided in the Professional Services Quality  
26 Management Plan are functioning properly and are being followed;
- 27 (d) The Professional Services percentages and construction percentages stated are  
28 accurate; and
- 29 (e) All quantities for which payment is requested on a unit price basis are accurate.

30 **15.2.6 Payment by ADOT**

- 31 (a) Within ten Business Days after ADOT receives the D&C Draw Request (including  
32 all materials and reports required under Section 15.2.3(b)) and the related D&C  
33 Draw Request certificate, ADOT will review the same for consistency with the draft  
34 D&C Draw Request package prepared at the most recent monthly progress

1 meeting and conformity with all requirements of the Contract Documents, and  
2 notify Developer of the amount approved for payment and specify the reason for  
3 disapproval of any remaining invoiced amounts. Developer may include such  
4 disapproved amounts in the next month's D&C Draw Request after correction of  
5 the deficiencies noted by ADOT.

6 (b) No later than the Developer Cycle Key Date first occurring after the ten Business  
7 Day period described in clause (a), ADOT will pay Developer the amount of the  
8 D&C Draw Request approved for payment less any amounts that ADOT is  
9 otherwise entitled to withhold or deduct.

10 (c) For Work authorized by NTP 1, ADOT will not have any obligation to pay Developer  
11 any amount that:

12 (i) Is inconsistent with Section 15.2.1(b);

13 (ii) Was not approved during the monthly progress meeting reviewing the  
14 draft invoice for such month; or

15 (iii) Would result in aggregate payments prior to issuance of NTP 2 in excess of  
16 that allowed under Section 15.2.1(b).

17 (d) For Work authorized by NTP 2, in no event shall ADOT have any obligation to pay  
18 Developer any amount that:

19 (i) Would result in payment for any activity in excess of the value of the  
20 completed percentage of such activity (for non-unit priced Work);

21 (ii) Was not approved during the monthly progress meeting review of the  
22 draft invoice for such month; or

23 (iii) Would result in aggregate payments in excess of the overall completion  
24 percentage for the Project multiplied by the Contract Price (for non-unit  
25 priced Work).

26 **15.2.7 Monthly Progress Schedule**

27 If a D&C Draw Request for any month is incomplete due to lack of ADOT approval of the  
28 Monthly Progress Schedule, ADOT may elect, in its sole discretion, to:

29 (a) Withhold 10% of the D&C Draw Request for such month;

30 (b) If applicable, withhold 10% of the D&C Draw Request for the immediately  
31 following month; and

32 (c) If applicable, withhold 100% of all further D&C Draw Requests,

1 until ADOT approves of the Monthly Progress Schedule as described in Section 15.2.2(d) and  
2 Section GP 110.06.2.7 of the Technical Provisions. Developer may include any previously withheld  
3 amounts in the D&C Draw Request for the month in which the Monthly Progress Schedule  
4 receives ADOT approval.

5 **15.2.8 Unincorporated Materials; Long Lead Items**

6 ADOT will not pay Developer for Construction Materials not yet incorporated in the Work  
7 unless all of the following conditions are met:

8 (a) Construction Materials shall be: (i) delivered to the Site; (ii) delivered to Developer  
9 and promptly stored by Developer in bonded storage at a location approved by  
10 ADOT in its good faith discretion; or (iii) stored at a Supplier’s fabrication site,  
11 which must be a bonded commercial location approved by ADOT, in its good faith  
12 discretion;

13 (b) The owner or operator of the storage location shall agree in writing to allow ADOT  
14 agents or representatives to access the stored Construction Materials during  
15 regular business hours in order to inspect and verify quantities and condition;

16 (c) The Quality Manager has certified that the quantity and quality of the  
17 Construction Materials comply with the requirements of the Contract Documents;

18 (d) Developer shall submit certified bills for such Construction Materials with the D&C  
19 Draw Request, as a condition to payment for such Construction Materials. The  
20 certifications must certify in favor of ADOT (i) the date and location of delivery for  
21 storage and (ii) that the Construction Materials are stored in compliance with the  
22 requirement set forth in this Section 15.2.8. ADOT will allow only such portion of  
23 the amount represented by these bills as, in its good faith discretion, is consistent  
24 with the reasonable cost of such Construction Materials; and

25 (e) Developer at its own cost shall promptly execute, acknowledge and deliver to  
26 ADOT proper bills of sale or other instruments in writing in a form acceptable to  
27 ADOT conveying and assuring to ADOT title to such Construction Materials  
28 included in any D&C Draw Request, free and clear of all Liens. Developer, at its  
29 own cost, shall conspicuously mark such Construction Materials as the property of  
30 ADOT, shall not permit such Construction Materials to become commingled with  
31 non-ADOT-owned property or with materials that do not conform with the  
32 Contract Documents, and shall take such other steps, if any, as ADOT may require  
33 or regard as necessary to vest title to such material in ADOT free and clear of Liens.

34 If Construction Materials are stored at any site not approved by ADOT, Developer shall accept  
35 full responsibility for any cost of, and any loss or damage to, such Construction Materials and pay  
36 all personal and property taxes that may be levied against ADOT by any state or subdivision  
37 thereof on account of such storage of such Construction Materials.

1           **15.2.9 Mobilization Payments; Bond and Insurance Premiums**

2           (a)     Developer shall not be entitled to payment for mobilization until Developer has  
3           obtained all Insurance Policies and has provided proof of coverage thereof to  
4           ADOT as required by Section 13.

5           (b)     Upon compliance with clause (a), Developer shall be entitled to payment for  
6           mobilization in an amount equal to the lesser of (1) the bid item price for  
7           mobilization set forth in Exhibit 2-4.1 (D&C Price Breakdown) or (2) 5% of the D&C  
8           Price (other than mobilization). This amount shall be fixed and not be subject to  
9           adjustment by any Relief Event, Claim or Supplemental Agreement, and shall be  
10          paid in installments as follows:

11          (i)     The first payment for mobilization shall be in an amount not to exceed 30%  
12          of the total payment for mobilization, payable as part of the first D&C Draw  
13          Request occurring after the issuance of NTP 1;

14          (ii)    The second payment for mobilization shall be in an amount not to exceed  
15          20% of the total payment for mobilization, payable as part of the first D&C  
16          Draw Request occurring after the issuance of NTP 2;

17          (iii)   The third payment for mobilization shall be in an amount not to exceed  
18          25% of the total payment for mobilization, payable as part of the first D&C  
19          Draw Request occurring after the issuance of NTP 2 and after 5% of the  
20          D&C Price is earned on items other than mobilization; and

21          (iv)    The fourth payment for mobilization shall be in the remaining amount of  
22          the total payment for mobilization, payable as part of the first D&C Draw  
23          Request occurring after the issuance of NTP 2 and after 10% of the D&C  
24          Price is earned on items other than mobilization.

25          (c)     ADOT will pay Developer as part of the first D&C Draw Request occurring after the  
26          issuance of NTP 1 the portion of the D&C Price allocable to bond and insurance  
27          premiums incurred as of the date of such D&C Draw Request and as set forth in  
28          Exhibit 2-4.1 (D&C Price Breakdown).

29           **15.2.10 Equipment**

30           Except as part of Compensation Amounts or Termination Compensation, ADOT will not  
31           pay for the costs of acquiring, purchasing or leasing any equipment. Costs of equipment, whether  
32           new, used or rented, and to the extent not included in the mobilization payments under Section  
33           15.2.9, shall be allocated to and paid for as part of the activities with which the equipment is  
34           associated, in a manner which is consistent with the requirements of Section 1.2.3 of Exhibit 13  
35           (Compensation Amount Specifications).

1 **15.3 Final D&C Payment**

2 Final D&C Payment for all D&C Work will be made as follows.

3 **15.3.1 Application for Final D&C Payment**

4 (a) No earlier than 15 days prior to the date on which Developer reasonably believes  
5 it will satisfy the conditions of Final Acceptance, Developer shall prepare and  
6 submit to ADOT a proposed Application for Final D&C Payment showing the  
7 proposed total amount due to Developer as of the date of Final Acceptance,  
8 including any amounts owing from Supplemental Agreements.

9 (b) The Application for Final D&C Payment shall list all outstanding Relief Event  
10 Notices and Relief Requests, stating the claimed Compensation Amount  
11 associated with each such Relief Event Notice and Relief Request.

12 (c) The Application for Final D&C Payment shall also be accompanied by:

13 (i) Information detailing the status of all existing or threatened claims and  
14 stop notices of Subcontractors, Suppliers, laborers, Utility Companies  
15 and/or other third parties against Developer, ADOT or the Project;

16 (ii) Consent of each Guarantor and Surety to the proposed payment schedule;

17 (iii) Such other documentation as ADOT may reasonably require; and

18 (iv) The release described in Section 15.3.3, executed by Developer.

19 (d) Prior applications and payments shall be subject to correction in the Application  
20 for Final D&C Payment. Relief Event Notices and Relief Requests filed concurrently  
21 with the Application for Final D&C Payment must be otherwise timely and meet  
22 all requirements under Section 16.

23 **15.3.2** ADOT's obligation to make payment to Developer based on the Application for  
24 Final D&C Payment is conditioned on ADOT's receipt of an executed release meeting the  
25 requirements of Section 15.3.3 and otherwise satisfactory in form and content to ADOT. The  
26 payment amount will be reduced by any amounts that are deductible under Section 15.8.

27 **15.3.3** Developer shall execute a release agreement that (i) releases ADOT from any and  
28 all Claims arising from the D&C Work, and (ii) releases and waives any claims against the  
29 Indemnified Parties, excluding only those matters identified in any Relief Event Notices and Relief  
30 Requests, or in written notices of other specific Claims, that in each case were previously timely  
31 delivered to ADOT and are listed as outstanding in the Application for Final D&C Payment. The  
32 release shall be accompanied by a sworn affidavit from Developer certifying that:

33 (a) All D&C Work complies with the requirements of the Contract Documents;

- 1 (b) Developer has resolved any claims made by Subcontractors, Suppliers, Utility
- 2 Companies, laborers, or other third parties against Developer, ADOT or the Project
- 3 (except those listed by Developer in accordance with Section 15.3.1(c)(i));
- 4 (c) Developer has no reason to believe that any Person has a valid claim against
- 5 Developer, ADOT or the Project which has not been communicated in writing by
- 6 Developer to ADOT as of the date of the certificate; and
- 7 (d) All guaranties, the D&C Payment Bond, the D&C Performance Bond, the O&M
- 8 Payment Bond, and the O&M Performance Bond are in full force and effect.

9 **15.3.4** Relief Requests submitted prior to the Application for Final Payment that are not  
 10 in Dispute shall be included in the Application for Final D&C Payment.

11 **15.3.5** ADOT will review Developer’s proposed Application for Final D&C Payment, and  
 12 within 20 Business Days after receipt, will deliver to Developer any changes or corrections. Any  
 13 changes or corrections made pursuant to this Section 15.3.5 will be reflected in an updated  
 14 payment schedule showing the amount owed to Developer for the applicable period.

15 **15.4 Incentive Payment**

16 **15.4.1** ADOT will pay Developer an incentive payment for early South Segment  
 17 Substantial Completion equal to the lesser of (a) \$400,000 or (b) the amount calculated pursuant  
 18 to the following table.

19

Bands		A	B	C
		# Days per Band that the date ADOT issues Certificate of South Segment Substantial Completion Precedes the Adjusted Target Date	Daily Incentive Payment	Cumulative Incentive Payment (A x B) per Band
1	Days 1 - 30		\$3,000	\$
2	Days 31 - 60		\$4,000	plus \$
3	Days 61 or more		\$5,000	plus \$
<b>Total Days</b>			<b>Total \$:</b>	\$

20 Example: If Developer obtains Certificate of South Segment Substantial Completion 100 days  
 21 before the adjusted target date, the incentive payment will equal:

22 Band 1: 30 days x \$3,000 = \$ 90,000  
 23 Band 2: 30 days x \$4,000 = \$ 120,000  
 24 Band 3: 40 days x \$5,000 = \$ 200,000  
 25 Total = \$ 410,000  
 26 Incentive payment = \$ 400,000

1           **15.4.2** For purposes of the foregoing calculation, the “**adjusted target date**” means:

2           (a) 825 days after the date ADOT issues NTP 1 (the “**target date**”); plus

3           (b) The number of days (if any) that the end of the critical path to South Segment  
4           Substantial Completion is extended due to any Relief Event Delay that:

5                   (i) is not concurrent with any other delay that is not caused by a Relief Event;

6                   (ii) Developer cannot reasonably avoid through mitigation as required under  
7                   Section 16.9; and

8                   (iii) is directly attributable only to a Relief Event under clause (a), (b), (c), (d) or  
9                   (g) (but only due to an ADOT Release of Hazardous Materials) of the  
10                  definition of Relief Event,

11                  but only if the date for South Segment Substantial Completion absent such a Relief  
12                  Event Delay, as indicated in the then Project Schedule accepted by ADOT, is earlier  
13                  than the target date.

14           **15.4.3** If Developer is entitled to an incentive payment for early South Segment  
15           Substantial Completion pursuant to Sections 15.4.1 and 15.4.2, then Developer shall include the  
16           amount as a separate line item in its Application for Final D&C Payment, and ADOT shall pay the  
17           amount earned concurrently with payment of the Final D&C Payment.

## 18   **15.5 Point of Service Agreement and Allowance for APS Facilities**

19           **15.5.1** Within a reasonable period of time after Developer has provided, and APS has  
20           approved, a service request letter that includes the locations and associated lock down sheets  
21           necessary to establish one or more points of electrical service for the Project (collectively, “**APS**  
22           **Facilities**”) in accordance with the Contract Documents, ADOT will negotiate and enter into a  
23           point of service agreement (“**Point of Service Agreement**”) with Arizona Public Service Electric  
24           (“**APS**”) for provision of APS Facilities. ADOT will attempt to include in such agreement the  
25           following provisions:

26           (a) APS will provide all planning, permitting, design, construction, materials and  
27           equipment to supply power up to and including the points of electrical service  
28           consistent with Developer’s design for the Project (which, together with related  
29           change orders approved by ADOT and APS, are referred to as the “**APS Scope of**  
30           **Work**”);

31           (b) Developer will be designated as ADOT’s coordinator for the design and  
32           construction of the APS Facilities;

33           (c) APS will cooperate and coordinate with ADOT and Developer during design  
34           development and construction, including providing interim and final designs to

1 ADOT and Developer for their review and comment, with the objective of reaching  
2 the most cost efficient design for the APS Facilities;

3 (d) APS will perform the APS Scope of Work consistently with the Project Baseline  
4 Schedule, subject to events and circumstances beyond APS' reasonable control,  
5 provided, however, that APS will not start final design work for APS Facilities until  
6 APS confirms Developer has provided the service request letter that includes  
7 lockdown sheets showing points of service locations, addresses and power  
8 requirements, and other information needed to start such final design of APS  
9 Facilities;

10 (e) APS will price and charge for the APS Scope of Work according to APS' standard  
11 practices;

12 (f) ADOT will directly pay APS for the costs of the APS Scope of Work; and

13 (g) APS will comply with applicable statutory and regulatory requirements, including  
14 Buy America.

15 **15.5.2** ADOT will provide to Developer a copy of each Point of Service Agreement with  
16 APS and any subsequent amendments thereto.

17 **15.5.3** Developer shall use diligent efforts, working with ADOT and APS, to adjust  
18 Developer's Project design in order to enable cost-efficient design and construction of the APS  
19 Facilities. Such efforts shall include evaluation of alternatives to minimize the number and  
20 location of the APS points of electrical service. ADOT and Developer will work with APS to obtain  
21 refined and detailed cost estimates based on consideration of design alternatives and design  
22 development until approval of final designs for the APS Scope of Work. Developer's design for all  
23 points of electrical service must provide APS with ready access to APS meters, as approved by  
24 APS.

25 **15.5.4** Developer shall diligently cooperate with APS regarding construction of the APS  
26 Facilities. Generally, APS will have one or two crews to install poles and wire. Developer shall  
27 work with APS to efficiently manage the crew availability and schedule. Developer shall work with  
28 APS on location and details to enable APS to make the final meter connection within the Project  
29 ROW. As an example, Developer will provide a conduit from the "last pole" to the meter and APS  
30 will pull the wire and make the meter connection.

31 **15.5.5** ADOT hereby establishes an allowance for payments for the APS Scope of Work,  
32 including payments for change orders, in the amount of \$1,500,000 (the "**APS Allowance**").  
33 Developer shall share in savings in expenditures from the APS Allowance and in expenditures  
34 exceeding the APS Allowance as follows:  
35

	Expenditure Savings (% of APS Allowance)	Excess Expenditures (% of APS Allowance)	Allocation to Developer
A	Up to - 5%	Up to + 5%	0% of A
B	< - 5% to - 20%	> +5% to + 20%	20% of B
C	< - 20%	> + 20%	30% of C

1 Example: The APS Allowance is \$1,500,000. The total amount paid to APS for the APS Scope of  
2 Work is \$1,000,000, for a total expenditure savings of \$500,000. Result: Developer receives  
3 \$105,000:

4 \$0 from the first \$75,000 of the expenditure savings (i.e. 5% of \$1.5M);  
5 \$45,000 from the next \$225,000 (i.e. 15% of \$1.5M) of the expenditure savings; and  
6 \$60,000 from the \$200,000 balance of the expenditure savings.

7 **15.5.6** If there are any savings in expenditures from the APS Allowance, then Developer  
8 shall include its share of such savings as a separate line item in its Application for Final D&C  
9 Payment, and ADOT shall pay the amount allocated to Developer concurrently with payment of  
10 the Final D&C Payment.

11 **15.5.7** If ADOT's expenditures on the APS Scope of Work exceed the APS Allowance,  
12 then ADOT may invoice Developer not more often than monthly for the amount allocated to  
13 Developer of the excess expenditures incurred. ADOT shall have the right to deduct the invoiced  
14 amounts from ADOT's payments to Developer of the D&C Price as set forth in Section 15.8.1.

15 **15.5.8** ADOT will submit to Developer on a monthly basis copies of APS' invoices and  
16 ADOT's record of payments to APS for the APS Scope of Work.

17 **15.5.9** No Developer costs or markups are chargeable to or payable from the APS  
18 Allowance.

## 19 **15.6 Operations and Maintenance Price**

20 **15.6.1** During the O&M Period, in full consideration for the performance by Developer  
21 of its duties and obligations related to the O&M Work (except as provided otherwise in Section  
22 15.6.4), ADOT will pay to Developer the O&M Price. ADOT will pay the O&M Price in accordance  
23 with this Section 15.5 and Section 15.7.

24 **15.6.2** The O&M Price is composed of Annual O&M Payments. Each Annual O&M  
25 Payment will be:

26 (a) Escalated or reduced in accordance with the CPI Adjustment Formula, which  
27 escalations or reductions shall be documented in Supplemental Agreements, or as  
28 otherwise mutually agreed; and

1 (b) Subject to deductions as set forth in Sections 11.6.2(b), 15.8.2, 17, 19 and 22,  
2 including deductions for Liquidated Damages.

3 **15.6.3** Every month during the O&M Period, subject to deductions as permitted herein,  
4 ADOT will pay Developer for O&M Work performed under this Agreement a “**Monthly O&M**  
5 **Payment**” equal to one-twelfth of the Annual O&M Payment owing to Developer in the  
6 applicable year. Such Monthly O&M Payments shall be payable pursuant to O&M Draw Requests  
7 submitted in accordance with Section 15.7.

8 **15.6.4** The O&M Price does not include Developer’s costs to perform Non-Routine  
9 Maintenance Work solely to correct damage to O&M Elements that results from an Incident or  
10 Emergency or response thereto to the extent such costs cumulatively exceed \$250,000 during  
11 the O&M Period. The following terms apply to such costs:

12 (a) For purposes of calculating such costs, Developer shall apply the Force Account  
13 Extra Work Cost provisions in Section 1.2 of Exhibit 13 (Compensation Amount  
14 Specifications) to the Agreement, except Section 1.2.1.2(c) thereof.

15 (b) ADOT will pay Developer for such costs that exceed such cap, in addition to the  
16 O&M Price; provided that Developer includes detailed information on such costs  
17 in its O&M Draw Requests.

18 (c) Developer shall keep complete and accurate books and records that track in detail  
19 all costs to perform such Non-Routine Maintenance Work. Developer shall include  
20 in its Monthly O&M Work Reports the amount of such costs incurred for the  
21 subject month and a running total of such costs.

22 (d) Notwithstanding the foregoing, no costs are chargeable to the \$250,000 cap or to  
23 ADOT where the Incident or Emergency is attributable to (i) a Developer Act or (ii)  
24 a collision involving a vehicle owned, leased or operated by a Developer-Related  
25 Entity when used in furtherance of the Work.

26 **15.6.5** The obligation of ADOT to pay the O&M Price to Developer shall commence upon  
27 the start of the O&M Period. No portion of the O&M Price shall be payable on account of services  
28 provided (a) as part of the D&C Work, (b) prior to the Project Substantial Completion Date, or (c)  
29 after the termination or expiration this Agreement.

30 **15.6.6** Each of year 1 through 3 as listed in Exhibit 2-4.2 (O&M Price Breakdown) means  
31 the 12-month period beginning on the Project Substantial Completion Date and each anniversary  
32 of the Project Substantial Completion Date thereafter during the O&M Period. If the O&M Period  
33 is less than three years because the Project Substantial Completion Date occurs later than the

1 Project Substantial Completion Deadline, then the portion of the Annual O&M Payments falling  
2 beyond the end of the O&M Period shall be null and void and shall not be owing to Developer.

3 **15.7 Invoicing and Payment for the O&M Price**

4 The process described in this Section 15.7 shall apply to invoicing and payment of the O&M Price.

5 **15.7.1** No earlier than the 25<sup>th</sup> day of each month, Developer shall submit to ADOT one  
6 electronic copy and two hard copies of an O&M Draw Request in the form required by ADOT for  
7 a Monthly O&M Payment for O&M Work performed and to be performed for such month  
8 satisfying all requirements specified herein. Each O&M Draw Request shall be executed by  
9 Developer’s Authorized Representative and O&M Manager. Developer acknowledges that ADOT  
10 may obtain funding for portions of the O&M Work from the federal government, local agencies  
11 and other third parties, and Developer agrees to segregate O&M Draw Requests for all such O&M  
12 Work in a format reasonably requested by ADOT and with detail and information as reasonably  
13 requested by ADOT. The O&M Draw Request for a Monthly O&M Payment must be accompanied  
14 by an attached report containing information that ADOT can use to verify the information  
15 included in the O&M Draw Request, the amount of the Monthly O&M Payment, and all  
16 components of Liquidated Damages accrued since the immediately preceding O&M Draw  
17 Request (or, for the first O&M Draw Request, since inception of the O&M Period) (the “**prior**  
18 **period**”). Such attached report shall include:

- 19 (a) A description of any Noncompliance Events, Noncompliance Points assessed  
20 during the prior period and any Noncompliance Charges owed for assessed  
21 Noncompliance Points;
- 22 (b) A description of any other Liquidated Damages assessed against Developer during  
23 the prior period in relation to the O&M Work, including the date and time of  
24 occurrence and a description of the events and duration of the events for which  
25 the Liquidated Damages were assessed;
- 26 (c) Any adjustments to reflect previous over-payments or under-payments;
- 27 (d) A detailed calculation of any interest payable in respect of any amounts owed; and
- 28 (e) Any other amount due and payable from Developer to ADOT or from ADOT to  
29 Developer under this Agreement, including any deductions related to the O&M  
30 Work that ADOT is entitled to make and any carry-over deductions or other prior  
31 adjustments not yet paid by Developer.

32 **15.7.2** ADOT will not be required to pay any Monthly O&M Payment unless and until  
33 Developer also submits to ADOT, in addition to the O&M Draw Request:

- 34 (a) The then applicable report(s) and update(s) regarding O&M Work required under  
35 Section OMR 400.3.3 of the Technical Provisions;

- 1 (b) The Noncompliance Report then required under Section 19.2.1(c); and
- 2 (c) If applicable, the monthly update on the status of any dispute with a
- 3 Subcontractor as required under Section 15.9.6.

4 **15.7.3** Within ten Business Days after ADOT’s receipt of a complete O&M Draw Request  
5 and the then-required reports, updates and information, ADOT will review the O&M Draw  
6 Request and all attachments and certificates thereto, and shall notify Developer of the amount  
7 approved for payment and the reason for disapproval of any remaining invoiced amounts or of  
8 any other information set forth in the O&M Draw Request. Developer may include such  
9 disapproved amounts in the next month’s O&M Draw Request after correction of the deficiencies  
10 or errors noted by ADOT and satisfaction of the requirements of the Contract Documents related  
11 thereto.

12 **15.7.4** No later than the Developer Cycle Key Date first occurring after the ten Business  
13 Day period described in Section 15.7.3, ADOT will pay Developer the Monthly O&M Payment in  
14 the amount of the O&M Draw Request approved for payment less any amounts that ADOT is  
15 otherwise entitled to withhold or deduct. No payment by ADOT will, at any time, preclude ADOT  
16 from showing that such payment was incorrect, or from recovering any money paid in excess of  
17 those amounts due hereunder.

18 **15.7.5** The Annual O&M Payment payable for any partial year shall be prorated; and  
19 the Monthly O&M Payment payable for any partial month shall be prorated.

20 **15.7.6** ADOT will have the right to dispute, in good faith, any amount specified in the  
21 O&M Draw Request submitted pursuant to this Section 15.7. ADOT will pay the amount of the  
22 O&M Draw Request that is not in Dispute. Developer and ADOT will use their reasonable efforts  
23 to resolve any such Dispute within 30 days after the Dispute arises. If they fail to resolve the  
24 Dispute within that time period, then the Dispute shall be resolved according to the Dispute  
25 Resolution Procedures.

26 **15.8 Limitations, Deductions and Withholdings**

27 **15.8.1** ADOT may deduct (1) from each payment of the D&C Price, including the Final  
28 D&C Payment, any of the following applicable to the D&C Work or accruing prior to Final  
29 Acceptance, and (2) from each payment of the O&M Price, any of the following applicable to the  
30 O&M Work or accruing during the O&M Period:

- 31 (a) Any ADOT or third party Losses for which Developer is responsible hereunder and  
32 which are not covered by the proceeds of the Insurance Policies, provided that if  
33 the underlying claim against Developer is still the subject of a legitimate Dispute,  
34 then:
  - 35 (i) ADOT may withhold the disputed amount pending resolution of the  
36 Dispute; and

- 1 (ii) once the Dispute is resolved, ADOT may deduct the amount of such Losses  
2 (if any) from the withheld amount and shall pay to Developer the balance  
3 of the withheld amount (if any);
- 4 (b) Any Liquidated Damages that have accrued as of the date of the application for  
5 payment (without duplication of any Liquidated Damages previously deducted  
6 under clause (c) below);
- 7 (c) Starting at two months prior to the date of Substantial Completion shown in the  
8 current Project Schedule as updated by any ADOT-approved Recovery Schedule,  
9 any Liquidated Damages that are anticipated to accrue based on reasonably  
10 anticipated failure to meet the Project Substantial Completion Deadline or Final  
11 Acceptance Deadline shown in the then current Project Schedule as updated by  
12 any ADOT-approved Recovery Schedule, provided that after Project Substantial  
13 Completion or Final Acceptance, as applicable, ADOT shall pay to Developer any  
14 such withheld amounts that do not ultimately accrue;
- 15 (d) Any sums expended by or owing to ADOT as a result of Developer's failure to  
16 maintain the Record Drawings;
- 17 (e) Any sums expended by ADOT in performing any of Developer's obligations under  
18 the Contract Documents which Developer has failed to perform;
- 19 (f) Any sums ADOT deems necessary to cover any amount which may become owing  
20 to ADOT by Developer, including costs to complete or remediate uncompleted  
21 Work or Nonconforming Work;
- 22 (g) Any sums Developer owes to ADOT for excess costs of the APS Scope of Work as  
23 set forth in Section 15.5; and
- 24 (h) Any other sums that ADOT is entitled to recover from Developer under the terms  
25 of this Agreement, including any carry-over deductions (including for Liquidated  
26 Damages) or other adjustments from prior months not yet paid by Developer.

27 The failure by ADOT to deduct any of the sums set forth in this Section 15.8.1 from a payment  
28 shall not constitute a waiver of ADOT's right to such sums.

29 **15.8.2** Any Liquidated Damages or offsets related to the D&C Work shall be deducted  
30 solely from the D&C Price; and any Liquidated Damages or offsets related to the O&M Work shall  
31 be deducted solely from the O&M Price.

32 **15.8.3** ADOT may withhold from Monthly O&M Payments for the last three months of  
33 the Term 105% of its reasonably estimated cost for Developer to properly perform and complete

1 by the end of the Term any Work required pursuant to Section 10.14 that is not yet properly  
2 performed and completed.

3 (a) As Developer progresses with such Work and reports such progress in its O&M  
4 Draw Requests, ADOT shall remit to Developer withheld amounts that exceed  
5 105% of the estimated cost of such remaining Work, including remaining punch  
6 list items.

7 (b) In addition to all other lawful remedies (including resort to the O&M Performance  
8 Bond and any Guaranty), ADOT may retain withheld amounts, as deductions from  
9 the O&M Price under this Section 15.8.3, to fund or reimburse ADOT for the cost  
10 to perform any such Work that Developer fails to properly perform and complete  
11 by the end of the Term.

12 **15.9 Prompt Payment to Subcontractors**

13 **15.9.1** Developer shall pay each Subcontractor with which it holds a direct Subcontract  
14 within seven days after Developer receives payment from ADOT, the amount to which such  
15 Subcontractor is entitled, less any retainage provided for in the Subcontract. Developer shall pay  
16 retainage, if any, on a Subcontractor's Work within ten days after:

17 (a) The Subcontractor has fulfilled the Subcontract requirements and the  
18 requirements under the Contract Documents for all the subcontracted Work,  
19 including the submission of all submittals required by the Subcontract and the  
20 relevant Contract Documents; and

21 (b) The Work done by the Subcontractor has been inspected and approved by  
22 Developer.

23 **15.9.2** If Developer fails to pay a Subcontractor within the time periods set forth in  
24 Section 15.9.1, Developer shall pay the Subcontractor interest on the unpaid balance, beginning  
25 on the eighth day or eleventh day, as applicable, at a rate of 0.5% per month or fraction of a  
26 month.

27 **15.9.3** A.R.S. §§ 28-411C, D and E shall apply to all Work.

28 **15.9.4** If Developer submits an invoice for the Work performed by a Subcontractor to  
29 ADOT for payment, such invoice constitutes a representation that the work of such Subcontractor  
30 included in the invoice was satisfactorily performed.

31 **15.9.5** Except for retainage, if any, Developer may exclude from its D&C Draw Request,  
32 Application for Final D&C Payment or O&M Draw Request, as applicable, and thereby withhold,  
33 payments to a Subcontractor only if, in Developer's reasonable determination, the  
34 Subcontractor's work is deficient, incomplete or otherwise not in compliance with the terms of  
35 the Contract Documents applicable to the Subcontractor's work or the Subcontract between  
36 Developer and the Subcontractor. If any Subcontractor is not paid promptly, Developer shall

1 provide to the Subcontractor and to ADOT via the comment section of the DOORS a written  
2 explanation of the reasons and when payment can be expected. Developer shall provide such  
3 explanation within seven days after the time the Subcontractor was otherwise entitled to  
4 payment.

5 **15.9.6** If a dispute arises between Developer and a Subcontractor regarding timely  
6 payment or withholding thereof, Developer shall immediately provide to ADOT a written  
7 explanation of the matter in dispute with supporting evidence and update ADOT monthly on the  
8 status of the dispute until it is resolved. Developer shall implement and use the dispute resolution  
9 process in the applicable Subcontract to resolve payment disputes as quickly as possible.

10 **15.9.7** ADOT reserves the right to request and receive documents from Developer, all  
11 Subcontractors of any tier, and Suppliers to determine whether timely payment requirements  
12 were met.

13 **15.10 Subcontractor Payment and Payroll Reporting**

14 **15.10.1 Subcontractor Payment Reporting**

15 (a) Developer shall report on a monthly basis, throughout the D&C Period, the  
16 amounts earned by and paid to all DBE and non-DBE Subcontractors working on  
17 the D&C Work. Developer shall enter this payment information by the 15<sup>th</sup> day of  
18 each month into the DOORS for payments made to DBEs and other Subcontractors  
19 for the previous month. This includes all lower-tier subcontracting regardless of  
20 whether the Subcontractor is a DBE under a Subcontract with another DBE.  
21 Developer shall separately submit information on payments made for Professional  
22 Services and Construction Work into the DOORS.

23 (b) Developer shall require that all DBE and non-DBE Subcontractors verify payments  
24 using the DOORS by responding to automated emails generated by the DOORS  
25 each month. Developer shall actively monitor the DOORS on a regular basis to  
26 ensure that all DBE and non-DBE Subcontractors verify receipt of payment by the  
27 last day of each month for the previous month's payment. Furthermore,  
28 Developer shall proactively work to resolve any payment discrepancies in the  
29 DOORS, between payment amounts it reports and payment confirmation  
30 amounts reported by DBE and non-DBE Subcontractors on a monthly basis.

31 (c) If no payments are made to any Subcontractor, DBE or non-DBE, during a given  
32 month, Developer shall enter the dollar value "0" for that month and indicate  
33 clearly that (a) no Work was done that required any payment to any  
34 Subcontractor, (b) no invoices were submitted by any Subcontractor requiring  
35 payment during that month, or (c) the Work performed by a Subcontractor was  
36 and remains deficient, incomplete or otherwise not in compliance with the terms  
37 of the Contract Documents or the applicable Subcontract.

1           **15.10.2 Subcontractor Payroll Reporting**

2           No later than the 15<sup>th</sup> day of every month, Developer shall submit complete and accurate  
3 payrolls to ADOT’s web-based certified payroll tracking system (LCPtracker) for all Work  
4 performed by all Subcontractors (regardless of tier) during the previous month. If ADOT does not  
5 receive all such payrolls by this deadline, ADOT will identify in a written notice to Developer any  
6 missing payrolls and other discrepancies or inaccuracies, and the following shall apply:

- 7           (a)     If Developer does not submit the missing or corrected payrolls within ten days of  
8                   the notice date, ADOT will have the right to withhold \$1,000.00 per missing or  
9                   inaccurate payroll, as applicable, from each subsequent progress payment until  
10                  Developer cures;
- 11          (b)     If Developer cures within 90 days of the notice date, ADOT will pay any  
12                   corresponding, accumulated withholdings with the next progress payment; and
- 13          (c)     If Developer does not cure within 90 days after the notice date, then, with respect  
14                   to each missing or inaccurate payroll, ADOT will have the right to retain the  
15                   accumulated withholdings as Liquidated Damages. These Liquidated Damages  
16                   shall be in addition to any other rights or remedies ADOT may have hereunder or  
17                   at Law.  
18

1 **SECTION 16. RELIEF EVENTS**

2 This Section 16 sets forth the requirements for obtaining monetary and schedule relief under the  
3 Contract Documents due to Relief Events. Developer hereby acknowledges and agrees that the  
4 D&C Price, O&M Price and compensation provided in Sections 15.1, Section 15.6 and 15.4 (if any)  
5 provide for full compensation for performance of all the Work, and the Completion Deadlines  
6 provide reasonable and adequate time to perform the Work required within the Completion  
7 Deadlines, subject only to those exceptions specified in this Section 16. The Compensation  
8 Amounts, Completion Deadline adjustments and performance relief specified in this Section 16  
9 shall represent the sole and exclusive right against ADOT, the State and their respective  
10 successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents,  
11 representatives, consultants and employees to compensation, damages, deadline extension and  
12 performance relief for the adverse financial and schedule effects of any event affecting the Work,  
13 the Project or Developer. No award of compensation or damages shall be duplicative. Developer  
14 unconditionally and irrevocably waives the right to any claim against ADOT, the State and their  
15 respective successors, assigns, agencies, divisions, officeholders, officers, directors,  
16 commissioners, agents, representatives, consultants and employees for any monetary  
17 compensation, Completion Deadline adjustment or other relief except to the extent specifically  
18 provided in this Section 16. The foregoing waiver encompasses all theories of liability, whether  
19 in contract, tort (including negligence), strict liability, equity, *quantum meruit* or otherwise, and  
20 encompasses all theories to extinguish contractual obligations, including impracticability, mutual  
21 or unilateral mistake, and frustration of purpose. Notwithstanding anything to the contrary  
22 herein, no liability of Developer that arose before the occurrence of the Relief Event giving rise  
23 to a claim under this Section 16 shall be excused as a result of the occurrence of such Relief Event.  
24 Nothing in the Technical Provisions shall have the intent or effect or shall be construed to create  
25 any right of Developer to any claim for additional monetary compensation, Completion Deadline  
26 adjustment or other relief. The provisions of this paragraph shall not affect Developer’s rights  
27 and protections under Section 8.8 or 13.1.14, Developer’s rights and protections under Section  
28 GP 110.05.2.5 or GP 110.05.3.5 of the Technical Provisions, or Developer’s remedies under the  
29 Contract Documents in the event of non-payment by ADOT or termination of this Agreement  
30 prior to the stated expiration of the Term.

31 **16.1 Relief Event Claim Process**

32 **16.1.1 General Provisions**

33 (a) This Section 16.1 applies to all Relief Events; provided that with respect to Relief  
34 Events that are ADOT-Directed Changes:

35 (i) If there is no Dispute regarding an ADOT-Directed Change, then this  
36 Section 16.1 shall not apply and instead the process for it shall be through  
37 a Supplemental Agreement or Directive Letter pursuant to Sections 17.1  
38 and 17.3, respectively; and

39 (ii) If the Parties disagree as to whether a Relief Event is an ADOT-Directed

1 Change or the extent of a Relief Event that the Parties agree is an ADOT-  
2 Directed Change, then this Section 16.1 shall apply.

- 3 (b) No Subcontractor shall have the right to request relief due to a Relief Event  
4 directly from ADOT. To the extent that a Subcontractor claims relief from  
5 Developer due to a Relief Event, any such request shall be deemed to have been  
6 directly incurred by Developer for purposes of evaluating the merits of any Relief  
7 Event Notice, Relief Request or other Claim against ADOT for such Relief Event. All  
8 such claims by Subcontractors must be submitted by Developer and Developer  
9 shall be responsible for pursuing such claims on behalf of its Subcontractors.

10 **16.1.2 Relief Event Notice**

- 11 (a) If at any time Developer determines that a Relief Event has occurred or is  
12 imminent, Developer shall promptly submit a written Relief Event Notice to ADOT  
13 and ADOT shall acknowledge receipt of such Relief Event Notice.

- 14 (b) The Relief Event Notice shall include, to the maximum extent of the information  
15 then available:

16 (i) A description of the Relief Event and its date of occurrence or inception in  
17 reasonable detail;

18 (ii) The provisions of the Contract Documents applicable to, governing or  
19 otherwise affecting or affected by the Relief Event;

20 (iii) Developer's preliminary good faith estimate of the anticipated adverse  
21 and beneficial effects (including cost impacts) of the Relief Event and the  
22 basis for such estimate;

23 (iv) Developer's preliminary good faith estimate of the Critical Path impact  
24 directly attributable to the Relief Event and the basis for such estimate;

25 (v) Developer's initial analysis of any adverse effect of the Relief Event on its  
26 ability to perform its obligations under this Agreement;

27 (vi) The actions Developer has taken prior to the Relief Event Notice to  
28 prevent, and proposes to take thereafter to mitigate, the cost, delay, and  
29 other consequences of the Relief Event; and

30 (vii) The type and amount of Insurance Policies that may be applicable and  
31 amounts that have been or are anticipated to be collected under such  
32 Insurance Policies.

- 33 (c) The nature and scope of the potential Claim stated in the Relief Event Notice shall  
34 remain consistent (except for reductions) for the remainder of the Relief Event

1 claim process and, if applicable, during any subsequent Dispute Resolution  
2 Procedures, except with respect to consequences of a Relief Event that (i) are of a  
3 different nature or scope from the consequences originally stated in the Relief  
4 Event Notice, (ii) first arise or occur after Developer delivers the Relief Event  
5 Notice to ADOT, and (iii) could not have been anticipated through the exercise of  
6 reasonable diligence and Good Industry Practice prior to delivering the Relief  
7 Event Notice to ADOT. If any such new consequences arise or occur prior to  
8 submission of the Relief Request, Developer shall report them to ADOT by a  
9 supplemental Relief Event Notice, and if any such new consequences arise or  
10 occur after the submission of the Relief Request, Developer shall follow the  
11 procedure set forth in Section 16.1.3(c).

12 (d) Developer shall submit the Relief Event Notice on a standardized form approved  
13 by ADOT. Prior to submission of the first Relief Event Notice, Developer shall  
14 prepare a draft Relief Event Notice form that includes all of the information  
15 required by Section 16.1.2(b) for ADOT's review and approval.

16 (e) Developer shall assign an exclusive identification number for each Relief Event  
17 Notice, starting with one and thereafter in chronological sequence. The exclusive  
18 identification number shall be used on each of the following corresponding  
19 documents: (a) Relief Request; (b) supplemental Relief Event Notices and  
20 submissions; and (c) final documentation of the Relief Event claim.

21 (f) If a single Relief Event is the cause of a continuing delay, only one Relief Event  
22 Notice shall be necessary.

### 23 **16.1.3 Relief Request**

24 (a) Developer shall, within 60 days after the date of the Relief Event Notice, submit  
25 to ADOT a Relief Request that provides Developer's complete reasoning for  
26 additional compensation for Extra Work Costs or Delay Costs, Completion  
27 Deadline adjustments and other requested relief relating to the Relief Event.  
28 ADOT will promptly acknowledge receipt of each Relief Request. The Relief  
29 Request shall include the following information, to the maximum extent then  
30 available:

31 (i) Full details of the Relief Event, including its nature, the date of its  
32 occurrence, its duration (to the extent that the Relief Event and the effects  
33 thereof have ceased, or estimated duration to the extent that the Relief  
34 Event and the effects thereof have not ceased), affected locations, and  
35 items of Work affected. Impacts to the O&M Work, if any, shall be stated  
36 by Fiscal Year;

37 (ii) Identification of all documents and a summary of any material verbal  
38 communications between ADOT and Developer, if any, relating to the

- 1 Relief Event and the name of the person or persons making such material  
2 verbal communications;
- 3 (iii) Identification of the specific provisions of the Contract Documents that  
4 Developer claims entitles Developer to the relief sought, and a detailed  
5 statement that explains the reasons why the provisions entitle Developer  
6 to that relief. If Developer seeks relief for ADOT’s alleged breach of the  
7 Contract Documents, then Developer shall identify the specific provisions  
8 of the Contract Documents that ADOT allegedly breached and the actions  
9 constituting such breach;
- 10 (iv) A detailed, itemized estimate of all Compensation Amounts claimed to the  
11 extent such amounts are eligible for compensation under this Section 16  
12 for the Relief Event in question. All such amounts shall be broken down in  
13 terms of the eligible direct costs for labor (including hourly wage rates,  
14 fringe benefits rates and audited burden), materials, equipment, third  
15 party fees and charges, extra insurance and performance and payment  
16 security (e.g., bonds and letters of credit), as applicable, and other direct  
17 costs, including expenses and profit, and any other cost category or  
18 categories ADOT reasonably specifies. The estimate shall include, to the  
19 extent applicable, the Extra Work Costs for future O&M Work, stated by  
20 Fiscal Year and in present value dollars as of the time of the estimate (i.e.,  
21 as if the future O&M Work were to be performed and the Extra Work Costs  
22 thereof paid for in the year of the estimate);
- 23 (v) Where Developer makes a request for a Completion Deadline adjustment,  
24 a Time Impact Analysis of the Project Schedule, in accordance with Section  
25 GP 110.06.2.11 of the Technical Provisions;
- 26 (vi) An analysis, and detailed, itemized estimate of all costs, of potential  
27 acceleration, re-sequencing, re-scheduling and other work-around or  
28 mitigation measures and a comparison of the estimated costs thereof to  
29 the estimated savings in the Compensation Amount and, if applicable,  
30 Completion Deadline adjustment that would result. If Developer requests  
31 a Completion Deadline adjustment and reasonably believes that it is not  
32 feasible to recover under the existing Completion Deadlines or reduce the  
33 Completion Deadline adjustment, or that the costs associated with such  
34 recovery or reduction are prohibitive, then Developer shall so state and  
35 provide supporting analysis and evidence;
- 36 (vii) The effect of the Relief Event on Developer’s ability to perform any of its  
37 obligations under this Agreement, including details of the relevant  
38 obligations, and the likely duration of that effect;
- 39 (viii) An explanation of the measures that Developer has previously taken to

1 prevent, and proposes to undertake to mitigate, the costs, delay and other  
2 consequences of the Relief Event; and

3 (ix) The type and amount of the Insurance Policies that may be applicable and  
4 amounts that have been or are anticipated to be collected under such  
5 Insurance Policies. Developer shall provide a copy of every notice letter  
6 and/or claim submitted to an insurer or other party that may be liable to  
7 reimburse or indemnify Developer due to the Relief Event. If the Relief  
8 Event may be covered by Developer's self-insurance or a Developer-  
9 controlled insurance program, Developer shall provide documentation of  
10 any claim against such insurance that it prepares in the ordinary course of  
11 business.

12 (b) Developer shall submit the Relief Request on a standardized form approved by  
13 ADOT. Prior to submission of the first Relief Request, Developer shall submit a  
14 draft form of Relief Request to ADOT for its review and approval.

15 (c) If, following submission of any Relief Request, Developer receives or becomes  
16 aware of (i) further information or estimates relating to the Relief Event or (ii)  
17 consequences of the Relief Event that (A) are of a different nature or scope from  
18 the consequences originally stated in the Relief Request, (B) first arise or occur  
19 after Developer delivers the Relief Request to ADOT, and (C) could not have been  
20 anticipated through the exercise of reasonable diligence and Good Industry  
21 Practice prior to delivering the Relief Request to ADOT, then Developer shall  
22 submit to ADOT a supplement setting forth such further information, estimates or  
23 new consequences. ADOT shall submit the supplement within the time limit set  
24 forth in Section 16.1.7(c). ADOT may request from Developer any additional  
25 information that ADOT may reasonably require, and Developer shall supply the  
26 same within the time period specified in ADOT's request for such additional  
27 information.

28 (d) Neither the fact that Developer submits to ADOT a Relief Request, nor the fact  
29 that ADOT keeps account of the costs of labor, materials, or equipment or time,  
30 shall in any way be construed as establishing the validity of the Relief Request or  
31 the Claims therein or method of computing any Compensation Amount or  
32 extension of Completion Deadlines.

#### 33 **16.1.4 ADOT Evaluation and Response to Relief Request; Negotiations**

34 (a) ADOT will evaluate the information presented in the Relief Request or in any  
35 supplement thereto pursuant to Section 16.1.3(c), and provide a written response  
36 to Developer within 45 days after receipt by ADOT, or any extension thereof  
37 agreed by the Parties.

- 1 (b) If ADOT does not provide Developer a written response within such 45-day period,  
2 and Developer has complied with all requirements of Sections 16.1.2 and 16.1.3,  
3 then the Relief Request or any supplements thereto shall be considered a Dispute  
4 for which Developer may initiate the Dispute Resolution Procedures in Section 24.  
5 ADOT's time to respond before a matter is eligible for resolution by the Dispute  
6 Resolution Procedures provided by Section 16.1.4(c) shall commence only when  
7 Developer submits all information required by Sections 16.1.2 and 16.1.3, unless  
8 ADOT agrees otherwise in writing.
- 9 (c) If ADOT provides a written response within such 45-day period stating that there  
10 are matters in dispute regarding the Relief Request or any supplement thereto,  
11 such matters in dispute shall be considered a Dispute for which Developer may  
12 initiate the Dispute Resolution Procedures in Section 24.
- 13 (d) ADOT may respond to Developer that the Relief Request does not fully comply  
14 with the content or format requirements of Sections 16.1.3(a) and (b) and reject  
15 the Relief Request for this reason. If ADOT provides any such response, Developer  
16 shall have the option to withdraw the Relief Request or to correct the deficiencies  
17 therein and re-submit it for ADOT's consideration. Developer's right to re-submit  
18 the Relief Request shall be subject to the time limitations provided in Section  
19 16.1.7(b).

#### 20 **16.1.5 Final Documentation of Relief Event**

- 21 (a) Within 30 days of the completion of Work related to a Relief Event that is the  
22 subject of a Relief Request which has not been resolved (whether by the Dispute  
23 Resolution Procedures or otherwise), Developer shall submit to ADOT the full and  
24 final documentation of the Relief Event. Pertinent information, references,  
25 arguments, and data to support the Relief Event shall be included in the full and  
26 final documentation, including updated analyses, descriptions, actual amounts  
27 and impacts, specific dates for Completion Deadline adjustments, and other  
28 documentation covering the same scope of information as required in Section  
29 16.1.3(a) for the Relief Request.
- 30 (b) Without limiting the foregoing, if Developer claims compensation under Section  
31 16.2, and except to the extent that such compensation is the subject of a previous  
32 written agreement by the Parties to be paid as a negotiated fixed price, Developer  
33 shall provide an itemized accounting of the actual direct costs. The accounting  
34 shall break down such costs in terms of labor (including audited burden),  
35 materials, equipment, third party fees (e.g., permit fees, plan check fees and  
36 charges) and other direct costs and indirect costs, field office overhead and profit,  
37 and any other cost category reasonably requested by ADOT. The documentation  
38 also shall include, to the extent applicable, the Extra Work Costs for future O&M  
39 Work, stated by Fiscal Year and in present value dollars as of the time of the  
40 estimate (i.e., as if the future O&M Work were to be performed and the Extra

1 Work Costs thereof paid for in the year of the estimate). The labor, materials, and  
2 equipment cost categories shall account for the following items:

3 (i) As to labor: a listing of individuals, classifications, regular hours and  
4 overtime hours worked, dates worked, and other pertinent information  
5 related to the requested payment of labor costs;

6 (ii) As to materials: invoices, purchase orders, location of materials either  
7 stored or incorporated into the Project, dates materials were transported  
8 to the Site or incorporated into the Project, and other pertinent  
9 information related to the requested payment of material costs; and

10 (iii) As to equipment: a detailed description (including make, model, and serial  
11 number) of the affected equipment, hours of use, dates of use, and  
12 equipment rates. Equipment rates shall be determined pursuant to Section  
13 1.2.3 of Exhibit 13 (Compensation Amount Specifications) as of the first  
14 date when the affected work related to the Relief Event claim was  
15 performed.

16 (c) Developer shall submit the full and final documentation of the Relief Event on a  
17 standardized form approved by ADOT, and shall certify the Relief Event claim to  
18 be accurate, truthful, and complete. Information submitted subsequent to the full  
19 and final documentation submittal will not be considered. No full and final  
20 documentation of the Relief Event claim will be considered that does not have the  
21 same nature, scope (except for reductions) and circumstances, and basis of the  
22 Relief Event claim, as those specified (i) in the Relief Event Notice and any  
23 supplements submitted in accordance with Section 16.1.2(c) and (ii) in the Relief  
24 Request and any additional information submitted in accordance with Section  
25 16.1.3(c).

#### 26 **16.1.6 ADOT Response to Final Documentation; Supplemental Agreement**

27 (a) ADOT's failure to respond to a full and final documentation of a Relief Event claim  
28 arising out of a Relief Event within 45 days after receipt shall constitute ADOT's  
29 rejection of the Relief Event claim, which shall thereafter constitute a Claim  
30 subject to the Dispute Resolution Procedures.

31 (b) If ADOT finds the Relief Event claim or any part thereof to be valid, or if the Relief  
32 Event claim or any part thereof is deemed to be valid as a result of completion of  
33 the Dispute Resolution Procedures, ADOT will:

34 (i) Deliver to Developer notice authorizing such partial or whole Relief Event;

35 (ii) Pay the Compensation Amount with respect to such Relief Event by one of  
36 the methods set forth in Section 16.2.3); and

1 (iii) Grant a commensurate Completion Deadline adjustment, if applicable, as  
2 provided in the Contract Documents.

3 (c) The Parties shall thereafter promptly execute a Supplemental Agreement  
4 documenting the Relief Event claim or part thereof that ADOT finds to be valid or  
5 that is upheld through the Dispute Resolution Procedures.

6 **16.1.7 Waiver**

7 Time is of the essence in Developer’s delivery of its written Relief Event Notice,  
8 supplemental Relief Event Notice, Relief Request and any additional information, estimates or  
9 new consequences to be provided under Section 16.1.3(c).

10 (a) If for any reason Developer fails to deliver the Relief Event Notice or supplement  
11 thereto in compliance with all applicable requirements:

12 (i) Within 45 days following the date (for purposes of this Section 16.1.7, the  
13 “starting date”) on which Developer first became aware (or should have  
14 been aware, using all reasonable due diligence) of the Relief Event (or, in  
15 the case of a supplement, the new consequences described in Section  
16 16.1.2(c)), Developer shall be deemed to have irrevocably and forever  
17 waived and released the portion of any Claim or right to relief for any  
18 adverse effect attributable or related to the Relief Event accruing after  
19 such 45-day deadline and until the date Developer submits the written  
20 Relief Event Notice or supplement thereto; and

21 (ii) Within 90 days following the starting date, Developer shall be deemed to  
22 have irrevocably and forever waived and released any and all Claim or right  
23 to relief for any adverse effect attributable or related to such Relief Event;  
24 and

25 (b) If for any reason Developer fails to deliver the Relief Request in compliance with  
26 all applicable requirements in Section 16.1.3 within 60 days after the date of the  
27 Relief Event Notice, Developer shall be deemed to have irrevocably and forever  
28 waived and released any and all Claim or right to relief for any adverse effect  
29 attributable or related to such Relief Event, provided, however, that with respect  
30 to any re-submittal of the Relief Request pursuant to Section 16.1.4(d), such  
31 deadline shall be the later of (i) 15 days after Developer receives ADOT’s rejection  
32 of the Relief Request or (ii) 60 days after the date of the Relief Event Notice.

33 (c) If for any reason Developer fails to deliver additional information, estimates or  
34 new consequences required under Section 16.1.3(c) within 60 days after receiving  
35 or becoming aware of such additional information, estimates or new  
36 consequences, Developer shall be deemed to have irrevocably and forever waived

1 and released any and all additional Claim or right to relief based on or included in  
2 such additional information, estimates or new consequences.

### 3 **16.1.8 Open Book Basis**

4 Developer shall share with ADOT all data, documents and information, and shall conduct  
5 all discussions and negotiations pertaining to a claimed Relief Event on an Open Book Basis.

## 6 **16.2 Payment for Extra Work Costs and Delay Costs**

7 **16.2.1** Except as provided otherwise in this Agreement, ADOT will pay to Developer the  
8 Compensation Amount directly attributable to occurrence of a Relief Event.

9 **16.2.2** ADOT will provide Developer with Notice of the method chosen for paying  
10 Developer for the Compensation Amount owed. ADOT may choose any method set forth in  
11 Section 16.2.3, or a combination of such methods, in its sole discretion.

12 **16.2.3** Following receipt of complete and conforming Claim documentation pursuant to  
13 Section 16.1, if ADOT chooses to pay the Compensation Amount owed under this Section 16.2:

14 (a) As a lump sum payment other than a negotiated fixed price, then payment of all  
15 undisputed amounts will be due and owing not later than the Developer Cycle Key  
16 Date first occurring after ADOT's receipt of all pertinent data, documents and  
17 information with respect to the Extra Work Costs or Delay Costs, as applicable;

18 (b) As a lump sum payment that is a negotiated fixed price, then payment(s) of all  
19 undisputed amounts will be due and owing not later than the Developer Cycle Key  
20 Date first occurring after ADOT receives from Developer all documentation  
21 required pursuant to the negotiated fixed price terms in order to receive  
22 scheduled payments under the negotiated fixed price terms with respect to such  
23 Extra Work Costs or Delay Costs, as applicable; and

24 (c) As progress payments invoiced as Work is completed, then payment of all  
25 undisputed amounts will be due and owing not later than the Developer Cycle Key  
26 Date first occurring after each date ADOT receives from Developer an invoice of  
27 such Extra Work Costs or Delay Costs incurred, as applicable, for such Work during  
28 the previous month, which invoice shall be itemized as set forth in Section 16.1.5  
29 and by the components of Extra Work Costs or Delay Costs, as applicable,  
30 allowable under Exhibit 13 (Compensation Amount Specifications) .

31 **16.2.4** If any portion of the Compensation Amount consists of costs of design or  
32 construction not then performed, then ADOT will have no obligation to make advance payments  
33 and shall have the right to pay such portion in monthly progress payments in accordance with

1 Section 15 and ADOT's standard practices and procedures for paying its contractors and  
2 applicable Laws.

3 **16.2.5** If ADOT elects to make monthly or other periodic payments, at any later time it  
4 may choose to complete compensation through a lump sum payment of the present value,  
5 determined in accordance with Section 16.2.6, of the remaining Extra Work Costs and Delay  
6 Costs.

7 **16.2.6** For the purpose of any discounting of future cost impacts, the Parties shall use  
8 as the discount rate the then-applicable yield on U.S. Treasury bonds having a tenor of seven  
9 years, as most recently issued as of the date ADOT issues its notice under Section 16.2.2, plus 150  
10 basis points.

11 **16.2.7** The Compensation Amount attributable to a Relief Event shall:

12 (a) Exclude:

13 (i) Third-party entertainment costs, lobbying and political activity costs, costs  
14 of alcoholic beverages, costs for first or business class travel in excess of  
15 prevailing economy travel costs, and costs of club memberships, in each  
16 case to the extent that such costs would not be reimbursed to an employee  
17 of ADOT in the regular course of business; and

18 (ii) Unallowable costs under the following provisions of the federal Contract  
19 Cost Principles, 48 C.F.R §§ 31.205: 31.205-8 (contributions or donations),  
20 31.205-13 (employee morale, health, welfare, food service, and dormitory  
21 costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines,  
22 penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-  
23 34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade,  
24 business, technical and professional activity costs), 31.205-44 (training and  
25 education costs), and 31.205-47 (costs related to legal and other  
26 proceedings);

27 (b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer  
28 could reasonably obtain in an arm's length, competitive transaction with a non-  
29 Affiliated Subcontractor;

30 (c) Exclude costs incurred in investigating, analyzing, asserting, pursuing or enforcing  
31 any Claim or Dispute, including:

32 (i) legal, accounting, financial advisory, and technical advisory fees and  
33 expenses; and

34 (ii) costs in connection with preparing Relief Event Notices, Relief Requests,  
35 final documentation of Claims in respect of Relief Events, and materials  
36 prepared for the Dispute Resolution Procedures;

- 1 (d) Take into account any savings in costs or time resulting from the Relief Event;
- 2 (e) Be subject to Developer’s obligation to prevent and to mitigate cost increases and  
3 augment cost decreases in accordance with Section 16.9;
- 4 (f) Exclude any amounts covered by applicable Insurance Policies or deemed self-  
5 insurance, as more particularly provided in Section 16.5; and
- 6 (g) Exclude loss, damage or destruction caused by a Relief Event or any other event  
7 to the tools, machinery, equipment and other items listed in, and to the extent  
8 provided in, Section 13.3.8.

9 **16.2.8** ADOT, at its election, may offset any Compensation Amount against any  
10 amounts due and owing to ADOT from Developer pursuant to this Agreement, such offset rights  
11 being in addition to ADOT’s offset rights under Section 21.2.5.

12 **16.3 Claim Deductible**

13 **16.3.1** Except as provided in this Section 16.3, each separate occurrence during the D&C  
14 Period of a Relief Event for which Developer makes a Claim for a Compensation Amount shall be  
15 subject to the Claim Deductible. The Claim Deductible reflects the Parties’ agreement that:

- 16 (a) Developer shall bear the financial risks for Extra Work Costs and Delay Costs, as  
17 applicable, for each separate occurrence during the D&C Period of a Relief Event,  
18 up to the Claim Deductible; and
- 19 (b) except as otherwise provided in this Section 16, ADOT will pay to Developer the  
20 applicable Compensation Amount in excess of the Claim Deductible; provided,  
21 however, that each Claim complies with Section 16.1.

22 **16.3.2** The Claim Deductible shall not apply to a Claim seeking recovery for:

- 23 (a) A Relief Event set forth in clauses (a), (b), (c), (g) (but only as to ADOT Releases of  
24 Hazardous Materials), (p), (s) or (t) of the definition of Relief Event; or
- 25 (b) A Relief Event first occurring during the O&M Period.

26 **16.3.3** For purposes of applying the Claim Deductible to each separate occurrence of a  
27 Relief Event, the occurrence of the Relief Event is determinative rather than the amount, number,  
28 locations or duration of consequences from the occurrence. For example, regarding clause (j) of  
29 the Force Majeure Event definition, a vehicle collision or traffic accident involving multiple  
30 vehicles and/or damage to multiple Elements shall be treated as a single Relief Event occurrence  
31 subject to one Claim Deductible. As an additional example, a Flood Event (clause (g) of the Force

1 Majeure Event definition) that results in flooding of three separate locations of the Project shall  
2 be treated as a single Relief Event occurrence subject to one Claim Deductible.

3 **16.4 Other Deductibles; Special Provisions**

4 Developer’s rights and remedies respecting certain Relief Events and Losses are subject to the  
5 provisions of this Section 16.3.3. The provisions of this Section 16.3.3 supersede any contrary  
6 provisions of this Agreement, but do not replace or supersede the other conditions and  
7 requirements for obtaining relief under this Section 16.

8 **16.4.1 Acquisition of Project ROW**

9 If a Relief Event occurs under clause (c) of the definition of Relief Event (concerning ADOT-  
10 Caused Delay) where the ADOT-Caused Delay is under clause (d) or (e) of such definition  
11 (concerning a time period to make available to Developer parcels being acquired for Project  
12 ROW), then the following provisions shall apply.

13 (a) If such Relief Event concerns Project ROW other than Developer-Designated ROW  
14 and Temporary Construction Easements, then Developer shall be eligible for a  
15 Compensation Amount, Completion Deadline adjustment and any other  
16 applicable relief specified in this Section 16.

17 (b) If such Relief Event concerns Developer-Designated ROW or a Temporary  
18 Construction Easement, then Developer’s relief shall be limited to any applicable  
19 Completion Deadline adjustment (and Developer shall not be entitled to any  
20 increase in the Contract Price or any other related Claim); provided that Developer  
21 shall have the sole risk of delay to Completion Deadlines arising out of the holding  
22 by the court in any condemnation action for the taking of the requested  
23 Developer-Designated ROW or Temporary Construction Easement over Additional  
24 TCE Property to the effect that (i) ADOT’s power of eminent domain does not  
25 extend to such requested Developer-Designated ROW or Temporary Construction  
26 Easement, or (ii) the proposed condemnation does not satisfy legal requirements  
27 for necessity of the taking.

28 (c) The refusal of any Governmental Entity that owns or controls Developer-  
29 Designated ROW or Additional TCE Property to grant necessary rights of access,  
30 entry and use to ADOT after ADOT makes diligent efforts to negotiate acquisition  
31 thereof shall not be grounds for any Claim other than any applicable Completion  
32 Deadline adjustment.

33 (d) To the extent that ADOT has not provided Developer with access to portions of  
34 the Project ROW on or prior to the later of the date provided in the Project  
35 Schedule or the date provided in TP Attachment 470-1 of the Technical Provisions,  
36 Developer shall work around such Project ROW and minimize delay to the  
37 completion of the Project.

1           **16.4.2 Force Majeure Events**

2           (a)     If (i) a Force Majeure Event as described in clause (j) of the definition thereof  
3           (certain vehicle collisions during D&C Period) occurs, (ii) the damage or  
4           destruction is to a bridge structure, noise wall, retaining wall, pavement section  
5           or overhead sign structure (including the DMS overhead structure at Sunset Point)  
6           that is part of the Existing Improvements, and (iii) ADOT elects to issue an ADOT-  
7           Directed Change or Directive Letter authorizing Developer to repair or replace  
8           such damage or destruction, then Developer shall be entitled to Extra Work Costs  
9           for the repair or replacement work. For clarity, occurrence of such a Force  
10          Majeure Event may entitle Developer to Delay Costs and a Completion Deadline  
11          adjustment with or without an ADOT-Directed Change or Directive Letter.

12          (b)     If a Force Majeure Event as described in clause (k) of the definition thereof occurs,  
13          then:

14               (i)     Notwithstanding any contrary provision of this Agreement, any resulting  
15               Pandemic Law shall be treated as part of such Force Majeure Event and  
16               shall not be treated as a Change in Law;

17               (ii)    Developer shall be entitled to the Compensation Amount and a Relief  
18               Event Delay only to the extent directly attributable to (A) unavailability or  
19               untimely delivery of equipment or material caused by such Force Majeure  
20               Event, (B) unavailability of labor due to sickness or quarantine in  
21               connection with such Force Majeure Event, or (C) Pandemic Law that  
22               directly adversely impacts jobsite productivity; and

23               (iii)   Developer shall, as part of its mitigation efforts under Section 16.9,  
24               implement applicable measures set forth in the Safety Management Plan.

25           **16.4.3 Utility Company Delay**

26          (a)     Developer shall not be entitled to Extra Work Costs relating to Utility Company  
27          Delay, except for Extra Work Costs allowable under Section 16.9.3 to mitigate  
28          Delay Costs.

29          (b)     Except as provided otherwise in Section 7.2.6, Developer shall be entitled to  
30          Completion Deadline adjustment for delay to the Critical Path that is directly  
31          attributable to Utility Company Delay.

32          (c)     Developer shall not be entitled to any Claim for Delay Costs relating to a Utility  
33          Company Delay described in clause (c) of the definition of Utility Company Delay  
34          unless the applicable Utility Agreement precludes an adequate damages remedy  
35          to Developer for Utility Company delays.

1           **16.4.4 Inaccurate Utility Information**

2           The following limitations apply to the Relief Event set forth in clause (f) of the definition  
3 thereof concerning Inaccurate Utility Information:

4           (a)     Developer’s compensation for Extra Work Costs shall be limited to the aggregate  
5 Extra Work Costs of the Utility Adjustment Work (including reimbursements  
6 payable to Utility Companies) that are directly attributable to the Inaccurate  
7 Utility Information.

8           (b)     Developer shall be entitled to compensation for reasonable and necessary costs  
9 to acquire Replacement Utility Property Interests for Utility Adjustments due to  
10 Inaccurate Utility Information only where:

11           (i)     The Utility Information fails to indicate, and none of the Developer-Related  
12 Entities has actual knowledge as of the Setting Date, that the Utility  
13 Company holds or is assumed to hold Prior Rights Documentation with  
14 respect to the subject Utility;

15           (ii)    It is not physically possible, including through commercially reasonable  
16 design modifications as described in Section 7.2.4(a), to perform the  
17 subject Utility Adjustment within the Schematic ROW or to use Protection  
18 in Place; and

19           (iii)   The Utility Company is not legally responsible under Law for the acquisition  
20 costs, such as in the case of a Replacement Utility Property Interest that is  
21 not for a Betterment or Utility Company Project.

22           (c)     Developer shall be entitled to Delay Costs and a Completion Deadline adjustment  
23 due to Inaccurate Utility Information only if the subject Utility is not a Service Line.

24           (d)     Developer shall be entitled to relief for Inaccurate Utility Information with respect  
25 to any Temporary Construction Easement in accordance with Section 16.4.20.

26           **16.4.5 Hazardous Materials**

27           (a)     If there occurs any Relief Event under clause (g) or (h) of the definition of Relief  
28 Event, and if Developer timely satisfies the terms and conditions for asserting a  
29 Relief Event set forth in Section 16.1, then ADOT will pay the applicable  
30 Compensation Amount directly attributable to Developer’s Hazardous Materials  
31 Management of such Hazardous Materials, subject to each of the following.

32           (i)     The Compensation Amount shall be limited as set forth in clause (b) below  
33 and shall be subject to adjustment as provided in Section 16.5.

1 (ii) If (A) the Hazardous Materials are contained in soils or other solid materials  
2 or objects that may be returned to trenches or other areas of excavation  
3 within or adjacent to the Project ROW pursuant to regulations, policies or  
4 approvals of applicable Governmental Entities, and (B) the excavation of  
5 such contaminated soils or other solid materials or objects is undertaken  
6 for any purpose or reason other than the fact of contamination, then Extra  
7 Work Costs for which ADOT is liable shall be limited to the reasonable  
8 incremental increase in out-of-pocket costs incurred in handling such  
9 contaminated soils, materials and objects in excess of the out-of-pocket  
10 costs Developer would incur to handle the same if they did not contain  
11 Hazardous Materials.

12 (iii) If the Hazardous Materials are contained in soils or other solid materials or  
13 objects that are removed from the location where found for any purpose  
14 or reason other than the fact of contamination, then Extra Work Costs for  
15 which ADOT is liable shall be limited to the reasonable incremental  
16 increase in out-of-pocket costs incurred to excavate, handle, contain, haul,  
17 transport, remove, remediate and dispose of the soils or other solid  
18 materials or objects in excess of the out-of-pocket cost Developer would  
19 incur to do the same if they did not contain Hazardous Materials.

20 (iv) If avoidance or remediation of such Hazardous Materials is capable of  
21 being accomplished under applicable Laws and Governmental Approvals  
22 through measures less costly than excavation, removal and off-site  
23 disposal of contaminated soil and groundwater, or less costly than return  
24 to trenches and other areas of excavation, then ADOT will only be liable  
25 for the least costly alternate measure. Such alternate, less costly measures  
26 may include (A) design modifications and construction techniques to avoid  
27 such Hazardous Materials or reduce the quantities to be excavated,  
28 handled, contained, hauled, transported, removed, remediated and  
29 disposed of off-site, and (B) on-site containment and institutional controls.  
30 If, however, Developer demonstrates that the total cost of any alternate  
31 measure, including Delay Costs to be borne by Developer, will exceed the  
32 total cost of excavation, removal and off-site disposal or return to trenches  
33 and other areas of excavation, including Delay Costs to be borne by  
34 Developer, then Developer shall not be obligated to implement such  
35 alternate measure. Developer shall respond to all reasonable requests by  
36 ADOT for supporting information regarding such cost comparison.

37 (v) The Compensation Amount available under this clause (a) is subject to the  
38 Claim Deductible, except with respect to ADOT Releases of Hazardous  
39 Materials.

- 1 (b) None of the following liabilities, costs, expenses and Losses shall be chargeable  
2 against or reimbursable by ADOT, including with respect to any Relief Event under  
3 clause (g) or (h) of the definition of Relief Event:
- 4 (i) Liabilities, costs, expenses and Losses to the extent attributable to  
5 Developer Releases of Hazardous Materials;
- 6 (ii) Delay Costs arising out of Releases of Hazardous Materials from vehicles  
7 operating within the Project ROW or the need to repair damage to Project  
8 improvements caused thereby. For purposes hereof, “vehicle” has the  
9 meaning set forth in A.R.S. § 28-101, and also means aircraft;
- 10 (iii) Liabilities, costs, expenses and Losses that could be avoided by the exercise  
11 of Good Industry Practice to mitigate and reduce cost, including exercise  
12 of Developer’s duties to avoid and mitigate set forth in Section 8.8.2;
- 13 (iv) Administrative and overhead expenses and profit of Developer or its  
14 Subcontractors arising out of or relating to performance of Hazardous  
15 Materials Management, except for (A) if Developer performs the  
16 investigation, characterization and remediation itself, then reasonable  
17 indirect costs and field office overhead expenses (but not profit) of  
18 Developer, in any case not exceeding 10% of the direct costs of such Work,  
19 and (B) if a Subcontractor directly performs investigation and  
20 characterization of Hazardous Materials or directly performs remediation  
21 of the Hazardous Materials, then reasonable indirect costs, field office  
22 overhead expenses and profit of such Subcontractor, in any case not  
23 exceeding the 15% markup as set forth in Section 1.1.2 of Exhibit 13  
24 (Compensation Amount Specifications), and a 5% markup by Developer as  
25 set forth in Section 1.1.3 of Exhibit 13 (Compensation Amount  
26 Specifications);
- 27 (v) Liabilities, costs, expenses and Losses incurred attributable to Developer  
28 Releases of Hazardous Materials;
- 29 (vi) Liabilities, costs, expenses and Losses incurred attributable to any  
30 Developer Act that exacerbates or increases the Release of Hazardous  
31 Materials or the costs to undertake Hazardous Materials Management;
- 32 (vii) Liabilities, costs, expenses and Losses incurred to the extent ADOT is not  
33 afforded the opportunity to inspect sites containing Hazardous Materials  
34 (including ADOT Releases of Hazardous Materials) before Developer takes  
35 any action that would inhibit ADOT’s ability to ascertain the nature and  
36 extent of the Hazardous Materials, except for Developer’s Emergency  
37 actions necessary to stabilize and contain a sudden release or otherwise  
38 required by Law to address the Emergency immediately;

1 (viii) Liabilities (except generator liability to the extent assumed by ADOT under  
2 Section 8.8.7(a)), costs, expenses and Losses with respect to Hazardous  
3 Materials in, on or under Developer-Designated ROW, Temporary  
4 Construction Easements, Replacement Utility Property Interests (except if  
5 Section 16.4.4(b) applies) or Developer's Temporary Work Areas; and

6 (ix) Liabilities, costs, expenses and Losses with respect to Hazardous Materials  
7 in, on or under locations Developer is required to avoid pursuant to the  
8 Technical Provisions.

9 (c) Extra Work Costs for off-Site disposal of soils contaminated with Hazardous  
10 Materials for which ADOT is liable under this Section 16.4.5 shall be determined  
11 by applying the same unit price (per ton or cubic yard) that applies to Developer  
12 under the Subcontract for off-site disposal of Hazardous Materials of similar  
13 character for which Developer is not compensated by ADOT. If no such  
14 Subcontract exists, or if no such unit price is stated in such Subcontract, then the  
15 unit price shall not exceed the unit price ADOT could obtain through competitive  
16 low bid from a qualified contractor for such work.

#### 17 **16.4.6 Cultural Resources**

18 Developer shall not be entitled to any increase in the Contract Price in connection with  
19 the Relief Event under clause (i) of the definition of Relief Event to the extent affecting (i)  
20 Developer-Designated ROW or (ii) Temporary Construction Easements.

#### 21 **16.4.7 Differing Site Conditions**

22 Developer's entitlement to the Compensation Amount and Completion Deadline  
23 adjustment for Differing Site Conditions shall be subject to the following conditions:

24 (a) During the D&C Work, if Developer encounters Differing Site Conditions,  
25 Developer shall immediately notify ADOT.

26 (b) Developer shall bear the burden of proving that a Differing Site Condition exists  
27 and that Developer could not reasonably have worked around the Differing Site  
28 Condition so as to avoid additional cost or delay.

29 (c) Each Relief Request relating to a Differing Site Condition shall include a statement  
30 by a Professional Engineer setting forth all relevant assumptions made by  
31 Developer with respect to the condition of the affected area, justifying the basis  
32 for such assumptions, explaining exactly how the existing conditions differ from  
33 those assumptions, and stating the efforts Developer undertook to find  
34 alternative design or construction solutions to eliminate or minimize the effect of  
35 the conditions and the associated costs.

1 (d) Unless Developer proves that a Differing Site Condition exists, Developer shall not  
2 be entitled to any increase in the Contract Price, Completion Deadline adjustment  
3 or any other Claim in connection with Work stoppages in the affected area during  
4 the period of time Developer investigates conditions in the affected area.

5 (e) Developer shall not be entitled to any increase in the Contract Price or Completion  
6 Deadline adjustment for Differing Site Conditions in, on or under (i) Developer-  
7 Designated ROW (except to the extent provided otherwise in Section 16.6.4  
8 regarding Completion Deadline adjustment), (iii) Temporary Construction  
9 Easements (except to the extent provided otherwise in Section 16.6.4 regarding  
10 Completion Deadline adjustment), (iv) Replacement Utility Property Interests  
11 (except if Section 16.4.4(b) applies) or (v) Developer's Temporary Work Areas.

12 (f) Developer shall be responsible for determining the appropriate action to be  
13 undertaken, subject to approval by ADOT. If any Governmental Approvals specify  
14 a procedure to be followed, Developer shall follow the procedure set forth in such  
15 Governmental Approvals.

#### 16 **16.4.8 Endangered and Threatened Species**

17 Developer shall not be entitled to any increase in the Contract Price in connection with  
18 the Relief Event under clause (k) of the definition of Relief Event to the extent affecting (i)  
19 Developer-Designated ROW or (ii) Temporary Construction Easements.

#### 20 **16.4.9 Change in Law**

21 (a) New or revised State statutes adopted after the Setting Date that change, add to  
22 or replace Applicable Standards, criteria, requirements, conditions, procedures  
23 and specifications, including Safety Standards, relating to the D&C Work or O&M  
24 Work, as well as revisions to the Technical Provisions to conform to such new or  
25 revised State statutes, shall be treated as a Change in Law (clause (l) of the  
26 definition of Relief Event) rather than an ADOT-Directed Change to Technical  
27 Provisions; provided, however, that (i) changes in Adjustment Standards  
28 attributable to the new or revised State statutes shall constitute neither a Change  
29 in Law nor an ADOT-Directed Change, and (ii) no Pandemic Law resulting from the  
30 occurrence of a Force Majeure Event as described in clause (k) thereof shall be  
31 treated as a Change in Law.

32 (b) If there is a Change in Law as described in Section 16.4.9(a) relating to the O&M  
33 Work, then Developer shall be entitled to capital and non-capital Extra Work Costs  
34 of performing the O&M Work necessary to comply with the Change in Law;  
35 provided that Developer shall not be entitled to any such Extra Work Costs if  
36 Developer in any case must replace or rectify defects in an affected Element in  
37 order to comply with the Contract Documents.

- 1 (c) If there is a Change in Law as described in Section 16.4.9(a) relating to the O&M  
2 Work, then ADOT shall be entitled to a credit from Developer for any decrease in  
3 the costs of O&M Work attributable to such Change in Law. The amount of the  
4 decrease shall include a 6% markup on the cost savings for overhead and profit.
- 5 (d) The exclusion set forth in clause (b)(v) of the definition of Change in Law shall not  
6 adversely impact the relief Developer is entitled to under this Section 16 in  
7 connection with Pandemic Law pursuant to clause (d) of the definition of the Relief  
8 Event.

9 **16.4.10 Change in Adjustment Standards**

10 Developer shall not be entitled to any Delay Costs due to a Change in Adjustment  
11 Standards.

12 **16.4.11 D&C Price Adjustment Due to Delay in NTP 1**

- 13 (a) If there is an ADOT-Caused Delay under clause (a) of the definition of ADOT-  
14 Caused Delay (delayed issuance of NTP 1), the D&C Price shall be subject to  
15 adjustment, as described in this Section 16.4.11.
- 16 (b) The adjusted D&C Price shall take effect on the date of issuance of NTP 1.
- 17 (c) The D&C Price shall be adjusted pursuant to a Supplemental Agreement solely by  
18 adding to the portion of the D&C Price for D&C Work performed on and after the  
19 date that such ADOT-Caused Delay becomes effective the “adjustment amount”  
20 (or “ $\Delta$ ”), calculated in accordance with this clause (c), and without the right to any  
21 additional compensation pursuant to the Supplemental Agreement.

22 
$$\Delta = N \times (\text{D\&C Price}) \times (([A-B]/B)/T)$$

23 Where:

24 “ $\Delta$ ” is the adjustment amount distributed on a *pro rata* basis over the  
25 remaining payments of the D&C Price set forth in Exhibit 2-4.1 (D&C Price  
26 Breakdown);

27 “N” is the number of days in the period starting on the 101st day after the  
28 Proposal Due Date and ending on the effective date of NTP 1;

29 “A” is the CCI value published for the month in which the effective date of  
30 NTP 1 occurs;

31 “B” is the CCI published for the month which contains the day which is N  
32 +15 days prior to the 15th day of the month which contains the effective date of  
33 NTP 1; and

1 "T" is the number of days between the 15th of the month for which the  
2 CCI value for "A" was taken and the 15th of the month for which the CCI value for  
3 "B" was taken.

- 4 (d) In the event of a delay to NTP 1 as described in this Section 16.4.11, Developer will  
5 be entitled to request a Supplemental Agreement to extend a Completion  
6 Deadline in accordance with Section 16.6.

#### 7 **16.4.12 D&C Price Adjustment Due to Delay in NTP 2**

- 8 (a) If there is an ADOT-Caused Delay under clause (b) of the definition of ADOT-  
9 Caused Delay (delayed issuance of NTP 2), the D&C Price shall be subject to  
10 adjustment, as described in this Section 16.4.12.

- 11 (b) The adjusted D&C Price shall take effect on the date of issuance of NTP 2.

- 12 (c) The D&C Price shall be adjusted pursuant to a Supplemental Agreement solely by  
13 adding to the portion of the D&C Price for D&C Work performed on and after the  
14 date of issuance of NTP 2 an "adjustment amount" (or " $\Delta$ "), calculated in  
15 accordance with this Section 16.4.12, and without the right to any additional  
16 compensation pursuant to the Supplemental Agreement.

17 
$$\Delta = N \times (\text{D\&C Price} - C) \times (([A-B]/B)/T)$$

18 Where:

19 " $\Delta$ " is the adjustment amount distributed on a *pro rata* basis over  
20 the remaining payments of the D&C Price set forth in Exhibit 2-4.1 (D&C Price  
21 Breakdown);

22 " $C$ " is the amount paid or owing from ADOT to Developer for D&C  
23 Work performed prior to issuance of NTP 2;

24 " $N$ " is the number of days in the period starting on the later of the  
25 11th Business Day after Developer satisfies the conditions precedent to issuance  
26 of NTP 2 set forth in Section 9.4.1;

27 " $A$ " is the CCI value published for the month in which the effective  
28 date of NTP 2 occurs;

29 " $B$ " is the CCI published for the month which contains the day  
30 which is  $N + 15$  days prior to the 15th day of the month which contains the effective  
31 date of NTP 2; and

1                                   “T” is the number of days between the 15th of the month for which  
2                                   the CCI value for “A” was taken and the 15th of the month for which the CCI value  
3                                   for “B” was taken.

- 4           (d)    In the event of a delay to NTP 2 as described in this Section 16.4.12, Developer will  
5                    be entitled to request a Supplemental Agreement to extend a Completion  
6                    Deadline in accordance with Section 16.6.

7                    **16.4.13 Delayed Governmental Approval**

8                    Developer shall not be entitled to any increase in the Contract Price in connection with  
9                    the Relief Event under clause (m) of the definition of Relief Event.

10                   **16.4.14 Delayed Issuance of Section 404 Permit**

11                   Developer shall not be entitled to any increase in the Contract Price in connection with  
12                   the Relief Event under clause (n) of the definition of Relief Event, provided, however, that this  
13                   Section 16.4.14 shall not apply to Delay Costs to the extent directly attributable to delay, beyond  
14                   the 180 days specified in clause (n) of the definition of Relief Event, in issuance of a Section 404  
15                   Individual Permit for the Project where such delay is due solely to the U.S. Army Corps of  
16                   Engineers’ action to generally suspend processing Section 404 Permits.

17                   **16.4.15 Necessary Schematic ROW Changes**

- 18           (a)    A Necessary Schematic ROW Change shall arise only where Developer establishes  
19                    with clear and convincing evidence that it is not physically possible, including  
20                    through commercially reasonable design modifications, to deliver the Basic  
21                    Configuration within the Schematic ROW. The Parties stipulate that it is not  
22                    commercially reasonable to require the following as a design modification:

23                    (i)    Retaining walls where retaining walls are not shown in the Schematic  
24                    Design;

25                    (ii)   An added structure not shown in the Schematic Design;

26                    (iii)   Fill slopes steeper than 2:1; or

27                    (iv)   Cut slopes steeper than 0.75:1.

- 28           (b)    A Necessary Schematic ROW Change shall not include areas outside the Schematic  
29                    ROW for Temporary Construction Easements.

- 30           (c)    Developer shall be entitled to Delay Costs and Completion Deadline adjustment  
31                    attributable to a Necessary Schematic ROW Change, in the respective amounts set  
32                    forth in clause (d) below, only if:

- 1 (i) Developer notifies ADOT, by Relief Event Notice, of the Necessary  
2 Schematic ROW Change, including a reasonable identification of the  
3 subject property, within 180 days after NTP 2;
- 4 (ii) ADOT is unable to deliver access to the necessary additional ROW within  
5 180 days after ADOT reviews and approves the subject property as  
6 qualifying for a Necessary Schematic ROW Change; and
- 7 (iii) The delay affects the Critical Path.
- 8 (d) The percentage of Delay Costs and Completion Deadline adjustment to which  
9 Developer shall be entitled shall vary based on when Developer delivers to ADOT  
10 the appropriate Relief Event Notice, as follows:
- 11 (i) 100% if Developer notifies ADOT within 120 days, inclusive, of NTP 2;
- 12 (ii) 75% if Developer notifies ADOT within 150 days, inclusive, of NTP 2;
- 13 (iii) 50% if Developer notifies ADOT within 180 days, inclusive, of NTP 2; and
- 14 (iv) No compensation for Delay Costs and no Completion Deadline adjustment  
15 if Developer notifies ADOT on or after the 181st day after NTP 2.
- 16 (e) Developer shall bear Extra Work Costs for any re-design and construction for the  
17 additional ROW required for a Necessary Schematic ROW Change; and ADOT will  
18 bear Extra Work Costs for Environmental Approvals, Utility Adjustments,  
19 Hazardous Materials Management and costs to acquire the additional ROW  
20 required for a Necessary Schematic ROW Change.

#### 21 **16.4.16 Latent Defects of Existing Improvements**

22 Developer's entitlement to the Compensation Amount and Completion Deadline  
23 adjustment for the Relief Event claim under clause (t) of the definition of Relief Event (Latent  
24 Defects in Existing Improvements) shall be subject to the following conditions:

- 25 (a) During the D&C Work, if Developer encounters any Defect in the Existing  
26 Improvements, Developer shall immediately notify ADOT.
- 27 (b) Developer shall bear the burden of proving that a latent Defect in the Existing  
28 Improvements exists and that Developer could not reasonably have worked  
29 around such latent Defect so as to avoid additional cost or delay.
- 30 (c) Each Relief Request shall include a statement by a Professional Engineer setting  
31 forth all relevant assumptions made by Developer with respect to the Existing  
32 Improvements, justifying the basis for such assumptions, explaining exactly how  
33 the Existing Improvements differ from those assumptions, and stating the efforts

1 Developer undertook to find alternative design or construction solutions to  
2 eliminate or minimize the effect of latent Defects of the Existing Improvements  
3 and the associated costs.

4 (d) Unless Developer proves that a latent Defect of the Existing Improvements exists,  
5 Developer shall not be entitled to any increase in the Contract Price, Completion  
6 Deadline adjustment or any other Claim in connection with Work stoppages in the  
7 affected area during the period of time Developer investigates conditions in the  
8 affected area.

9 (e) Developer shall not be entitled to any increase in the Contract Price or Completion  
10 Deadline adjustment for a latent Defect of the Existing Improvements in, on or  
11 under (i) Developer-Designated ROW, (iii) Temporary Construction Easements, (iv)  
12 Replacement Utility Property Interests (except if Section 16.4.4(b) applies) or (v)  
13 Developer's Temporary Work Areas.

14 **16.4.17 APS Delay**

15 (a) Developer shall not be entitled to any increase in the Contract Price in connection  
16 with the Relief Event under clause (u) of the definition of Relief Event.

17 (b) Developer may be entitled to a Completion Deadline adjustment due to  
18 occurrence of the Relief Event under clause (u) of the definition of Relief Event,  
19 provided that only the period of delay beyond the date described in clause (u) of  
20 the definition of Relief Event shall be taken into consideration in determining  
21 whether the Critical Path is affected by such Relief Event.

22 **16.4.18 ADOT Broadband Initiative for I-17**

23 (a) Developer shall not be entitled to any increase in the Contract Price in connection  
24 with the Relief Event under clause (v) of the definition of Relief Event.

25 (b) Developer may be entitled to a Completion Deadline adjustment due to  
26 occurrence of the Relief Event under clause (v) of the definition of Relief Event,  
27 but only to the extent that Developer cannot reasonably avoid or mitigate such  
28 interruption or interference to the Construction Work through coordination and  
29 cooperation required under Section 8.5.1, including through re-sequencing and  
30 work arounds. Only the period of interruption or interference beyond the date  
31 described in clause (v) of the definition of Relief Event shall be taken into  
32 consideration in determining whether the Critical Path is affected by such Relief  
33 Event.

34 **16.4.19 Approach Slab, Bridge Deck, Expansion Joint and Culvert Repairs**

35 If ADOT requires approach slab repairs pursuant to Section DR 455.3.2.7 of the Technical  
36 Provisions, requires bridge deck repairs pursuant to Section DR 455.3.2.8 of the Technical

1 Provisions, requires additional expansion joint repairs pursuant to Section DR 455.3.2.8 of the  
2 Technical Provisions, or requires culvert repairs pursuant to Section DR 445.2.2 of the Technical  
3 Provisions, then ADOT will pay the Extra Work Cost pursuant to an ADOT-Directed Change, but  
4 Developer shall not be entitled to schedule relief or Delay Costs. ADOT shall not be liable,  
5 however, for any costs and schedule impacts that Developer incurs to repair damage to bridge  
6 decks, approach slabs, joints or other elements attributable to Developer's removal of AC overlay  
7 on bridge decks and approach slabs pursuant to Section DR 455.3.2.8 of the Technical Provisions.

#### 8 **16.4.20 Conditions Affecting Temporary Construction Easements**

9 If a condition described in clause (f), (i), (k) or (p) of the definition of Relief Event is  
10 discovered within a Temporary Construction Easement, Developer:

- 11 (a) Shall not be entitled to any increase in the Contract Price; and
- 12 (b) May be entitled to Completion Deadline adjustment only where:
  - 13 (i) Such condition adversely impacts the Construction Work required to be  
14 carried out, or the detour routes, within the affected Temporary  
15 Construction Easement; and
  - 16 (ii) Such Construction Work or detour routes are incapable of being relocated  
17 to an alternate location not impacted by such condition.

#### 18 **16.5 Insurance Adjustments**

19 **16.5.1** Application of insurance proceeds in the event of any loss, damage or  
20 destruction to the Project is governed by Section 13.3.

21 **16.5.2** In all other circumstances, each Claim seeking the payment of a Compensation  
22 Amount shall be net of all insurance available to Developer, or deemed to be self-insured by  
23 Developer under Section 13.2.4, with respect to the Relief Event giving rise to the Compensation  
24 Amount. The amount of such insurance or deemed self-insurance shall be netted out before  
25 determining the Compensation Amount to be charged against the Claim Deductible.

#### 26 **16.6 Effect of Relief Events on Completion Deadlines**

27 **16.6.1** Subject to Sections 16.6.2, 16.6.3 and 16.6.4 and satisfaction of any conditions  
28 or requirements set forth in the Contract Documents, including in Section 16.3.3, Developer shall  
29 be entitled to extension of applicable Completion Deadlines by the period that the end of the  
30 Critical Path extends beyond the original Completion Deadline due to any Relief Event Delay that  
31 Developer cannot reasonably avoid through mitigation as required under Section 16.9.  
32 Notwithstanding the foregoing, Developer shall not be entitled to extension of applicable  
33 Completion Deadlines to the extent that the Relief Event Delay is concurrent with any other delay  
34 that is not caused by a Relief Event, except that, where the Relief Event Delay is directly  
35 attributable to existence or occurrence of a Relief Event under clause (a), (b), (c) or (p) of the

1 definition of Relief Event, Developer may be entitled to an extension of applicable Completion  
2 Deadlines attributable to the impact on the Critical Path of such Relief Event Delay even if  
3 concurrent with another delay not caused by a Relief Event.

4 **16.6.2** Developer's entitlement to a Completion Deadline adjustment under Section  
5 16.6.1 is subject to Developer demonstrating that the Project Schedule in the absence of the  
6 Relief Event contained a reasonable amount of time to complete the Work that is the subject of  
7 the Relief Event.

8 **16.6.3** As an alternative to the Completion Deadlines extensions to which Developer is  
9 otherwise entitled under Section 16.6.1, ADOT, in its sole discretion, may pay Developer  
10 acceleration costs based on the information received pursuant to Sections 16.1.3(a)(vi) and  
11 17.1.3(e), in which case such election shall be documented in the applicable Supplemental  
12 Agreement.

13 **16.6.4** Cumulative extensions of a Completion Deadline under Section 16.6.1 due to  
14 Relief Event Delays directly attributable to existence or occurrence of the following Relief Events  
15 shall not exceed 120 days:

16 (a) Relief Events under clauses (g), (i), (j), (k) and (p) of the definition of Relief Event  
17 on or directly affecting Developer-Designated ROW or Temporary Construction  
18 Easements;

19 (b) Relief Events under clause (m) of the definition of Relief Event; and

20 (c) Relief Events under clause (c) of the definition of Relief Event (concerning  
21 ADOT-Caused Delay) where the ADOT-Caused Delay is under clause (e) of such  
22 definition and arises out of the refusal of any Governmental Entity that owns or  
23 controls the requested Developer-Designated ROW or Additional TCE Property to  
24 grant necessary rights of access, entry and use to ADOT after ADOT makes diligent  
25 efforts to negotiate acquisition of such requested Developer-Designated ROW or  
26 Additional TCE Property.

27 The foregoing extension of applicable Completion Deadlines shall be the exclusive remedy for a  
28 Relief Event described in clauses (a), (b) and (c) of this Section 16.6.4. Developer shall not be  
29 entitled to any increase in the Contract Price or any other Claim in connection with such Relief  
30 Events.

1           **16.6.5** All Completion Deadline adjustments are subject to this Section 16.6,  
2 notwithstanding anything to the contrary in the Contract Documents.

3 **16.7 Effect of Relief Events on Developer Performance, Developer Default, Noncompliance**  
4 **Points and Deductions**

5           **16.7.1** Occurrence of a Relief Event shall not excuse Developer from:

6           (a) timely payment of monetary obligations under this Agreement irrespective of  
7 whether Developer is owed a Compensation Amount for the Relief Event; or

8           (b) compliance with the Contract Documents or applicable Laws, except temporary  
9 inability to comply due solely and directly to the Relief Event.

10           **16.7.2** Subject to the requirements set forth in Section 16.9, Developer shall be entitled  
11 to rely upon the occurrence of a Relief Event as a defense against a Developer Default where the  
12 Relief Event causes the Developer Default.

13           **16.7.3** Refer to Section 19.5 regarding the effect of a Relief Event on the accrual of  
14 Noncompliance Events and Noncompliance Points and assessment of Noncompliance Charges  
15 for Noncompliance Events.

16           **16.7.4** Refer to Sections 22.2.4 and 22.2.5 regarding the effect of a Relief Event on  
17 Liquidated Damages for Closures.

18 **16.8 Exclusive Relief; Release of Claims**

19 The relief provided pursuant to this Section 16 or pursuant to the Dispute Resolution Procedures  
20 for a Relief Event shall represent the sole right to compensation, damages, and other relief from  
21 the adverse effects of a Relief Event. As a condition precedent to ADOT’s obligation to pay any  
22 Compensation Amount or abide by such relief, Developer shall execute a full, unconditional,  
23 irrevocable waiver and release, in form reasonably acceptable to ADOT, of any other Claims,  
24 Losses or rights to relief or compensation associated with such Relief Event that is not the subject  
25 of a Dispute.

26 **16.9 Prevention and Mitigation**

27           **16.9.1** Developer shall be entitled to the relief, compensation, time extension and  
28 protection provided under this Section 16 only if the occurrence of a Relief Event and the effects  
29 of such occurrence:

30           (a) Are beyond the reasonable control of Developer-Related Entities;

31           (b) Are not due to a Developer Act; and

1 (c) Could not have been avoided by the exercise of caution, due diligence or  
2 reasonable efforts by Developer-Related Entities.

3 **16.9.2** Subject to Developer’s right to compensation under Section 16.9.3, Developer  
4 shall take all steps reasonably necessary to mitigate the consequences of any Relief Event,  
5 including all steps that would generally be taken in accordance with Good Industry Practice.

6 **16.9.3 Re-sequencing and Re-scheduling of Work; Other Mitigation Measures**

7 (a) Developer shall not be entitled to submit a claim for Compensation Amounts,  
8 Completion Deadline adjustments or other relief that could have been avoided  
9 through accelerating, re-sequencing and re-scheduling of the Work or other work-  
10 around or mitigation measures the cost of which is justified by equal or greater  
11 savings in the Compensation Amount claimed.

12 (b) After submitting the information required by Section 16.1.3(a)(vi), Developer shall  
13 cooperate with ADOT thereafter to identify the acceleration, re-sequencing, re-  
14 scheduling and other work-around or mitigation measures that will maximize  
15 mitigation of costs to ADOT and of any Completion Deadline adjustment, taking  
16 into account the cost of the potential acceleration, re-sequencing, re-scheduling  
17 and other work-around or mitigation measures.

18 (c) ADOT will compensate Developer for the reasonable costs of acceleration, re-  
19 sequencing, re-scheduling and other work-around or mitigation measures  
20 authorized in writing by ADOT pursuant to this Section 16.9.3, in the same manner  
21 it pays the Compensation Amount under Section 16.2.

22 (d) If Developer incurs incremental additional costs to prepare, implement and  
23 achieve a Recovery Schedule pursuant to Section 9.9 and it is later determined  
24 that the circumstances addressed by the Recovery Schedule are a Relief Event  
25 Delay for which Developer is entitled to compensation under this Section 16, then  
26 the Compensation Amount shall include such costs.

27 **16.9.4** Without limiting Section 16.9.3, if any claim is asserted or administrative  
28 proceeding, litigation or other legal action is brought against Developer by any third party (other  
29 than a Developer-Related Entity) seeking relief that would or could entitle Developer to a  
30 Compensation Amount or Completion Deadline adjustment if determined adversely to  
31 Developer, then Developer, at its expense, shall defend against such claim, administrative  
32 proceeding, litigation or other legal action diligently and professionally, shall not interfere with  
33 or resist ADOT’s intervention in the claim negotiations or administrative proceeding, litigation or  
34 other legal action, and shall actively assist and cooperate with ADOT in its defense against the  
35 claim, administrative proceeding, litigation or other legal action. At the request of either Party,  
36 both Parties shall enter into, or cause their respective legal counsel to enter into, a joint defense  
37 agreement setting forth terms for their joint cooperation and defense. The Parties may mutually

1 choose, but are not obligated, to be jointly represented by legal counsel in such administrative  
2 proceeding, litigation or other legal action.

3 **16.9.5** For further mitigation obligations of Developer respecting Hazardous Materials  
4 and Recognized Environmental Conditions, refer to Section 8.8.2.

1           **SECTION 17. ADOT-DIRECTED CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS**

2   **17.1 ADOT-Directed Changes**

3           **17.1.1 ADOT’s Right to Issue Supplemental Agreement**

4           (a) ADOT may, at any time and from time to time, without notice to any Surety,  
5 authorize or require, pursuant to a Supplemental Agreement, changes in the Work  
6 (including reductions in the scope of the D&C Work or O&M Work) or in terms and  
7 conditions of the Technical Provisions (including changes in the Applicable  
8 Standards and Safety Standards), except that ADOT has no right to require any  
9 change that:

10           (i) Requires the Work to be performed in a way that violates applicable Law;

11           (ii) Materially increases risk to the health or safety of any Person; or

12           (iii) Materially and adversely changes the nature of the Project as a whole.

13           (b) ADOT also shall have the right to issue a Supplemental Agreement for any other  
14 event that the Contract Documents expressly state shall be treated as an ADOT-  
15 Directed Change.

16           (c) ADOT’s changes to the Work shall be documented through the issuance of an  
17 ADOT-Directed Change or Directive Letter. No document, including any field  
18 directive, comment to a Submittal, correspondence discussing the Contract  
19 Documents or the Work or otherwise shall be valid, effective or enforceable as an  
20 ADOT-Directed Change unless expressly identified and agreed to in a  
21 “**Supplemental Agreement**” and signed by:

22           (i) the ADOT project director;

23           (ii) the ADOT construction manager for ADOT-Directed Changes with a value  
24 of less than \$350,000; or

25           (iii) another ADOT individual identified in a written notice from the project  
26 director or construction manager to Developer as having authority to  
27 execute Supplemental Agreements.

28           (d) ADOT may in its discretion unilaterally issue a Supplemental Agreement that  
29 amends this Agreement if (i) there is no effect on the Developer’s costs or  
30 schedule and (ii) such amendment is limited to ministerial and administrative  
31 changes necessary for ADOT’s proper administration of this Agreement.

1           **17.1.2 Request for Change Proposal**

2           (a)     If ADOT desires to issue an ADOT-Directed Change or to evaluate whether to  
3           initiate such a change, then ADOT may, in its sole discretion, issue a Request for  
4           Change Proposal. The Request for Change Proposal shall set forth the nature,  
5           extent and details of the proposed ADOT-Directed Change. ADOT may, in its sole  
6           discretion, determine whether to implement the proposed change after  
7           consideration of Developer’s response.

8           (b)     Within five Business Days after Developer receives a Request for Change Proposal,  
9           or such longer period to which the Parties may mutually agree, ADOT and  
10          Developer shall consult to define the proposed scope of the change. Within five  
11          Business Days after the initial consultation, or such longer period to which the  
12          Parties may mutually agree, ADOT and Developer shall consult concerning the  
13          estimated financial, schedule and other impacts.

14          **17.1.3 Response to Request for Change Proposal**

15                 As soon as possible through the exercise of diligent efforts, and in any event within 60  
16          days, following ADOT’s delivery to Developer of a Request for Change Proposal, Developer shall  
17          provide ADOT with a response that contains a detailed assessment of the cost, schedule, and  
18          other impacts of the proposed ADOT-Directed Change, including the following:

19          (a)     A scope of work which shall be described in sufficient detail and broken down into  
20          suitable components and activities to enable pricing. The work breakdown shall  
21          include all activities associated with the proposed modification, including a  
22          description of additions, deletions and modifications to the Technical Provisions;

23          (b)     Developer’s detailed estimate of the impacts on costs of carrying out the proposed  
24          ADOT-Directed Change, including any Extra Work Costs, Delay Costs or reduction  
25          in costs to Developer. The cost estimate shall include a pricing form identifying  
26          which Work items have been priced based on estimated quantities and unit rates  
27          and which items have been priced on another basis, with reasons;

28          (c)     Any consents or permits required;

29          (d)     If the Change Notice is issued prior to the Final Acceptance Date, the effect of the  
30          proposed ADOT-Directed Change on the Project Schedule, including achievement  
31          of the Completion Deadlines, taking into consideration Developer’s duty to  
32          mitigate any delay or any time saved by implementation of the proposed ADOT-  
33          Directed Change;

34          (e)     If so requested by ADOT, in its sole discretion, an alternative cost and schedule  
35          proposal showing the acceleration costs associated with meeting the Completion  
36          Deadlines without any adjustment, as well as any additional costs permitted

- 1 hereunder;
- 2 (f) The effect (if any) of the proposed ADOT-Directed Change on the Performance  
3 Requirements; and
- 4 (g) Any other relevant information related to carrying out the proposed ADOT-  
5 Directed Change.

6 **17.1.4 Negotiation and Directed Changes**

- 7 (a) Following ADOT's receipt of Developer's response to the Request for Change  
8 Proposal and of such further assessment by ADOT and its consultants of the cost,  
9 schedule, and other impacts of the proposed ADOT-Directed Change, if ADOT  
10 decides, in its sole discretion, to proceed with such change, ADOT and Developer  
11 shall exercise good faith efforts to negotiate a mutually acceptable Supplemental  
12 Agreement, including, to the extent applicable:
- 13 (i) any adjustment of the Completion Deadlines; and
- 14 (ii) either (A) any Compensation Amount to which Developer is entitled, and  
15 the timing and method for payment of such Compensation Amount (in  
16 accordance with Section 16.2.2) or (B) any net cost savings and schedule  
17 savings to which ADOT is entitled under Section 17.1.6 and the timing and  
18 method for realizing such cost savings.
- 19 (b) If ADOT and Developer are unable to reach agreement on a Supplemental  
20 Agreement, ADOT may, in its sole discretion, elect to resolve the related Dispute  
21 according to the Dispute Resolution Procedures, with or without issuing a  
22 Directive Letter.
- 23 (i) If ADOT elects not to issue a Directive Letter, Developer shall not  
24 implement the proposed ADOT-Directed Change until resolution by the  
25 Dispute Resolution Procedures.
- 26 (ii) If ADOT delivers to Developer a Directive Letter pursuant to Section 17.3.1  
27 directing Developer to proceed with performance of the Work in question  
28 notwithstanding such disagreement, then:
- 29 (A) Developer shall implement and perform the Work in question as  
30 directed by ADOT; and
- 31 (B) if applicable, ADOT will make interim payments to Developer on a  
32 monthly progress payment basis for the reasonable documented  
33 Compensation Amount that is not disputed by ADOT, subject to  
34 subsequent adjustment through the Dispute Resolution  
35 Procedures.

1           **17.1.5 Payment and Schedule Adjustment**

2           In connection with an ADOT-Directed Change:

- 3           (a)     ADOT will pay (through one of the payment mechanisms set forth in Section  
4                   16.2.3) the Compensation Amount agreed upon or determined through the  
5                   Dispute Resolution Procedures as having resulting from the ADOT-Directed  
6                   Change; and
- 7           (b)     the Project Schedule and Completion Deadlines shall be adjusted as agreed upon  
8                   or determined through the Dispute Resolution Procedures, and in accordance  
9                   with Section 16.6, to reflect the effects of the ADOT-Directed Change.

10           **17.1.6 Reductive ADOT-Directed Changes**

11           (a)     In addition to a Request for Change Proposal, ADOT may deliver to Developer a  
12                   written notice that, in ADOT’s opinion, the ADOT-Directed Change will reduce  
13                   Developer costs, or save time. In such event, ADOT may prepare an analysis and a  
14                   detailed assessment of the cost and schedule impacts of the proposed ADOT-  
15                   Directed Change, either independently of or in reply to Developer’s written  
16                   response to a Request for Change Proposal, including the following:

- 17                   (i)     ADOT’s estimate of the saved costs resulting from the implementation of  
18                   the proposed ADOT-Directed Change;
- 19                   (ii)    If the written notice is issued prior to the Final Acceptance Date, the effect  
20                   of the proposed ADOT-Directed Change on shortening the Project  
21                   Schedule and Completion Deadlines;
- 22                   (iii)   The effect, if any, of the proposed ADOT-Directed Change on Performance  
23                   Requirements; and
- 24                   (iv)    Any other relevant information related to carrying out the proposed ADOT-  
25                   Directed Change.

26           (b)     Developer and ADOT thereafter shall cooperate in good faith to determine the  
27                   estimated net cost savings and time savings, if any, attributable to the proposed  
28                   ADOT-Directed Change. Any dispute regarding such savings shall be resolved  
29                   according to the Dispute Resolution Procedures.

30           (c)     ADOT will be entitled to 100% of the estimated net cost savings, if any,  
31                   attributable to any reductive ADOT-Directed Change. Such net cost savings shall  
32                   include the net reduction, if any, in labor, material, equipment and overhead costs  
33                   associated with the ADOT-Directed Change.

34           (d)     ADOT shall receive such savings:

- 1 (i) as periodic payments from Developer, which, if selected, shall be due and  
2 owing to ADOT monthly on the last day of each month;
- 3 (ii) as an adjustment to the D&C Price;
- 4 (iii) as an adjustment to the O&M Price;
- 5 (iv) as a credit against any sums owed by ADOT to Developer under the  
6 Contract Documents; or
- 7 (v) through any combination of the foregoing, as selected by ADOT.
- 8 (e) Any time savings resulting from a reductive ADOT-Directed Change shall be  
9 incorporated into the Project Schedule and taken into account in determining  
10 available Float.

## 11 **17.2 Developer Changes**

12 **17.2.1** By submittal of a written Change Request, Developer may request ADOT to  
13 approve:

- 14 (a) Modifications to the Technical Provisions; or
- 15 (b) Modifications to Developer's Proposal Commitments.

16 **17.2.2** Any such Change Request shall only request an adjustment to the foregoing that  
17 is of equal or better quality than the original Technical Provisions or Developer's Proposal  
18 Commitments, unless ADOT agrees otherwise, which decision shall be in ADOT's sole discretion.  
19 The Change Request shall set forth Developer's detailed estimate of net impacts (positive and  
20 negative) on costs and schedule attributable to the requested change, including the following:

- 21 (a) The proposed change to the Work in sufficient detail to enable ADOT to evaluate  
22 it in full and the reasons for proposing such change to the Work;
- 23 (b) Any implications of the change to the Work including details regarding proposed  
24 variations to the O&M Price, if any;
- 25 (c) All other information required by Section DR 440.3.2 of the Technical Provisions  
26 with respect to any Change Request that constitutes a Design Exception; and
- 27 (d) All of the information described in Section 17.1.3.

28 **17.2.3** ADOT, in its sole discretion (and, if ADOT so elects, after receiving a  
29 comprehensive report from an independent engineer regarding the proposed Change Request,  
30 the cost of which shall be borne by Developer), may accept or reject any Change Request  
31 proposed by Developer. If ADOT accepts such Change Request, Developer shall execute a

1 Supplemental Agreement and shall implement such change in accordance with the Supplemental  
2 Agreement, applicable Technical Provisions, the Project Management Plan, Good Industry  
3 Practice and all applicable Laws. No Change Request shall be binding or deemed accepted unless  
4 documented in a written Supplemental Agreement signed by ADOT’s Authorized Representative  
5 or by his/her designee appointed in writing. No such Supplemental Agreement shall constitute  
6 an ADOT-Directed Change regardless of its title, designation or wording.

7 **17.2.4** Developer shall solely bear the risk of any increase in the costs of the Work or  
8 other costs, and for any additional risks, resulting from a Change Request accepted by ADOT.  
9 Developer shall not be entitled to any increase in the Contract Price, adjustment of a Completion  
10 Deadline or any other Claim for delays or other impacts resulting from a Change Request  
11 accepted by ADOT.

12 **17.2.5** Without limiting the foregoing, Developer shall compensate ADOT for any  
13 incremental increase in ADOT’s overhead, administrative and out-of-pocket costs resulting from  
14 a Change Request accepted by ADOT. Developer shall make payment in the amount and at the  
15 time or times agreed upon in the Supplemental Agreement. If ADOT and Developer are unable  
16 to agree to the terms of such Supplemental Agreement, ADOT has the right, in its sole discretion,  
17 to reject the Change Request or refer the disagreement to the Dispute Resolution Procedures.

18 **17.2.6** To the extent a Change Request accepted by ADOT results in a net cost savings  
19 to Developer, ADOT will be entitled to 50% of such savings that the analysis indicates will occur  
20 during the remainder of the Term after approval of the Change Request. ADOT will obtain its  
21 share of the savings in the manner described in Section 17.1.6(c).

22 **17.2.7** To the extent a Change Request accepted by ADOT results in a time savings, such  
23 time savings shall be incorporated into the Project Schedule and taken into account in  
24 determining available Float.

25 **17.2.8** Developer may implement and permit a Utility Company to implement, without  
26 a Change Request or Supplemental Agreement, changes to a Utility Adjustment design that do  
27 not vary from the Technical Provisions.

28 **17.2.9** Developer may request as a Deviation certain minor changes in the Work that  
29 do not result in significant cost savings. ADOT, in its sole discretion, may approve such changes  
30 as Deviations, as described in Sections 8.2.5 and 10.5.3, in which case a Supplemental Agreement  
31 is not required. Any other request for a change in the requirements of the Contract Documents  
32 shall require a Change Request and a Supplemental Agreement.

33 **17.3 Directive Letters**

34 **17.3.1** ADOT may at any time issue a Directive Letter to Developer:

- 35 (a) regarding any matter for which a Supplemental Agreement can be issued; or
- 36 (b) in the event of any Dispute regarding the scope of the Work or whether Developer

1                   has performed in accordance with the requirements of the Contract Documents.

2                   **17.3.2** ADOT shall state in each Directive Letter whether the directive therein is Work  
3 that is within, in addition to, or a reduction of the scope of Work set forth in the Contract  
4 Documents.

5                   **17.3.3** No document, including any field directive, comment to a Submittal,  
6 correspondence discussing the Contract Documents or the Work, or otherwise, shall be valid,  
7 effective or enforceable as a Directive Letter unless:

8                   (a) expressly identified as a “**Directive Letter**”; and

9                   (b) signed by:

10                   (i) the ADOT project director;

11                   (ii) the ADOT construction manager for Directive Letters pertaining to Work  
12 with a value of less than \$350,000; or

13                   (iii) another ADOT individual identified in a written notice from the project  
14 director or construction manager to Developer as having authority to  
15 execute Directive Letters.

16                   **17.3.4** The Directive Letter will:

17                   (a) state that it is issued under this Section 17.3;

18                   (b) describe the Work in question; and

19                   (c) if the Directive Letter concerns a matter for which a Supplemental Agreement can  
20 or will be issued, provide for payment of any Compensation Amount, reductions  
21 in compensation and/or schedule adjustment, as applicable, directly attributable  
22 to such matters.

23                   **17.3.5** Developer shall proceed immediately as directed in the Directive Letter,  
24 including by commencing any Work described therein within the time specified in the Directive  
25 Letter.

26                   **17.3.6** If the Directive Letter states that the Work therein is an addition to the scope of  
27 Work in the Contract Documents, but ADOT and Developer disagree as to the extent of the  
28 addition to the scope of Work, Developer shall have the right to assert that an ADOT-Directed  
29 Change has occurred. In such situation, Developer shall comply with and be subject to the  
30 procedures under Section 16.1 for Relief Event claims and the remainder of Section 16 to the  
31 extent of the disagreement of the change in the scope of the Work.

32                   **17.3.7** If the Directive Letter states that the Work is within Developer’s original scope

1 of Work set forth in the Contract Documents or is necessary to comply with the requirements of  
2 the Contract Documents, but Developer disagrees, Developer shall have the right to assert that  
3 an ADOT-Directed Change has occurred. In such situation, Developer shall comply with and be  
4 subject to the procedures under Section 16.1 for Relief Event claims and the remainder of  
5 Section 16.

6 **17.3.8** The fact that ADOT issued a Directive Letter shall not be considered evidence  
7 that an ADOT-Directed Change occurred.

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**SECTION 18. RESERVED**

1                   **SECTION 19. NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS**

2   **19.1 Noncompliance Points System**

3                   **19.1.1** Noncompliance Points shall be used to measure Developer’s performance of  
4 certain obligations listed in the Noncompliance Event Tables in Exhibit 14 (Noncompliance Event  
5 Tables) to this Agreement and trigger remedies described in this Section 19 for breaches and  
6 failures to perform any such obligations. The Noncompliance Event Tables list separately the  
7 Noncompliance Events that apply during the D&C Period and O&M Period, and the corresponding  
8 cure period that is available to Developer for each Noncompliance Event. Inclusion in the  
9 Noncompliance Event Tables of a Noncompliance Event bears no implication regarding the  
10 materiality of the underlying breach or failure to perform. For purposes of this Section 19.1,  
11 references to “cure periods” shall mean those cure periods and repair response times listed or  
12 referenced in the Noncompliance Event Tables.

13                   **19.1.2** The Noncompliance Event Tables contain a representational, but not exhaustive,  
14 list of Noncompliance Events possible under the Contract Documents. Accordingly, ADOT, from  
15 time to time, may add new Noncompliance Events to the Noncompliance Event Tables, or modify  
16 existing Noncompliance Events, subject to the terms and conditions of this Section 19.1.2.

17                   (a) Additions to or modifications of Noncompliance Events and Noncompliance Event  
18 Tables shall be done in consultation with and subject to the prior approval of  
19 Developer. Developer shall cooperate in good faith, and shall not unreasonably  
20 withhold or delay approval, and approval shall be conclusively deemed given if  
21 Developer does not disapprove in writing within the time period set forth in clause  
22 (b) below. Notwithstanding the foregoing, if an addition or modification addresses  
23 any existing or pre-existing Noncompliance Event or breach or failure to perform  
24 obligations under the Contract Documents, Developer acknowledges and agrees  
25 ADOT shall have the right to implement such addition or modification without  
26 necessity for Developer’s approval, provided ADOT has first consulted in good  
27 faith with Developer in accordance with clause (b) below and the addition or  
28 modification otherwise satisfies the terms and conditions in this Section 19.1.2.

29                   (b) ADOT shall initiate the consultation process for additions to or modifications of  
30 Noncompliance Events and Noncompliance Tables by issuing to Developer a  
31 Request for Change Proposal. ADOT and Developer shall thereafter follow the  
32 procedures set forth in Section 17.1, provided that Developer’s time period to  
33 respond with written comments and, if applicable, approval or disapproval shall  
34 not exceed 30 days after receipt of the Request for Change Proposal. If  
35 Developer’s approval is required and given, the Parties shall promptly execute a  
36 Supplemental Agreement making the additions or modifications to Attachment  
37 500-1 of the Technical Provisions, whereupon they shall take effect. If an  
38 affirmative approval from Developer is not required, ADOT will consider in good  
39 faith Developer’s comments and then decide whether and on what terms to  
40 incorporate the proposed additions or modifications into Attachment 500-1 of the

1 Technical Provisions and the O&M Period Noncompliance Event Table. ADOT will  
2 provide a written notice to Developer of its decision, whereupon the addition or  
3 modification shall take effect provided that it otherwise satisfies the terms and  
4 conditions in this Section 19.1.2.

5 (c) For any new Noncompliance Event to be added to the D&C Period Noncompliance  
6 Event Table or “Planning and Reporting” section of the O&M Period  
7 Noncompliance Event Table, ADOT will establish (with Developer’s approval  
8 where applicable) the applicable assessment category (“A” or “B,” as more fully  
9 described in Section 19.3), number of Noncompliance Points, Noncompliance  
10 Charges, and cure period. ADOT’s right to make additions to the D&C Period  
11 Noncompliance Event Table and “Planning and Reporting” section of the O&M  
12 Period Noncompliance Event Table shall not be exercised in a manner to expand,  
13 nor shall it be deemed to expand, Developer’s obligations under the Contract  
14 Documents; but rather to add to or eliminate from the D&C Period Noncompliance  
15 Event Table and “Planning and Reporting” section of the O&M Period  
16 Noncompliance Event Table existing contractual obligations for which  
17 Noncompliance Points may be assessed. Developer shall not be entitled to an  
18 increase in the Contract Price, Completion Deadline adjustment or any other Claim  
19 for additions or adjustments ADOT makes under this clause (c), provided that the  
20 addition or adjustment complies with clause (d) below (if applicable) and clause  
21 (e) below.

22 (d) In order for ADOT to add new, or to modify, Noncompliance Events under the  
23 “Attachment 500-1” section of the O&M Period Noncompliance Event Table,  
24 ADOT shall have the right to make additions or modifications to any applicable  
25 part of Attachment 500-1 of the Technical Provisions, subject to the following  
26 provisions.

27 (i) In the case of an addition, ADOT’s Request for Change Proposal shall set  
28 forth (A) for Attachment 500-1 of the Technical Provisions the Element,  
29 Performance Requirement, repair response times, Inspection method and  
30 frequency, Measurement Record and Target, and (B) the Noncompliance  
31 Points applicable to such Element.

32 (ii) In the case of a modification, ADOT’s Request for Change Proposal shall set  
33 forth the proposed modifications to (A) the number of Noncompliance  
34 Points, and (B) the Noncompliance Charges. ADOT’s right to modify any  
35 applicable part of Attachment 500-1 of the Technical Provisions is limited  
36 such that the repair response times set forth in the O&M Period  
37 Noncompliance Event Table, as it exists on the Effective Date, shall not  
38 decrease unless justified by the need to better protect public safety.

39 (iii) If the sole purpose of the addition or modification under this clause (d) is  
40 to address an aspect of Developer’s design (including materials selection)

1 not originally addressed in Attachment 500-1 of the Technical Provisions  
2 because the design (including materials selection) differs from that  
3 assumed in the Schematic Design, then:

4 (A) the terms for the addition or modification in Attachment 500-1 of  
5 the Technical Provisions shall be generally consistent with the  
6 terms for comparable Elements already in Attachment 500-1 of the  
7 Technical Provisions; and

8 (B) Developer shall not be entitled to (1) any compensation for any  
9 increase in the number of Noncompliance Points, (2) any  
10 compensation for any increase in the risk of incurring  
11 Noncompliance Points and Noncompliance Charges, (3) any  
12 adjustment to the triggers for Persistent Developer Default, or (4)  
13 Completion Deadline adjustment for such additions or  
14 modifications.

15 This clause (iii) supersedes any contrary provisions of Section 17.1.

16 (iv) No modification or addition to Noncompliance Events under the  
17 "Attachment 500-1" section of the O&M Period Noncompliance Event  
18 Table may have an assessment category of "B".

19 (v) If Developer proves, in its written comments, that ADOT's addition or  
20 modification to Attachment 500-1 of the Technical Provisions under this  
21 clause (d), other than those pursuant to clause (iii) above, will result in  
22 Extra Work Costs to perform the O&M Work, then such addition or  
23 modification shall entitle Developer to an additional Compensation  
24 Amount in the amount equal to such Extra Work Costs; provided, however,  
25 that ADOT shall have the right to reduce or eliminate such Extra Work  
26 Costs by further modifying Attachment 500-1 of the Technical Provisions.  
27 Under no circumstances, however, will Developer be entitled to:

28 (A) any compensation for any increase in the risk of incurring  
29 Noncompliance Points and Noncompliance Charges;

30 (B) any adjustment to the triggers for Persistent Developer Default; or

31 (C) Completion Deadline adjustment for such additions or  
32 modifications.

33 This clause (v) supersedes any contrary provisions of Section 17.1.

34 (e) ADOT's right to add existing contractual obligations to the Noncompliance Event  
35 Tables, or to make additions or modifications to Attachment 500-1 of the  
36 Technical Provisions, is limited such that the total number of Noncompliance

1 Points and total Noncompliance Charges set forth in each Noncompliance Event  
2 Table, as it exists on the Effective Date, shall not increase; provided that this  
3 limitation does not apply to additions or modifications made pursuant to clause  
4 (d)(iii) above. In order to avoid a net increase in the total number of  
5 Noncompliance Points and total Noncompliance Charges, ADOT may elect to:

6 (i) remove contractual obligations and reduce Noncompliance Points  
7 allocated to listed contractual obligations;

8 (ii) remove or reduce Noncompliance Charges allocated to listed contractual  
9 obligations; or

10 (iii) remove Elements from Attachment 500-1 of the Technical Provisions.

11 (f) ADOT will have no right to assess Noncompliance Points or Noncompliance  
12 Charges on account of a Noncompliance Event that occurs prior to the addition of  
13 the subject existing contractual obligation(s) to the Noncompliance Event Tables.

## 14 **19.2 Assessment Notification and Cure Process**

### 15 **19.2.1 Notification Initiated by Developer; Monthly Reporting**

16 (a) Developer shall establish within 60 days after NTP 1 and thereafter maintain an  
17 electronic database of all Noncompliance Events throughout the Term. During the  
18 O&M Period, Developer shall incorporate such electronic database into the  
19 Maintenance Information System. Developer shall enter each Noncompliance  
20 Event into the database in real time upon discovery (whether through self-  
21 monitoring or ADOT Notice during the D&C Period, and whether through its own  
22 discovery or ADOT Notice during the O&M Period). The electronic database shall  
23 at a minimum provide the following information for each Noncompliance Event:

24 (i) Description of the Noncompliance Event, including its item number set  
25 forth in the first column of the applicable Noncompliance Event Table;

26 (ii) Date and time the Noncompliance Event commenced;

27 (iii) Location of the Noncompliance Event (if applicable);

28 (iv) Applicable cure period;

29 (v) Whether the Noncompliance Event can be cured during the applicable  
30 cure period;

31 (vi) Expected date and time of cure (if any);

32 (vii) Status of Noncompliance Event, including actual date and time of cure;

- 1 (viii) The number of Noncompliance Points (if any) to be assessed; and
- 2 (ix) The amount of Noncompliance Charges to be assessed.
- 3 (b) Developer shall retain each Noncompliance Event entry in the electronic database
- 4 until at least three years after the date of cure.
- 5 (c) Commencing on the Effective Date, Developer shall deliver to ADOT a monthly
- 6 report (the “**Noncompliance Report**”) of all Noncompliance Events that occur
- 7 during the immediately preceding month, and any Noncompliance Events from
- 8 previous months that remain uncured as of the start of the preceding month.
- 9 During the D&C Period, Developer shall incorporate the monthly Noncompliance
- 10 Report into the Monthly Progress Report. During the O&M Period, Developer shall
- 11 incorporate the monthly Noncompliance Report into the Monthly O&M Work
- 12 Report. For each such Noncompliance Event, the monthly Noncompliance Report
- 13 must provide the same information required in the electronic database, as
- 14 described in clause (a) above.
- 15 (d) Within a reasonable time after receiving the monthly Noncompliance Report,
- 16 ADOT will deliver to Developer a written notice setting forth:
- 17 (i) ADOT’s determination whether the Noncompliance Events reported as
- 18 cured were cured within the applicable cure periods; and
- 19 (ii) The Noncompliance Points and Noncompliance Charges to be assessed for
- 20 the Noncompliance Events that are not cured within the applicable cure
- 21 periods.

## 22 **19.2.2 Notification Initiated by ADOT**

23 If ADOT believes that a Noncompliance Event specified in the Noncompliance Event

24 Tables has occurred but has not been entered into the electronic database, ADOT may deliver to

25 Developer a Notice thereof, in writing or via electronic email. ADOT’s Notice shall describe the

26 Noncompliance Event, including its approximate location (if applicable).

## 27 **19.2.3 Cure Periods**

- 28 (a) Developer shall cure Noncompliance Events by the end of the applicable cure
- 29 periods set forth in the applicable Noncompliance Event Table.
- 30 (b) Except as provided otherwise in Section 19.3.3, for each Noncompliance Event
- 31 identified by the assessment category “A” in the Noncompliance Event Tables,
- 32 Developer’s cure period with respect to the Noncompliance Event shall be
- 33 deemed to start upon the date Developer first obtained knowledge or had reason
- 34 to know of the Noncompliance Event. For this purpose, if the Notice of the
- 35 Noncompliance Event is initiated by ADOT, Developer shall be deemed to first

1 obtain knowledge of the Noncompliance Event not later than the date of delivery  
2 of the Notice to Developer.

3 (c) For each Noncompliance Event identified by the assessment category “B” in the  
4 Noncompliance Event Tables, Developer’s initial cure period shall be deemed to  
5 start upon the date the Noncompliance Event occurred, regardless of whether  
6 ADOT has delivered a Notice to Developer.

7 (d) Each of the cure periods set forth in the Noncompliance Event Tables shall be the  
8 only cure period available to Developer for the corresponding Noncompliance  
9 Event, and shall control if it differs from any cure period that is set forth in Section  
10 21.1.2 and might otherwise apply to the Noncompliance Event.

#### 11 **19.2.4 Notification of Cure**

12 (a) When Developer determines it has cured any Noncompliance Event, Developer  
13 shall enter in the electronic database, as well as in the next monthly report, notice  
14 identifying the Noncompliance Event, stating that Developer has completed cure  
15 and briefly describing the cure, including any modifications to the Project  
16 Management Plan to protect against future, similar Noncompliance Events.  
17 Thereafter, ADOT will have the right, but not the obligation, to inspect and verify  
18 completion of the cure.

19 (b) ADOT may reject any Developer notice of cure if ADOT determines that Developer  
20 has not fully cured the Noncompliance Event. Upon making this determination,  
21 ADOT will deliver a written notice of rejection to Developer either in a separate  
22 writing or electronic mail. Any Dispute regarding rejection of cure may be resolved  
23 according to the Dispute Resolution Procedures.

#### 24 **19.3 Assessment of Noncompliance Points**

25 Upon notification of a Noncompliance Event, whether initiated by Developer under Section  
26 19.2.1 or ADOT under Section 19.2.2, ADOT may assess Noncompliance Points in accordance with  
27 Exhibit 14-1 (D&C Period Noncompliance Event Table) or Exhibit 14-2 (O&M Period  
28 Noncompliance Event Table), as applicable, and subject to the terms and conditions set forth in  
29 this Sections 19.3.

30 **19.3.1** Subject to Section 19.3.3, for each Noncompliance Event identified by the  
31 assessment category “A” in the Noncompliance Event Tables, if it is cured by the end of the first  
32 cure period, no Noncompliance Points shall be assessed; but if it is not cured by the end of the  
33 first cure period, the Noncompliance Points shall be assessed at the end of the first cure period,

1 and shall be assessed again at the end of each subsequent cure period, unless cured by the end  
2 of the subsequent cure period.

3 **19.3.2** For each Noncompliance Event identified by the assessment category “B” in the  
4 Noncompliance Event Tables, the Noncompliance Points shall first be assessed on the date the  
5 Noncompliance Event occurred (the start of the first cure period). Provided that the  
6 Noncompliance Event is not then cured, Noncompliance Points shall be assessed again at the end  
7 of the first and each subsequent cure period.

8 **19.3.3** If a Noncompliance Event that is listed in the D&C Period Noncompliance Event  
9 Table occurs, for which ADOT has initiated a Notice of determination pursuant to Section 19.2.2,  
10 and such Noncompliance Event is not subject to the special provisions set forth in Section 19.5,  
11 then ADOT may assess Noncompliance Points as if assessment category “B” applies even if the  
12 Noncompliance Event is identified by assessment category “A” in the applicable Noncompliance  
13 Event Table, provided that this Section 19.3.3 shall not apply to items 14.1-02, 14.1-07, 14.1-08,  
14 14.1-09, 14.1-13 (but only with respect to correcting any defective Work under the warranties),  
15 14.1-14 and 14.1-16 (but only with respect to temporary repair responses) of the D&C Period  
16 Noncompliance Event Table.

17 **19.3.4** Continuation of any Noncompliance Event identified by the assessment category  
18 “A” or “B” in the Noncompliance Event Tables beyond the initial cure period into subsequent  
19 cure periods shall be treated as a separate Noncompliance Event.

20 (a) With respect to a Noncompliance Event in assessment category “A”, a new cure  
21 period equal to the prior cure period shall commence upon expiration of the prior  
22 cure period, without necessity for further notice.

23 (b) With respect to a Noncompliance Event in assessment category “B”, successive  
24 new cure periods shall arise and each shall equal the initial cure period but shall  
25 be measured starting upon the later of (i) the expiration of the initial cure period  
26 or (ii) the date that Developer first obtained knowledge or had reason to know of  
27 the Noncompliance Event. For this purpose, if ADOT initiates Notice of the  
28 Noncompliance Event, Developer shall be deemed to first obtain knowledge of the  
29 Noncompliance Event not later than the date of delivery of the Notice to  
30 Developer. (For example, if the initial cure period is ten days and Developer first  
31 obtains knowledge of the Noncompliance Event 30 days after it occurs, then the  
32 initial cure period shall expire at ten days, the next separate Noncompliance Event  
33 shall take effect day 30 and initiate a new ten-day cure period ending day 40, and  
34 each successive Noncompliance Event and cure period shall take effect every ten  
35 days thereafter until cure.).

36 **19.3.5** To the extent that any breach or failure to perform obligations under the  
37 Contract Documents would cause simultaneous occurrence of more than one Noncompliance  
38 Event, ADOT may assess Noncompliance Points only with respect to the Noncompliance Event  
39 that carries the highest number of Noncompliance Points and each other Noncompliance Event

1 that simultaneously occurred as a result of the same breach or failure shall be disregarded;  
2 provided that nothing in this Section 19.3.5 shall be deemed to excuse Developer from diligently  
3 pursuing notification of any Noncompliance Event.

4 **19.3.6** Notwithstanding Section 19.3.5, nothing in this Agreement shall prevent the  
5 accrual of Noncompliance Points for both the occurrence of a Noncompliance Event and the  
6 failure to notify ADOT of the same Noncompliance Event in accordance with this Agreement.

7 **19.3.7** The number of points listed in the Noncompliance Event Tables for any particular  
8 Noncompliance Event, as such number of points may be adjusted pursuant to Section 19.1.2, is  
9 the maximum number of Noncompliance Points that may be assessed for each occurrence or  
10 circumstance that constitutes a Noncompliance Event. ADOT may, but is not obligated to, assess  
11 less than the maximum number of points.

12 **19.3.8** Noncompliance Charges shall be assessed against and payable by Developer in  
13 accordance with Section 22.4.

14 **19.3.9** Regardless of the continuing assessment of Noncompliance Points under this  
15 Section 19.3, ADOT will be entitled to exercise its step-in rights in accordance with Section 21.5  
16 and, if applicable, its work suspension rights in accordance with Section 20, after expiration of  
17 the initial cure period available to Developer.

18 **19.3.10** Upon either Party's request at any time after ADOT has assessed Noncompliance  
19 Points three or more successive times for failure to cure the same occurrence or circumstance  
20 that constitutes a Noncompliance Event, the Parties will meet and confer to discuss the  
21 occurrence or circumstance and measures to mitigate continuation of such assessments and to  
22 effect cure. This provision shall not be construed to imply that ADOT is obligated to waive the  
23 Noncompliance Event or Developer's obligation to cure.

24 **19.4 Trigger Points for Persistent Developer Default**

25 **19.4.1** A "Persistent Developer Default", entitling ADOT to require submittal of  
26 Developer's remedial plan under Section 21.2.3, shall exist on any date when:

- 27 (a) 60 Noncompliance Points have been assessed in any consecutive 365-day period  
28 during the D&C Period;
- 29 (b) 80 Noncompliance Points have been assessed in any consecutive 720-day period  
30 during the D&C Period;
- 31 (c) 60 Noncompliance Points have been assessed in any consecutive 365-day period  
32 during the O&M Period; or
- 33 (d) 80 Noncompliance Points have been assessed in any consecutive 720-day period  
34 during the O&M Period.

1           **19.4.2** The number of Noncompliance Points that would otherwise be counted under  
2 Section 19.4.1 is subject to reduction in accordance with Section 21.2.3(c).

3 **19.5 Special Provisions for Certain Noncompliance Events**

4           **19.5.1** This Section 19.5 applies only to a Noncompliance Event that has an assessment  
5 category of “A” or “B,” as set forth in the Noncompliance Event Tables and is directly attributable  
6 to:

- 7           (a) A Relief Event;
- 8           (b) A traffic accident on the Project ROW not caused by a Developer Act; or
- 9           (c) Unexpected loss, disruption, break, explosion, leak or other damage of a Utility  
10 serving or in the vicinity of the Project but not within the maintenance  
11 responsibility of Developer.

12 **19.5.2** If a Noncompliance Event set forth in Section 19.5.1 occurs, then:

- 13           (a) The applicable cure period shall be extended if the Noncompliance Event is not  
14 reasonably capable of being cured within the applicable cure period due solely to  
15 an occurrence set forth in Section 19.5.1. The extension shall be for a reasonable  
16 period of time under the circumstances, taking into account the scope of the  
17 efforts necessary to cure, the effect of such occurrence on Developer’s ability to  
18 cure, availability of temporary remedial measures, and need for rapid action due  
19 to impact of the Noncompliance Event on safety or traffic movement;
- 20           (b) The Noncompliance Event shall not be counted toward a Persistent Developer  
21 Default for purposes of Section 19.4, provided the Noncompliance Event is cured  
22 within the applicable cure period, as it may be extended pursuant to clause (a)  
23 above;
- 24           (c) Regardless of which Party initiates notification of the Noncompliance Event, no  
25 Noncompliance Points shall be assessed if Developer cures such Noncompliance  
26 Event within the applicable cure period provided or extended pursuant to clause  
27 (a) above; and
- 28           (d) The Noncompliance Event shall not result in Noncompliance Charges under  
29 Section 22.4 if the Noncompliance Event is cured within the applicable cure  
30 period, as it may be extended pursuant to clause (a) above.

1 **19.6 Special Provisions for ADOT Step-in**

2 **19.6.1** If ADOT exercises a suspension right under Section 20 or a step-in right under  
3 Section 21.5, with respect to any portion of the Project (the “**affected Project portion**”), then:

4 (a) During the period that ADOT is in control of the Work for the affected Project  
5 portion (the “**step-in or suspension period**”), neither the condition of the affected  
6 Project portion nor the performance of or failure to perform Work respecting the  
7 affected Project portion shall result in a new Noncompliance Event, assessment of  
8 new Noncompliance Points or new Noncompliance Charges under Section 22.4;

9 (b) All cure periods that are available for Noncompliance Events respecting the  
10 affected Project portion and that arose prior to and are pending as of the date the  
11 step-in or suspension period commences shall be deemed forfeited by Developer;

12 (c) During the step-in or suspension period for the affected Project portion, Section  
13 19.3.4 shall not be applied to Noncompliance Events that arose prior to the date  
14 such step-in or suspension period commences; and

15 (d) The step-in or suspension period for the affected Project portion shall be  
16 disregarded for purposes of determining a Persistent Developer Default under  
17 Section 19.4. For avoidance of doubt, this means that (i) such step-in or suspension  
18 period shall not be included in counting the consecutive time periods set forth in  
19 Section 19.4 and (ii) such consecutive time periods shall be treated as consecutive  
20 notwithstanding the intervening step-in or suspension period.

21 **19.7 Provisions Regarding Dispute Resolution**

22 **19.7.1** Developer may object to the assessment of Noncompliance Points or the starting  
23 point for or duration of the cure period respecting any Noncompliance Event by delivering to  
24 ADOT written notice of such objection not later than five days after ADOT delivers its  
25 corresponding notice of determination. Such notice also shall constitute notice for purposes of  
26 Section 24.2.

27 **19.7.2** Developer may object to ADOT’s rejection of any notification of completion of a  
28 cure given pursuant to Section 19.2.4(b) by delivering to ADOT written Notice of such objection  
29 not later than 15 days after ADOT delivers its Notice of rejection. Such Notice also shall constitute  
30 Notice for purposes of Section 24.2.

31 **19.7.3** If for any reason Developer fails to deliver its Notice of objection within the  
32 applicable time periods set forth in Sections 19.7.1 and 19.7.2, Developer shall be conclusively

1 deemed to have accepted the matters set forth in the applicable Notice from ADOT, and shall be  
2 forever barred from challenging them.

3 **19.7.4** If Developer gives timely written Notice of objection, either Party may refer the  
4 matter for resolution according to the Dispute Resolution Procedures.

5 **19.7.5** In the case of any Dispute as to the number of Noncompliance Points to assign  
6 for Noncompliance Events added to the Noncompliance Event Tables, the sole issue for  
7 resolution shall be how many Noncompliance Points should be assigned in comparison with the  
8 number of Noncompliance Points set forth in the Noncompliance Event Tables for  
9 Noncompliance Events of equivalent severity.

10 **19.7.6** Pending resolution of any Dispute arising under this Section 19.7, the provisions  
11 of this Section 19 shall take effect as if ADOT's determinations were not in Dispute. If the final  
12 decision regarding the Dispute is that (a) the Noncompliance Points should not have been  
13 assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or  
14 duration of the cure period must be adjusted, or (d) a Noncompliance Event has been cured, then  
15 the number of Noncompliance Points assigned or assessed, the Noncompliance Points balance  
16 and the related liabilities of Developer shall be adjusted to reflect such decision.

17 **19.7.7** For the purpose of determining whether ADOT may declare an Event of Default  
18 under clause (q) of Section 21.1.1 for failure to timely submit or comply with the remedial plan,  
19 the number of Noncompliance Points in Dispute:

20 (a) Shall not be counted pending resolution of the Dispute if Developer delivers  
21 Notice of objection within the applicable time limit set forth in Section 19.7.1 or  
22 19.7.2; and

23 (b) Shall be counted if Developer for any reason does not deliver Notice of objection  
24 within the applicable time limit set forth in Section 24.2, or does not diligently  
25 pursue Dispute Resolution Procedures to conclusion (and in any such case  
26 Developer shall be deemed to have irrevocably waived the Dispute).

27 **19.7.8** Any Noncompliance Charges determined to be due pursuant to the Dispute  
28 Resolution Procedures shall be paid within 20 days following the resolution of the Dispute,  
29 together with interest thereon.  
30



- 1 (f) Failure to carry out and comply with Directive Letters, where such failure is not  
2 cured within 15 days after ADOT delivers written notice thereof to Developer;
- 3 (g) Failure to replace or remove personnel as set forth in Sections 11.6 and 11.8.2, as  
4 applicable, where such failure is not cured within 30 days after ADOT delivers  
5 written notice thereof to Developer;
- 6 (h) Failure to provide proof of required insurance coverage as set forth in Section  
7 13.1.15 (and ADOT shall have the right to suspend for such failure following a  
8 written request rather than notice of a Developer Default as set forth in Section  
9 13.1.5(c));
- 10 (i) Any additional failure to perform the Work in compliance with, or other breach of,  
11 the Contract Documents, except for Noncompliance Events while there is no  
12 ongoing Persistent Developer Default, where such failure is not cured within 15  
13 days after ADOT delivers notice thereof to Developer;
- 14 (j) Failure to deliver or maintain the D&C Payment Bond, D&C Performance Bond,  
15 O&M Performance Bond, O&M Payment Bond and any other bonds or other  
16 security required hereunder;
- 17 (k) Failure to comply with any provision of the Construction Quality Management  
18 Plan, Professional Services Quality Management Plan or Operations and  
19 Maintenance Quality Management Plan, where such failure is not cured within 15  
20 days after ADOT delivers written notice thereof to Developer;
- 21 (l) If at any time ADOT gives Developer notice of ADOT's determination that  
22 Developer is in violation of any of its DBE or OJT commitments and obligations,  
23 that Developer's DBE or OJT utilization and Good Faith Efforts to meet the DBE  
24 Goals or OJT Goals are inconsistent with Developer's DBE or OJT commitments  
25 and obligations, or that Developer is failing to undertake Good Faith Efforts with  
26 respect to either the DBE Goals or OJT Goals, and the matter is not cured or the  
27 determination is not reversed upon any administrative reconsideration pursuant  
28 to Section 21.6.1(c); or
- 29 (m) If, at any time during the D&C Work, Developer does not have on Site a Quality  
30 Manager who has been approved by ADOT.

31 **20.2.2** Developer shall promptly comply with any such suspension order, even if  
32 Developer disputes the grounds for suspension. ADOT will lift the suspension order promptly  
33 after Developer fully cures and corrects the applicable breach or failure to perform or all other  
34 reasons for the suspension order permanently cease to exist. Developer shall promptly  
35 recommence the Work upon receipt of notice from ADOT directing Developer to resume work.

1           **20.2.3** ADOT will have no liability to Developer, and Developer shall have no right to any  
2 increase in the Contract Price or Completion Deadline adjustment in connection with any  
3 suspension of Work properly founded on any of the grounds set forth in Section 20.2.1. If ADOT  
4 orders suspension of Work on one of the foregoing grounds but it is finally determined under the  
5 Dispute Resolution Procedures that such grounds did not exist, the suspension shall be treated  
6 as a suspension for ADOT’s convenience under Section 20.1, and the amount of any  
7 compensation or Completion Deadline adjustment may be determined by the Dispute Resolution  
8 Procedures without the need to comply with the Relief Event claims process set forth in  
9 Section 16.

10   **20.3 Responsibilities of Developer during Suspension Periods**

11 During periods in which Work is suspended, whether partially or entirely, Developer shall make  
12 passable, place in a maintainable condition and shall open to traffic such portions of the Project  
13 and temporary roadways as may be agreed upon between ADOT and Developer for temporary  
14 accommodation of traffic during the anticipated period of suspension. Additionally, if ADOT does  
15 not suspend the Work in its entirety, Developer shall continue other Work that has been and can  
16 be performed at the Site or off the Site during the period a portion of the Work is suspended.  
17



- 1 owing to ADOT under this Agreement;
- 2 (i) Developer fails to timely observe or perform or cause to be observed or performed  
3 any other covenant, agreement, obligation, term or condition required to be  
4 observed or performed by Developer under the Contract Documents;
- 5 (j) Any representation or warranty in the Contract Documents made by Developer or  
6 any Guarantor, or any certificate, schedule, report, instrument or other document  
7 delivered by or on behalf of Developer to ADOT pursuant to the Contract  
8 Documents is false or materially misleading or inaccurate when made or omits  
9 material information when made;
- 10 (k) Any Insolvency Event occurs with respect to:
- 11 (i) Developer; or
- 12 (ii) The Lead Contractor, Lead O&M Firm or any Guarantor unless Developer  
13 enters into a replacement contract or a replacement Guaranty with a  
14 reputable and financially sound entity reasonably acceptable to ADOT  
15 within 90 days of the inception of the Insolvency Event.
- 16 (l) Any Guarantor revokes or attempts to revoke its obligations under its Guaranty or  
17 otherwise takes the position that its Guaranty is no longer in full force and effect;
- 18 (m) Any Key Subcontract is terminated (other than a non-default termination on the  
19 scheduled termination thereof) and Developer has not entered into a replacement  
20 Key Subcontract with a reputable counterparty reasonably acceptable to ADOT  
21 within 90 days after the termination of such Key Subcontract;
- 22 (n) Whether in connection with the Project or otherwise, any final judgment is issued  
23 holding Developer or any Guarantor liable for an amount in excess of \$100,000  
24 based on a finding of intentional or reckless misconduct or violation of a state or  
25 federal false claims act;
- 26 (o) Developer fails to resume performance that has been suspended or stopped,  
27 within the time specified in the originating notification after receipt of notice from  
28 ADOT to do so, or (if applicable) after cessation of the event preventing  
29 performance;
- 30 (p) After exhaustion of all rights of appeal, there occurs any disqualification,  
31 suspension or debarment (distinguished from ineligibility due to lack of financial  
32 qualifications), or there goes into effect an agreement for voluntary exclusion,  
33 from bidding, proposing or contracting with any federal or State department or  
34 agency of (i) Developer, (ii) any affiliate of Developer (as “affiliate” is defined in 29  
35 C.F.R. § 16.105 or successor regulation of similar import), (iii) any Equity Member  
36 or (iv) any Key Subcontractor whose work is not completed;

- 1 (q) There occurs any Persistent Developer Default, ADOT delivers to Developer notice  
2 of the Persistent Developer Default, and either: (i) Developer fails to deliver to  
3 ADOT, within 15 days after such notice is delivered, a remedial plan meeting the  
4 requirements for approval set forth in Section 21.2.3; or (ii) Developer fails to fully  
5 comply with the schedule or specific elements of, or actions required under, the  
6 approved remedial plan;
- 7 (r) Except as expressly permitted or excused under this Agreement, the Technical  
8 Provisions or the ADOT-approved Transportation Management Plan, there occurs  
9 any Closure;
- 10 (s) Developer fails to comply with ADOT's written suspension of Work order issued in  
11 accordance with Section 20.2.1 within the time stated in such order; or
- 12 (t) There occurs any use of the Project or any portion thereof in violation of this  
13 Agreement, the Technical Provisions, Governmental Approvals or Laws (except  
14 violations of Law by Persons other than Developer-Related Entities).

15 **21.1.2 Notice and Opportunity to Cure**

16 For Developer breaches or failures listed in the Noncompliance Event Tables, the cure  
17 periods set forth therein shall exclusively govern for the sole purpose of assessing Noncompliance  
18 Points and Noncompliance Charges. For the purpose of ADOT's exercise of other remedies, and  
19 subject to remedies that this Section 21 expressly states may be exercised before lapse of a cure  
20 period, Developer shall have the following cure periods with respect to the following Developer  
21 Defaults:

- 22 (a) Respecting a Developer Default under clauses (q) and (s) of Section 21.1.1, a  
23 period of five days after ADOT delivers to Developer written notice of the  
24 Developer Default;
- 25 (b) Respecting a Developer Default under clauses (a), (d), (f), (g), (h) and (o) of Section  
26 21.1.1, a period of 15 days after ADOT delivers to Developer notice of the  
27 Developer Default; provided, however, that with respect to a Developer Default  
28 under clause (f) of Section 21.1.1:
- 29 (i) ADOT will have the right, but not the obligation, to effect cure, at  
30 Developer's expense, if such Developer continues beyond five days after  
31 such notice is delivered; and
- 32 (ii) Developer may effect a temporary cure of failure to deliver replacement  
33 Project Bonds, and obtain an additional 120 days to effect full cure, by  
34 providing interim security as and when provided in Section 21.5.2;
- 35 (c) Respecting a Developer Default under clauses (c), (e), (i), (j), (p) and (t) of Section  
36 21.1.1, a period of 30 days after ADOT delivers to Developer notice of the

1 Developer Default; provided, however, that:

2 (i) if the Developer Default is of such a nature that the cure cannot with  
3 diligence be completed within such time period and Developer has  
4 commenced meaningful steps to cure immediately after receiving the  
5 default notice, Developer shall have such additional period of time, up to  
6 a maximum cure period of 60 days (90 days in the case of a Developer  
7 Default under clause (p)), as is reasonably necessary to diligently effect  
8 cure; and

9 (ii) as to clause (i) of Section 21.1.1, cure will be regarded as complete when  
10 the adverse effects of the breach are remedied; and

11 (d) Respecting a Developer Default under clauses (b), (k), (l), (m), (n) and (r) of Section  
12 21.1.1, no cure period, and there shall be no right to notice of such Developer  
13 Default.

### 14 **21.1.3 Declaration of Event of Default**

15 If any event or condition described in Section 21.1.1 occurs and is either not subject to  
16 cure or is not cured within the period specified in Section 21.1.2, ADOT may declare that an  
17 “**Event of Default**” has occurred and provide a written notice to Developer to the extent required  
18 under Section 21.1.2.

## 19 **21.2 ADOT Remedies for Developer Default**

### 20 **21.2.1 Termination for Default**

21 ADOT shall have the right to terminate for Developer Default that is or becomes an Event  
22 of Default in accordance with Section 26.5.

### 23 **21.2.2 Other Remedies**

24 (a) With or without termination of this Agreement, Developer shall owe and pay to  
25 ADOT, and ADOT shall otherwise be entitled to deduct from payments it owes to  
26 Developer, all reimbursements owing, Liquidated Damages, amounts ADOT  
27 deems advisable to cover any existing or threatened claims and stop notices of  
28 Subcontractors, laborers or other Persons, amounts of any Losses that have  
29 accrued, the cost to complete or remediate uncompleted Work or Nonconforming  
30 Work, interest under this Agreement, and other damages and amounts that ADOT  
31 has determined are or may be payable to ADOT under the Contract Documents.

32 (b) ADOT may (i) appropriate any or all materials, supplies and equipment on the Site,  
33 (ii) direct the Surety to complete the Work, (iii) enter into an agreement for the  
34 completion of the Work or portion thereof according to the terms and provisions  
35 hereof with another contractor or Surety, or (iv) use such other methods as may

1 be required for the completion of the Work and the requirements of the Contract  
2 Documents, including completion of the Work by ADOT.

3 (c) ADOT will have the right, but not the obligation, to pay such amount or perform  
4 such act as may then be required from Developer under the Contract Documents  
5 or Subcontracts. If ADOT exercises any right to perform any obligations of  
6 Developer, ADOT may, but is not obligated to, among other things:

7 (1) Perform or attempt to perform, or cause to be performed, the  
8 remaining Work;

9 (2) Spend such sums as ADOT deems necessary to employ and pay  
10 such architects, engineers, consultants and contractors and obtain  
11 materials and equipment as may be required for the purpose of  
12 completing the Work;

13 (3) Execute all applications, certificates and other documents as may  
14 be required for completing the Work;

15 (4) Modify or terminate any contractual arrangements;

16 (5) Take any and all other actions that it may in its good faith discretion  
17 consider necessary to complete the Work; and

18 (6) Prosecute and defend any action or proceeding incident to the  
19 Work.

20 (d) Developer and each Guarantor shall be jointly and severally liable to ADOT for all  
21 costs reasonably incurred by ADOT or any Person acting on ADOT's behalf in  
22 completing the Work or having the Work completed by another Person (including  
23 any re-procurement costs, throw away costs for unused portions of the completed  
24 Work and any financing costs). ADOT will be entitled to withhold all or any portion  
25 of further payments to Developer until such time as ADOT is able to determine (i)  
26 the amount that remains payable to Developer (if any) and (ii) the amount payable  
27 by Developer to ADOT in connection with ADOT's damages and Claims against  
28 Developer-Related Entities or as otherwise required by the Contract Documents.  
29 ADOT will determine the total cost of all completed Work and will notify Developer  
30 and each Guarantor of the amount, if any, that Developer and each Guarantor, as  
31 applicable, shall pay ADOT or ADOT will pay Developer or its Surety with respect  
32 thereto. ADOT's Recoverable Costs will be deducted from any moneys due or  
33 which may become due to Developer or its Surety. If ADOT's Recoverable Costs  
34 exceeds the sum then payable to Developer under this Agreement, then  
35 Developer and each Guarantor shall be jointly and severally liable therefor and  
36 shall pay to ADOT the amount of such excess.

1 (e) In lieu of the provisions of this Section 20.2.2 for terminating this Agreement for  
2 an Event of Default and completing the Work, ADOT may, in its sole discretion,  
3 pay Developer for the portion of the Work already done according to the  
4 provisions of the Contract Documents and ADOT may treat the remaining Work as  
5 if it had never been included in, or contemplated by, this Agreement. No Claim  
6 under this clause (e) will be allowed for prospective profits on, or any other  
7 compensation relating to, the remaining Work uncompleted by Developer.

8 **21.2.3 Remedial Plan Delivery and Implementation Upon Persistent Developer**  
9 **Default**

10 (a) Developer recognizes, agrees and acknowledges that the measures for  
11 determining the existence of a Persistent Developer Default under Section 19.4.1  
12 are a fair and appropriate objective basis to conclude that (i) there is a pattern and  
13 practice of continuing, repeated and numerous Noncompliance Events and (ii)  
14 such pattern and practice will have a material, cumulative adverse impact on the  
15 value of this Agreement to ADOT if systematic changes in Developer's  
16 performance are not implemented.

17 (b) Upon the occurrence of a Persistent Developer Default in accordance with Section  
18 19.4, Developer shall, within 30 days after notice of the Persistent Developer  
19 Default, prepare and submit a remedial plan for ADOT approval in its good faith  
20 discretion. The remedial plan shall set forth a schedule and specific actions to be  
21 taken by Developer to improve its performance, reduce the number, frequency  
22 and severity of Noncompliance Events, and reduce the assessment of  
23 Noncompliance Points to the point that such Persistent Developer Default will not  
24 continue. ADOT may require that such actions include improving Developer's  
25 quality management practices, plans and procedures, revising and restating the  
26 Project Management Plan, changing organizational and management structure,  
27 increasing monitoring and inspections, changing Key Personnel and other  
28 important personnel, replacing Subcontractors, and delivering additional security  
29 to ADOT.

30 (c) If (i) Developer complies in all material respects with the schedule and specific  
31 elements of, and actions required under, the approved remedial plan; (ii) as a  
32 result of Developer satisfying paragraph (i), ADOT reduces the Noncompliance  
33 Points in accordance with Section 19.4 to the point that such Persistent Developer  
34 Default is no longer ongoing; and (iii) as of the date it satisfies the requirements  
35 in (i) and (ii), there exist no other uncured Developer Defaults for which a Notice  
36 was given, then ADOT will reduce the number of Noncompliance Points that would  
37 otherwise then be counted toward Persistent Developer Default by 25%. Such  
38 reduction shall be taken from the earliest assessed Noncompliance Points that  
39 would otherwise then be counted toward Persistent Developer Default.

40 (d) Developer's failure to deliver to ADOT the required remedial plan within such 30-

1 day period shall constitute a material Developer Default that may result in ADOT’s  
2 issuance of a Notice of Developer Default triggering a five-day cure period. Failure  
3 to comply in any material respect with the schedule or specific elements of, or  
4 actions required under, the remedial plan shall constitute a material Developer  
5 Default that may result in ADOT’s issuance of a Notice of Developer Default  
6 triggering a 30-day cure period. If either of the events remains uncured within the  
7 period specified in this clause (d), then ADOT may declare that an Event of Default  
8 has occurred in accordance with Section 21.1.3.

9 **21.2.4 Developer Defaults Related to Safety**

10 (a) Notwithstanding anything to the contrary in this Agreement, if in the good faith  
11 judgment of ADOT, a Developer Default results in an Emergency or danger to  
12 persons or property, and if Developer is not then diligently taking all necessary  
13 steps to rectify or mitigate such Emergency or danger, ADOT may, without notice  
14 and without awaiting lapse of the period to cure any breach, and in addition and  
15 without prejudice to its other remedies, but is not obligated to:

16 (i) Immediately take such action as may be reasonably necessary to rectify or  
17 mitigate the Emergency or danger, in which event Developer shall pay to  
18 ADOT on demand the cost of such action, including ADOT’s Recoverable  
19 Costs; or

20 (ii) Suspend the Work or close or cause to be closed any and all portions of  
21 the Project affected by the Emergency or danger.

22 (b) So long as ADOT undertakes such action in good faith, even if under a mistaken  
23 belief in the occurrence of such Developer Default or existence of an Emergency  
24 or danger as a result thereof, such action shall not be deemed unlawful or a breach  
25 of this Agreement, shall not expose ADOT to any liability to Developer and shall  
26 not entitle Developer to an increase in the Contract Price, Completion Deadline  
27 adjustment or other Claim, it being acknowledged that ADOT has a high priority,  
28 paramount public interest in protecting the public and worker safety at the Project  
29 and the adjacent and connecting areas.

30 (c) ADOT’s good faith determination of the existence of such a failure, Emergency or  
31 danger shall be deemed conclusive in the absence of clear and convincing  
32 evidence to the contrary.

33 (d) Immediately following rectification or mitigation of such Emergency or danger, as  
34 determined by ADOT, ADOT will allow the Work to continue or such portions of  
35 the Project to reopen, as the case may be.

1           **21.2.5 Damages; Offset**

2           (a)     Subject to Section 22, ADOT will be entitled to recover any and all damages  
3           available at Law for any and all causes of action ADOT may have against Developer,  
4           including for the damages caused by a Developer Default. Developer shall owe any  
5           such damages that accrue after the occurrence of the Developer Default  
6           regardless of whether the Developer Default is subsequently cured or ripens into  
7           an Event of Default.

8           (b)     Subject to Section 22.1.2, ADOT’s notification of a Developer Default, ADOT’s  
9           declaration of an Event of Default, or any action taken by ADOT under this Section  
10           21.2 shall not relieve Developer, Sureties and Guarantors of their respective  
11           liability for the Liquidated Damages which continue to accrue after such  
12           notification, declaration or action.

13           (c)     ADOT’s remedies with respect to Nonconforming Work shall include the right to  
14           accept such Work and receive payment as provided in Section 8.7 in lieu of the  
15           remedies specified in this Section 21.2.

16           (d)     Where this Agreement is not terminated, damages include:

17                   (i)     Costs ADOT incurs to complete the D&C Work in excess of the D&C Price;

18                   (ii)    Compensation and reimbursements due but unpaid to ADOT under the  
19                   Contract Documents;

20                   (iii)   Costs to remedy any defective part of the Work; and

21                   (iv)   Costs to rectify any breach or failure to perform by Developer or to bring  
22                   the condition of the Project to that required by the Contract Documents.

23           (e)     If the amount of damages ADOT incurs in relation to any Developer Default or  
24           Event of Default is not liquidated or known with certainty at the time a payment  
25           is due from ADOT to Developer, ADOT may withhold, deduct and offset up to 105%  
26           of the amount it reasonably estimates will be due, subject to ADOT’s obligation to  
27           adjust such withholding, deduction or offset when the amount of damages owing  
28           to ADOT is liquidated or becomes known with certainty.

29           **21.2.6 Resort to Performance Security**

30           Upon the occurrence of an Event of Default, without waiving or releasing Developer from  
31           any obligations, ADOT will be entitled to make demand upon and enforce any Project Bond, and  
32           make demand upon, draw on and enforce and collect any letter of credit, Guaranty or  
33           performance security available to ADOT under this Agreement with respect to the Event of  
34           Default in question in any order in ADOT’s sole discretion. If ADOT suffers damages due to an  
35           Event of Default, ADOT will be entitled to make demand, draw, enforce and collect regardless of

1 whether the Event of Default is subsequently cured. ADOT will apply the proceeds of any such  
2 action to the satisfaction of Developer’s obligations under this Agreement, including payment of  
3 amounts due to ADOT. The foregoing does not limit or affect ADOT’s right to give notice to or  
4 make demand upon and enforce any Project Bond, and make demand upon, draw on and enforce  
5 and collect any letter of credit, Guaranty or other performance security, immediately after ADOT  
6 is entitled to do so under the Project Bond, letter of credit, Guaranty or other performance  
7 security. No prior Notice from ADOT shall be required if it would preclude draw on the Project  
8 Bond, letter of credit, Guaranty or other payment or performance security before its expiration  
9 date.

10 **21.2.7 Other Rights and Remedies; Cumulative Remedies**

11 Subject to Sections 22.9 and 22.10:

- 12 (a) ADOT will also be entitled to exercise any other rights and remedies available  
13 under this Agreement, or available at Law or in equity;
- 14 (b) Each right and remedy of ADOT hereunder shall be cumulative and shall be in  
15 addition to every other right or remedy provided herein or now or hereafter  
16 existing at law or in equity or by statute or otherwise; and
- 17 (c) The exercise or beginning of the exercise by ADOT of any one or more of any of  
18 such rights or remedies shall not preclude the simultaneous or later exercise by  
19 ADOT of any or all other such rights or remedies.

20 **21.3 Event of Default Due Solely to Developer’s Failure to Achieve Completion Deadlines**

21 **21.3.1** If an Event of Default consists solely of Developer’s failure to achieve Project  
22 Substantial Completion or Final Acceptance by the applicable Completion Deadline, then ADOT  
23 agrees not to terminate or seek damages respecting the delay except its right to Liquidated  
24 Damages so long as (a) the ADOT-approved Project Schedule (incorporating any ADOT-approved  
25 Recovery Schedule) demonstrates that Developer is capable of meeting such Completion  
26 Deadline within 270 days of the Project Substantial Completion Deadline or 120 days of the Final  
27 Acceptance Deadline, as applicable, and (b) Developer diligently performs the Work in  
28 accordance with such schedule. Nothing in this Section 21.3 shall prejudice any other rights or  
29 remedies that ADOT may have due to any other Event of Default during such 270-day period or  
30 120-day period, as applicable.

31 **21.3.2** If Project Substantial Completion or Final Acceptance of the Project has not  
32 occurred within 270 days or 120 days, respectively, of the applicable Completion Deadline, ADOT  
33 will have the right to exercise any other right or remedy under this Agreement, at law or in equity,  
34 including termination of this Agreement.

1 **21.4 Immediate ADOT Entry to Cure Wrongful Use or Closure**

2 **21.4.1** Without prior notice and without awaiting lapse of the period to cure, if any  
3 Developer Default occurs under Section 21.1.1(r) or (t), ADOT may enter and take control of the  
4 relevant portion of the Project to reopen and continue traffic operations or remedy the wrongful  
5 use for the benefit of the public and restore the permitted uses, until such time as such Developer  
6 Default is cured or ADOT terminates this Agreement.

7 **21.4.2** Developer shall pay to ADOT on demand ADOT’s Recoverable Costs in  
8 connection with ADOT’s exercise of its rights under Section 21.4.1.

9 **21.4.3** So long as ADOT undertakes such action in good faith, even if under a mistaken  
10 belief in the occurrence of such a Developer Default, ADOT’s action shall not be deemed unlawful  
11 or a breach of this Agreement, shall not subject ADOT to any liability to Developer, and shall not  
12 entitle Developer to any increase in the Contract Price, Completion Deadline adjustment or other  
13 Claim, unless ADOT’s action constitutes gross negligence, recklessness or willful misconduct.  
14 Developer acknowledges that ADOT has a high priority, paramount public interest in maintaining  
15 continuous public access to the Project and maintaining the authorized uses of the Project.  
16 ADOT’s good faith determination that such action is needed shall be deemed conclusive in the  
17 absence of clear and convincing evidence to the contrary.

18 **21.4.4** Immediately following rectification of such Developer Default, as determined by  
19 ADOT, ADOT will relinquish control of the relevant portion of the Project back to Developer.

20 **21.5 ADOT Step-in Rights**

21 **21.5.1** Without necessity for declaration of an Event of Default, ADOT may exercise its  
22 step-in rights on the terms and conditions set forth in this Section 21.5:

- 23 (a) If a Developer Default has occurred; and  
24 (b) If the cure period, if any, available to Developer under Section 21.1.2, has expired  
25 without full and complete cure by Developer.

26 **21.5.2** ADOT will have the right, but not the obligation, to pay, perform and enter into  
27 an agreement with another Person to perform, all or any portion of Developer's obligations and  
28 the Work that are the subject of such Developer Default, as well as any other then-existing  
29 Developer Defaults or failures to perform for which Developer received prior written Notice from  
30 ADOT but has not commenced or does not continue diligent efforts to cure. Exercise of such  
31 ADOT’s rights shall not waive or release Developer from any obligations.

32 **21.5.3** ADOT may, to the extent reasonably required for or incident to curing such  
33 Developer Default or any other Developer Defaults or failures to perform:

- 34 (a) Perform or attempt to perform, or caused to be performed, such Work;

- 1 (b) Employ security guards and other safeguards to protect the Project;
- 2 (c) Incur such costs as ADOT deems reasonably necessary to employ and pay such  
3 architects, engineers, consultants and contractors and obtain materials and  
4 equipment as may be required to perform such Work, without obligation or  
5 liability to Developer or any Subcontractors for loss of opportunity to perform  
6 such Work or supply the same materials and equipment;
- 7 (d) In accordance with Section 21.2.6, draw on and use proceeds from the Project  
8 Bonds and any other available security to the extent such instruments provide  
9 recourse to pay such sums;
- 10 (e) Execute all applications, certificates and other documents as may be required;
- 11 (f) Make decisions respecting, assume control over, and continue, such Work as may  
12 be reasonably required;
- 13 (g) Modify or terminate any contractual arrangements in ADOT's good faith  
14 discretion, without liability on the part of ADOT for termination fees, costs or  
15 other charges;
- 16 (h) Meet with, coordinate with, direct and instruct contractors and suppliers, process  
17 invoices and applications for payment from contractors and suppliers, pay  
18 contractors and suppliers, and resolve claims of contractors, Subcontractors and  
19 suppliers, and for this purpose Developer irrevocably appoints ADOT as its  
20 attorney-in-fact with full power and authority to act for and bind Developer in its  
21 place and stead for the duration of the Term;
- 22 (i) Take any and all other actions it may in its good faith discretion consider necessary  
23 to effect cure and perform such Work; and
- 24 (j) Prosecute and defend any action or proceeding incident to such Work.

25 **21.5.4** Developer shall reimburse ADOT, within 30 days of receiving an invoice, for  
26 ADOT's Recoverable Costs in connection with the performance of any act or Work permitted  
27 under this Section 21.5. In lieu of reimbursement, ADOT may elect, in its sole discretion, to deduct  
28 such amounts from any amounts payable to Developer under this Agreement. Developer  
29 acknowledges that amounts owing from Developer to ADOT as Noncompliance Charges are not  
30 intended to liquidate or reimburse ADOT's Recoverable Costs.

31 **21.5.5** Neither ADOT nor any of its Authorized Representatives, contractors,  
32 subcontractors, vendors and employees shall be liable to Developer in any manner for any  
33 inconvenience or disturbance arising out of its entry onto the Project, Project ROW or  
34 Developer's Temporary Work Areas in exercising its rights under this Section 21.5, unless caused  
35 by the gross negligence, recklessness, intentional misconduct or bad faith of such Person. If any  
36 Person exercises any right to pay or perform under this Section 21.5, it nevertheless shall have

1 no liability to Developer for the sufficiency or adequacy of any such payment or performance, or  
2 for the manner or quality of design, construction, operation or maintenance, unless caused by  
3 the gross negligence, recklessness, intentional misconduct or bad faith of such Person.

4 **21.5.6** ADOT’s rights under this Section 21.5 are subject to the right of any Surety under  
5 payment and performance bonds to assume performance and completion of all bonded work.

6 **21.5.7** In the event ADOT takes action described in this Section 21.5 and it is later finally  
7 determined that there did not occur such Developer Default and expiration, without full and  
8 complete cure, of the cure period, if any, available to Developer, then ADOT’s action shall be  
9 treated as a Directive Letter for an ADOT-Directed Change. Developer shall comply with the Relief  
10 Event claims process under Section 16 if Developer seeks a Compensation Amount, a Completion  
11 Deadline adjustment or to assert any other Claim arising therefrom.

## 12 **21.6 DBE and OJT Special Remedies**

13 **21.6.1** Notwithstanding any contrary provision in any other Section of this Section 21,  
14 if ADOT determines at any time that Developer is in violation of any of its DBE or OJT  
15 commitments and obligations, or that Developer is not making Good Faith Efforts with respect  
16 to the DBE Goals or OJT Goals, then:

17 (a) ADOT may require Developer to submit in writing a proposed corrective plan for  
18 ADOT’s approval, and Developer shall diligently undertake the approved  
19 corrective action;

20 (b) If Developer does not submit such corrective plan within ten Business Days of  
21 request, if the corrective plan is disapproved as inadequate, or if Developer fails  
22 to diligently carry out the approved corrective plan, then ADOT will have the right  
23 to withhold (i) in the case of DBE, 1% of progress payments, until cure, and (ii) in  
24 the case of OJT, \$10,000 for each of the first two progress payments occurring  
25 thereafter, and \$50,000 for each subsequent progress payment occurring  
26 thereafter, until cure. Developer may request such withheld amounts in the next  
27 month’s D&C Draw Request after Developer effects cure to ADOT’s satisfaction;

28 (c) Except as provided in Sections 21.6.2, 21.6.3, 21.6.4 and 22.5, before exercising  
29 other remedies, ADOT will provide Developer an opportunity for administrative  
30 reconsideration, by an ADOT official who did not take part in the original  
31 determination that Developer is in violation of its DBE Goals or OJT Goals.  
32 Developer shall have the right to provide written documentation to such official  
33 to support its case no later than ten Business Days after ADOT gives written notice  
34 of such determination and, upon request, to meet in person with such ADOT  
35 official at a date and time the ADOT official designates. ADOT will then consider  
36 the findings and opinions of such ADOT official and issue a written decision on  
37 reconsideration to Developer within 30 days after receiving Developer’s written

1 documentation and conclusion of any meeting with such ADOT official. ADOT's  
2 decision is not administratively appealable to the USDOT; and

- 3 (d) If as a result of such administrative process, ADOT does not reverse its  
4 determination, then ADOT may issue a notice of Developer Default, withhold (or  
5 continue to withhold) progress payments, issue an order to suspend Work and, if  
6 Developer's failure continues without cure within the applicable cure period,  
7 terminate this Agreement for an Event of Default. In addition, if ADOT does not  
8 reverse its determination, and reasonably determines that Developer acted in bad  
9 faith in not making Good Faith Efforts with respect to the DBE Goals or OJT Goals,  
10 then ADOT may elect to pursue proceedings to disqualify or debar Developer from  
11 future bidding as non-responsible, as well as any Subcontractor or Supplier that  
12 has violated or participated in violation of DBE or OJT requirements.

13 **21.6.2** If Developer fails to (a) timely deliver to ADOT in complete form any DBE Monthly  
14 Utilization Progress Report required under Section 18.02.2 of the Exhibit 6 (ADOT's DBE Special  
15 Provisions), (b) enter the same information by the 15th day of each month into the DOORS, or (c)  
16 accurately complete and submit any other required reports, forms and documentation required  
17 by Exhibit 6 (ADOT's DBE Special Provisions) within the applicable time specified therein, and  
18 Developer does not cure such failure within ten Business Days after ADOT delivers to Developer  
19 notice of such failure, then ADOT will have the right to withhold 1% of progress payments payable  
20 thereafter, until cure. Developer may request such withheld amounts in the next month's D&C  
21 Draw Request after Developer effects cure to ADOT's satisfaction.

22 **21.6.3** If Developer fails to (a) timely deliver to ADOT in complete form any OJT monthly  
23 report required under Section 923-6 of Exhibit 7 (ADOT's OJT Special Provisions), or (b) accurately  
24 complete and submit any other required reports, forms and documentation required by Exhibit  
25 7 (ADOT's OJT Special Provisions) within the applicable time specified therein, and Developer  
26 does not cure such failure within ten Business Days after ADOT delivers to Developer notice of  
27 such failure, then ADOT will have the right to withhold \$10,000 for each of the first two progress  
28 payments occurring thereafter, and \$50,000 for each subsequent progress payment occurring  
29 thereafter, until cure. Developer may request such withheld amounts in the next month's D&C  
30 Draw Request after Developer effects cure.

31 **21.6.4** If at any time during the performance of the Construction Work, the use of OJT  
32 Trainees is not in conformance with the schedule or supplemental schedule as submitted and  
33 approved pursuant to Exhibit 7 (ADOT's OJT Special Provisions), then ADOT will have the right to  
34 withhold \$10,000 for each of the first two progress payments occurring thereafter, and \$50,000  
35 for each subsequent progress payment occurring thereafter until Developer conforms to the  
36 schedule or supplemental schedule. Conformance with the schedule or supplemental schedule

1 will be considered acceptable when the OJT Trainee utilization to date is at least 90% of that  
2 shown on the schedule or supplemental schedule, for the Construction Work performed to date.

3 **21.7 Right to Suspend Work for Failure by ADOT to Make Undisputed Payment**

4 Subject to Section 15.3.1, Developer shall have the right to suspend Work if ADOT fails to  
5 make an undisputed payment due hereunder (including failure due to non-appropriation) within  
6 15 Business Days after ADOT's receipt of written notice of nonpayment from Developer and its  
7 plan to suspend Work. Any such work suspension shall be considered a suspension for  
8 convenience under Section 20.1 and shall be considered an ADOT-Directed Change. Developer  
9 shall not have the right to terminate this Agreement for any failure by ADOT to make an  
10 undisputed payment due hereunder; provided, however, that if such nonpayment continues for  
11 more than 90 days after ADOT's receipt of such written notice, such nonpayment may be deemed  
12 a Termination for Convenience pursuant to Section 26.1. Upon such termination, the Parties'  
13 rights and obligations shall be as set forth in Section 26.2.

14



- 1 of damages are properly chargeable to Developer;
- 2 (e) Such sums are reasonable in light of the anticipated or actual harm caused by
- 3 delayed Project Substantial Completion or delayed Final Acceptance of the
- 4 Project, the difficulties of the proof of loss, and the inconvenience or infeasibility
- 5 of otherwise obtaining an adequate remedy;
- 6 (f) Such Liquidated Damages are not intended to, and do not, liquidate Developer’s
- 7 liability under the indemnification provisions of Section 23.1, even though third
- 8 party claims against Indemnified Parties may arise out of the same event, breach
- 9 or failure that gives rise to the Liquidated Damages; and
- 10 (g) Such Liquidated Damages are not intended to, and do not, liquidate damages for
- 11 cost to complete the Project or any other damages except damages due to delay
- 12 in Project Substantial Completion or Final Acceptance.

13 **22.2 Liquidated Damages for D&C Period Closures**

14 **22.2.1** Subject to Sections 22.2.4 and 22.2.5, for any full or partial Closure of traffic lanes  
 15 that occurs on the Project during the D&C Period at a time not approved by ADOT under Section  
 16 DR 462.3.3 of the Technical Provisions, Developer shall be liable for and pay to ADOT Liquidated  
 17 Damages in the following amounts for every 15-minute interval, or portion thereof, that an  
 18 initially approved Closure of traffic lanes persists outside the approved time periods, as  
 19 applicable:  
 20

	One Lane Closure	Two Lane Closure
I-17 mainline	\$2,000	\$5,000
Ramps	\$100	Not applicable
Crossroads	\$100	Not applicable

21 **22.2.2** Subject to Section 22.2.4, for any Major Closure that violates the restriction in  
 22 Section DR 462.3.3.1 of the Technical Provisions stating that the traffic queue due to a Major  
 23 Closure must clear completely before Developer implements another Major Closure in the same  
 24 direction, or violates the restriction stating that traffic queues at one Major Closure must not be  
 25 captured at another Major Closure within the Project limits, Developer shall be liable for and pay  
 26 to ADOT Liquidated Damages in the amount of \$40,000.

27 **22.2.3** Developer acknowledges and agrees that:

- 28 (a) the Liquidated Damages described in this Section 22.2 are reasonable in order to
- 29 compensate ADOT for damages ADOT will incur by reason of the matters that
- 30 result in Liquidated Damages for Closures of traffic lanes;
- 31 (b) such damages include loss of use, enjoyment and benefit of the Project, and
- 32 connection to ADOT transportation facilities, by the general public, injury to the

1 credibility and reputation of ADOT's transportation improvement program with  
2 policy makers and with the general public who depend on and expect availability  
3 of service, and additional costs of administering this Agreement (including  
4 engineering, legal, accounting, overhead and other administrative costs);

5 (c) such damages are incapable of accurate measurement because of, among other  
6 things, the unique nature of the Project and the unavailability of a substitute for  
7 it; and

8 (d) the Parties have agreed to Liquidated Damages under this Section 22.2 in order to  
9 fix and limit Developer's costs and to avoid later Disputes over what amounts of  
10 damages are properly chargeable to Developer.

11 **22.2.4** No Liquidated Damages shall be assessed for Closures of traffic lanes that are  
12 necessary because of damage or destruction to a traffic lane, ramp, structure, cross road or  
13 shoulder directly attributable to a Relief Event; provided that such waiver of Liquidated Damages  
14 will continue only for so long as necessary, taking into account Developer's duty to mitigate under  
15 Section 16.9, to repair or replace the damage or destruction and reopen the affected traffic lane.

16 **22.2.5** No Liquidated Damages shall be assessed for any full or partial Closure of traffic  
17 lanes to the extent it persists beyond the end of the approved time period as a result of any of  
18 the following, provided that (1) such waiver of Liquidated Damages shall only apply to the  
19 minimum extra time period that would be required to end the Closure through use of diligent  
20 efforts, and (2) Developer shall immediately notify ADOT if any such event occurs that Developer  
21 believes will delay ending the Closure within the approved time period:

22 (a) A Relief Event that occurs during the Closure and directly adversely impacts the  
23 ability to end the Closure on time;

24 (b) An Incident or Emergency that occurs during the Closure and directly adversely  
25 impacts the ability to end the Closure on time, provided that the Incident or  
26 Emergency is not caused by a Developer Act; or

27 (c) Unexpected loss, disruption, break, explosion, leak or other damage of a Utility  
28 that occurs during the Closure and directly adversely impacts the ability to end the  
29 Closure on time, provided that the same is not caused by a Developer Act.

30 **22.2.6** Assessment of Liquidated Damages for Closures of traffic lanes shall not preclude  
31 ADOT's exercise of its right to remove an unpermitted Closure at Developer's expense under  
32 Section 21.4.

### 33 **22.3 Liquidated Damages for O&M Period Closures**

34 **22.3.1** Subject to Sections 22.3.2 and 22.3.4, for any full or partial Closure of traffic lanes  
35 on the Project that occurs during the O&M Period at a time not approved by ADOT under Sections  
36 DR 462.3.3 and OMR 400.2.7 of the Technical Provisions, Developer shall be liable for and pay to

1 ADOT Liquidated Damages in the following amounts for every 15-minute interval, or portion  
2 thereof, that an initially approved Closure of traffic lanes persists outside the approved time  
3 periods, as applicable:  
4

	One Lane Closure	Two Lane Closure
SB general purpose lanes or Flex Lanes	\$500	\$1,250

5 **22.3.2** The Liquidated Damages set forth in Section 22.3.1 shall be adjusted annually on  
6 the first anniversary of the Effective Date and continuing on each anniversary thereafter during  
7 the Term to equal the original Liquidated Damages amount multiplied by the greater of 1.0 or a  
8 fraction the numerator of which is the CPI most recently published prior to the applicable  
9 anniversary and the denominator of which is the Base CPI.

10 **22.3.3** Developer acknowledges and agrees that the Liquidated Damages described in  
11 this Section 22.3 are reasonable in order to compensate ADOT for damages it will incur by reason  
12 of the matters that result in Liquidated Damages for Closures of traffic lanes. Such damages  
13 include loss of use, enjoyment and benefit of the Project, and connection to ADOT transportation  
14 facilities, by the general public, injury to the credibility and reputation of ADOT’s transportation  
15 improvement program with policy makers and with the general public who depend on and expect  
16 availability of service, and additional costs of administering this Agreement (including  
17 engineering, legal, accounting, overhead and other administrative costs). Developer further  
18 acknowledges that these damages are incapable of accurate measurement because of, among  
19 other things, the unique nature of the Project and the unavailability of a substitute for it. The  
20 Parties have agreed to Liquidated Damages under this Section 22.3 in order to fix and limit  
21 Developer’s costs and to avoid later Disputes over what amounts of damages are properly  
22 chargeable to Developer.

23 **22.3.4** The waiver of Liquidated Damages under Sections 22.2.4 and 22.2.5 shall apply  
24 to Liquidated Damages for Closures of traffic lanes during the O&M Period.

25 **22.3.5** Assessment of such Liquidated Damages shall not preclude ADOT’s exercise of  
26 its right to remove an unpermitted Closure at Developer’s expense under Section 21.4.

27 **22.4 Noncompliance Charges for Noncompliance Points**

28 **22.4.1** Developer shall be liable for and pay to ADOT amounts to compensate ADOT for  
29 damages due to the occurrence of Noncompliance Events, as described in the applicable  
30 Noncompliance Event Tables. The amounts owing from Developer to ADOT as Noncompliance  
31 Charges do not liquidate the costs to ADOT to rectify the corresponding Noncompliance Event.

32 **22.4.2** For each assessed Noncompliance Point, Developer shall be subject to  
33 Liquidated Damages in the amount of \$3,000 (the “**Noncompliance Charges**”). The  
34 Noncompliance Charges will not be adjusted during the D&C Period. The Noncompliance

1 Charges, however, shall be adjusted (up or down, as applicable) commencing on the  
2 commencement date of the O&M Period and on each anniversary of such date thereafter  
3 throughout the O&M Period by a fraction, the numerator of which is the CPI most recently  
4 published prior to the commencement date or anniversary thereof, as applicable, and the  
5 denominator of which is the Base CPI.

6 **22.4.3** ADOT will waive Noncompliance Charges assessed for Noncompliance Events set  
7 forth in Exhibit 14-2 (O&M Period Noncompliance Event Table), subject to the following terms  
8 and conditions:

9 (a) ADOT will waive such Noncompliance Charges first accruing in a calendar month  
10 only if the total of such monthly Noncompliance Charges does not exceed \$45,000  
11 (the “**monthly waiver limit**”). The monthly waiver limit shall be adjusted (up or  
12 down, as applicable) commencing on the commencement date of the O&M Period  
13 and on each anniversary of such date thereafter throughout the O&M Period by a  
14 fraction, the numerator of which is the CPI most recently published prior to the  
15 commencement date or anniversary thereof, as applicable, and the denominator  
16 of which is the Base CPI. The monthly waiver limit for a partial calendar month  
17 during the O&M Period shall be prorated;

18 (b) For clarity, if Noncompliance Charges first accruing in a calendar month exceed  
19 the monthly waiver limit, none of such Noncompliance Charges may be waived;

20 (c) Noncompliance Charges that accrue due to (i) a second or further failure to cure  
21 the corresponding Noncompliance Event as provided in Section 19.3.4 or (ii)  
22 Noncompliance Events that adversely affect the safety of the traveling public, as  
23 determined by ADOT, will not be waived even if Developer does not exceed the  
24 monthly waiver limit, and will count toward whether the monthly waiver limit is  
25 exceeded; and

26 (d) Waiver of Noncompliance Charges does not waive the corresponding  
27 Noncompliance Event or Noncompliance Points; and ADOT shall have all other  
28 rights and remedies under the Contract Documents regarding such  
29 Noncompliance Event or Noncompliance Points.

30 **22.4.4** Developer shall pay ADOT the amount of the Noncompliance Charges accrued  
31 within 20 days after ADOT requests payment from time to time. Alternatively, ADOT shall have  
32 the right to deduct the Noncompliance Charges from payments of the D&C Price or the O&M  
33 Price, as applicable, in accordance with Section 15.

34 **22.4.5** Developer acknowledges that the Noncompliance Charges assessed in  
35 accordance with the Contract Documents are reasonable liquidated amounts in order to  
36 compensate ADOT for damages it will incur by reason of Developer’s failure to comply with the

1 applicable provisions of the Contract Documents. The damages addressed by the Noncompliance  
2 Charges consist of:

3 (a) ADOT's increased costs of administering this Agreement, including the increased  
4 costs of engineering, legal, accounting, monitoring, oversight and overhead, and  
5 obligations to pay or reimburse Governmental Entities with regulatory jurisdiction  
6 over the O&M Limits for violation of applicable Governmental Approvals or for  
7 their increased costs of monitoring and enforcing Developer's compliance with  
8 applicable Governmental Approvals;

9 (b) Potential harm and future costs to ADOT from reduction in the condition and  
10 useful life of the Elements;

11 (c) Potential harm to the credibility and reputation of ADOT with other Governmental  
12 Entities, with policy makers and with the general public who depend on and  
13 expect timely and quality delivery and availability of service;

14 (d) Potential harm and detriment to those using the Project, which may include loss  
15 of use, enjoyment and benefit of the Project and of facilities connecting to the  
16 Project, additional wear and tear on vehicles, and increased costs of congestion,  
17 travel time and accidents; and

18 (e) ADOT's increased costs of addressing potential harm to the environment,  
19 including increased harm to air quality caused by congestion, and harm to water  
20 quality, soils conditions, historic structures and other environmental resources  
21 caused by Noncompliance Events.

22 **22.4.6** Developer further acknowledges that the damages described in Section 22.4.5  
23 would be difficult and impracticable to measure and prove, because, among other things:

24 (a) The Project is of a unique nature and no substitute for it is available;

25 (b) The costs of monitoring and oversight will be variable and extremely difficult to  
26 quantify;

27 (c) The nature and level of increased monitoring and oversight will be variable  
28 depending on the circumstances; and

29 (d) The variety of factors that influence use of and demand for the Project makes it  
30 difficult to quantify actual damages.

1           **22.4.7** The Parties have agreed to Liquidated Damages under this Section 22.4 in order  
2 to fix and limit Developer’s costs and to avoid later Disputes over what amounts of damages are  
3 properly chargeable to Developer.

4           **22.5 Liquidated Damages Respecting DBEs and OJT**

5           **22.5.1 DBEs**

6           (a) If Developer replaces or substitutes, or allows or suffers replacement or  
7 substitution, for a Committed DBE in violation of Section 19.0 of Exhibit 6 (ADOT’s  
8 DBE Special Provisions), then Developer shall be liable for and pay to ADOT  
9 Liquidated Damages in an amount equal to 1.5 times the unpaid portion of the  
10 Subcontract amount under the Subcontract with the wrongfully replaced  
11 Committed DBE.

12           (b) If, following Project Substantial Completion, ADOT determines that Developer has  
13 not met the DBE Goals for Professional Services and Construction Work and did  
14 not exercise Good Faith Efforts to meet such DBE Goals, then Developer shall be  
15 liable for and pay to ADOT Liquidated Damages in an amount equal to the total  
16 contract value that would have had to be paid to DBEs performing commercially  
17 useful functions (as described in Section 16.05 of Exhibit 6 (ADOT’s DBE Special  
18 Provisions)) to meet each of the DBE Goals, minus the total contract value of Work  
19 actually performed by DBEs and credited toward each of the DBE Goals.

20           (c) Developer acknowledges and agrees that the Liquidated Damages respecting  
21 DBEs described in this Section 22.5.1 are reasonable to compensate ADOT for  
22 damages ADOT will incur by reason of the violations or failures described in this  
23 Section 22.5.1. Such damages include jeopardizing attainment of ADOT’s overall  
24 DBE goals, injury to the credibility and reputation of ADOT’s DBE program,  
25 potential loss of federal funding equal to or exceeding the value of Work denied  
26 to DBEs, imposition of other costly measures and requirements by the FHWA, and  
27 additional costs of administering this Agreement and enforcing Developer’s  
28 compliance with its DBE obligations. Further, the severity of such damages is  
29 expected to vary with the portion of the Subcontract amount denied to the  
30 Committed DBE or the portion of the DBE Goal not attained. Developer further  
31 acknowledges that these damages are incapable of accurate measurement  
32 because of, among other things, their imprecise nature. The Parties have agreed  
33 to Liquidated Damages under this Section 22.5.1 in order to fix and limit  
34 Developer’s costs and to avoid later Disputes over what amounts of damages are  
35 properly chargeable to Developer.

36           **22.5.2 OJT**

37           (a) If, following Project Substantial Completion, ADOT determines that Developer has  
38 not met the OJT Goals and did not exercise Good Faith Efforts to meet the OJT

1 Goals, then Developer shall be liable for and pay to ADOT Liquidated Damages in  
2 the amount that ADOT is then holding pursuant to Sections 21.6.3 and 21.6.4.

3 (b) Developer acknowledges and agrees that the Liquidated Damages respecting OJT  
4 described in this Section 22.5.2 are reasonable to compensate ADOT for damages  
5 it will incur by reason of the violations or failures described in this Section 22.5.2.  
6 Such damages include jeopardizing the attainment of ADOT's overall OJT goals,  
7 injury to the credibility and reputation of ADOT's OJT program, potential loss of  
8 federal funding equal to or exceeding the value of Work denied to OJT Trainees,  
9 imposition of other costly measures and requirements by the FHWA, and  
10 additional costs of administering this Agreement and enforcing Developer's  
11 compliance with its OJT obligations. Further, the severity of such damages is  
12 expected to vary with the portion of the employment work denied to OJT Trainees.  
13 Developer further acknowledges that these damages are incapable of accurate  
14 measurement because of, among other things, their imprecise nature. The Parties  
15 have agreed to Liquidated Damages under this Section 22.5.2 in order to fix and  
16 limit Developer's costs and to avoid later Disputes over what amounts of damages  
17 are properly chargeable to Developer.

## 18 **22.6 Liquidated Damages for Unavailability of Key Personnel**

19 Developer shall be subject to Liquidated Damages for the failure or unavailability of Key  
20 Personnel to work on the Project, as set forth in Section 11.6.2(b).

## 21 **22.7 Liquidated Damages Respecting Subcontractor Payroll Reporting**

22 **22.7.1** Developer shall be subject to Liquidated Damages if Developer does not comply  
23 with certain requirements of Subcontractor payroll reporting, as set forth in Section 15.10.2(c).

24 **22.7.2** Developer acknowledges that ADOT requires timely receipt of the Subcontractor  
25 payrolls described in Section 15.10.2 for ADOT to comply with applicable federal and State labor  
26 laws. Developer further acknowledges that the Liquidated Damages described in Section  
27 15.10.2(c) are reasonable to compensate ADOT for damage it will incur if ADOT fails to comply  
28 with these laws. Such damages include potential loss of federal funding, the imposition of other  
29 sanctions by the U.S. Department of Labor or FHWA, and additional costs of administering this  
30 Agreement and enforcing Developer's compliance with applicable requirements herein.  
31 Developer further acknowledges that these damages are incapable of accurate measurement  
32 because of, among other things, their imprecise nature. The Parties have agreed to Liquidated

1 Damages under this Section 22.7 in order to fix and limit Developer’s costs and to avoid later  
2 Disputes over what amounts of damages are properly chargeable to Developer.

3 **22.8 Payment; Satisfaction; Waiver; Non-Exclusive Remedy**

4 **22.8.1** Developer shall pay any Liquidated Damages owing under this Section 22 within  
5 20 days after ADOT delivers to Developer ADOT’s invoice or demand therefor.

6 **22.8.2** To satisfy Liquidated Damages not paid when due, ADOT shall have the right to:

7 (a) deduct and offset Liquidated Damages from any amounts owing from ADOT to  
8 Developer; and

9 (b) demand payment under, draw on and collect from, any Project Bond, certificate  
10 of deposit, letter of credit, Guaranty or other security provided by Developer  
11 pursuant to this Agreement.

12 **22.8.3** Permitting or requiring Developer to continue and finish the Work or any part  
13 thereof after a Completion Deadline, as applicable, shall not act as a waiver of ADOT’s right to  
14 receive Liquidated Damages hereunder or any rights or remedies otherwise available to ADOT.

15 **22.8.4** Subject to Section 21.3, ADOT’s right to, and imposition of, Liquidated Damages  
16 are in addition, and without prejudice, to any other rights and remedies available to ADOT under  
17 this Agreement, at law or in equity respecting the breach, failure to perform or Developer Default  
18 that is the basis for the Liquidated Damages, except for recovery of the monetary damages that  
19 the Liquidated Damages are intended to compensate.

20 **22.9 Limitation on Developer’s Liability**

21 **22.9.1 D&C Work**

22 (a) Notwithstanding any other provision of the Contract Documents and except as set  
23 forth in clause (c) below, to the extent permitted by applicable Law, ADOT will not  
24 seek to recover damages from Developer resulting from breach of this Agreement  
25 with respect to the D&C Work (whether arising in contract, negligence or other  
26 tort, or any other theory of law) in excess of \$30,000,000, which amount shall  
27 specifically include any delay Liquidated Damages paid pursuant to Section 22.1).

28 (b) Notwithstanding any other provision of the Contract Documents and except as set  
29 forth in clause (c) below, to the extent permitted by applicable Law, ADOT will not  
30 seek to recover from Developer Liquidated Damages for delay pursuant to Section  
31 22.1 in excess of \$13,000,000.

32 (c) The foregoing limitation on Developer’s liability to ADOT respecting the D&C Work  
33 shall not apply to or limit any right of recovery ADOT may have respecting the  
34 following:

- 1 (i) Costs reasonably incurred by ADOT, or any Person acting on ADOT's behalf,  
2 to complete or correct the D&C Work, or have the D&C Work completed  
3 or corrected by another Person, in excess of the sum otherwise payable to  
4 Developer under this Agreement for the D&C Work, provided that any  
5 amounts ADOT receives from the surety under the D&C Performance Bond  
6 on account of such costs shall be credited toward the amounts payable by  
7 Developer hereunder, unless subsequently refunded, set-aside, returned  
8 or disgorged for any reason;
- 9 (ii) Amounts paid by or on behalf of Developer with respect to the D&C Work  
10 that are covered by insurance proceeds, including any amounts Developer  
11 is deemed to self-insure pursuant to Section 13.2.4;
- 12 (iii) Losses incurred by any Indemnified Party relating to or arising out of  
13 Developer's indemnities set forth in Sections 8.8.7(e) and 23.1, related to  
14 the D&C Work or occurring during the D&C Period;
- 15 (iv) Losses arising out of recklessness, gross negligence, fraud, criminal  
16 conduct, illegal activity, bad faith or intentional misconduct (which does  
17 not include an intentional Event of Default) on the part of any Developer-  
18 Related Entity; and
- 19 (v) Losses arising out of Developer Releases of Hazardous Materials.
- 20 (d) Liabilities of Developer to Subcontractors, laborers and other third parties arising  
21 out of the D&C Work, including liabilities paid from the D&C Payment Bond and  
22 liabilities to third-party owners of facilities or improvements within the D&C Work,  
23 shall not reduce or erode the amount described in Section 22.9.1(a) or (b).

24 **22.9.2 O&M Work**

- 25 (a) Notwithstanding any other provision of the Contract Documents and except as set  
26 forth in clauses (b) and (c) below, to the extent permitted by applicable Law, ADOT  
27 will not seek to recover damages from Developer resulting from breach of this  
28 Agreement with respect to the O&M Work (whether arising in contract,  
29 negligence or other tort, or any other theory of law) in excess of \$1,000,000.
- 30 (b) The foregoing limitation on Developer's liability respecting the O&M Work shall  
31 apply only if the liability is solely and exclusively caused by a breach of Developer's  
32 obligations respecting the O&M Work. If (i) a liability arises in part out of a breach  
33 of Developer's obligations respecting the D&C Work and in part out of a breach of  
34 Developer's obligations respecting the O&M Work, or (ii) a liability arises in whole  
35 or in part out of any Defects with slopes and embankments, then the terms  
36 respecting limitation on Developer's liability set forth in Section 22.9.1 shall  
37 control and apply.

- 1 (c) The foregoing limitation on Developer’s liability respecting the O&M Work shall  
2 not apply to or limit any right of recovery ADOT may have respecting the following:
- 3 (i) Costs reasonably incurred by ADOT, or any Person acting on ADOT’s behalf,  
4 to perform the O&M Work, or have the O&M Work performed by another  
5 Person, for the balance of the Term in excess of the sum otherwise payable  
6 to Developer under this Agreement for the O&M Work for the balance of  
7 the Term, provided that any amounts ADOT receives from the surety under  
8 the O&M Performance Bond on account of such costs shall be credited  
9 toward the amounts payable by Developer hereunder, unless  
10 subsequently refunded, set-aside, returned or disgorged for any reason;
- 11 (ii) Amounts paid by or on behalf of Developer with respect to the O&M Work  
12 that are covered by insurance proceeds, including any amounts Developer  
13 is deemed to self-insure pursuant to Section 13.2.4;
- 14 (iii) Losses incurred by any Indemnified Party relating to or arising out of  
15 Developer’s indemnities set forth in Sections 8.8.7(e) and 23.1, related to  
16 the O&M Work or occurring during the O&M Period;
- 17 (iv) Losses arising out of recklessness, gross negligence, fraud, criminal  
18 conduct, illegal activity, bad faith or intentional misconduct (which does  
19 not include an intentional Event of Default) on the part of any Developer-  
20 Related Entity; and
- 21 (v) Losses arising out of Developer Releases of Hazardous Materials.
- 22 (d) Liabilities of Developer to Subcontractors, laborers and other third parties arising  
23 out of the O&M Work, including liabilities paid from the O&M Payment Bond, shall  
24 not reduce or erode the amount described in Section 22.9.2(a).

25 **22.10 Limitation on Punitive and Consequential Damages**

26 **22.10.1** Notwithstanding any other provision of the Contract Documents and except as  
27 set forth in Section 22.10.2, to the extent permitted by applicable Law, neither Party shall be  
28 liable to the other for punitive damages or indirect or incidental consequential damages, whether  
29 arising out of breach of this Agreement, tort (including negligence) or any other theory of liability,  
30 and each Party hereby releases the other party from any such liability.

31 **22.10.2** The foregoing limitations on Developer’s liability for consequential damages  
32 shall not apply to or limit any right of recovery ADOT may have respecting the following:

- 33 (a) Losses (including defense costs) to the extent (i) covered by the proceeds of  
34 insurance required to be carried pursuant to Section 13, (ii) covered by the  
35 proceeds of insurance actually carried by or insuring any Developer-Related Entity  
36 under policies solely with respect to the Project and the Work, regardless of

1 whether required to be carried pursuant to Section 13, or (iii) Developer is  
2 deemed to have self-insured the Loss pursuant to Section 13.2.4;

- 3 (b) Losses arising out of recklessness, gross negligence, fraud, criminal conduct, illegal  
4 activity, bad faith or intentional misconduct (which does not include an intentional  
5 Event of Default) on the part of any Developer-Related Entity;
- 6 (c) Developer’s indemnities set forth in Sections 8.8.7(e) and 23.1;
- 7 (d) Developer’s obligation to pay Liquidated Damages in accordance with Sections  
8 11.6.2 and 15.10.2(c) and this Section 22;
- 9 (e) Losses arising out of Developer Releases of Hazardous Materials; and
- 10 (f) Amounts Developer may owe or be obligated to reimburse to ADOT under the  
11 express provisions of the Contract Documents, including, subject to any agreed  
12 scope of work and budget, ADOT’s Recoverable Costs.

13 **22.10.3** The foregoing limitations on ADOT’s liability for consequential damages shall not  
14 apply to or limit any right of recovery Developer may have respecting the following:

- 15 (a) Losses arising out of ADOT’s recklessness, gross negligence, fraud, criminal  
16 conduct, illegal activity, bad faith or intentional misconduct (which does not  
17 include an intentional Event of Default);
- 18 (b) Losses arising out of Release of Hazardous Materials by ADOT;
- 19 (c) ADOT’s liabilities set forth in Section 8.8.7(c); and
- 20 (d) Amounts ADOT may owe or be obligated to reimburse to Developer under the  
21 express provisions of the Contract Documents.  
22



1 or hindered the progress or completion of work being performed by such other  
2 ADOT contractor or developer, so as to cause inconvenience, disruption, delay or  
3 loss, to the extent such claim arises out of the actual or alleged culpable act, error,  
4 omission, negligence, breach or misconduct of any Developer-Related Entity;

5 (i) Developer’s performance of, or failure to perform and comply with, the  
6 obligations under any Utility Agreement to which it is a party or of which it  
7 assumes obligations, (ii) any dispute between Developer and a Utility Company  
8 arising out of Utility Adjustments, (iii) any Betterment or (iv) any Utility Company  
9 Project;

10 (j) (i) Any Developer-Related Entity’s breach of or failure to perform an obligation  
11 that ADOT owes to a third person, including Governmental Entities, under Law or  
12 under any agreement between ADOT and a third person, where ADOT has  
13 delegated performance of the obligation to Developer under the Contract  
14 Documents or (ii) the acts or omissions of any Developer-Related Entity that  
15 render ADOT unable to perform or abide by an obligation that ADOT owes to a  
16 third person, including Governmental Entities, under any agreement between  
17 ADOT and a third person, where the agreement was disclosed or known to  
18 Developer;

19 (k) Inverse condemnation, trespass, nuisance or similar taking of or harm to real  
20 property by reason of: (i) the failure of any Developer-Related Entity to comply  
21 with Good Industry Practices, requirements of the Contract Documents, the  
22 Project Management Plan or Governmental Approvals respecting control and  
23 mitigation of construction activities and construction impacts, (ii) the negligence  
24 or intentional misconduct of any Developer-Related Entity, or (iii) the actual  
25 physical entry onto or encroachment upon another’s property by any Developer-  
26 Related Entity; or

27 (l) Errors, inconsistencies or other defects in the design, construction, operations or  
28 maintenance of the Project or of Utility Adjustments included in the Work.

29 **23.1.2** Subject to the releases and disclaimers herein, including all the provisions set  
30 forth in Section 5.1.8 of this Agreement, Developer’s indemnity obligation shall not extend to any  
31 third party Loss to the extent directly caused by:

32 (a) The negligence, recklessness, intentional misconduct, bad faith or fraud of such  
33 Indemnified Party;

34 (b) ADOT’s breach of any of its obligations under the Contract Documents;

35 (c) An Indemnified Party’s material violation of any Laws or Governmental Approvals;  
36 or

1 (d) An unsafe requirement inherent in prescriptive design or prescriptive construction  
2 specifications of the Technical Provisions, but only where prior to occurrence of  
3 the third party Loss:

4 (i) Developer complied with such specifications and did not actually know, or  
5 would not have known, while exercising reasonable diligence, that the  
6 requirement created a potentially unsafe condition; or

7 (ii) Developer knew of and reported to ADOT the potentially unsafe  
8 requirement.

9 **23.1.3** In claims by an employee of a Developer-Related Entity, Subcontractor, anyone  
10 directly or indirectly employed by them or anyone for whose acts they may be liable, the  
11 indemnification obligation under this Section 23.1 shall not be limited by a limitation on the  
12 amount or type of damages, compensation or benefits payable under workers' compensation,  
13 disability benefit or other employee benefits laws.

14 **23.1.4** For purposes of this Section 23.1, "third party" means any person or entity other  
15 than an Indemnified Party and Developer, except that a "third party" includes any Indemnified  
16 Party's employee, agent or contractor who asserts a claim against an Indemnified Party that is  
17 within the scope of the indemnities and that is not covered by the Indemnified Party's worker's  
18 compensation program.

19 **23.1.5** Developer hereby acknowledges and agrees that it is Developer's obligation to  
20 perform the Work in accordance with the Contract Documents and that the Indemnified Parties  
21 are fully entitled to rely on Developer's performance of such obligation. Developer further agrees  
22 that any certificate, review or approval by ADOT or others hereunder shall not relieve Developer  
23 of any of its obligations under the Contract Documents or in any way diminish its liability for  
24 performance of such obligations or its obligations under this Section 23.

25 **23.1.6** The indemnity set forth in Section 23.1.1(g) is intended to operate as an  
26 agreement pursuant to the Comprehensive Environmental Response and Compensation and  
27 Liability Act, 42 U.S.C. § 9607(e), to insure, protect, hold harmless and indemnify the Indemnified  
28 Parties.

29 **23.1.7** The obligations under this Section 23 shall not be construed to negate, abridge,  
30 or reduce other rights or obligations that would otherwise exist in favor of an Indemnified Party  
31 hereunder.

## 32 **23.2 Defense and Indemnification Procedures**

33 **23.2.1** If ADOT receives notice of a claim or otherwise has actual knowledge of a claim  
34 that it believes is within the scope of the indemnities under Section 23.1, and if ADOT gives notice  
35 thereof pursuant to Section 13.2, then ADOT shall have the right to conduct its own defense

1 unless either an insurer accepts defense of the claim within the time required by Law or  
2 Developer accepts the tender of the claim in accordance with Section 23.2.3.

3 **23.2.2** Subject to Section 23.2.6, if the insurer under any applicable Insurance Policy  
4 accepts the tender of defense, ADOT and Developer shall cooperate in the defense as required  
5 by the Insurance Policy. If no insurer under potentially applicable Insurance Policies provides  
6 defense, then Section 23.2.3 shall apply.

7 **23.2.3** If the defense is tendered to Developer, then within 15 days after receipt of the  
8 tender, Developer shall notify the Indemnified Party whether Developer has tendered the matter  
9 to an insurer. If Developer does not tender the matter to an insurer, then within such 15 days, or  
10 if the insurer has rejected the tender, then within five days after such rejection, Developer shall  
11 deliver a notice to the Indemnified Party stating one of the following:

- 12 (a) Developer accepts the tender of defense and confirms that the claim is subject to  
13 full indemnification without any “reservation of rights” to deny or disclaim full  
14 indemnification thereafter;
- 15 (b) Developer accepts the tender of defense but with a “reservation of rights”, in  
16 whole or in part, to deny or disclaim indemnification thereafter; or
- 17 (c) Developer rejects the tender of defense based on a determination that it is not  
18 required to indemnify against the claim under the terms of this Agreement or any  
19 other agreement or obligation to provide indemnification.

20 **23.2.4** If Developer accepts the tender of defense under Section 23.2.3(a), Developer  
21 shall have the right to select legal counsel for the Indemnified Party, subject to reasonable  
22 approval by the Indemnified Party, and Developer shall otherwise control the defense of such  
23 claim, including settlement, and bear the fees and costs of defending and settling such claim.  
24 During such defense:

- 25 (a) Developer shall fully and regularly inform the Indemnified Party of the progress of  
26 the defense and of any settlement discussions; and
- 27 (b) The Indemnified Party shall fully cooperate in said defense, provide to Developer  
28 all materials and access to personnel it requests as necessary for defense,  
29 preparation and trial and which or who are under the control of or reasonably  
30 available to the Indemnified Party, and maintain the confidentiality of all  
31 communications between it and Developer concerning such defense.

32 **23.2.5** If Developer responds to the tender of defense as specified in Section 23.2.3(b)  
33 or (c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control  
34 the defense of such claim, including settlement.

35 **23.2.6** Notwithstanding Section 23.2.3(a) or (b), the Indemnified Party may assume its  
36 own defense by delivering to Developer notice of such election and the reasons therefor, if the

1 Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably  
2 determines that:

3 (a) A conflict exists between it and Developer that prevents or potentially prevents  
4 Developer from presenting a full and effective defense;

5 (b) Developer is otherwise not providing an effective defense in connection with the  
6 claim; or

7 (c) Developer lacks the financial capacity to satisfy potential liability or to provide an  
8 effective defense.

9 **23.2.7** If the Indemnified Party is entitled and elects to conduct its own defense, then:

10 (a) In the case of a defense conducted under Section 23.2.3(a), it shall have the right  
11 to settle or compromise the claim with Developer’s prior consent, which shall not  
12 be unreasonably withheld or delayed;

13 (b) In the case of a defense conducted under Section 23.2.3(b), it shall have the right  
14 to settle or compromise the claim (i) with Developer’s prior consent, which shall  
15 not be unreasonably withheld or delayed, or (ii) with approval of the court or  
16 arbitrator following reasonable notice to Developer and opportunity to be heard,  
17 without prejudice to the Indemnified Party’s rights to be indemnified by  
18 Developer; and

19 (c) In the case of a defense conducted under Section 23.2.3(c), it shall have the right  
20 to settle or compromise the claim without Developer’s prior consent and without  
21 prejudice to its rights to be indemnified by Developer.

22 **23.2.8** If the Indemnified Party is entitled and elects to conduct its own defense of a  
23 claim for which it is entitled to indemnification, Developer shall reimburse all reasonable costs  
24 and expenses the Indemnified Party incurs in investigating and defending, including  
25 reimbursement of reasonable attorneys’ fees and other litigation and defense costs. Except  
26 where Developer rejects defense pursuant to Section 23.2.3(c), Developer shall reimburse such  
27 defense costs and expenses on a current basis. If Developer fails to reimburse on a current basis,  
28 or if it is ultimately determined that Developer was not entitled to reject the tender of defense,  
29 then the Indemnified Party also shall be entitled to interest at the rate calculated in accordance  
30 with Section 27.14 on the amount of such defense costs and expenses as well as on any  
31 settlement amounts from the date such costs and expenses or settlement amounts are incurred  
32 by the Indemnified Party.

33 **23.2.9** A refusal of, or failure to accept, a tender of defense, as well as any Dispute over  
34 whether an Indemnified Party that has assumed control of defense is entitled to do so under  
35 Section 23.2.7, shall be resolved according to the Dispute Resolution Procedures.

1           **23.2.10** The Parties acknowledge that while Section 23.1 contemplates that Developer  
2 will have responsibility for certain claims and liabilities arising out of its obligations to indemnify,  
3 circumstances may arise in which there may be shared liability of the Parties with respect to such  
4 claims and liabilities. In such case, where either Party believes a claim or liability may entail  
5 shared responsibility and that principles of comparative negligence and indemnity are applicable,  
6 it shall confer with the other Party on management of such claim or liability. If the Parties cannot  
7 agree on an approach to representation in the matter in question, each shall arrange to represent  
8 itself and to bear its own costs in connection therewith pending the outcome of such matter.  
9 Within 30 days subsequent to the final, non-appealable resolution of the matter in question,  
10 whether by arbitration, judicial proceedings or otherwise, the Parties shall adjust the costs of  
11 defense, including reimbursement of reasonable attorney’s fees and other litigation and defense  
12 costs, in accordance with the indemnification arrangements of this Section 23.2, and consistent  
13 with the outcome of such proceedings concerning the respective liabilities of the Parties on the  
14 third-party claim.

15           **23.2.11** In determining responsibilities and obligations for defending suits pursuant to  
16 this Section 23.2, and to the extent consistent with applicable Law, specific consideration shall  
17 be given to the following factors: (a) the party performing the activity in question; (b) the location  
18 of the activity and incident; (c) contractual arrangements then governing the performance of the  
19 activity; and (d) allegations of respective fault contained in the claim.

1                   **SECTION 24. PARTNERING AND DISPUTE RESOLUTION PROCEDURES**

2   **24.1 Partnering**

3                   **24.1.1 General Provisions**

4           (a)   For the mutual benefit of the Parties, ADOT and Developer shall establish a  
5           partnering relationship to complete the Project effectively. The purpose of the  
6           partnering relationship is to establish and maintain effective communication  
7           between the Parties to cooperatively identify and resolve critical Project-related  
8           issues. Neither the partnering relationship itself, nor discussions between the  
9           Parties addressed at the initial partnering workshop, refresher partnering  
10          meetings or the construction closeout partnering meeting (collectively  
11          “**Partnering Meetings**”), shall modify the terms and conditions of this Agreement.

12          (b)   In implementing and managing the partnering relationship required under this  
13          Section 24.1, ADOT and Developer shall:

- 14           (i)    Use early and regular communication;
- 15           (ii)   Establish and maintain a relationship of shared trust, equity and  
16           commitment;
- 17           (iii)   Identify, quantify, and support attainment of mutual goals;
- 18           (iv)   Develop strategies for using risk-management tools and concepts;
- 19           (v)    Implement timely communication and decision making;
- 20           (vi)   Resolve potential problems at the lowest level of responsible management  
21           to avoid negative impacts and Disputes, including by developing a process  
22           for the escalation of field-level issues, such as by using the Issue Resolution  
23           Ladder informally as Disputes arise to resolve them before they materialize  
24           into Claims and Disputes;
- 25           (vii)   Develop a plan for periodic joint evaluation based on mutually agreed  
26           goals;
- 27           (viii)  Hold Partnering Meetings, as set forth in Section 24.1.2, to preserve the  
28           partnering relationship and its benefits; and
- 29           (ix)   Establish periodic joint evaluations of the partnering process and  
30           attainment of mutual goals.

1           **24.1.2 Partnering Meeting Schedule; Participants**

- 2           (a)     ADOT shall designate a person of ADOT’s choice to facilitate Partnering Meetings.
- 3           (b)     The Parties shall schedule and conduct Partnering Meetings as follows:
- 4                 (i)     The initial partnering workshop prior to NTP 2;
- 5                 (ii)    Refresher partnering meetings annually thereafter during the D&C Period,
- 6                         or as mutually agreed by the Parties; and
- 7                 (iii)   The construction closeout meeting no later than 60 days after the Project
- 8                         Substantial Completion Date.
- 9           (c)     The Parties shall conduct Partnering Meetings at ADOT’s offices or at such other
- 10                        locations as the Parties mutually agree.
- 11           (d)     Key Personnel and executives from both Parties with knowledge relevant to the
- 12                        matters to be discussed shall attend Partnering Meetings.

13           **24.1.3 Partnering Team; Partnering Charter**

- 14           (a)     ADOT and Developer shall establish a partnering team for the Project, which team
- 15                        shall consist of Project-level contributors and decision-makers from ADOT,
- 16                        Developer, and, if applicable, stakeholder organizations. Each Party shall identify
- 17                        its respective members of the partnering team prior to the initial partnering
- 18                        workshop and all members of the partnering team must attend the initial
- 19                        partnering workshop.
- 20           (b)     The partnering team shall create during the initial partnering workshop a
- 21                        partnering charter that includes:
- 22                 (i)     Mutual goals (e.g., core goals that may also include Project-specific goals
- 23                        and individual goals that are jointly supported by both Parties);
- 24                 (ii)    A partnering team commitment statement signed by every member of the
- 25                        partnering team;
- 26                 (iii)   A plan for both Parties to maintain the partnering relationship for the
- 27                        duration of the D&C Period; and
- 28                 (iv)   A plan and schedule to conduct partnering evaluation surveys that
- 29                        measure the progress of mutual goals and key short-term issues as they
- 30                        arise in connection with the Project.
- 31           (c)     The members of the partnering team shall:

- 1 (i) Identify the appropriate persons in each Party’s organization who shall fill  
2 the roles of reviewers for the Issues Resolution Ladder described in Section  
3 24.2.2(c);
- 4 (ii) Identify the documentation, in addition to that specifically required by this  
5 Agreement, that the Parties desire for review of a Dispute at each level of  
6 the Issue Resolution Ladder described in Section 24.2.2(c);
- 7 (iii) Participate in a partnering evaluation survey in accordance with the  
8 schedule determined during the initial partnering meeting; and
- 9 (iv) Jointly review the results of the partnering evaluation survey and  
10 document lessons learned regarding the Work.
- 11 (d) The Parties shall comply with the requirements of this Section 24.1 when  
12 addressing potential Disputes and prior to proceeding to the Disputes Resolution  
13 Procedures set forth in Section 24.2.

14 **24.1.4 Confidentiality**

15 Subject to the requirements of the Public Records Law, any statements made or materials  
16 prepared during or relating to partnering meetings, including any statements made or documents  
17 prepared by the facilitator, shall be kept in confidence and used only for the purpose of  
18 facilitating resolution of potential Disputes via the partnering process, and shall not be utilized  
19 or revealed to others, except to officials and agents of the Parties who are authorized to act on  
20 the subject matter. However, the Parties understand that such documents may be  
21 subsequently discoverable and admissible in mediation, arbitration or court proceedings,  
22 subject to the rules of procedure therein.

23 **24.1.5 Cost Responsibility**

- 24 (a) The costs of the facilitator, the site and food for Partnering Meetings shall be  
25 shared equally by ADOT and Developer. All other costs associated with the  
26 partnering process shall be borne separately by the Party that incurs the costs.
- 27 (b) ADOT will initially pay the full costs of the facilitator, the site and food for  
28 Partnering Meetings, and thereafter deduct 50% of the qualifying costs from  
29 amounts owing to Developer under this Agreement.

30 **24.2 Disputes Resolution Procedures**

31 **24.2.1 General Provisions**

- 32 (a) Disputes shall be resolved pursuant to the multi-step Dispute Resolution  
33 Procedures described in this Section 24.2, subject to the following conditions:

- 1 (i) The matter has first been raised in compliance with the notice and  
2 information requirements set forth in this Agreement, so as to constitute  
3 a Dispute;
- 4 (ii) The Dispute is eligible for resolution under this Section 24.2; and
- 5 (iii) The Dispute is not resolved by partnering under Section 24.1.
- 6 (b) The Party bringing a Dispute shall bear the burden of proving the same, subject to  
7 any provisions of this Agreement expressly assigning the burden of proof.
- 8 (c) Resolutions of Disputes pursuant to this Section 24.2 shall be final, binding,  
9 conclusive and enforceable as set forth in this Section 24.2.
- 10 (d) The Issue Resolution Ladder and mediation processes are administrative  
11 procedures and remedies, and failure of Developer to comply with either or both  
12 of such processes in all material respects as to any Dispute or Claim shall constitute  
13 a failure to diligently pursue and exhaust such administrative procedures and  
14 remedies, and shall operate as a bar against the Dispute or Claim.
- 15 (e) The provisions of this Section 24.2 shall continue to apply after expiration or  
16 earlier termination of this Agreement to all Claims and Disputes between the  
17 Parties arising out of the Contract Documents.

18 **24.2.2 Issue Resolution Ladder**

- 19 (a) As a condition to the right to bring a Dispute to mediation, arbitration or litigation,  
20 the Party bringing the Dispute shall first attempt to resolve the Dispute directly  
21 with other Party using the Issue Resolution Ladder.
- 22 (b) The Issue Resolution Ladder is the process for elevating Disputes from the  
23 Project's field level to various levels of review, up to the Parties' executive  
24 management if necessary, with defined time limits for each level of review. The  
25 goal of the Issue Resolution Ladder is to resolve each Dispute as close to the field  
26 level as possible while recognizing the requirement to elevate the Dispute to the  
27 next level of review before the Dispute impacts cost or schedule.
- 28 (c) The Issue Resolution Ladder shall consist of three levels of review and  
29 corresponding time periods to review, as follows:  
30  
31

Level of Review	Developer Reviewer	ADOT Reviewer	Time Limit
3	Executive Officer	Senior Deputy State Engineer	30 days, or any lesser period mutually approved
2	Project Manager	Design Manager, Construction Manager, O&M Manager or Project Manager (as applicable)	14 days, or any lesser period mutually approved
1	Project Level	Technical Lead	7 days, or any lesser period mutually approved

1 (d) The Parties shall meet and commence the Issue Resolution Ladder within 20 days  
2 following the invoking Party’s written request that complies with the notice and  
3 information requirements set forth in this Agreement.

4 (e) The partnering team as set forth in Section 24.1.3 shall identify the individuals  
5 from ADOT’s and Developer’s respective organizations filling the roles of  
6 reviewers in the Issue Resolution Ladder, and the documentation required for  
7 each level of review in the Issue Resolution Ladder. The individuals filling such  
8 roles and the documentation required for each level of review may vary for the  
9 D&C Work and O&M Work, as appropriate.

10 (f) If reviewers at any level of the Issue Resolution Ladder cannot resolve a Dispute  
11 within the applicable time period set forth in clause (c) above, then they may  
12 mutually agree to continue efforts to resolve the Dispute at their level for a  
13 reasonable period of time, provided that either reviewer shall have the unilateral  
14 right after the applicable time period to elevate the Dispute to the next level of  
15 review in the Issues Resolution Ladder.

16 **24.2.3 Issue Resolution Ladder Outcome**

17 (a) If ADOT and Developer succeed in resolving a Dispute using the Issue Resolution  
18 Ladder, the Parties shall memorialize the resolution in writing, including execution  
19 of any Supplemental Agreement as appropriate, and promptly perform their  
20 respective obligations in accordance therewith.

21 (b) If the Parties do not resolve the Dispute using the Issues Resolution Ladder, then  
22 either Party shall have the right, after conclusion of the Issues Resolution Ladder,  
23 to bring the Dispute to mandatory mediation, as described in Section 24.2.4.

24 **24.2.4 Mandatory Mediation**

25 Only upon completion of the requirements of Section 24.2.2, either Party shall have the  
26 right to initiate mandatory mediation proceedings for the unresolved Dispute, as a condition to

1 bringing the Dispute to arbitration or litigation.

2 (a) **Mediation Process**

3 (i) The Party bringing the Dispute to mediation shall do so by serving the other  
4 Party with a written Notice to initiate mediation proceedings. Such notice  
5 shall be delivered within 60 days following the conclusion, without  
6 resolution, of the Issue Resolution Ladder. Failure to provide such notice  
7 to initiate mediation proceedings within this time period shall constitute a  
8 waiver of any further right to pursue the Dispute and all related issues  
9 thereunder, including any relief associated therewith. Either Party may, in  
10 its sole discretion, grant an extension of the 60-day period; provided,  
11 however, that no such extension may be in excess of 30 additional days  
12 beyond the original 60-day period.

13 (ii) Within ten Business Days after providing such notice, the Parties shall  
14 mutually select a qualified individual to serve as mediator. The mediator  
15 shall have at least ten years of experience serving as a mediator, shall have  
16 at least five years of experience mediating design, construction, operations  
17 or maintenance work disputes, as applicable, based on the nature of the  
18 Dispute, and preferably shall be an attorney at law.

19 (iii) If the Parties are unable to agree upon an individual to serve as mediator,  
20 then either Party may petition the Superior Court located in Maricopa  
21 County to appoint a mediator who meets the foregoing qualifications.

22 (iv) The Parties shall use diligent efforts to convene and conclude mediation  
23 proceedings within 30 days after the mediator is appointed, or at such  
24 other date and time as may be set by the mediator or agreed to by the  
25 Parties. Each Party shall have the right to present to the mediator such  
26 materials and documentation as it may deem relevant to the Dispute, and  
27 each Party shall provide to the mediator such further materials,  
28 documentation, and information as the mediator may reasonably request.  
29 The Parties shall meet within three days after appointment of the mediator  
30 and determine whether and to what extent the Parties will share the  
31 materials submitted to the mediator with each other. The Parties may  
32 enlist the mediator to assist in determining a process for the sharing, if any,  
33 of the materials submitted to the mediator.

34 (v) Each Party shall bring to the mediation a representative with authority to  
35 mediate and settle the Dispute, and such representative shall actively  
36 participate in the mediation process. Each Party may bring to the  
37 mediation such other persons as it chooses; provided, however, that  
38 neither Party shall be represented at the mediation by legal counsel unless  
39 both Parties consent thereto in advance of the mediation.

- 1 (vi) Each Party shall make good faith efforts to resolve the Dispute through  
2 mediation.
- 3 (vii) The venue of any mediation shall be in Phoenix, Arizona unless both Parties  
4 consent to a different venue.
- 5 (viii) Developer and ADOT will share equally the expenses of the mediator and  
6 mediation forum. Each Party shall bear its own costs of preparing for and  
7 participating in the mediation.

8 (b) **Mediation Outcome**

9 If the Parties do not resolve the Dispute through mediation or within 30 days  
10 following the conclusion of the mediation, the Party bringing the Dispute may proceed to either  
11 arbitration in accordance with Section 24.2.6 or litigation in accordance with Section 24.2.7, as  
12 applicable.

13 **24.2.5 Evidentiary Impact of Issue Resolution Ladder or Mediation**

- 14 (a) The Issue Resolution Ladder process and mediation process shall be considered  
15 settlement negotiations for the purpose of all State and federal rules that protect  
16 disclosures made during settlement negotiations from later discovery or use in  
17 evidence; provided, however, that any settlement executed by the Parties  
18 pursuant to such processes shall not be considered confidential and may be  
19 disclosed.
- 20 (b) Evidence of anything said, or of any admission made, in the course of the Issue  
21 Resolution Ladder or mediation process is without prejudice and is not admissible  
22 in evidence for any purpose and disclosure of such evidence shall not be  
23 compelled before an arbitrator or in any civil action.
- 24 (c) No document or copy thereof prepared for the purpose of, in the course of, or  
25 pursuant to the Issue Resolution Ladder or mediation process shall be admissible  
26 in evidence, and disclosure of such document or copy shall not be compelled, in  
27 any arbitration or civil action.
- 28 (d) No stenographic or other record of the Issue Resolution Ladder process or  
29 mediation session(s) shall be made except to memorialize a settlement record.
- 30 (e) To the extent permitted by the Law, all conduct, statements, promises, offers,  
31 views and opinions, oral or written, made during the Issue Resolution Ladder  
32 process or mediation by any party or agent are (i) confidential, (ii) where  
33 appropriate, considered work product and privileged, (iii) not subject to discovery,  
34 and (iv) inadmissible in evidence in any arbitration or civil action.
- 35 (f) The limitations of this Section 24.2.5 shall not affect the discovery or admissibility

1 of facts, opinions, statements, documents or other evidence existing or developed  
2 independent of the Issue Resolution Ladder or mediation process, and the  
3 discoverability or admissibility of such evidence is not changed or affected  
4 because of its use in the Issue Resolution Ladder process or mediation.

- 5 (g) The Parties may waive any of the confidentiality provisions of this Section 24.2.5  
6 through a written waiver or consent to disclosure.

#### 7 **24.2.6 Binding Arbitration**

##### 8 (a) **Disputes Eligible for Arbitration**

9 Either Party shall have the right to initiate binding arbitration proceedings for a  
10 Dispute, together with related or similar unresolved Disputes that arise fairly contemporaneously  
11 out of the same set of acts, events or circumstances, that:

- 12 (i) is or are unresolved;
- 13 (ii) has or have fully exhausted the processes set forth in Sections 24.1, 24.2.2,  
14 and 24.2.4;
- 15 (iii) has or have a cumulative amount in controversy not exceeding \$2,500,000;  
16 and
- 17 (iv) has or have a cumulative Completion Deadline adjustment in controversy  
18 not exceeding 45 days.

19 All unresolved Disputes that arise fairly contemporaneously out of the same set of acts, events  
20 or circumstances shall be aggregated in order to determine eligibility for arbitration under  
21 clauses (iii) and (iv) above.

##### 22 (b) **Arbitration Process**

- 23 (i) The Party electing to bring an unresolved Dispute to arbitration shall serve  
24 upon the other Party a written request for mandatory and binding  
25 arbitration.
- 26 (ii) The Parties shall then seek to agree upon the arbitration process, and any  
27 other matter pertinent to arbitration not otherwise addressed in this  
28 Section 24.2.6.
- 29 (iii) If the Parties cannot agree upon an arbitration process within 30 days after  
30 service of the written request under clause (i) above, then the Party  
31 seeking arbitration shall be entitled to compel arbitration by serving on the  
32 other party and the American Arbitration Association (“**AAA**”) a demand  
33 for arbitration, in accordance with AAA rules. The Expedited Procedures of

1 the Construction Industry Arbitration Rules of the AAA shall be used for  
2 Disputes relating to D&C Work and the Commercial Dispute Resolution  
3 Procedures of the AAA shall be used for all other Disputes including the  
4 O&M Work. The arbitration shall be conducted by a single arbitrator  
5 mutually agreeable to the Parties and selected from the complex  
6 construction litigation panel developed by AAA in the case of Disputes  
7 relating to D&C Work, or from a list developed by the AAA in all other  
8 cases. If the Parties fail to appoint a mutually agreeable arbitrator within  
9 30 days, the President of the AAA shall appoint the arbitrator from the  
10 complex construction litigation panel in the case of Disputes relating to  
11 D&C Work, or from such list developed by the AAA in all other Disputes.  
12 The scope and extent of discovery shall be as determined by the arbitrator  
13 in accordance with AAA rules set forth above.

14 (iv) Notwithstanding clause (b)(iii) above, for insurance Disputes, the  
15 arbitrator(s) shall be experienced in the industry of insurance  
16 underwriting.

17 (v) The arbitrator shall render a decision by applying the pertinent provision(s)  
18 of the Contract Documents and applicable Law to the relevant facts and  
19 circumstances of the Dispute. The arbitrator shall set forth the decision  
20 and reasoning for the decision in writing.

21 (vi) If any Party acts to unreasonably delay or prevent arbitration, the other  
22 Party shall be entitled to enforce the arbitration provisions of this  
23 Agreement by petition to the Superior Court located in Maricopa County,  
24 Arizona.

25 (vii) The arbitrator shall not have the power to award punitive damages,  
26 rescind this Agreement, reform the Contract Documents, or void any  
27 limitations on liability contained in this Agreement.

28 (viii) The venue of any arbitration hearing shall be in Phoenix, Arizona unless  
29 both Parties consent to a different venue.

30 (ix) Developer and ADOT will share equally the expenses of the arbitrator and  
31 the arbitration forum. Each Party shall bear its own costs of preparing for  
32 and participating in the arbitration.

33 (c) **Arbitration Outcome**

34 (i) Subject to clause (ii) below, the decision of the arbitrator shall be binding,  
35 and the judgment rendered by the arbitrator may be entered in the  
36 Superior Court located in Maricopa County, Arizona, and thereafter, in any  
37 such jurisdiction as may be necessary to enforce the judgment.

1 (ii) The aggregate arbitration award for all unresolved Disputes described in  
2 clause (a) above shall not exceed the limitations set forth in clauses (a)(iii)  
3 and (iv) above. The portion of any arbitration award that exceeds any such  
4 limitation shall be null and void and the arbitration award shall be deemed  
5 automatically and conclusively reduced to the limitation amount without  
6 necessity for further proceedings.

7 **24.2.7 State Court Litigation; Jurisdiction and Venue**

8 (a) Either Party shall have the right to initiate litigation proceedings if (i) a Dispute,  
9 together with all related or similar unresolved Disputes that arise fairly  
10 contemporaneously out of the same set of acts, events or circumstances, is or are  
11 unresolved after having fully exhausted the processes set forth in Sections 24.1,  
12 24.2.2, and 24.2.4, and (b) such Dispute or Disputes are not eligible for arbitration  
13 under Section 24.2.6. Any such litigation proceeding shall be *de novo*.

14 (b) All litigation between the Parties concerning any Disputes shall be filed, heard and  
15 decided in the Superior Court located in Maricopa County, Arizona, which shall  
16 have exclusive jurisdiction and venue.

17 **24.2.8 Continuation of Work and Payments During Dispute**

18 (a) Failure by ADOT to pay any amount in dispute shall not alleviate, diminish or  
19 modify in any respect Developer's obligation to perform under the Contract  
20 Documents, including Developer's obligation to achieve the Completion Deadlines  
21 and perform all Work in accordance with the Contract Documents. At all times  
22 while any dispute is pending or during the Dispute Resolution Procedures,  
23 Developer shall, and shall cause all Subcontractors to, continue with the  
24 performance of the Work and their obligations, including any disputed Work or  
25 obligations, diligently and without delay or slow down, in accordance with the  
26 Contract Documents, except to the extent enjoined by order of a court or  
27 otherwise specified or directed by ADOT. Developer acknowledges that it shall be  
28 solely responsible for the results of any delaying actions or inactions that any  
29 Developer-Related Entity takes during the pendency of resolution of a dispute  
30 relating to the Work even if Developer's position in connection with the dispute  
31 ultimately prevails. In addition, during the pendency of resolution of a dispute  
32 relating to the Work, the Parties shall continue to comply with all provisions of the  
33 Contract Documents, the Project Management Plan, the Governmental Approvals  
34 and applicable Law.

35 (b) During the course of any and all Dispute Resolution Procedures, ADOT will  
36 continue to pay to Developer when due all undisputed amounts owing under this  
37 Agreement.

38 (c) Any Claim or Dispute regarding such payment shall be resolved pursuant to this

1                    Section 24. Developer shall proceed as directed by ADOT pending resolution of  
2                    the Claim or Dispute. Within 20 days following the resolution of any such Claim or  
3                    Dispute, each Party shall promptly pay to the other any amount owing (together  
4                    with interest thereon), subject to the restrictions governing payment under the  
5                    Contract Documents.

6                    **24.2.9 Attorney Fees**

7                    Except as expressly provided otherwise in this Agreement, each Party shall bear its own  
8                    attorneys' fees and expenses incurred in connection with any Dispute Resolution Procedures,  
9                    regardless of the outcome.



- 1 (ii) All Claims or Disputes regarding the D&C Work have been settled; and
- 2 (iii) The Final D&C Payment has been paid and accepted.
- 3 (c) The DPDs and index and catalogue pertaining to the O&M Work shall be held in
- 4 such cabinet or otherwise maintained until all of the following have occurred:
- 5 (i) 60 days have elapsed from the expiration or earlier termination of this
- 6 Agreement;
- 7 (ii) All Claims or Disputes regarding the O&M Work have been settled; and
- 8 (iii) All amounts owing from ADOT to Developer and from Developer to ADOT
- 9 under this Agreement have been paid and accepted.

10 **25.1.3 Availability for Review**

- 11 (a) The DPDs shall be available during business hours for joint review by (1) Developer
- 12 and ADOT, or (2) by Developer, ADOT and any dispute resolver, in accordance with
- 13 Section 24, in connection with:
  - 14 (i) approval of the Project Schedule;
  - 15 (ii) negotiation of Supplemental Agreements;
  - 16 (iii) aiding in determining appropriate Compensation Amounts and
  - 17 Termination Compensation;
  - 18 (iv) resolution of Claims or Disputes under the Contract Documents;
  - 19 (v) aiding in determining the value of terminated Work; and
  - 20 (vi) as described in Section 25.1.7.
- 21 (b) If any Claim or Dispute becomes the subject of mediation, arbitration or litigation,
- 22 then, within ten days after ADOT delivers to Developer a written request and a
- 23 confidentiality agreement pursuant to Section 25.1.4 signed by ADOT, Developer
- 24 shall deliver to ADOT in readable, electronic form all DPDs described in the
- 25 request, indexed and catalogued as required by Section 25.1.2.
- 26 (c) ADOT will be entitled to review all or any part of the DPDs to satisfy itself regarding
- 27 the applicability of the individual documents to the matter at issue.
- 28 (d) Developer shall cooperate with ADOT's request for review of the DPDs upon 24-
- 29 hour notice.

1           **25.1.4 Proprietary Information**

2           The DPDs are, and shall always remain, the property of Developer and shall be considered  
3 to be in Developer’s possession, subject to ADOT’s right to review the DPDs as provided in this  
4 Section 25.1. Developer will have and control the keys to the cabinet containing the DPDs. ADOT  
5 acknowledges that Developer may consider that the DPDs constitute trade secrets or proprietary  
6 information. ADOT will have the right to copy the DPDs for the purposes set forth in this Section  
7 25.1, provided that the Parties execute a mutually agreeable confidentiality agreement with  
8 respect to DPDs that constitute trade secrets or proprietary information, which confidentiality  
9 agreement shall explicitly acknowledge that it is subject to applicable Law (including the Public  
10 Records Act).

11           **25.1.5 Representation**

12           Developer represents and warrants that the DPDs constitute all documentary information  
13 used in the preparation of its Contract Price. Developer agrees that no other price proposal  
14 preparation information will be considered in resolving disputes or Claims. Developer further  
15 agrees that the DPDs are not part of the Contract Documents and that nothing in the DPDs shall  
16 change or modify any Contract Document.

17           **25.1.6 Form of DPDs**

18           Except as otherwise provided in the RFP, Developer shall submit the DPDs in such format  
19 as is used by Developer in connection with its Proposal. Developer represents and warrants that  
20 the DPDs provided with the Proposal were personally examined by an authorized officer of  
21 Developer prior to delivery, and that the DPDs meet the requirements of this Section 25.1.  
22 Developer further represents and warrants that all DPDs provided were or will be personally  
23 examined prior to delivery by an authorized officer of Developer, and that they shall meet the  
24 requirements of this Section 25.1.

25           **25.1.7 Supplementary DPD Information**

26           ADOT may at any time conduct a review of the DPDs to determine whether they are  
27 complete. If ADOT determines that any data is missing from a DPD, Developer shall provide such  
28 data within three Business Days after delivery of ADOT’s request for such data. At the time of its  
29 submission to ADOT, such data will be date stamped, labeled to identify it as supplementary DPD  
30 information, and added to the DPDs. Developer shall have no right to add documents to the DPDs  
31 except upon ADOT’s request. The DPDs associated with any Supplemental Agreement or Contract  
32 Price adjustment under this Agreement shall be reviewed, organized and indexed in the same  
33 manner as the original DPDs.

34           **25.2 Financial Reporting Requirements**

35           **25.2.1** Developer shall deliver or cause to be delivered to ADOT such financial and  
36 narrative reports, statements, certifications, budgets and information as ADOT may request from

1 time to time for any purpose related to the Project, the Work or the Contract Documents,  
2 including information to assist ADOT with preparing annual reports required by A.R.S. § 28-  
3 6953B. Developer shall make such delivery within ten Business Days after requested, or within  
4 any other time period specified in the Contract Documents.

5 **25.2.2** Without limiting Section 25.2.1, Developer shall deliver to ADOT the following  
6 financial statements and information for each Guarantor and each Equity Member that has joint  
7 and several liability with Developer (if any), at the times specified below.

8 (a) Within 120 days after the end of each fiscal year ending during the D&C Period, (i)  
9 the financial statements of the Guarantor or Equity Member, as applicable, and  
10 its consolidated subsidiaries at the end of such year, (which shall include a balance  
11 sheet, consolidated statement of financial condition, statements of earnings,  
12 statement of changes in financial position, and all related notes to the financial  
13 statements, setting forth in each case in comparative form the figures for the  
14 previous fiscal year), all in reasonable detail, and (ii) an opinion thereon of an  
15 independent public accountant of recognized national standing selected by the  
16 Guarantor or Equity Member, as applicable, which opinion shall state that such  
17 financial statements have been prepared in accordance with GAAP consistently  
18 applied, and that the examination of such accountants in connection with such  
19 financial statements has been made in accordance with generally accepted  
20 auditing standards, and accordingly, included such tests of the accounting records  
21 and such other auditing procedures as were considered necessary in the  
22 circumstances. If financial statements are prepared in accordance with principles  
23 other than GAAP, Developer shall concurrently deliver a letter from the certified  
24 public accountant of the applicable entity discussing the areas of the financial  
25 statements that would be affected by a conversion to GAAP; and

26 (b) Within 15 days after written request of ADOT delivered not more often than  
27 annually during the O&M Period, the most recent financial statements and  
28 opinions described in clause (a) above for the Guarantor or Equity Member, as  
29 applicable.

30 **25.2.3** Developer shall cooperate and provide, and shall cause the Subcontractors to  
31 cooperate and provide, such information as determined necessary or desirable by ADOT in  
32 connection with any ADOT financing for the Project. Without limiting the generality of the  
33 foregoing:

34 (a) Developer shall provide such information deemed necessary or desirable by ADOT  
35 for inclusion in ADOT's securities disclosure documents and in order to comply  
36 with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic  
37 information and notice of material events. Developer shall provide customary  
38 representations and warranties to ADOT and the capital markets as to the  
39 correctness, completeness and accuracy of any information furnished; and

1 (b) Developer shall provide all necessary information and supporting documentation  
2 required for ADOT's preparation of quarterly reports to FHWA on progress and usage  
3 of the funding received from the USDOT under the Infrastructure for Rebuilding  
4 America (INFRA) discretionary grant program.

5 **25.2.4** Developer shall cooperate and provide, and shall cause the Subcontractors to  
6 cooperate and provide, such information as is necessary or requested by ADOT to assist or  
7 facilitate the submission by ADOT of any documentation, reports or analysis required by the  
8 State, FHWA or any other Governmental Entity with jurisdiction over the Project. Without limiting  
9 the foregoing, Developer acknowledges that ADOT is obligated to provide financial information  
10 to Maricopa County, Arizona for the costs and expenses incurred for the D&C Work performed  
11 within Maricopa County, Arizona, and agrees to provide all relevant financial information and  
12 supporting documentation including itemized costs as and when requested by ADOT.

13 **25.2.5** All reports and information delivered by Developer under this Section 25.2 shall  
14 also be delivered electronically, to the extent electronic files exist, and be suitable for posting on  
15 the web.

### 16 **25.3 Subcontract Pricing Documents**

17 **25.3.1** Developer shall require each Key Subcontractor to submit to Developer a copy  
18 of all documentary information used in determining its Subcontract price (including the price for  
19 Subcontract work included in any Supplemental Agreement), immediately prior to executing the  
20 Subcontract and each Subcontract change order. Such documentary information shall be held in  
21 the same manner as the DPDs and shall be accessible by ADOT, Developer and Dispute resolvers,  
22 on terms substantially similar to those contained herein.

23 **25.3.2** Each Key Subcontract shall include (a) a representation and warranty from the  
24 Subcontractor, for the benefit of Developer and ADOT, stating that its submission in the DPDs  
25 constitutes all the documentary information used in establishing its Subcontract price, and (b)  
26 the Subcontractor's covenant to provide a sworn certification in favor of Developer and ADOT  
27 together with each supplemental set of DPDs, stating that the information contained therein is  
28 complete, accurate and current.

29 **25.3.3** Each Subcontract shall include a provision requiring the Subcontractor to  
30 preserve all documentary information used in establishing its Subcontract price and to provide  
31 such documentation to Developer for incorporation into the DPDs or to ADOT in connection with  
32 any Claim made by Developer that involves work performed by the Subcontractor.

### 33 **25.4 Maintenance and Inspection of Books and Records**

34 **25.4.1** Except for DPDs (which shall be maintained as set forth in Section 25.1),  
35 Developer shall keep and maintain accurate and complete Books and Records, including copies  
36 of all original documents delivered to ADOT. Developer shall keep, maintain and preserve such  
37 Books and Records in accordance with applicable provisions of the Contract Documents and

1 Project Management Plan, and in accordance with Good Industry Practice. Developer shall keep  
2 the Books and Records in a secure, fireproof location in the collocated office throughout the D&C  
3 Period and thereafter in a secure, fireproof location in Maricopa County, Arizona, or in another  
4 location ADOT approves in its sole discretion. Developer shall notify ADOT where the Books and  
5 Records are kept.

6 **25.4.2** Developer shall make all its Books and Records available for inspection by ADOT  
7 and ADOT's Representatives at Developer's principal offices in Arizona, or at ADOT's project  
8 office for DPDs, at all times during normal business hours, without charge. Developer shall  
9 provide copies thereof to ADOT, or make available for review to ADOT, as and when expressly  
10 required by the Contract Documents, or, for those not expressly required, upon request and at  
11 no expense to ADOT. ADOT may conduct any such inspection upon 24-hour prior notice, or  
12 unannounced and without prior notice where ADOT has good faith suspicion of fraud. The right  
13 of inspection includes the right to make extracts and take notes. The provisions of this Section  
14 25.4.2 are subject to the following:

15 (a) They shall remain in full force and effect regardless of whether a Claim or dispute  
16 exists or whether either Party or both of the Parties have invoked the Dispute  
17 Resolution Procedures; and

18 (b) Developer reserves the right to assert exemptions from disclosure for information  
19 that would be exempt under applicable State Law from discovery in legal actions,  
20 including information protected by the attorney-client or other legal privilege  
21 based upon an opinion of counsel reasonably satisfactory to ADOT.

22 **25.4.3** Developer shall retain Books and Records for the Record Retention Period;  
23 provided, however, that if the Contract Documents specify any different period for retention of  
24 particular records, such time period shall control. Any provision of the Contract Documents  
25 establishing a stated period for retention of Books and Records means the period of time, as  
26 stated, after the date the Book or Record is generated, unless specifically provided otherwise.

27 **25.4.4** Notwithstanding the foregoing, Developer shall retain and make available all  
28 Books and Records which relate to Claims and Disputes being processed or the subject of the  
29 Dispute Resolution Procedures for a period of not less than one year after the date the dispute  
30 is finally resolved (or for any longer period required under any other applicable provision of the  
31 Contract Documents). Throughout the course of any Work that is in Dispute and the subject of  
32 the Dispute Resolution Procedures, Developer shall keep separate and complete Books and  
33 Records that provide a clear distinction between the incurred direct costs of disputed Work and  
34 that of undisputed Work, and shall permit ADOT access to these Books and Records on an Open  
35 Book Basis.

36 **25.4.5** Refer to Attachment 1 to Exhibit 4 (Federal Requirements) (Federal  
37 Requirements for Federal-Aid Construction Projects) for Federal Requirements applicable to  
38 maintenance and inspection of Books and Records, with which Developer shall comply.

1 **25.5 Audits**

2 **25.5.1** ADOT shall have the right to review and audit Developer, its Subcontractors and  
3 their respective Books and Records as and when ADOT deems necessary for purposes of verifying  
4 compliance with the Contract Documents and applicable Law. Without limiting the foregoing,  
5 ADOT shall have the right to audit the Project Management Plan and compliance therewith,  
6 including the right to inspect Work or activities and to verify the accuracy and adequacy of the  
7 Project Management Plan and its component parts, plans and other documentation. ADOT may  
8 conduct any such audit of Books and Records upon 24-hour prior notice, or unannounced and  
9 without prior notice where there is good faith suspicion of fraud.

10 **25.5.2** All Claims or disputes shall be subject to audit at any time following the filing of  
11 the Claim or dispute. The audit may be performed by employees of ADOT or by an auditor under  
12 contract with ADOT. No notice from ADOT is required before commencing any audit (1) within  
13 60 days after the Final Acceptance or (2) within 60 days after termination of this Agreement.  
14 Thereafter, ADOT will provide 20 days' Notice to Developer, any Subcontractors or their  
15 respective agents before commencing an audit. Developer, Subcontractors or their agents shall  
16 provide and cause Developer-Related Entities to provide adequate facilities, acceptable to ADOT,  
17 for the audit during normal business hours. Developer shall cooperate and cause Developer-  
18 Related Entities to cooperate with the auditors. At a minimum, the auditors shall have available  
19 to them the following documents:

- 20 (a) Daily time sheets and supervisor's daily reports;
- 21 (b) Union agreements;
- 22 (c) Insurance, welfare, and benefits records;
- 23 (d) Payroll registers;
- 24 (e) Earnings records;
- 25 (f) Payroll tax forms;
- 26 (g) Material invoices and requisitions;
- 27 (h) Material cost distribution work sheet;
- 28 (i) Equipment records (list of company equipment, rates, etc.);
- 29 (j) Subcontractors' and Suppliers' invoices;
- 30 (k) Subcontractors' and agents' payment certificates;
- 31 (l) Canceled checks (payroll, Subcontractors and Suppliers);

- 1 (m) Job cost report;
- 2 (n) Job payroll ledger;
- 3 (o) General ledger;
- 4 (p) Cash disbursements journal;
- 5 (q) Project Schedules;
- 6 (r) All documents that relate to each and every Claim or dispute, together with all  
7 documents that support the amount of damages as to each Claim or dispute; and
- 8 (s) Work sheets used to prepare the Claim or dispute establishing the cost  
9 components for items of the Claim or dispute, including labor, benefits and  
10 insurance, materials, equipment, Subcontractors, all documents that establish the  
11 time periods, individuals involved, the hours for the individuals, and the rates for  
12 the individuals.

13 **25.5.3** Failure of any Developer-Related Entity to maintain and retain sufficient records  
14 to allow the auditors to verify any portion of any Claim or dispute shall constitute a waiver, and  
15 bar any recovery or relief, regarding such portion of the Claim or dispute. Failure of any  
16 Developer-Related Entity to permit the auditor access to the Books and Records of any  
17 Developer-Related Entity, or to otherwise fully comply with the provisions of this Section 25.5  
18 shall constitute a waiver of the Claim or dispute and shall bar any recovery or relief thereunder.

19 **25.5.4** Any rights of the FHWA to review and audit Developer, its Subcontractors and  
20 their respective Books and Records are set forth in Exhibit 4 (Federal Requirements).

21 **25.5.5** Developer represents and warrants the completeness and accuracy of all  
22 information it or its agents provide in connection with ADOT audits, and shall cause all  
23 Subcontractors other than ADOT and Governmental Entities acting as Subcontractors to warrant  
24 the completeness and accuracy of all information such Subcontractors or their agents provide in  
25 connection with ADOT audits.

26 **25.5.6** ADOT's rights of audit include the right to observe the business operations of  
27 Developer and its Subcontractors to confirm the accuracy of Books and Records.

28 **25.5.7** Developer's internal and third party quality and compliance auditing  
29 responsibilities shall be set forth in the Project Management Plan, consistent with the audit  
30 requirements referred to in Sections GP 110.04.1, GP 110.07.2, GP 110.08 and GP 110.09 of the  
31 Technical Provisions.

32 **25.5.8** Nothing in the Contract Documents shall in any way limit the constitutional and  
33 statutory powers, duties and rights of elected State officials, including the independent rights of  
34 the State Auditor General, in carrying out his or her legal authority. Developer understands and

1 acknowledges that:

2 (a) The State Auditor General may conduct an audit or investigation of any Person  
3 receiving funds from the State directly under this Agreement or indirectly through  
4 a Subcontract;

5 (b) Acceptance of funds directly under this Agreement or indirectly through a  
6 Subcontract acts as acceptance of the authority of the State Auditor General,  
7 under the direction of the Joint Legislative Audit Committee, to conduct an audit  
8 or investigation in connection with those funds; and

9 (c) A Person that is the subject of an audit or investigation must provide the State  
10 Auditor General with access to any information the State Auditor General  
11 considers relevant to the investigation or audit.

## 12 **25.6 Arizona Public Records Act**

13 **25.6.1** Developer acknowledges and agrees that all records, documents, drawings,  
14 plans, specifications and other materials in ADOT's possession, including materials submitted by  
15 Developer, are subject to the provisions of the Public Records Act. To the extent that this  
16 Agreement involves the exchange or creation of "public information," as such term is defined by  
17 the Public Records Act, that ADOT collects, assembles, or maintains or has a right of access to,  
18 and is not otherwise excepted from disclosure under the Public Records Act, Developer is  
19 required, at its sole cost and expense, to make any such information available in .pdf format,  
20 which is accessible by the public.

21 **25.6.2** If Developer believes information or materials submitted to ADOT constitute  
22 trade secrets or confidential commercial, financial or proprietary information or other  
23 information that is exempted from disclosure under the Public Records Act, Proposer shall  
24 specifically and conspicuously do all of the following:

25 (a) invoke the exclusion on submission of the information or other material for which  
26 protection is sought;

27 (b) identify the data or other materials for which protection is sought with  
28 conspicuous labeling as "CONFIDENTIAL" in the center header of each such page  
29 affected, provided, however, that no such designation is necessary for the DPDs,  
30 which Developer hereby deems to be confidential;

31 (c) state the reasons why protection is necessary; and

32 (d) fully comply with any applicable state Law with respect to information that the  
33 Respondent contends should be exempt from disclosure.

34 **25.6.3** If ADOT receives a request for public disclosure of materials marked  
35 "CONFIDENTIAL," ADOT will use reasonable efforts to notify Developer of the request and give

1 Developer an opportunity to assert, in writing and at Developer’s sole expense, a claimed  
2 exception under the Public Records Act or other applicable Law within the time period specified  
3 in the notice issued by ADOT and allowed under the Public Records Act. Under no circumstances,  
4 however, will ADOT be responsible or liable to Developer or any other Person for the disclosure  
5 of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs  
6 through inadvertence, mistake or negligence on the part of ADOT or its officers, employees,  
7 contractors or consultants.

8 **25.6.4** In the event of any proceeding or litigation concerning the disclosure of any  
9 material submitted by Developer to ADOT, ADOT’s sole involvement will be as a stakeholder  
10 retaining the material until otherwise ordered by a court or such other authority having  
11 jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise  
12 prosecuting or defending any action concerning the materials at its sole cost and risk; provided,  
13 however, that ADOT reserves the right, in its sole discretion, to intervene or participate in the  
14 litigation in such manner as it deems necessary or desirable. Except in the case of ADOT’s  
15 voluntary intervention or participation in litigation, Developer shall pay and reimburse ADOT  
16 within 30 days after receipt of demand and reasonable supporting documentation for all costs  
17 and fees, including attorneys’ fees and costs, ADOT incurs in connection with any litigation,  
18 proceeding or request for disclosure.

19 **25.6.5** Nothing contained in this Section 25.6 shall modify or amend requirements and  
20 obligations imposed on ADOT by the Public Records Act or other applicable Law, and the  
21 provisions of the Public Records Act or other Laws shall control in the event of a conflict between  
22 the procedures described above and the applicable Law.

23 **25.7 Intellectual Property**

24 **25.7.1 Proprietary Intellectual Property**

25 (a) Developer acknowledges and agrees that all Proprietary Intellectual Property, in  
26 any medium, is specially ordered or commissioned by ADOT, including works  
27 made for hire in accordance with Section 101 of the Copyright Act of 1976. In  
28 consideration for ADOT’s obligation to pay Developer on the terms and conditions  
29 of this Agreement, Developer hereby transfers and assigns to ADOT all rights, title,  
30 ownership and interest in and to the Proprietary Intellectual Property including  
31 any and all software, work product and designs.

32 (b) As a condition of Final Acceptance, Developer shall deliver to ADOT all work  
33 product, documents, results and related materials created in the development of  
34 Proprietary Intellectual Property during the D&C Period as well as a complete,  
35 indexed collection of such materials. Without limiting the generality of the  
36 foregoing, delivery of such materials shall include Design Documents and  
37 Construction Documents. Developer may retain a copy of such work product,  
38 documents, results and related materials.

1 (c) Developer shall deliver to ADOT all work product, documents, results and related  
2 materials created in the development of Proprietary Intellectual Property during  
3 the O&M Period promptly after creation, as well as an indexed collection of such  
4 materials. Developer may retain a copy of such work product, documents, results  
5 and related materials.

6 (d) ADOT hereby grants to Developer a non-exclusive, irrevocable, perpetual, fully  
7 paid up license to use, exploit, manufacture, distribute, copy, adapt and display  
8 the Proprietary Intellectual Property, including in connection with (i)  
9 incorporation into the Project, (ii) the Work, (iii) all other services performed for  
10 or on behalf of ADOT to complete the Work, or comply with Developer's  
11 obligations under this Agreement, and (iv) other projects and work of Developer.  
12 No Intellectual Property rights of ADOT are being licensed to Developer except as  
13 otherwise expressly provided in this Section 25.7.1. Developer's use or  
14 exploitation of the licensed Proprietary Intellectual Property shall be at  
15 Developer's sole discretion and risk, and in no way shall be deemed to confer  
16 liability or indemnity obligation on ADOT. ADOT shall not be liable to Developer-  
17 Related Entity or any other person for any claim, loss, damage, cost, judgment,  
18 fee, penalty, charge or expense (including attorney's fees and costs) to the extent  
19 arising out of or resulting from use or exploitation of the licensed Proprietary  
20 Intellectual Property by Developer, any transferee of the license or any of their  
21 respective board members, officers, agents or employees. ADOT makes no  
22 warranty or representation, express or implied, regarding the licensed Proprietary  
23 Intellectual Property or its suitability for any intended purpose.

24 (e) ADOT acknowledges and agrees that:

25 (i) ADOT will bear responsibility for infringement of third party Intellectual  
26 Property rights resulting solely from ADOT's alteration of Proprietary  
27 Intellectual Property; and

28 (ii) Developer makes no warranty or representation, express or implied,  
29 regarding the suitability of the Proprietary Intellectual Property for reuse  
30 unrelated to the Project, unless such reuse is with the prior written  
31 authorization of Developer;

32 provided that the foregoing provisions do not affect or limit Developer's  
33 obligations and liabilities under Section 23.1.1(c).

## 34 **25.7.2 Developer Intellectual Property**

35 (a) Subject to Section 25.7.5, Developer hereby grants to ADOT a non-exclusive,  
36 irrevocable, perpetual, fully paid-up right and license to use, exploit, manufacture,  
37 distribute, copy, adapt and display the Developer Intellectual Property, including  
38 any enhancements thereof.

- 1 (b) Developer shall identify and disclose all Developer Intellectual Property contained  
2 or included in the Project Intellectual Property, including (when reasonably  
3 available) full and specific information detailing Intellectual Property claimed,  
4 date of authorship, creation or invention, date of application(s), application  
5 number(s) and registering entit(ies), date of registration(s), registration number(s)  
6 and registering entit(ies), if any, and owner including person or entity name and  
7 address.
- 8 (c) Developer shall deliver to ADOT all Developer Intellectual Property contained or  
9 included in the Project Intellectual Property promptly upon request.

10 **25.7.3 Third Party Intellectual Property**

- 11 (a) Whenever using any design, device, material, software or process protectable or  
12 protected as Third Party Intellectual Property, Developer shall obtain the right and  
13 license for such use. Without limiting the foregoing, and subject to Section 25.7.5,  
14 Developer shall secure nonexclusive, transferable, irrevocable, unconditional,  
15 royalty-free licenses in the name of ADOT to use, reproduce, modify, adapt and  
16 disclose Third Party Intellectual Property and shall pay any and all royalties and  
17 license fees required to be paid for any Intellectual Property incorporated into the  
18 Project Intellectual Property. All Third Party Intellectual Property licenses are  
19 subject to ADOT’s review and approval. The foregoing requirement shall not apply,  
20 however, to mass-marketed software products (sometimes referred to as “shrink  
21 wrap software”) owned by such a Person where such a license cannot be extended  
22 to ADOT using commercially reasonable efforts. In such case, Developer shall  
23 acquire the proper rights for ADOT to make use of such software products as  
24 necessary for Developer to comply with the Contract Documents.
- 25 (b) Developer shall identify and disclose all Third Party Intellectual Property contained  
26 or included in the Project Intellectual Property including (when reasonably  
27 available) full and specific information detailing Intellectual Property claimed,  
28 date of authorship, creation or invention, date of application(s), application  
29 number(s) and registering entity(ies), date of registration(s), registration  
30 number(s) and registering entity(ies), if any, and owner including person or entity  
31 name and address.

32 **25.7.4 Inclusion in Contract Price**

33 Developer acknowledges and agrees that the Contract Price includes all royalties,  
34 licensing fees and costs arising from Project Intellectual Property or in any way involved in the  
35 Work.

36 **25.7.5 Licensing Limitations**

37 Licenses granted under Sections 25.7.2 and 25.7.3 shall be limited as follows:

- 1 (a) The right to transfer the license is limited to any Governmental Entity that  
2 succeeds to the power and authority of ADOT generally or with respect to the  
3 Project, and any Governmental Entity having power and authority over any state,  
4 county, city or municipal road where the Proprietary Intellectual Property of  
5 Developer is installed, deployed or operated.
- 6 (b) The right to sublicense is limited to State, regional and local Governmental Entities  
7 that own or operate a State Highway or other road (tolled or not tolled) where the  
8 Proprietary Intellectual Property of Developer is installed, deployed or operated,  
9 and to their respective concessionaires, developers, contractors, subcontractors,  
10 employees, attorneys, consultants and agents that are retained in connection with  
11 such a State Highway or other road (tolled or untolled).
- 12 (c) ADOT will:
- 13 (i) Not disclose any Developer Intellectual Property or Third Party Intellectual  
14 Property to any Person other than authorized transferees and sublicensees  
15 who agree to be bound by any confidentiality obligations of ADOT relating  
16 thereto;
- 17 (ii) Enter into a commercially reasonable confidentiality agreement if  
18 requested by Developer with respect to the licensed Developer Intellectual  
19 Property or Third Party Intellectual Property; and
- 20 (iii) Include, or where applicable require such State, regional or local  
21 Governmental Entity to include, in the contract with the sublicensee its  
22 covenant to employ sound business practices no less diligent than those  
23 used for its own confidential information, and no less diligent than  
24 required by commercially reasonable standards of confidentiality, to  
25 protect all Developer Intellectual Property or Third Party Intellectual  
26 Property and other materials provided under the sublicense against  
27 disclosure to third parties not in receipt of a sublicense, and to use the  
28 sublicense only for the permitted purposes.

29 **25.7.6 Limitation on ADOT Liability**

30 Notwithstanding any contrary provision of this Agreement, in no event shall ADOT or any  
31 of its directors, officers, employees, consultants or agents be liable to any Developer-Related  
32 Entity, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of  
33 breach of the duty of confidentiality set forth in Section 25.7.5 if such breach is not the result of  
34 recklessness or intentional misconduct. Developer hereby irrevocably waives all claims to any  
35 such damages.

1           **SECTION 26. EARLY TERMINATION OF AGREEMENT; TRANSITION AT END OF TERM**

2           **26.1 Termination for Convenience**

3           **26.1.1** ADOT may, at any time, terminate this Agreement and the performance of the  
4 Work by Developer if ADOT determines, in its sole discretion, that a termination is in ADOT’s best  
5 interest (“**Termination for Convenience**”). ADOT will terminate by delivering to Developer a  
6 Notice of Termination for Convenience specifying the termination and its effective date.

7           **26.1.2** If ADOT terminates this Agreement on grounds or in circumstances beyond  
8 ADOT’s termination rights specifically set forth in this Agreement, such termination shall be  
9 deemed a Termination for Convenience for the purpose of determining the amount of  
10 Termination Compensation due (but not for any other purpose).

11           **26.2 Termination for Convenience Compensation Amount**

12           **26.2.1** If ADOT exercises its right of Termination for Convenience, it shall owe  
13 Termination Compensation to Developer in an amount equal to the sum of the following:

- 14           (a) Payments due but not yet paid in accordance with Section 15 for all D&C Work  
15 and O&M Work performed up to the date of termination, including work in  
16 progress since the last D&C Draw Request or O&M Draw Request, as applicable;  
17 plus
- 18           (b) Developer’s actual reasonable out-of-pocket costs, including equipment costs  
19 only to the extent permitted by Section 1.2.3 of Exhibit 13 (Compensation Amount  
20 Specifications), for demobilization and for work done to preserve and protect the  
21 Project, plus 15% of such costs for overhead and profit; plus
- 22           (c) Solely with respect to the O&M Work, an amount equal to 6% of the sum of the  
23 unescalated Annual O&M Payments (prorated for any partial year) for the  
24 remaining balance of the O&M Period; plus
- 25           (d) The cost of settling and paying claims arising out of the termination of Work under  
26 Subcontracts and Utility Agreements, exclusive of the amounts paid or payable on  
27 account of supplies or materials delivered or services furnished by the  
28 Subcontractor prior to the effective date of the Notice of Termination for  
29 Convenience, which amounts shall be included in the cost for which payment is  
30 made under clause (a) above; plus
- 31           (e) The reasonable out-of-pocket cost incurred to prepare and carry out the transition  
32 plan under Section 26.9.1; plus
- 33           (f) Any other reasonable out-of-pocket cost (including overhead) incurred incidental  
34 to termination of Work under this Agreement, including the reasonable cost to  
35 Developer of handling material returned to Suppliers, delivered to ADOT or

- 1 otherwise disposed of as directed by ADOT, and including a reasonable allowance  
2 for Developer's administrative costs in determining the amount payable due to  
3 termination of this Agreement, but excluding any costs and expenses incurred in  
4 connection with any disputes or Claims; minus
- 5 (g) The cost of property, materials, supplies, equipment and other things to be  
6 retained by Developer, the agreed price for, or proceeds from, the sale of such  
7 items not otherwise delivered to ADOT, including proceeds of sales pursuant to  
8 Section 26.9.2(j), and other appropriate deductions allowed under this  
9 Agreement, including those deductions that would be permitted in connection  
10 with the Final D&C Payment and each Monthly O&M Payment; minus
- 11 (h) except for normal spoilage, and except to the extent that ADOT will have  
12 otherwise expressly assumed the risk of loss, the fair value, as determined by  
13 ADOT, of equipment, machinery, materials, supplies and property which are  
14 destroyed, lost, stolen or damaged so as to become undeliverable to ADOT; minus
- 15 (i) All unliquidated advance or other payments made to or on behalf of Developer  
16 applicable to the terminated portion of the Work; minus
- 17 (j) The cost of repairing any Nonconforming Work (or, in ADOT's sole discretion, the  
18 amount which ADOT is entitled to recover under Section 8.7.2); minus
- 19 (k) The amount of any other Claim which ADOT may have against any Developer-  
20 Related Entity in connection with this Agreement; minus
- 21 (l) Any other amounts due or payable by Developer to ADOT pursuant to this  
22 Agreement or any such amount that is in dispute; minus
- 23 (m) Amounts that ADOT reasonably deems appropriate to retain to cover any existing  
24 or threatened claims and stop notices relating to the Project, including claims by  
25 Utility Companies, provided that ADOT will promptly pay to Developer any such  
26 retained amounts remaining after the need for the retention ends.

27 **26.2.2** The Termination Compensation as determined under Section 26.2.1 shall be  
28 subject to the following limitations:

- 29 (a) Developer shall not be entitled to any Termination Compensation in excess of the  
30 value of the Work performed (determined as provided in Section 26.2.1);
- 31 (b) except to the extent provided in Sections 26.2.1(b) and (c), items such as lost or  
32 anticipated profits, unabsorbed overhead and opportunity costs of Developer  
33 shall not be recoverable;
- 34 (c) the total amount to be paid to Developer for Termination for Convenience with  
35 respect to the O&M Work, exclusive of the costs described in Sections 26.2.1(d),

1 (e) and (f), may not exceed the total Annual O&M Payment for the year in which  
2 the termination occurs; and

- 3 (d) if any refund is payable with respect to insurance or bond premiums, letter of  
4 credit fees, deposits or other items that were previously passed through to ADOT  
5 by Developer, Developer shall pay such refund to ADOT or such amount shall  
6 otherwise be credited to ADOT.

7 **26.2.3** Upon determination of the amount of the Termination Compensation, the  
8 Parties shall sign a Supplemental Agreement to reflect the agreed amount, and ADOT will pay  
9 Developer any amount that may be due.

### 10 **26.3 Subcontracts**

11 **26.3.1** Provisions shall be included in each Subcontract (at all tiers) to ensure ADOT's  
12 rights of Termination for Convenience are passed through to the Subcontractors and to establish  
13 terms and conditions relating thereto, including procedures for determining the amount payable  
14 to each Subcontractor upon a termination, consistent with this Section 26.

15 **26.3.2** Each Subcontract shall provide that, in the event of a Termination for  
16 Convenience, the Subcontractor will not be entitled to any anticipatory or unearned profit on  
17 work terminated or partly terminated, except as provided in Section 26.2.1(b) and (c), or to any  
18 payment which constitutes consequential damages or punitive damages due to the Termination  
19 for Convenience.

### 20 **26.4 Termination Based on Delayed Issuance of NTPs**

21 **26.4.1** If NTP 1 has not been issued within 180 days after the Proposal Due Date plus  
22 the number of days of any delay in such issuance attributable in whole or in part to a Developer  
23 Act, Developer shall have the right to terminate this Agreement, which right shall be exercised  
24 by delivery of notice of termination to ADOT. In such event, ADOT's sole liability to Developer is  
25 to pay Developer (a) the same payment for work product as provided to responsive, unsuccessful  
26 Proposers pursuant to Section 6.3 of the ITP, provided, however, that all other conditions for  
27 such payment are met, plus (b) reasonable out-of-pocket costs (including overhead) incurred in  
28 performing any of the activities described or required in Sections 6.1.2(g), (h) and (j) of the ITP.

29 **26.4.2** If NTP 2 has not been issued within 120 days after satisfaction of all conditions  
30 precedent to issuance of NTP 2, Developer may conditionally elect to terminate this Agreement  
31 by providing ADOT with notice of such conditional election.

- 32 (a) If Developer delivers a notice of its conditional election to terminate, ADOT will  
33 have the choice of either accepting such notice of termination or continuing this  
34 Agreement in effect by delivering to Developer notice of ADOT's choice not later  
35 than 30 days after receipt of Developer's notice.

- 36 (b) If ADOT does not deliver notice of its choice within such 30-day period, then it will

1 be deemed to have accepted Developer’s election to terminate the Agreement.  
2 In such event, the termination shall be deemed a termination for convenience and  
3 handled in accordance with this Section 26.

4 (c) If ADOT delivers timely notice choosing to continue this Agreement in effect, then  
5 the Contract Price adjustment provisions described in Section 16.4.12 shall be  
6 extended and continue in effect for the duration of the delay in issuance of NTP 2,  
7 or until earlier termination of this Agreement.

## 8 **26.5 Termination for Developer Default**

9 **26.5.1** Subject to Section 21.3 (concerning the occurrence of an Event of Default  
10 consisting solely of Developer’s failure to achieve Project Substantial Completion or Final  
11 Acceptance by the applicable Completion Deadline), in the event of any Developer Default that  
12 is or becomes an Event of Default, ADOT may terminate this Agreement or a portion thereof,  
13 including Developer’s rights of entry upon and control of the Project.

14 **26.5.2** The Agreement will terminate on the date ADOT gives Notice of termination or  
15 any other date specified in such Notice. ADOT may include Notice of termination in its  
16 declaration of the Event of Default.

17 **26.5.3** If this Agreement is terminated under this Section 26.5 and it is later determined  
18 that ADOT lacked the right to terminate for an Event of Default, such termination shall be deemed  
19 to constitute a Termination for Convenience pursuant to Section 26.1.

## 20 **26.6 Termination for Extended Force Majeure Event**

21 **26.6.1** If a Force Majeure Event occurs and such Force Majeure Event is continuing or  
22 its consequence remains such that either Party is unable to comply with its relevant obligations  
23 under this Agreement for a continuous period of more than 12 months, either Party may  
24 terminate this Agreement by giving 30 day written notice to the other Party.

25 **26.6.2** If termination occurs for an extended Force Majeure Event pursuant to this  
26 Section 26.6, then ADOT will owe Termination Compensation to Developer equal to that owing  
27 upon a Termination for Convenience, except for (a) the markup under Section 26.2.1(b), which  
28 shall be limited to 10%, and (b) the amount set forth in Section 26.2.1(c).

## 29 **26.7 Termination by Court Ruling**

30 **26.7.1** This Agreement and the other Contract Documents are subject to Termination  
31 by Court Ruling.

32 **26.7.2** Termination by Court Ruling becomes effective, and automatically terminates  
33 this Agreement, upon issuance of the final, non-appealable court order by a court of competent  
34 jurisdiction; provided, however, that where Section 27.16 applies, Termination by Court Ruling  
35 becomes effective only after the Parties determine they are unable to negotiate revisions to the

1 Contract Documents to effect their original intent.

2 **26.7.3** If both Parties agree in writing, they may elect to terminate this Agreement in  
3 part due to such court order and to continue the remainder of this Agreement in effect, to the  
4 extent it is possible to do so without violating the court order.

5 **26.7.4** If Termination by Court Ruling occurs, then ADOT will owe Termination  
6 Compensation to Developer equal to that owing upon a Termination for Convenience, except the  
7 amount set forth in Section 26.2.1(c).

## 8 **26.8 Termination Based on Statutory Grounds**

9 **26.8.1** ADOT may terminate this Agreement, without penalty or further obligation,  
10 within three years after the Effective Date, if any person significantly involved in initiating,  
11 negotiating, securing, drafting or creating this Agreement for ADOT is or becomes, at any time  
12 during such three-year period, an employee or agent of Developer. See A.R.S., Title 38, Chapter  
13 3, Article 8, and, in particular, § 38-511.

14 **26.8.2** ADOT may terminate this Agreement, without obligation or penalty, if Developer  
15 or any member of the Developer’s team violates A.R.S. § 41-2517C, regarding unlawful offering  
16 of employment to a procurement officer or procurement employee.

## 17 **26.9 Responsibilities after Notice of Termination**

18 **26.9.1** Within three days after either Party delivers to the other Party a notice of  
19 termination of this Agreement, Developer and ADOT shall meet and confer for the purpose of  
20 developing an interim transition plan for the orderly transition of the terminated Work,  
21 demobilization and transfer of the Project design, construction, operation and maintenance to  
22 ADOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan  
23 within 15 days after the date of such notice of termination. The Parties shall use diligent efforts  
24 to complete a final transition plan within 30 days after such date. The final transition plan shall  
25 be in form and substance acceptable to ADOT in its good faith discretion and shall include and be  
26 consistent with the provisions and procedures set forth in Section 26.9.2.

27 **26.9.2** After either Party delivers to the other Party a notice of termination of this  
28 Agreement, and except as otherwise directed by ADOT, Developer shall timely comply with the  
29 following obligations independent of, and without regard to, the timing for preparing or  
30 implementing the transition plan or for determining, adjusting, settling and paying any amounts  
31 due Developer under this Agreement:

32 (a) Developer shall stop the Work as specified in the notice;

33 (b) Developer shall immediately notify all affected Subcontractors and Suppliers that  
34 this Agreement is being terminated and that their Subcontracts (including orders  
35 for materials, services or facilities) are not to be further performed unless  
36 otherwise authorized in writing by ADOT;

- 1 (c) Developer shall not enter into any further Subcontracts (including orders for  
2 materials, services or facilities), except as necessary to complete the continued  
3 portion of the Work;
- 4 (d) Unless instructed otherwise by ADOT, Developer shall terminate all Subcontracts  
5 and Utility Agreements to the extent they relate to the Work terminated;
- 6 (e) To the extent directed by ADOT, Developer shall execute and deliver to ADOT  
7 written assignments, in form and substance acceptable to ADOT, acting  
8 reasonably, of all of Developer's right, title, and interest in and to: (i) Subcontracts  
9 and Utility Agreements that relate to the terminated Work, provided ADOT  
10 assumes in writing all of Developer's obligations thereunder that arise after the  
11 effective date of the termination; and (ii) all assignable warranties, claims and  
12 causes of action held by Developer against Subcontractors and other Persons in  
13 connection with the terminated Work, to the extent such Work is adversely  
14 affected by any Subcontractor or other Person's breach of warranty, contract or  
15 other legal obligation; provided, however, that Developer may retain claims  
16 against Subcontractors for which ADOT has been fully compensated;
- 17 (f) Subject to the prior approval of ADOT, Developer shall settle all outstanding  
18 liabilities and claims arising from termination of Subcontracts and Utility  
19 Agreements that are required to be terminated hereunder;
- 20 (g) Within 30 days after notice of termination is delivered, Developer shall provide  
21 ADOT with a true and complete list of all materials, goods, machinery, equipment,  
22 parts, supplies and other property in inventory or storage (whether held by  
23 Developer or any Person or entity on behalf of or for the account of Developer)  
24 for use in or respecting the terminated Work, or on order or previously completed  
25 but not yet delivered from Suppliers for use in or respecting such Work. In  
26 addition, if requested by ADOT, Developer shall promptly transfer title and deliver  
27 to ADOT or ADOT's Authorized Representative, through bills of sale or other  
28 documents of title, as directed by ADOT, all such materials, goods, machinery,  
29 equipment, parts, supplies and other property, provided ADOT assumes in writing  
30 all of Developer's obligations under any contracts relating to the foregoing that  
31 arise after the effective date of termination;
- 32 (h) On or about the effective date of termination, Developer shall execute and deliver  
33 to ADOT the following, together with an executed bill of sale or other written  
34 instrument, in form and substance acceptable to ADOT, acting reasonably,  
35 assigning and transferring to ADOT all of Developer's right, title and interest in and  
36 to the following:
- 37 (i) All completed or partially completed drawings (including plans, elevations,  
38 sections, details and diagrams), specifications, designs, Record Drawings,  
39 surveys, and other Design Documents and information pertaining to the

- 1 design or construction of the terminated Work;
- 2 (ii) All samples, borings, boring logs, geotechnical data and similar data and  
3 information relating to the terminated Work;
- 4 (iii) All books, records, reports, test reports, studies and other documents of a  
5 similar nature relating to the terminated Work; and
- 6 (iv) All other work product and Intellectual Property used or owned by  
7 Developer or any Affiliate relating to the terminated Work;
- 8 (i) For the period of time specified by ADOT in the notice of termination or until ADOT  
9 takes over the Work, Developer shall take all action that may be necessary, or that  
10 ADOT may direct, for the safety, protection and preservation of:
- 11 (i) The public, including public and private vehicular movement;
- 12 (ii) Work; and
- 13 (iii) Equipment, machinery, materials and property related to the Project that  
14 is in the possession of Developer and in which ADOT has or may acquire an  
15 interest;
- 16 (j) As authorized by ADOT in writing, Developer shall use its best efforts to sell, at  
17 reasonable prices, any property of the types referred to in clause (i) above;  
18 provided, however, that Developer: (i) is not required to extend credit to any  
19 purchaser; and (ii) may acquire the property under the conditions prescribed and  
20 at prices approved by ADOT. The proceeds of any transfer or disposition will be  
21 applied to reduce any payments to be made by ADOT under the Contract  
22 Documents or paid in any other manner directed by ADOT;
- 23 (k) Developer shall immediately safely demobilize and secure construction, staging,  
24 lay down and storage areas for the Project and Utility Adjustments included in the  
25 Work, including Developer's Temporary Work Areas, in a manner satisfactory to  
26 ADOT, and remove all debris and waste materials, except as otherwise approved  
27 by ADOT in writing;
- 28 (l) Developer shall assist ADOT in such manner as ADOT may require prior to and for  
29 a reasonable period following the effective date of termination to ensure the  
30 orderly transition of the terminated Work and its management to ADOT, and shall,  
31 if appropriate and if requested by ADOT, take all steps as may be necessary to  
32 enforce the provisions of Subcontracts pertaining to the surrender of the  
33 terminated Work;
- 34 (m) Developer shall deliver to ADOT all Books and Records and the then-current  
35 Electronic Document Management System, except for information in Books and

1 Records exempt under applicable State Law from discovery in legal actions,  
2 including information protected by the attorney-client or other legal privilege  
3 based upon an opinion of counsel reasonably satisfactory to ADOT;

4 (n) Developer shall carry out such other directions as ADOT may give for the  
5 termination of the Work; and

6 (o) Developer shall take such other actions as are necessary or appropriate to mitigate  
7 the damage and costs of termination.

8 **26.9.3** Termination of this Agreement under this Section 26 shall not relieve Developer  
9 or any Surety or Guarantor of its obligation for any Claims.

10 **26.10 Payment**

11 **26.10.1** ADOT will pay amounts owing to Developer under this Section 26 as follows:

12 (a) Undisputed amounts, by not later than the next Developer Cycle Key Date  
13 occurring after ADOT approves said amounts; and

14 (b) Disputed amounts, by not later than the next Developer Cycle Key Date occurring  
15 after the corresponding dispute is resolved.

16 **26.10.2** ADOT may, but is not obligated to, make advance partial payments to Developer  
17 for costs Developer incurs in connection with a termination under this Section 26, before  
18 Developer's Termination Compensation is finally determined. If the total of such advance partial  
19 payments exceeds the amount of the Termination Compensation finally determined to be owing  
20 to Developer under this Section 26, such excess shall be payable by Developer to ADOT upon  
21 demand.

22 **26.11 No Consequential Damages**

23 Except as provided in Section 26.2.1(b) and (c), and without limiting Section 22.10.1, under no  
24 circumstances shall Developer be entitled to anticipatory or unearned profits or consequential  
25 damages as a result of any termination under this Section 26. The payment to Developer  
26 determined in accordance with this Section 26 constitutes Developer's exclusive remedy for a  
27 termination hereunder.

28 **26.12 No Waiver; Release**

29 **26.12.1** Notwithstanding anything contained in this Agreement to the contrary, a  
30 termination under this Section 26 shall not waive any right or claim to damages that ADOT may  
31 have and ADOT may pursue any cause of action which it may have at Law, in equity or under the  
32 Contract Documents.

33 **26.12.2** Subject to Section 26.13, ADOT's payment to Developer of the amounts required

1 under this Section 26 shall constitute full and final satisfaction of, and upon payment ADOT will  
2 be forever released and discharged from, any and all Claims, causes of action, suits, demands and  
3 Losses, known or unknown, suspected or unsuspected, that Developer may have against ADOT  
4 arising out of or relating to the termination of this Agreement. Upon such payment, Developer  
5 shall execute and deliver to ADOT all such releases and discharges as ADOT may reasonably  
6 require to confirm the foregoing, but no such release and discharge shall be necessary to give  
7 effect to the foregoing satisfaction and release.

8 **26.13 Dispute Resolution**

9 The failure of the Parties to agree on amounts due under this Section 26 shall be a Dispute to be  
10 resolved in accordance with Section 24.

11 **26.14 Allowability of Costs**

12 All costs claimed by Developer under this Section 26 must be allowable, allocable and reasonable  
13 in accordance with the cost principles and procedures of 48 C.F.R. Part 31.

14 **26.15 Flex Lanes System Transition at the End of the Term**

15 **26.15.1** ADOT and Developer shall meet and confer between 12 and six months before  
16 the maturity of the Term for the purpose of developing a Flex Lanes Transition Plan for:

- 17 (a) Training of ADOT staff in the maintenance of the Flex Lanes System;
- 18 (b) Equipment replacements or improvements of the Flex Lanes System that would  
19 be recommended for the five-year period following the Term; and
- 20 (c) The orderly transfer of Flex Lanes System maintenance from Developer to ADOT  
21 at the maturity of the Term.

22 **26.15.2** Based on initial consultation which shall occur no later than nine months before  
23 the maturity of the Term, Developer shall prepare a draft of the Flex Lanes Transition Plan. ADOT  
24 will review and respond to the draft Flex Lanes Transition Plan within 30 days after receipt. Within  
25 ten days after ADOT delivers its response, the Parties will meet to resolve all issues to ADOT's  
26 satisfaction. Developer shall then submit the final Flex Lanes Transition Plan for approval no later  
27 than 30 days after the issue resolution meeting. The Parties shall use diligent efforts to complete  
28 preparation of the Flex Lanes Transition Plan not later than six months prior to the maturity of  
29 the Term. The Flex Lanes Transition Plan shall be in form and substance acceptable to ADOT in  
30 its good faith discretion.

31 **26.15.3** The Flex Lanes Transition Plan shall include and be consistent with the provisions  
32 and procedures set forth in (a) Sections 26.9.2(g), (h), (k) and (l), and (b) Section OMR 501 of the  
33 Technical Provisions.

34 **26.15.4** The Parties shall carry out the provisions and procedures in the Flex Lanes

- 1 Transition Plan in a timely manner in order to thoroughly train ADOT staff in the maintenance of
- 2 the Flex Lanes System and to effectuate a smooth and uninterrupted transition of Flex Lanes
- 3 System maintenance to ADOT at the maturity of the Term.

1 **SECTION 27. MISCELLANEOUS PROVISIONS**

2 **27.1 Amendments**

3 The Contract Documents may be amended only by a written instrument duly executed by the  
4 Parties or their respective successors or assigns, except to the extent expressly provided  
5 otherwise in this Agreement.

6 **27.2 Waiver**

7 **27.2.1** No waiver of any term, covenant or condition of the Contract Documents shall  
8 be valid unless in writing and signed by the obligee Party.

9 **27.2.2** The exercise by a Party of any right or remedy provided under the Contract  
10 Documents shall not waive or preclude any other or further exercise thereof or the exercise of  
11 any other right or remedy. No waiver by any Party of any right or remedy under the Contract  
12 Documents shall be deemed to be a waiver of any other or subsequent right or remedy under  
13 the Contract Documents. The consent by one Party to any act by the other Party requiring such  
14 consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent  
15 act for which consent is required, regardless of whether similar to the act for which consent is  
16 given.

17 **27.2.3** Except as provided otherwise in the Contract Documents, no act, delay or  
18 omission done, suffered or permitted by one Party or its agents shall be deemed to waive,  
19 exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other  
20 Party from the full performance of its obligations under the Contract Documents.

21 **27.2.4** Either Party’s waiver of any breach or failure to enforce any of the terms,  
22 covenants, conditions or other provisions of the Contract Documents at any time shall not in any  
23 way limit or waive that Party’s right thereafter to enforce or compel strict compliance with every  
24 term, covenant, condition or other provision. Furthermore, if the Parties make and implement  
25 any interpretation of the Contract Documents without documenting such interpretation by an  
26 instrument signed by both Parties, such interpretation and implementation thereof will not be  
27 binding in the event of any future Claims or disputes.

28 **27.3 Independent Contractor**

29 **27.3.1** Developer is an independent contractor, and nothing contained in the Contract  
30 Documents shall be construed as constituting any relationship with ADOT other than that of  
31 Project developer and independent contractor.

32 **27.3.2** Nothing in the Contract Documents is intended or shall be construed to create  
33 any partnership, joint venture or similar relationship between ADOT and Developer; and in no  
34 event shall either Party take a position in any tax return or other writing of any kind that a  
35 partnership, joint venture or similar relationship exists. While the term “public-private  
36 partnership” may be used on occasion to refer to contractual relationships of the type hereby

1 created, the Parties do not thereby express any intention to form or hold themselves out as a de  
2 jure or de facto partnership, joint venture or similar relationship, to share net profits or net  
3 losses, or to give ADOT control or joint control over Developer's financial decisions or  
4 discretionary actions concerning the Project and the Work.

5 **27.3.3** In no event shall the relationship between ADOT and Developer be construed as  
6 creating any relationship whatsoever between ADOT and Developer's employees. Neither  
7 Developer nor any of its employees is or shall be deemed to be an employee of ADOT. Except as  
8 otherwise specified in the Contract Documents, Developer has sole authority and responsibility  
9 to employ, discharge and otherwise control its employees and has complete and sole  
10 responsibility as a principal for its agents, for all Subcontractors and for all other Persons that  
11 Developer or any Subcontractor hires to perform or assist in performing the Work.

12 **27.4 Successors and Assigns; Change of Control**

13 **27.4.1** The Contract Documents shall be binding upon and inure to the benefit of ADOT  
14 and Developer and their permitted successors, assigns and legal representatives.

15 **27.4.2** ADOT may transfer and assign all or any portion of its rights, title and interests  
16 in and to the Contract Documents, including rights with respect to any Project Bond, Guaranties,  
17 letters of credit and other security for payment or performance:

18 (a) Without Developer's consent, to any other public agency or public entity as  
19 permitted by Law, provided that the successor or assignee has assumed all of  
20 ADOT's obligations, duties and liabilities under the Contract Documents then in  
21 effect;

22 (b) Without Developer's consent, to any other Person that succeeds to the  
23 governmental powers and authority of ADOT; provided, however, that such  
24 successor(s) has assumed all of ADOT's obligations, duties and liabilities under the  
25 Contract Documents then in effect; and

26 (c) To any other Person with the prior approval of Developer.

27 **27.4.3** All rights of ADOT under Section 14, as well as all other rights and claims of ADOT,  
28 insofar as they relate to Elements that will be owned by Persons other than ADOT (such as Utility  
29 Companies and Local Jurisdictions), shall be assignable to such Persons.

30 **27.4.4** In the event of ADOT's assignment of all of its rights, title and interests in the  
31 Contract Documents as permitted hereunder, Developer shall have no further recourse to ADOT  
32 under the Contract Documents or otherwise except as specifically provided by other contractual  
33 agreement or by statute.

34 **27.4.5** Developer shall not voluntarily or involuntarily sell, assign, convey, transfer,  
35 pledge, mortgage or otherwise encumber Developer's interest in and to the Contract Documents  
36 or any portion thereof without ADOT's prior approval, except to any entity that is under the same

1 ultimate management control as Developer. Developer shall not grant any right of entry, license  
2 or other special occupancy of the Project to any other Person that is not in the ordinary course  
3 of Developer performing the Work, without ADOT's prior approval. Any sale, assignment,  
4 conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, license or other  
5 special occupancy in violation of this provision shall be null and void *ab initio* and ADOT, at its  
6 option, may declare any such attempted action to be a material Developer Default and Event of  
7 Default.

8 **27.4.6** Developer shall not voluntarily or involuntarily cause, permit or suffer any  
9 Change of Control without ADOT's prior approval. If there occurs any voluntary or involuntary  
10 Change of Control without ADOT's prior approval, ADOT, at its option, may declare it to be a  
11 material Developer Default and Event of Default.

12 **27.4.7** Where ADOT's prior approval is required for a proposed sale, assignment,  
13 conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of right of entry, license  
14 or other special occupancy, or for any proposed Change of Control, ADOT may withhold or  
15 condition its approval in its sole discretion. Any such decision of ADOT to withhold consent shall  
16 be final, binding and not subject to the Dispute Resolution Procedures.

17 **27.4.8** Assignments and transfers of Developer's interest in or to the Contract  
18 Documents permitted under this Section 27.4 or otherwise approved by ADOT will be effective  
19 only upon ADOT's receipt of notice of the assignment or transfer and a written recordable  
20 instrument executed by the transferee, in form and substance acceptable to ADOT, in which the  
21 transferee, without condition or reservation, assumes all of Developer's obligations, duties and  
22 liabilities under this Agreement and the other Contract Documents then in effect and agrees to  
23 perform and observe all provisions thereof applicable to Developer. Each transferee shall take  
24 Developer's interest in or to the Contract Documents subject to, and shall be bound by, the  
25 Project Management Plan, the Subcontracts, the Utility Agreements, the Governmental  
26 Approvals, and all agreements between the transferor and Governmental Entities with  
27 jurisdiction over the Project or the Work, except to the extent otherwise approved by ADOT in  
28 its good faith discretion.

29 **27.5 Change of Organization or Name**

30 **27.5.1** Developer shall not change its legal form of business organization without the  
31 prior approval of ADOT, which consent may be granted or withheld in ADOT's sole discretion.

32 **27.5.2** In the event either Party changes its name, such Party agrees to promptly furnish  
33 the other Party with notice of change of name and appropriate supporting documentation and  
34 take necessary steps to ensure the new name replaces the old name in all Contract Documents.

35 **27.6 Designation of Representatives; Cooperation with Representatives**

36 **27.6.1** ADOT and Developer shall each designate an individual or individuals with the  
37 authority to make decisions and bind the Parties on matters relating to the Contract Documents

1 (for each Party, its respective “**Authorized Representative**”). Exhibit 15 (Initial Designation of  
2 Authorized Representatives) hereto provides the Parties’ initial Authorized Representative  
3 designations. Either Party may change its initial Authorized Representative designation by a  
4 subsequent writing delivered to the other Party in accordance with Section 27.12.

5 **27.6.2** Developer’s Authorized Representative(s) shall have onsite field and office  
6 authority to represent and act on behalf of Developer during the Term. Such Authorized  
7 Representative(s) shall be present at the Site at all times while the D&C Work is in progress.

8 **27.6.3** The Parties may also designate technical representatives who shall be authorized  
9 to (a) investigate and report on matters relating to the design and construction of the Project and  
10 operations and maintenance of the Flex Lanes and (b) negotiate on behalf of each of the Parties,  
11 but who do not have authority to bind ADOT or Developer.

12 **27.6.4** Developer shall cooperate with ADOT and all representatives of ADOT  
13 designated as described above.

14 **27.7 Limitation on Third Party Beneficiaries**

15 It is not intended by any of the provisions of the Contract Documents to create any third party  
16 beneficiary hereunder or to authorize anyone not a Party hereto to commence any legal  
17 proceeding of any nature whatsoever based on the terms or provisions hereof, except to the  
18 extent that specific provisions (such as the indemnity provisions) identify third parties and state  
19 that they are entitled to benefits hereunder. Except as otherwise provided in this Section 27.7,  
20 the duties, obligations and responsibilities of the Parties to the Contract Documents with respect  
21 to third parties shall remain as imposed by Law. The Contract Documents shall not be construed  
22 to create a contractual relationship of any kind between ADOT and a Subcontractor or any Person  
23 other than Developer.

24 **27.8 No Personal Liability of ADOT Employees; Limitation on State’s Liability**

25 **27.8.1** ADOT’s Authorized Representatives are acting solely as agents and  
26 representatives of ADOT when carrying out the provisions of or exercising the power or authority  
27 granted to them. They shall not be liable to any Developer-Related Entity either personally or as  
28 employees of ADOT for actions in their ordinary course of employment.

29 **27.8.2** In no event shall ADOT be liable for any injury, damage or death caused by any  
30 Developer Act.

31 **27.8.3** Nothing in the Agreement waives or diminishes the protections and defense  
32 afforded to ADOT and its employees by A.R.S. Title 12, Chapter 7, Article 2 (§ 12-820 et seq).

33 **27.9 Governing Law**

34 The Contract Documents shall be governed by and construed in accordance with (a) the Laws of  
35 the State, without regard to its principles of conflicts of laws, and (b) any applicable federal Laws.

1 **27.10 Five Year Transportation Facilities Construction Program**

2 The parties acknowledge that the Project and this Agreement are subject to A.R.S., Title 28,  
3 Chapter 20, Article 3.

4 **27.11 Israel Boycott**

5 Pursuant to A.R.S. § 35-393.01, Developer hereby certifies that it is not currently engaged in, and  
6 agrees to not engage in, throughout the Term, a boycott of goods or services from Israel.

7 **27.12 Notices and Communications**

8 **27.12.1** Notices under the Contract Documents shall be in writing and: (a) delivered  
9 personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight  
10 mail or courier service, with delivery receipt requested; or (d) sent by email communication  
11 followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in  
12 Sections 27.12.2 and 27.12.3, as applicable (or to such other address as may from time to time  
13 be specified in writing).

14 **27.12.2** All notices, correspondence and other communications to Developer shall be  
15 delivered to the following address or as otherwise directed by Developer's Authorized  
16 Representative:

17  
18 Allen Mills  
19 Project Manager  
20 3888 E. Broadway Rd.  
21 Phoenix, AZ 85040-2924  
22 Telephone: (602) 437-7878  
23 E-mail: [allen.mills@kiewit.com](mailto:allen.mills@kiewit.com)  
24 Facsimile: (602) 437-7719  
25

26 In addition, copies of all notices regarding disputes, suspension, termination and default shall be  
27 delivered to the following:

28  
29 Nicholas Wiatrowski  
30 Area Manager  
31 3888 E. Broadway Rd.  
32 Phoenix, AZ 85040-2924  
33 Telephone: (602) 437-7878  
34 E-mail: [nicholas.wiatrowski@kiewit.com](mailto:nicholas.wiatrowski@kiewit.com)  
35 Facsimile: (602) 437-7719

1           **27.12.3** All notices, correspondence and other communications to ADOT will be marked  
2 as regarding the I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction) Project and shall be delivered  
3 to the following address or as otherwise directed by ADOT’s Authorized Representative:

4                   Arizona Department of Transportation  
5                   206 S. 17<sup>th</sup> Avenue, MD 139A  
6                   Phoenix, AZ 85007  
7                   Attn: Annette Riley  
8                   Telephone: (602) 712-4241  
9                   E-mail: ariley@azdot.gov

10 In addition, copies of all notices regarding disputes, suspension, termination and default shall be  
11 delivered to the following:

12                   Office of the Arizona Attorney General  
13                   Transportation Section  
14                   2005 N. Central Avenue  
15                   Phoenix, AZ 85004  
16                   Telephone: (602) 542-1680  
17                   E-mail: transportation@azag.gov  
18                   Facsimile: (602) 542-3646

19           **27.12.4** Notices shall be deemed received when actually received in the office of the  
20 addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on  
21 the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices  
22 delivered by email communication shall be deemed received when actual receipt at the email  
23 address of the addressee is confirmed. Notwithstanding the foregoing, notices sent or received  
24 after 5:00 p.m. (measured as of the prevailing time in Phoenix, Arizona) shall be deemed received  
25 on the first Business Day following delivery.

26 **27.13 Taxes**

27 Developer shall pay, prior to delinquency, all applicable taxes. Developer shall have no right to  
28 any increase in the Contract Price or any other Claim due to its misinterpretation of Laws  
29 respecting taxes or incorrect assumptions regarding applicability of taxes.

30 **27.14 Interest on Amounts Due and Owing**

31           **27.14.1** Pursuant to A.R.S. § 44-1201D, neither Party shall be entitled to any prejudgment  
32 interest for any unliquidated amount.

33           **27.14.2** Subject to Section 27.14.1, amounts owed to Developer under this Agreement  
34 and not paid when due shall bear interest at a floating rate equal to the following:

- 35           (a) If not in good faith dispute, then at the Prime Rate in effect from time to time plus  
36 100 basis points, commencing on the date due and continuing until paid; and

1 (b) If subject to a good faith dispute over the amount or whether it is due, then at the  
2 Prime Rate in effect from time to time, commencing from the date ADOT responds  
3 to a Claim therefor or the date ADOT denies the Claim, whichever is earlier, and  
4 continuing until the date the amount is finally determined to be due pursuant to  
5 settlement or the Dispute Resolution Procedures, and thereafter at the Prime Rate  
6 in effect from time to time plus 100 basis points until paid.

7 **27.14.3** Subject to Section 27.14.1, any amount owed to ADOT under this Agreement,  
8 including any overpayment to Developer as a result of an inaccuracy in a D&C Draw Request or  
9 O&M Draw Request, and not paid when due shall bear interest at a floating rate equal to the  
10 following:

11 (a) If not in good faith dispute, then at the Prime Rate in effect from time to time plus  
12 100 basis points, commencing on the date of ADOT's payment of the D&C Draw  
13 Request or O&M Draw Request, or the date ADOT claims any other amount is due,  
14 and continuing until the date the overpayment or other amount due is paid to  
15 ADOT or ADOT deducts such amount from payment to Developer; and

16 (b) If the subject of a good faith dispute over whether it is due, then at the Prime Rate  
17 in effect from time to time, commencing on the date of ADOT's payment of the  
18 D&C Draw Request or O&M Draw Request, or the date ADOT claims any other  
19 amount is due, and continuing until the date the amount is finally determined to  
20 be due pursuant to settlement or the Dispute Resolution Procedures, and  
21 thereafter at the Prime Rate in effect from time to time plus 100 basis points until  
22 paid.

23 **27.14.4** ADOT will not owe interest on any sum ADOT withholds from payments to  
24 Developer pursuant to this Agreement, except for the period, if any, from the date the withheld  
25 amount becomes due and owing to Developer until paid.

26 **27.14.5** A Party's right to receive interest is without prejudice to any other rights and  
27 remedies the Party may have under this Agreement.

28 **27.15 Integration of Contract Documents**

29 ADOT and Developer agree and expressly intend that, subject to Section 27.16, this Agreement  
30 and other Contract Documents constitute a single, non-severable, integrated agreement the  
31 terms of which are interdependent and non-divisible.

32 **27.16 Severability**

33 **27.16.1** If any clause, provision, section or part of the Contract Documents is ruled invalid  
34 by a court of competent jurisdiction, then the Parties shall:

35 (a) Promptly meet and negotiate a substitute for such clause, provision, section or  
36 part, which shall, to the greatest extent legally permissible, effect the original

1 intent of the Parties to account for any change in the Work resulting from such  
2 invalidated portion; and

3 (b) If necessary or desirable, apply to the court or other decision maker (as applicable)  
4 which declared such invalidity for an interpretation of the invalidated portion to  
5 guide the negotiations.

6 **27.16.2** The invalidity or unenforceability of any such clause, provision, section or part  
7 shall not affect the validity or enforceability of the balance of the Contract Documents, which  
8 shall be construed and enforced as if the Contract Documents did not contain such invalid or  
9 unenforceable clause, provision, section or part.

10 **27.17 Headings**

11 The captions of the sections and clauses herein are inserted solely for convenience and under no  
12 circumstances are they or any of them to be treated or construed as part of this Agreement.

13 **27.18 Entire Agreement**

14 The Contract Documents contain the entire understanding of the Parties with respect to the  
15 subject matter hereof and supersede all prior agreements, understandings, statements,  
16 representations and negotiations between the Parties with respect to its subject matter.

17 **27.19 Counterparts**

18 This instrument may be executed in two or more counterparts, each of which shall be deemed  
19 an original, but all of which together shall constitute one and the same instrument.

20

21 [Signature page immediately follows]

1 IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.  
2

KIEWIT-FANN JOINT VENTURE

ARIZONA DEPARTMENT OF  
TRANSPORTATION

By:   
Name: Stan M. Driver  
Title: Authorized Representative

DocuSigned by:  
  
Name: John S. Halikowski  
Title: Director

By: \_\_\_\_\_  
Name: Jason Fann  
Title: Authorized Representative

3

1 IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

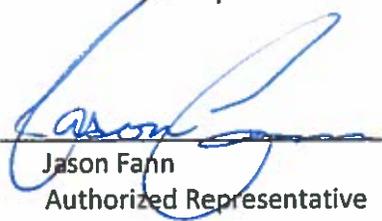
2

KIEWIT-FANN JOINT VENTURE

ARIZONA DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_  
Name: Stan M. Driver  
Title: Authorized Representative

By: \_\_\_\_\_  
Name: John S. Halikowski  
Title: Director

By:  \_\_\_\_\_  
Name: Jason Fann  
Title: Authorized Representative

3

1 **EXHIBIT 1**

2

3

4 **ABBREVIATIONS AND DEFINED TERMS**

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

<b>AAA</b>	American Arbitration Association
<b>AASHTO</b>	American Association of State Highway and Transportation Officials
<b>AC</b>	Asphaltic Concrete
<b>ACFC</b>	Asphaltic Concrete Friction Course
<b>ADA</b>	Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.
<b>ADEQ</b>	Arizona Department of Environmental Quality
<b>ADOT</b>	Arizona Department of Transportation
<b>ADWR</b>	Arizona Department of Water Resources
<b>AGFD</b>	Arizona Game and Fish Department
<b>AMBER</b>	America’s Missing: Broadcast Emergency Response
<b>APS</b>	Arizona Public Service Electric
<b>A.R.S.</b>	Arizona Revised Statutes
<b>AR-ACFC</b>	Asphaltic Rubber – Asphaltic Concrete Friction Course
<b>ASCE</b>	American Society of Civil Engineers
<b>ASLD</b>	Arizona State Land Department
<b>ASM</b>	Arizona State Museum
<b>ATC</b>	Alternative Technical Concept
<b>AWG</b>	American Wire Gauge
<b>AWS</b>	American Welding Society
<b>AZPDES</b>	Arizona Pollutant Discharge Elimination System
<b>AZ UTRACS</b>	Arizona’s Unified Transportation Registration and Certification System
<b>BLM</b>	Bureau of Land Management
<b>BMP</b>	Best Management Practices
<b>CAD</b>	Computer Aided Design
<b>CADD</b>	Computer Aided Drafting and Design
<b>CCI</b>	ENR Construction Cost Index
<b>CCTV</b>	Closed Circuit Television
<b>CDC</b>	U.S. Center for Disease Control
<b>CE</b>	Categorical Exclusion

<b>C.F.R.</b>	Code of Federal Regulations
<b>CGP</b>	Construction General Permit
<b>CIP</b>	Cast-in-Place
<b>CQM</b>	Construction Quality Manager
<b>CQMP</b>	Construction Quality Management Plan
<b>CPI</b>	Consumer Price Index
<b>CPM</b>	Critical Path Method
<b>CR</b>	Construction Requirements
<b>CRM</b>	Comment Resolution Meeting
<b>D&amp;C</b>	Design and Construction
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DMS</b>	Dynamic Message Signs
<b>DOORS</b>	ADOT's web-based DBE and OJT Online Reporting System (available at <a href="https://adotdoors.dbesystem.com">https://adotdoors.dbesystem.com</a> )
<b>DPDs</b>	Detailed Pricing Documents
<b>DPS</b>	Arizona Department of Public Safety
<b>DR</b>	Design Requirements
<b>DTM</b>	Digital Terrain Model
<b>ECC</b>	Erosion Control Coordinator
<b>ECM</b>	Environmental Compliance Manager
<b>ECP</b>	Environment Communications Protocol
<b>EDMS</b>	Electronic Document Management System
<b>EEO</b>	Equal Employment Opportunity
<b>EMP</b>	Environmental Management Plan
<b>EPA</b>	Environmental Protection Agency
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	U.S. Department of Transportation, Federal Highway Administration
<b>FIS</b>	Flood Insurance Study
<b>FMS</b>	Freeway Management Systems
<b>GP</b>	General Provisions
<b>GPDM</b>	Geotechnical Project Development Manual (2021)
<b>GPS</b>	Global Positioning System
<b>HDPE</b>	High Density Poly Ethylene
<b>HEC</b>	Hydraulic Engineering Circular
<b>HEC-RAS</b>	Hydrologic Engineering Center River Analysis System
<b>HED</b>	Highway Easement Deed

<b>HPT</b>	ADOT's Historic Property Team
<b>HPTP</b>	Historic Property Treatment Plan
<b>HVAC</b>	Heating, Ventilation, and Air Conditioning
<b>IA</b>	Independent Assurance
<b>ID</b>	Identification
<b>IRI</b>	International Roughness Index
<b>ISO</b>	International Standards Organization or International Organization for Standardization
<b>IT</b>	Information Technology
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>LED</b>	Light-Emitting Diode
<b>LiDAR</b>	Light Detection and Ranging
<b>LRFD</b>	Load and Resistance Factor Design
<b>MASH</b>	Manual for Assessing Safety Hardware
<b>Mbps</b>	Megabits per Second
<b>MDR</b>	Materials Design Report
<b>MIS</b>	Maintenance Information System
<b>MOT</b>	Maintenance of Traffic
<b>mph</b>	Miles per Hour
<b>MSE</b>	Mechanically Stabilized Earth
<b>MSHA</b>	U.S. Mine Safety and Health Administration
<b>MUTCD</b>	Manual for Uniform Traffic Control Devices
<b>NAD</b>	North American Datum
<b>NAVD</b>	North American Vertical Datum
<b>NB</b>	Northbound
<b>NBI</b>	National Bridge Inventory
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NEMA</b>	National Electrical Manufacturers Association
<b>NEPA</b>	National Environmental Policy Act
<b>NOI</b>	Notice of Intent
<b>NOT</b>	Notice of Termination
<b>NTP</b>	Notice to Proceed
<b>O&amp;M</b>	Operations and Maintenance
<b>OEM</b>	Original Equipment Manufacturers
<b>OHWM</b>	Ordinary High Water Mark

<b>OJT</b>	On-the-Job Training
<b>OMMP</b>	Operations and Maintenance Management Plan
<b>OMQMP</b>	Operations and Maintenance Quality Management Plan
<b>OMSMP</b>	Operations and Maintenance Safety Management Plan
<b>OSHA</b>	Occupational Safety & Health Administration
<b>P3</b>	Public-Private Partnership
<b>PCMS</b>	Portable Changeable Message Signs
<b>PDF</b>	Portable Document Format
<b>PDS</b>	Pavement Design Summary
<b>PI</b>	Public Involvement
<b>PIP</b>	Public Involvement Plan
<b>PJD</b>	Preliminary Jurisdictional Delineation
<b>PMP</b>	Project Management Plan
<b>PPE</b>	Personal Protective Equipment
<b>PSQM</b>	Professional Services Quality Manager
<b>PSQMP</b>	Professional Services Quality Management Plan
<b>PVC</b>	Polyvinyl Chloride
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QMP</b>	Quality Management Plan
<b>RFC</b>	Release for Construction
<b>RFI</b>	Request for Information
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RIDs</b>	Reference Information Documents
<b>ROW</b>	Right-of-Way
<b>SAT</b>	System Acceptance Testing
<b>SB</b>	Southbound
<b>SBC</b>	Small Business Concerns
<b>SDPP</b>	Sewage Discharge Prevention Plan
<b>SHPO</b>	State Historic Preservation Office
<b>SPT</b>	Standard Penetration Test
<b>SR</b>	State Route
<b>SRP</b>	Salt River Project
<b>SSID</b>	Service Set Identification
<b>SWPPP</b>	Stormwater Pollution Prevention Plan

<b>TCE</b>	Temporary Construction Easement
<b>TCP</b>	Traffic Control Plan
<b>TI</b>	Traffic Interchange
<b>TMP</b>	Transportation Management Plan
<b>TOC</b>	Traffic Operations Center
<b>TPs</b>	Technical Provisions
<b>TRB</b>	Transportation Research Board
<b>TRACS</b>	Transportation Accounting System
<b>TSMO</b>	Traffic System Management and Operations
<b>TWG</b>	Technical Work Group
<b>UPRR</b>	Union Pacific Railroad
<b>UPS</b>	Uninterruptable Power Supply
<b>U.S.</b>	United States
<b>U.S.C.</b>	United States Code
<b>USACE</b>	United States Army Corps of Engineers
<b>USDOT</b>	United States Department of Transportation
<b>UTP</b>	Unshielded Twisted Pair
<b>VAB</b>	Vehicle Arresting Barrier
<b>VAC</b>	Volts Alternative Current
<b>VLAN</b>	Virtual Local Area Network
<b>VoIP</b>	Voice Over Internet Protocol
<b>VPN</b>	Virtual Private Network
<b>WAN</b>	Wide Area Network
<b>WBS</b>	Work Breakdown Structure
<b>WHO</b>	World Health Organization
<b>WLAN</b>	Wireless Local Area Networks

- 1 **3D Models** means the models described in Section GP 110.10.2.4.3 of the Technical Provisions.
- 2 **Action Report** means the report described in Section GP 110.05.4.1 of the Technical Provisions.
- 3 **Additional TCE Property** has the meaning set forth in Section 7.2.1(a) of the Agreement.
- 4 **Adjacent Work** means any project, work, improvement or development to be planned, designed  
5 or constructed that could or does affect the Project or that is located on the Site or property  
6 contiguous with the Project. Examples of Adjacent Work include the ADOT Broadband Initiative  
7 for I-17, proposed subdivisions, other roads constructed by Governmental Entities, site grading  
8 and drainage, and other development improvement plans and Utility projects.

1 **Adjustment Standards** means the standard design and construction methods that a Utility  
2 Company applies to facilities (comparable to facilities subject to Utility Adjustments on account  
3 of the Project) constructed by the Utility Company (or for the Utility Company by its contractors),  
4 at its own expense. Unless the context or applicable Utility Agreement requires otherwise,  
5 references in the Contract Documents to a Utility Company’s “applicable Adjustment Standards”  
6 refer to those that are in effect as of the Setting Date.

7 **Adjustments** means Utility Adjustments.

8 **ADOT** means the Arizona Department of Transportation, a public agency constituted under the  
9 laws of the State.

10 **ADOT Broadband Initiative for I-17** has the meaning set forth in Section DR 466.3.3.1 of the  
11 Technical Provisions.

12 **ADOT-Caused Delay** means any of the following events, to the extent they result in a delay or  
13 interruption in the performance of any material Developer obligation under the Agreement:

14 (a) Failure of ADOT to issue NTP 1 by the date that is 100 Days after the Proposal Due  
15 Date plus the number of days of any delay in such issuance attributable in whole or in part to a  
16 Developer Act;

17 (b) Failure of ADOT to issue NTP 2 by the date that is ten Business Days after the  
18 anticipated issuance date set forth in Section 9.4.1 of the Agreement plus the number of days of  
19 any delay in such issuance attributable in whole or in part to a Developer Act;

20 (c) ADOT-Directed Change;

21 (d) Failure or inability of ADOT to make available to Developer any Project ROW parcel  
22 listed in TP Attachment 470-1 of the Technical Provisions by the later of the date provided in the  
23 Project Schedule or the date provided in TP Attachment 470-1 of the Technical Provisions;

24 (e) Failure or inability of ADOT to make available to Developer any parcel:

25 (i) respecting Developer-Designated ROW or Additional TCE Property to be  
26 acquired from the U.S. Bureau of Land Management, 180 days after ADOT has notified Developer  
27 in writing that all Environmental Approvals have been obtained and ADOT will acquire the parcel;

28 (ii) respecting Developer-Designated ROW or Additional TCE Property to be  
29 acquired from the Arizona State Land Department, 180 days after ADOT has notified Developer  
30 in writing that all Environmental Approvals have been obtained and ADOT will acquire the parcel;  
31 and

32 (iii) respecting Developer-Designated ROW or Additional TCE Property to be  
33 acquired from a private owner, 180 days after ADOT has notified Developer in writing that all  
34 Environmental Approvals have been obtained and ADOT will acquire the parcel,

1 provided that “make available” as used in clauses (d) and (e) above means that ADOT has (A)  
2 obtained an order for immediate possession, (B) closed the acquisition of the parcel or (C)  
3 otherwise obtained permanent right of entry through settlement, negotiation, the condemnation  
4 process or otherwise, which in each case may be subject to covenants, conditions, restrictions  
5 and limitations the compliance with which by Developer will not adversely interfere with the  
6 Project Schedule or planned construction means and methods. With respect to clause (d) above,  
7 “make available” requires relocation of occupants and commencement or completion of  
8 demolition or clearance, including data recovery for cultural resources, so as not to interfere  
9 unreasonably with Developer’s performance of the Work with respect to the parcel. With respect  
10 to clause (e) above, “make available” does not require commencement or completion of  
11 relocation, demolition or clearance (such as, but not limited to, data recovery for cultural  
12 resources);

13 (f) Following delivery of written notice from Developer requesting such action in  
14 accordance with the terms and requirements of the Contract Documents, the failure of ADOT to  
15 provide responses to proposed schedules, plans, Design Documents and other Submittals and  
16 matters submitted to ADOT after the Effective Date for which response is required under the  
17 Contract Documents as an express prerequisite to Developer’s right to proceed or act, within the  
18 time periods (if any) indicated in the Contract Documents, or if no time period is indicated, within  
19 a reasonable time, taking into consideration (i) the nature, importance and complexity of the  
20 Submittal or matter, (ii) the number of Submittals or such other items which are then pending  
21 for ADOT’s response, (iii) the completeness and accuracy of the Submittal or such other item, and  
22 (iv) Developer’s performance and history of Nonconforming Work under the Contract  
23 Documents;

24 (g) Suspensions of the Work that ADOT orders under Section 20.1 of the Agreement,  
25 subject to the following:

26 (i) Any suspension of Work lasting up to 45 days arising from a Relief Event  
27 under clause (e), (h), (i), (j), (l), (n) or (o), respectively, of the definition of “Relief Event” (Force  
28 Majeure Events, presence or Release of Hazardous Materials, ADOT’s performance of data  
29 recovery respecting archeological, paleontological, historical or cultural resources, ADOT’s  
30 actions related to endangered or threatened species, litigation, or security threat, rule, order or  
31 directive) shall not be considered an ADOT-Caused Delay, despite the fact that ADOT may  
32 specifically direct Developer to suspend the Work; but

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

35 (h) Failure of ADOT to complete data recovery and consultations pursuant to the  
36 Historic Property Treatment Plan by April 30, 2022; and

37 (i) Any other event that the Contract Documents expressly state is an “ADOT-Caused  
38 Delay”.

1 Any proper suspension of Work pursuant to Section 20.2 of the Agreement is not an ADOT-  
2 Caused Delay.

3 **ADOT Consultant** means any firm or person under contract with ADOT to perform services for or  
4 on behalf of ADOT, whether or not the identity or status of such firm or person is known to  
5 Developer.

6 **ADOT Design Exception and Design Variance Process Guide** means the Design Exception and  
7 Design Process Guide, updated by the ADOT Roadway Engineering Group dated December 14,  
8 2009, including all revisions thereto applicable on the Setting Date.

9 **ADOT-Directed Change** means changes in the scope of the Work or terms and conditions of the  
10 Contract Documents (including changes in the Applicable Standards and the Technical Provisions,  
11 subject to Section 1.4.2), which ADOT has directed Developer to perform.

12 **ADOT Pavement Design Manual** means the Pavement Design Manual, Roadway Engineering  
13 Group, Pavement Design Section, Phoenix, Arizona, September 2017, as it may be revised as of  
14 the Setting Date.

15 **ADOT PIP** means the ADOT public involvement plan dated February 2017 set forth in the  
16 Reference Information Documents in the file entitled "I-17 Anthem to SR69 - ADOT Public  
17 Involvement Plan - 201702".

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

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

24 (b) Third-party costs ADOT incurs to procure any such third party contractors; plus

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

31 (d) Interest on all the foregoing sums at the applicable floating rate set forth in  
32 Section 27.14.3 of the Agreement, commencing on the date due under the applicable terms of  
33 the Contract Documents and continuing until paid.

1 **ADOT Release(s) of Hazardous Material** means a Release of Hazardous Material directly by ADOT  
2 or by its contractors, subcontractors, agents or employees acting in such capacity (other than any  
3 Developer-Related Entity), excluding, however, any Known or Suspected Hazardous Material.

4 **ADOT Standard Specifications** means the 2021 Arizona Department of Transportation Standard  
5 Specifications for Road and Bridge Construction and associated Stored Specifications, adopted by  
6 the Arizona State Transportation Board, including all revisions thereto applicable on the Setting  
7 Date.

8 **ADOT Systems Engineering Checklist** means the checklist provided in the Reference Information  
9 Documents in the file entitled “ADOT Systems Engineering Checklist.PDF”.

10 **Aesthetic Theme** has the meaning set forth in Section DR 450.3.1 of the Technical Provisions.

11 **Affiliate** means:

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

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

16 (c) Any Person for which 20 percent or more of the equity interest in such Person is  
17 held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of the shareholders,  
18 members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer  
19 under clause (b) of this definition.

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

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

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

28 **Alternative Technical Concept** means an ADOT-approved technical solution or approach that  
29 differs from the requirements in the Contract Documents and is included in Exhibit 2-1  
30 (Developer’s Schematic Design Including Alternative Technical Concepts).

31 **Amended Application for ROW Supporting Documents** means the application described in  
32 Section DR 470.2.4 of the Technical Provisions.

- 1 **Annual O&M Payment** means the annual payments to Developer for performance of the O&M  
2 Work set forth in Exhibit 2-4.2 (O&M Price Breakdown) to the Agreement, as adjusted pursuant  
3 to Section 15.6.2 of the Agreement.
- 4 **Annual O&M Work Report** means the report described in Section OMR 400.3.3B of the Technical  
5 Provisions.
- 6 **Applicable Standards** means all applicable codes, standards, manuals, guidelines, publications,  
7 advisory circulars and references listed or referenced within the Agreement or the Technical  
8 Provisions, including those described or listed in Sections GP 110.01.1.1, DR 400 and CR 400 of  
9 the Technical Provisions.
- 10 **Applications for Deviations** means the application described in Section 8.2.5 of the Agreement
- 11 **Application for Final D&C Payment** has the meaning set forth in Section 15.3 of the Agreement.
- 12 **Application for Government Approvals** means any application for a Governmental Approval.
- 13 **APS Allowance** has the meaning set forth in Section 15.5.5 of the Agreement.
- 14 **APS Facilities** has the meaning set forth in Section 15.5.1 of the Agreement.
- 15 **APS Scope of Work** has the meaning set forth in Section 15.5.1 of the Agreement.
- 16 **Archaeological Documentation and Reporting** means the compilation and synthesis of the  
17 background, field and laboratory research that results from the archaeological surveying,  
18 whether performed by ADOT, Developer or another party, of parcels on which Developer shall  
19 perform any Work.
- 20 **Arizona 811** means the field locator that performs all requirements as specified in A.R.S. §§ 40-  
21 360.21 through 40-360.29 for all underground facilities.
- 22 **As-Built Drainage Report** means the report described in Section DR 445.3.3 of the Technical  
23 Provisions.
- 24 **As-Built Geotechnical Engineering Report** means the report described in Section DR 416.3.2 of  
25 the Technical Provisions.
- 26 **As-Built Load Rating Report** means the report described in Section CR 455.3.7 of the Technical  
27 Provisions.
- 28 **As-Built Schedule** means a schedule, as more particularly described in, and satisfying the  
29 requirements of, Section GP 110.06.2.12 of the Technical Provisions.
- 30 **Authorized Representative** has the meaning set forth in Section 27.6.1 of the Agreement.
- 31 **Base CCI** means 12,112.

1 **Base CPI** means 268.551.

2 **Basic Configuration** has the meaning set forth in Section GP 110.01.2.1 of the Technical  
3 Provisions.

4 **Basis of Design Report** means a report, as described in, and satisfying the requirements of,  
5 Section GP 110.01.1.2 of the Technical Provisions.

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

9 **Betterment** has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in  
10 the applicable Utility Agreement. When not defined by a Utility Agreement, “Betterment” means  
11 any upgrading of a Utility or related facilities in the course of a Utility Adjustment that is not  
12 attributable to the construction of the Project, and is made solely for the benefit of and at the  
13 election of the Utility Company, including an increase in the capacity, capability, efficiency or  
14 function of an Adjusted Utility over that which was provided by the existing Utility; provided,  
15 however, that the following are not considered Betterments:

16 (a) Any upgrading which is required for accommodation of the Project;

17 (b) Replacement devices or materials that are of equivalent standard although not  
18 identical;

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

21 (d) Any upgrading required by applicable Law;

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

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

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

28 **Blasters in Charge** means the individuals described in Section GP 110.08.3.9 of the Technical  
29 Provisions.

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

- 1 **Blasting Plan** means a plan, as described in, and satisfying the requirements of, Section CR  
2 416.3.4.7 of the Technical Provisions.
- 3 **Blasting Report** means a report, as described in, and satisfying the requirements of, Section CR  
4 416.3.4.7 of the Technical Provisions.
- 5 **Blasting Supervisors** means the individuals described in Section GP 110.08.3.8 of the Technical  
6 Provisions.
- 7 **Books and Records** means any and all documents, books, records, papers, or other information  
8 relating to the Project, Project ROW, Utility Adjustments or Work, including:
- 9 (a) All design, construction, operation and maintenance documents (including plans,  
10 drawings, specifications, submittals, subcontracts, subconsultant agreements, purchase orders,  
11 invoices, schedules, meeting minutes, budgets, forecasts, change orders, Utility Adjustment  
12 documents and files);
- 13 (b) Income statements, balance sheets, statements of cash flow and changes in  
14 financial position, and details regarding expenses and capital expenditures;
- 15 (c) All budgets, certificates, claims, contracts, correspondence, data (including test  
16 data), documents, expert analyses, facts, files, information, investigations, materials, notices,  
17 plans, projections, proposals, records, reports, requests, samples, schedules, settlements,  
18 statements, studies, surveys, tests, test results, traffic information (including volume counts,  
19 classification counts, origin and destination data, speed and travel time information and vehicle  
20 jurisdiction data) that is analyzed, categorized, characterized, created, collected, generated,  
21 maintained, processed, produced, prepared, provided, recorded, stored or used by Developer or  
22 any of its Representatives in connection with the Project; and
- 23 (d) With respect to all of the above, any information that is stored electronically or on  
24 computer-related media, including in the Electronic Document Management System.
- 25 **Boring and Access Plan** means a plan, as described in, and satisfying the requirements of, Section  
26 DR 416.3.1 of the Technical Provisions.
- 27 **Bridge Deck Drainage** means the drainage requirements described in Section DR 457.3.7 of the  
28 Technical Provisions.
- 29 **Bridge Hydraulics Report** means the report described in Section DR 457.3.8 of the Technical  
30 Provisions.
- 31 **Business Day** means any day except Saturdays, Sundays and the legal holidays as defined in A.R.S.  
32 § 1-301.
- 33 **Buy America** means the Buy America requirements set forth in 23 C.F.R. § 635.410.

1 **Categorical Exclusion** means a class of actions that ADOT, in accordance with NEPA policy, has  
2 determined do not, individually or cumulatively, have a significant effect on the human or natural  
3 environment and for which, therefore, neither an environmental assessment nor an  
4 environmental impact statement are normally required.

5 **Certificate of Final Acceptance** means the certificate issued by ADOT confirming that the Project  
6 has achieved the conditions for Final Acceptance set forth in Section 8.6.5(a) of the Agreement.

7 **Certificate of Project Substantial Completion** means the written certificate issued by ADOT  
8 confirming that the Project has achieved the conditions for Project Substantial Completion set  
9 forth in Sections 8.6.1(a) of the Agreement.

10 **Certificate of South Segment Substantial Completion** means the written certificate issued by  
11 ADOT confirming that the South Segment has achieved the conditions for South Segment  
12 Substantial Completion set forth in Sections 8.6.2(b) of the Agreement.

13 **Change in Adjustment Standards** means any change in Adjustment Standards that directly  
14 affects the design or construction of Utility Adjustments and is (a) necessary to conform to  
15 applicable Law or Change in Law or (b) adopted by the applicable Utility Company after the  
16 Setting Date. A Change in Law that changes, adds to or replaces Adjustment Standards, as well  
17 as revisions to the Technical Provisions to conform to such Change in Law, shall be treated as a  
18 Change in Adjustment Standards rather than a Change in Law or an ADOT-Directed Change.

19 **Change in Law** means:

20 (a) The adoption of any State or local Law after the Setting Date that materially  
21 increases the costs of, or the time required to complete, Developer's performance of its  
22 obligations under the Contract Documents; or

23 (b) Any change in State or local Law, or in the interpretation or application thereof by  
24 any State or local Governmental Entity, after the Setting Date, in each case that is materially  
25 inconsistent with State or local Laws in effect on the Setting Date and that materially increases  
26 the costs of, or the time required to complete, Developer's performance of its obligations under  
27 the Contract Documents.

28 The term "Change in Law" excludes:

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

30 (ii) Any change in, or new, State or local Law that also constitutes or causes a  
31 change in, or new, Adjustment Standards;

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

1 (iv) Any change in, or new, State or local Law relating to Developer’s general  
2 business operations, including licensing and registration fees, income taxes, gross receipts taxes,  
3 property taxes, transaction privilege taxes, sales and use taxes, social security, Medicare,  
4 unemployment and other payroll-related taxes, provided that “Change in Law” includes any  
5 increase after the Setting Date in the combined rate of State and local transaction privilege taxes  
6 on materials incorporated or to be incorporated into the Project during the O&M Period; and

7 (v) Any change in, or new, local health, safety or labor Laws (but without  
8 prejudice to provisions of the Agreement concerning change in Pandemic Law).

9 **Change of Control** means any assignment, sale, financing, grant of security interest, transfer of  
10 interest or other transaction of any type or description, including by or through voting securities,  
11 asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise,  
12 that results, directly or indirectly, in a change in possession of the power to direct or control or  
13 cause the direction or control of the management of Developer or a material aspect of its  
14 business. A Change of Control of a shareholder, member, partner or joint venture member of  
15 Developer may constitute a Change of Control of Developer if such shareholder, member, partner  
16 or joint venture member possesses the power to direct or control, or cause the direction or  
17 control of, the management of Developer. Notwithstanding the foregoing, the following shall not  
18 constitute a Change of Control:

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

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

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

32 (d) The exercise of minority veto or voting rights (whether provided by Law, by  
33 Developer’s organizational documents or by related member or shareholder agreements or  
34 similar agreements) over major business decisions of Developer, provided that if such minority  
35 veto or voting rights are provided by shareholder or similar agreements, ADOT has received  
36 copies of such agreements; or

37 (e) The voluntary resignation of a shareholder, member, partner or joint venture  
38 member of Developer during the O&M Period, but only if (i) the resigning shareholder, member,

1 partner or joint venture member has not been in control of the management of Developer at any  
2 time prior thereto, (ii) the resignation occurs following expiration of the statutory period of  
3 repose under A.R.S. Section 12-552, and (iii) after the resignation the minimum Tangible Net  
4 Worth requirements of Section 12.7 of the Agreement will continue to be met.

5 **Change Request** means a written request issued by Developer to ADOT under Section 17.2 of the  
6 Agreement, in the form attached as Exhibit 12 (Contract Modification Request Form) to the  
7 Agreement, as ADOT may revise it from time to time.

8 **Claim** means:

9 (a) a demand by Developer, which is or potentially could be disputed by ADOT, for:

10 (i) a time extension under the Contract Documents including an extension of  
11 the Completion Deadlines;

12 (ii) payment of money or damages from ADOT to Developer including a  
13 Compensation Amount; or

14 (iii) any other type of relief from ADOT, whether claimed under the Contract  
15 Documents or at Law or in equity; or Law; or

16 (b) a demand by ADOT, which is or potentially could be disputed by Developer, for  
17 payment of money or damages from Developer to ADOT.

18 A Claim includes each request by Developer due to a Relief Event, which is subject to the  
19 procedures under Section 16 of the Agreement.

20 **Claim Deductible** means the following amounts, as applicable, for each separate occurrence of a  
21 Relief Event:

22 (a) the first \$25,000 of Extra Work Costs; and

23 (b) the amount equal to the Delay Costs for the first five days of delay to the Critical  
24 Path due to the Relief Event, subject to an aggregate cap of 25 days.

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

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

28 **Collocated Office Layout Plan** means the layout plan for the collocated office that ADOT and  
29 Developer are to occupy, as more particularly described in Section GP 110.05.2.6 of the Technical  
30 Provisions.

- 1 **Comment Resolution Form** means the form described in Section GP 110.10.2.5 of the Technical  
2 Provisions.
- 3 **Committed DBE** has the meaning set forth in Section 3.01 of the DBE Special Provisions.
- 4 **Compensation Amount** means the amount of increase in the Contract Price, if any, owing to  
5 Developer under Section 16 of the Agreement on account of the occurrence of a Relief Event  
6 which will compensate Developer for amounts due for Extra Work Costs and Delay Costs: (a) to  
7 the extent permitted by Law, as a lump sum payment; (b) as progress payments invoiced as Work  
8 is completed; or (c) through any combination of the above, as determined by ADOT, in its sole  
9 discretion, in accordance with the procedures set forth in Section 16.2 of the Agreement.
- 10 **Completion Deadline** means either or both of the Project Substantial Completion Deadline and  
11 Final Acceptance Deadline, as the context requires.
- 12 **Compliance Oversight Committee** has the meaning set forth in Section 13.02 of Exhibit 6 (ADOT's  
13 DBE Special Provisions) to the Agreement.
- 14 **Compliance Evaluation Report** means the report referred to in Section CR 420.3.2.2.5.1 of the  
15 Technical Provisions.
- 16 **Computer Disaster Recovery Plan** means the plan described in, and satisfying the requirements  
17 of, Section GP 110.05.4.1H of the Technical Provisions.
- 18 **Concept of Operations Plan** means the plan described in, and satisfying the requirements of,  
19 Section DR 466.3.4 of the Technical Provisions.
- 20 **Construction Coordination Meeting** means the weekly meeting held to discuss construction  
21 activities planned for the upcoming week.
- 22 **Construction Documents** means all Final Design Document Submittals, final Utility Adjustment  
23 plans, fabrication plans, material and hardware descriptions and specifications.
- 24 **Construction Manager** means the individual described in Section GP 110.08.2.2 of the Technical  
25 Provisions. The Construction Manager is one of the Key Personnel listed in Exhibit 8-2 (Key  
26 Personnel) of the Agreement.
- 27 **Construction Materials** means all building and construction materials, supplies, fixtures and  
28 equipment to be incorporated into or made part of the Project, including any long-lead items  
29 ordered for the Project.
- 30 **Construction Operations Survey** has the meaning set forth in Section CR 425.2.2.11C of the  
31 Technical Provisions.

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

4 **Construction Quality Manager** means the individual designated by Developer to be responsible  
5 for management of construction Quality Acceptance functions, as more particularly described in  
6 Section GP 110.08.3.2 of the Technical Provisions.

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

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

12 **Consumer Price Index** or **CPI** means the Consumer Price Index for All Urban Consumers (CPI-U),  
13 All Items, for the Phoenix-Mesa metropolitan statistical area, as published twice per year by the  
14 United States Department of Labor, Bureau of Labor Statistics, for which the base year is 1982-  
15 84 = 100, or if such publication ceases to be in existence, a comparable index selected by ADOT  
16 and approved by Developer, acting reasonably. If such index is revised so that the base year  
17 differs from that set forth above, the CPI shall be converted in accordance with the conversion  
18 factor published by the United States Department of Labor, Bureau of Labor Statistics. If the  
19 Bureau of Labor Statistics otherwise alters its method of calculating such index, the Parties shall  
20 mutually determine appropriate adjustments in the affected index.

21 **Contract Documents** means the documents listed in Section 1.2.1(a) of the Agreement.

22 **Contract Price** means either or both of the D&C Price and the O&M Price, as applicable.

23 **Controlling Work Item** means a work activity in which any delay in its completion will result in a  
24 delay to a Completion Deadline.

25 **CPI Adjustment Formula** means for the Annual O&M Payment:

26 
$$Adjusted\ Annual\ O\&M\ Payment_{Year\ Y} = Annual\ O\&M\ Payment_{Year\ Y} \times (CPI/BCPI)$$

27 Where:

28  $Annual\ O\&M\ Payment_{Year\ Y}$  = the applicable year's Annual O&M Payment as  
29 listed in Exhibit 2-4.2 (O&M Price Breakdown) to the Agreement;

30 "CPI" = the CPI most recently published prior to the month in which Year "Y"  
31 commenced; and

32 BCPI = Base CPI.

1 Increases in the Annual O&M Payment pursuant to Section 16.1.5(b) will be escalated or reduced  
2 in the same manner, except that the BCPI shall be the CPI most recently published prior to the  
3 date the Parties establish such increase in a Supplemental Agreement.

4 **Crisis Communications Plan** means the plan described in, and satisfying the requirements of,  
5 Section CR 425.2.2.4 of the Technical Provisions.

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

14 **D&C Draw Request** means a draw request and certificate described in Section 15.2.2 of the  
15 Agreement.

16 **D&C Guaranty** has the meaning set forth in Section 12.7.1 of the Agreement.

17 **D&C Payment Bond** means the bond referred to in Section 12.1.2 of the Agreement in the form  
18 of Exhibit 9-2 to the ITP.

19 **D&C Performance Bond** means the bond referred to in Section 12.1.1 of the Agreement in the  
20 form of Exhibit 9-1 to the ITP.

21 **D&C Period** means the period of the Term from the Effective Date up to the Project Substantial  
22 Completion Date.

23 **D&C Period Noncompliance Event Table** means the Noncompliance Event Table, set forth in  
24 Exhibit 14-1 (D&C Period Noncompliance Event Table) to the Agreement, that identifies the  
25 Noncompliance Events and corresponding cure periods, if any, that apply during the D&C Period.  
26 The D&C Period Noncompliance Event Table is subject to change in accordance with Section  
27 19.1.2 of the Agreement.

28 **D&C Price** means the lump sum price for D&C Work set forth in Section 15.1.1 of the Agreement,  
29 as it may be modified from time to time in accordance with the express provisions of the  
30 Agreement.

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

- 1 **Dark Skies** means lights meeting the requirements of the International Dark-Sky Association,  
2 meaning they minimize glare while reducing light trespass and sky glow through shielding to  
3 minimize the blue light in the nighttime environment.
- 4 **Day** or **day** means calendar day.
- 5 **DBE Certificate of Final Payments, Construction and Professional Services** means the  
6 certification in the form of Attachment E to the DBE Special Provisions.
- 7 **DBE Goals** has the meaning set forth in Section 11.2.1 of the Agreement.
- 8 **DBE/OJT Outreach and Compliance Manager** means the individual described in Section GP  
9 110.08.2.8 of the Technical Provisions. The DBE/OJT Outreach and Compliance Manager is one  
10 of the Key Personnel listed in Exhibit 8-2 (Key Personnel) of the Agreement.
- 11 **DBE Monthly Utilization Progress Report** means the report by that name described in Section  
12 18.02.2 of the DBE Special Provisions.
- 13 **DBE Special Provisions** means ADOT's provisions regarding DBE utilization for the Project set  
14 forth in Exhibit 6 (ADOT's DBE Special Provisions) to the Agreement.
- 15 **DBE Subcontractor** means any Person included in the DBE Utilization Plan to perform D&C Work.
- 16 **DBE Utilization Plan** means Developer's ADOT-approved plan for meeting the DBE participation  
17 goals, described in Section 11.2.5(b) of the Agreement.
- 18 **Defect** means an error, omission, defect or other attribute, whether in design, construction or  
19 installation, affecting the condition, use, functionality or operation of any Element of the Project,  
20 which causes or has the potential to cause one or more of the following:
- 21 (a) A hazard, nuisance or other risk to public or worker health or safety, including the  
22 health and safety of those traveling on the Project;
- 23 (b) A structural deterioration of or other loss of or damage to the affected Element or  
24 any other part of the Project;
- 25 (c) Damage to a third party's property or equipment;
- 26 (d) Damage to the environment;
- 27 (e) Failure of the affected Element or any other part of the Project to meet a  
28 requirement of the Contract Documents; or
- 29 (f) Failure of an Element to meet the Target for a Measurement Record as set forth  
30 in TP Attachment 500-1 of the Technical Provisions.

1 **Delay Costs** means Developer’s additional costs (and profit thereon) attributable to a Relief Event  
2 Delay, which costs are limited to those, and are subject to the exclusions, set forth in Section 2  
3 of Exhibit 13 to the Agreement.

4 **Design Change** means any adjustment or change to Project design during Construction Work.

5 **Design Documents** means all drawings (including Plans, profiles, cross-sections, notes,  
6 elevations, sections, details and diagrams), specifications, reports, studies, calculations,  
7 electronic files, records and submittals necessary for, or related to, the design of the Project or  
8 the Utility Adjustments in accordance with the Contract Documents, the Governmental  
9 Approvals and applicable Law.

10 **Design Exception** has the meaning as defined in the ADOT Design Exception and Design Variance  
11 Process Guide.

12 **Design Exception and Design Variance Report** means the report described in Section DR 440.3.2  
13 of the Technical Provisions.

14 **Design Manager** means the individual described in Section GP 110.08.2.3 of the Technical  
15 Provisions, and identified in Exhibit 8 (Key Subcontractors and Key Personnel) as Key Personnel.

16 **Design Review** means the review process described in Section GP 110.10.2.5 of the Technical  
17 Provisions.

18 **Design Submittal Schedule** means the schedule for all design Submittal packages, as more  
19 particularly described in Section GP 110.10.2.5.2 of the Technical Provisions.

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

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

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

26 **Detailed Pricing Documents** has the meaning set forth in Section 25.1 of the Agreement.

27 **Detour Plans** means the plans described in, and satisfying the requirements of, Section DR  
28 462.3.1.4 of the Technical Provisions.

29 **Developer** means Kiewit-Fann Joint Venture, a joint venture formed by and between Kiewit  
30 Infrastructure West Co. and Fann Contracting Inc. under the laws of the State of Delaware,  
31 together with its permitted successors and assigns.

1 **Developer Act** means any negligence, gross negligence, recklessness, fraud, criminal conduct,  
2 illegal activity, intentional misconduct, bad faith, fault, breach of contract, breach of the  
3 requirements of the Contract Documents, violation of Law or a Governmental Approval, or other  
4 wrongful act or wrongful omission of, or by, any Developer-Related Entity.

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

10 **Developer Default** has the meaning set forth in Section 21.1.1 of the Agreement.

11 **Developer-Designated ROW** means any permanent interest in real property (which term is  
12 inclusive of all estates and interests in real property), improvements and fixtures outside of the  
13 Schematic ROW that Developer requests ADOT to acquire for the Project. The term specifically  
14 includes (a) any such interest required for drainage for the Project if not identified in the  
15 Schematic ROW; (b) the necessity to condemn an entire parcel even though only a portion of the  
16 parcel is required as Developer-Designated ROW; (c) ROW acquired to implement an approved  
17 ATC; and (d) any air space, surface rights and subsurface rights within the Developer-Designated  
18 ROW. The term specifically excludes (i) Replacement Utility Property Interests; (ii) Developer's  
19 Temporary Work Areas; and (iii) Necessary Schematic ROW Changes.

20 **Developer Intellectual Property** means all Intellectual Property developed by Developer or its  
21 Affiliates or Subcontractors independently of and not related to its or their obligations to perform  
22 under the Contract Documents.

23 **Developer-Related Entity** means:

24 (a) Developer;

25 (b) Developer's shareholders, members, partners or joint venture members;

26 (c) Subcontractors and Suppliers;

27 (d) Any other Persons performing any of the Work directly or indirectly on  
28 Developer's behalf or over which Developer directly or indirectly exercises control;

29 (e) Any other Persons for whom Developer may be legally or contractually  
30 responsible; and

31 (f) The employees, agents, officers, directors, shareholders, representatives,  
32 consultants, successors, assigns and invitees of any of the foregoing.

33 **Developer Release of Hazardous Materials** means:

1 (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s),  
2 attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or  
3 breach of applicable Law or contract by any Developer-Related Entity;

4 (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or  
5 elsewhere by any Developer-Related Entity, regardless of cause;

6 (c) Release of Hazardous Materials from any vehicle operated by a Developer-Related  
7 Entity in the course of performing Work or from such vehicle's cargo, regardless of cause; or

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

11 **Developer's Proposal Commitments** means the content of Exhibit 2-3 (Proposal Commitments)  
12 to the Agreement.

13 **Developer's Schematic Design** means Developer's conceptual design for the Project set forth in  
14 Exhibit 2-1 (Developer's Schematic Design Including Alternative Technical Concepts) to the  
15 Agreement.

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

24 **Deviation** means:

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

27 (b) A change in the Work or other requirements of the Contract Documents issued  
28 under Section 17.2.9 of the Agreement. Such Deviations include "Design Exceptions" and "Design  
29 Variances."

30 **Differing Site Conditions** means:

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

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

4 The term Differing Site Conditions shall specifically exclude:

5 (i) All such subsurface or latent conditions that (A) were known to Developer  
6 prior to the Setting Date, or (B) would have become known to Developer by undertaking  
7 Reasonable Investigation;

8 (ii) Changes in surface topography;

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

11 (iv) Utility facilities;

12 (v) Hazardous Materials; and

13 (vi) Any conditions that constitute or are caused by a Force Majeure Event.

14 **Directive Letter** has the meaning set forth in Section 17.3 of the Agreement.

15 **Disadvantaged Business Enterprise** has the meaning set forth in 49 C.F.R. Section 26.5.

16 **Dispute** means any dispute, Claim, disagreement or controversy between ADOT and Developer  
17 concerning their respective rights and obligations under the Contract Documents, including  
18 concerning any alleged breach or failure to perform and remedies therefor, and that has satisfied  
19 all predicate notice and information requirements set forth in the Agreement and that is eligible  
20 for resolution using the Dispute Resolution Procedures. “Dispute” includes all disputes that the  
21 Agreement expressly designates as Disputes or as eligible for resolution under the Dispute  
22 Resolution Procedures without any further prerequisites. The word “dispute” in its lower case  
23 spelling shall have its plain language meaning.

24 **Dispute Resolution Procedures** means collectively, the procedures established under Section  
25 24.2 of the Agreement.

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

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

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

1 **Drilled Shaft Installation Plan** means a plan, as described in, and satisfying the requirements of,  
2 Section CR 416.3.1.2 of the Technical Provisions.

3 **Drilled Shaft Load Test Program** means a program as described in, and satisfying the  
4 requirements of, Section CR 416.3.1.1 of the Technical Provisions.

5 **Drilled Shaft Load Test Report** means a program as described in, and satisfying the requirements  
6 of, Section CR 416.3.1.1E of the Technical Provisions.

7 **Drilled Shaft Quality Control Report** means a program as described in, and satisfying the  
8 requirements of, Section CR 416.3.1.3 of the Technical Provisions.

9 **Effective Date** means the date of the Agreement, which shall be the last date on which all  
10 required signatures for the Agreement are obtained.

11 **Effective FEMA Special Flood Hazard Area** means the area where the National Flood Insurance  
12 Program's floodplain management regulations must be enforced and the area where the  
13 mandatory purchase of flood insurance applies.

14 **Electronic Document Management System** means the secure data management system  
15 provided by Developer containing all of the data Developer is required to submit to ADOT in  
16 connection with the Work and compatible with data systems, standards and procedures  
17 employed by ADOT, as more particularly described in Section GP 100.04.2 of the Technical  
18 Provisions.

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

21 **Emergency** means any unplanned event or condition originating from within or adjacent to the  
22 Project ROW that:

23 (a) presents an immediate or imminent threat to the integrity of any part of the  
24 infrastructure of the Project, to the environment, to property adjacent to the Project or to the  
25 safety of the public;

26 (b) causes serious injury to persons, or significant damage to property or the  
27 environment, within or adjacent to the Project; or

28 (c) the Arizona Department of Public Safety recognizes as an emergency.

29 **Engineer of Record** means the Professional Engineer that signs and seals the RFC Submittal prior  
30 to construction of the relevant Project components.

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

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

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

5 (a) The NEPA Approval;

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

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

9 **Environmental Compliance Manager** means the individual described in, and satisfying the  
10 requirements of, **Section GP 110.08.3.10** of the Technical Provisions.

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

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

22 (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and  
23 groundwater;

24 (c) Releases of Hazardous Materials;

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

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

29 (f) Safety of employees and other persons; and

30 (g) Notification, documentation, and record keeping requirements relating to the  
31 foregoing.

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

- 1 (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as  
2 amended;
- 3 (ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
- 4 (iii) Section 4(f) of the U.S. Department of Transportation Act of 1966 (49  
5 U.S.C. § 303(c))
- 6 (iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act  
7 of 1970 (49 C.F.R. Part 24)
- 8 (v) The Comprehensive Environmental Response, Compensation, and Liability  
9 Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- 10 (vi) The Solid Waste Disposal Act, as amended by the Resource Conservation  
11 and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), as amended;
- 12 (vii) The Emergency Planning and Community Right to Know Act of 1986 (42  
13 U.S.C. §§ 11001 *et seq.*), as amended;
- 14 (viii) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- 15 (ix) The Water Pollution Control Act, as amended by the Clean Water Act (33  
16 U.S.C. §§ 1251 *et seq.*), as amended;
- 17 (x) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*),  
18 as amended;
- 19 (xi) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;
- 20 (xii) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as  
21 amended;
- 22 (xiii) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;
- 23 (xiv) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et*  
24 *seq.*), as amended;
- 25 (xv) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- 26 (xvi) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401  
27 *et seq.*), as amended;
- 28 (xvii) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), as  
29 amended;
- 30 (xviii) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

- 1 (xix) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), as  
2 amended;
- 3 (xx) The National Historic Preservation Act (16 U.S.C. §§ 470 et seq.), as  
4 amended;
- 5 (xxi) The Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668 et seq.), as  
6 amended;
- 7 (xxii) The Migratory Bird Treaty Act (16 U.S.C. §§ 703 et seq.), as amended;
- 8 (xxiii) General (A.R.S. §49- 101 to 191);
- 9 (xxiv) Water Quality Control (A.R.S. §49-201 to 391);
- 10 (xxv) Air Quality (A.R.S. §49-401 to 593);
- 11 (xxvi) Solid Waste Management (A.R.S. §49-701 to 881);
- 12 (xxvii) Hazardous Waste Disposal (A.R.S. §49 -901 to 973);
- 13 (xxviii) Underground Storage Tank Regulation (A.R.S. §49-1001 to 1091.01);
- 14 (xxix) Light Pollution (A.R.S. §49-1101 to 1106);
- 15 (xxx) Water Infrastructure Finance Program (A.R.S. §49-1201 to 1282); and
- 16 (xxxi) Natural Gas Facilities (A.R.S. §49-1303).

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

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

23 **Environmentally Sensitive Avoidance Area** means the area to be fenced off during construction  
24 and not accessible for any purpose. The RIDs show this geographic area in folder 13.0 Cultural,  
25 to which access is limited to qualified specialists.

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

28 **Equity Member** means: (a) each entity with a direct equity interest in Developer (whether as a  
29 member, partner, joint venture member or otherwise); and (b) each entity with an indirect  
30 interest in Developer through one or more intermediaries. Notwithstanding the foregoing, if

1 Developer is a publicly traded company, shareholders with less than a 10% interest in Developer  
2 are not considered Equity Members.

3 **Erosion Control Coordinator** means the individual described in Section GP 110.08.3.15 of the  
4 Technical Provisions.

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

6 **Escalated Benchmark O&M Period Insurance Premiums** has the meaning set forth in Section  
7 13.1.14(e)(ii) of the Agreement.

8 **Event of Default** has the meaning set forth in Section 21.1.3 of the Agreement.

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

14 **Existing Conditions Site Documentation** means the documentation described in Section GP  
15 110.11.1 of the Technical Provisions.

16 **Existing Improvements** means any and all roadway, drainage, structures, traffic improvements  
17 and other improvements of any kind in, on or under the Project Right of Way that the Department  
18 completed prior to and are in existence as of the Effective Date, excluding Utilities not serving  
19 the Project.

20 **Existing Structure Modification Report** means the report described in, and satisfying the  
21 requirements of, Section DR 455.3.1 of the Technical Provisions.

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

25 **Extra Work** means any Work in the nature of additional work, altered work or deleted work that  
26 is directly attributable to occurrence of a Relief Event and absent the Relief Event would not be  
27 required (or deleted) by the Contract Documents. For clarity, the term “Extra Work” includes  
28 additional work necessary for Developer to obtain Environmental Approvals, reevaluations,  
29 amendments and supplements of the NEPA Approval, and other Governmental Approvals  
30 required under Section 6.3 of the Agreement in connection with a Relief Event. The term “Extra  
31 Work” does not include Relief Event Delay.

32 **Extra Work Costs** means the incremental increase in Developer’s cost of labor, material,  
33 equipment and other direct and indirect costs directly attributable to Extra Work, as calculated  
34 in accordance with Section 1 of Exhibit 13 (Compensation Amount Specifications) (Extra Work  
35 Costs) to the Agreement.

1 **Falsework Drawings** means the drawings described in Section CR 455.3.3 of the Technical  
2 Provisions.

3 **Federal Prevailing Wage Rates** has the meaning set forth in Section 11.10.1 of the Agreement.

4 **Federal Requirements** means the federally mandated provisions for construction contracts  
5 funded wholly or in part with federal-aid funding or other federal funds or credit, including the  
6 provisions set forth in Exhibit 4 (Federal Requirements) to the Agreement.

7 **Field Office Layout Plan** means the layout plan for the field office that ADOT is to occupy, as more  
8 particularly described in Section GP 110.05.3.6 of the Technical Provisions.

9 **Final Acceptance** means the occurrence of all of the events and satisfaction of all of the  
10 conditions set forth in Section 8.6.5(a) of the Agreement, as and when confirmed by ADOT's  
11 issuance of a Certificate of Final Acceptance.

12 **Final Acceptance Date** means the date on which Final Acceptance for the Project occurs.

13 **Final Acceptance Deadline** means the deadline for Final Acceptance, which shall be not later than  
14 100 days after the Project Substantial Completion Date, unless adjusted by Supplemental  
15 Agreement pursuant to the Agreement.

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

17 **Final DBE Utilization Summary Report** means the summary report prepared in accordance with  
18 Section 18.02.4 of Exhibit 6 (ADOT's DBE Special Provisions).

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

21 **Final Design Documents Submittal** means the Design Documents described in, satisfying the  
22 requirements of, and prepared in accordance with Section GP 110.10.2.6.7 of the Technical  
23 Provisions.

24 **Final Design Submittal** means the applicable design Submittal described in, and satisfying the  
25 conditions of, Section GP 110.10.2.6.5 of the Technical Provisions.

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

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

29 **Flex Lanes** means freeway lanes that connect to main lanes in both directions of travel and have  
30 gates at each end that can be opened or closed to allow traffic to operate in either direction, to  
31 be designed, constructed, operated and maintained as part of the Project.

- 1 **Flex Lanes Direction Change** means the process for switching the direction of travel within the  
2 Flex Lanes from northbound to southbound or southbound to northbound as Developer shall  
3 more fully describe in the Operations Manual.
- 4 **Flex Lanes Guide Signs** has the meaning set forth in Section DR 460.3.3.2 of the Technical  
5 Provisions
- 6 **Flex Lanes System** means the gates, vehicle arresting barriers, control system, Flex Lanes Guide  
7 Signs, DMS, CCTV cameras, ITS and associated control cabinets, equipment and software required  
8 for the operation and maintenance of the Flex Lanes.
- 9 **Flex Lanes Transition Plan** means the plan for transitioning operation and maintenance of the  
10 Flex Lanes System from Developer to ADOT at the end of the O&M Period, as more particularly  
11 described in Section 26.15 of the Agreement.
- 12 **Float** means the amount of time that any given activity or logically connected sequence of  
13 activities shown on the Project Schedule may be delayed before it will affect the Project  
14 Substantial Completion Deadline or Final Acceptance Deadline, as applicable. Such Float is  
15 generally identified as the difference between the early start date and late start date, or early  
16 completion date and late completion date, for activities shown on the Project Schedule.
- 17 **Flood Event** means storms and floods for which the Governor of the State has proclaimed a state  
18 of emergency, when the damaged work of the Project is located within the territorial limits to  
19 which such proclamation is applicable.
- 20 **Force Account Work** means Extra Work Costs determined on a force account basis, in accordance  
21 with Section 1.2 of Exhibit 13 (Compensation Amount Specifications) (Force Account) of the  
22 Agreement.
- 23 **Force Majeure Event** means the occurrence of any of the following events that actually,  
24 demonstrably, materially and adversely affects performance of Developer's obligations (other  
25 than payment obligations) in accordance with the terms of the Contract Documents:
- 26 (a) War (including civil war and revolution), invasion, armed conflict, or violent act of  
27 foreign enemy, in each case occurring within the State of Arizona;
- 28 (b) Military or armed blockade or takeover of the Project or Site;
- 29 (c) Any act of terrorism, riot, insurrection, civil commotion or sabotage that, in each  
30 case, causes direct physical damage to the Project or the Site or directly impacts performance of  
31 Work at the Site;
- 32 (d) National strikes not specific to Developer, embargoes not specific to Developer,  
33 or disruption of the normal movement of goods and materials by a port or transportation  
34 authority that, in each case, directly impacts performance of Work at the Site;

1 (e) Nuclear explosion that causes direct physical damage to the Project or the Site;

2 (f) Chemical, biological (excluding Pandemic) or radioactive contamination of the  
3 Project or the Site;

4 (g) Flood Event, fire (including vehicle fire), explosion, gradual inundation caused by  
5 natural events, tornado, sinkhole caused by natural events, or Landslide, that, in each case causes  
6 direct physical damage to the Project or Site or directly impacts performance of Work at the Site;

7 (h) Any governor-declared Emergency within the limits of the Project ROW, except  
8 one consisting of or arising out of traffic accidents;

9 (i) One or more earthquakes of a moment magnitude greater than 5.0 (measured by  
10 the United States Geological Survey moment magnitude) with an epicenter within 150 miles of  
11 the northernmost or southernmost point of the Project ROW, including all foreshocks and  
12 aftershocks, where such earthquakes include ground shaking, liquefaction, settlement or ground  
13 movements that directly impact, and cause damage to, temporary or permanent works of the  
14 Project; and

15 (j) A vehicle collision or traffic accident involving multiple vehicles with damage to  
16 multiple elements on any of the roadways within the Project ROW that (i) occurs during the D&C  
17 Period, (ii) causes damage to a bridge structure, noise wall, retaining wall, pavement section or  
18 overhead sign structure (including the DMS overhead structure at Sunset Point) of the Project  
19 and (iii) requires repair due to the collision. The foregoing does not include: (A) a collision due to  
20 a Developer Act or (B) a collision involving a vehicle owned, leased or operated by a Developer-  
21 Related Entity when used in furtherance of the Work. For the purposes hereof, a “vehicle” has  
22 the meaning set forth in A.R.S. § 28-101, and also means aircraft; and

23 (k) Either (i) a Pandemic other than any strain or variant of COVID-19 that the WHO  
24 or CDC designated as an epidemic or pandemic on or prior to the Setting Date, or (ii) any  
25 Pandemic Law, that in either case limits or restricts movement of people, goods or materials, or  
26 imposes health, safety or workplace requirements, restrictions or limitations, thereby directly  
27 impacting the Project or the Work.

28 **Foundation Report** means the report described in, and satisfying the requirements of, Section  
29 DR 455.3.1 of the Technical Requirements.

30 **Future Projects List** means the list described in Section GP 110.01.2.2.1 of the Technical  
31 Provisions.

32 **Gates** means the mechanical barriers at each end of the Flex Lanes that can be opened remotely  
33 to allow movement of traffic in a specific direction and closed to allow traffic to move in the  
34 opposite direction.

- 1 **General Engineering Consultant** means the entity, as well as its personnel, designated in writing  
2 by ADOT as its program manager for the Project, and which shall have all duties, responsibilities  
3 and rights granted by ADOT.
- 4 **Generally Accepted Accounting Principles** means such accepted accounting practice as, in the  
5 opinion of the accountant, conforms at the time to a body of generally accepted accounting  
6 principles in the United States.
- 7 **Geometric Drawing** means the drawing described in Section GP 110.10.2.6.3 of the Technical  
8 Provisions.
- 9 **Geotechnical Engineering Report** means a report, as described in, and satisfying the  
10 requirements of, Section DR 416.3.2 of the Technical Provisions.
- 11 **Geotechnical Manager** means the individual described in Section GP 110.08.3.6 of the Technical  
12 Provisions.
- 13 **Geotechnical Software** means the software described in Section DR 416.2.3 of the Technical  
14 Provisions.
- 15 **Geotechnical Supplements** means a supplement to the applicable Geotechnical Engineering  
16 Report, as more particularly described in Section DR 416.3.2 of the Technical Provisions.
- 17 **Good Faith Efforts** means (a) with respect to DBE, the efforts to meet the DBE Goals required  
18 under 49 C.F.R. Part 26, Appendix A, and (b) with respect to OJT, the effort to meet the OJT Goals  
19 required under 23 C.F.R. § 230.409(g)(4).
- 20 **Good Industry Practice** means the exercise of the degree of skill, diligence, prudence and  
21 foresight which would reasonably and ordinarily be expected from a skilled and experienced  
22 designer, engineer, construction contractor or operations or maintenance contractor seeking in  
23 good faith to comply with its contractual obligations, complying with all applicable Laws and  
24 engaged in the same type of undertaking under circumstances and conditions similar to those  
25 within the same geographic area as the Project.
- 26 **Governmental Approval** means any permit, license, consent, concession, grant, franchise,  
27 authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or  
28 other approval, guidance, protocol, agreement, mitigation agreement, or memoranda of  
29 agreement/understanding, and any amendment or modification of any of them, required by or  
30 with, or provided by, Governmental Entities, including State, local, or federal regulatory agencies,  
31 agents, or employees, which authorize or pertain to the Work or the Project, but excluding any  
32 such approvals given by or required from any Governmental Entity in its capacity as a Utility  
33 Company. The term “Governmental Approvals” include Environmental Approvals.
- 34 **Governmental Approval Package** means the package of documentation that a Governmental  
35 Entity requires to be submitted to it in order to determine whether to issue a Governmental  
36 Approval (or any proposed reevaluation, amendment, supplement, modification, renewal,

1 extension or waiver of a Governmental Approval or provision thereof) or the terms and  
2 conditions thereof. Such documentation includes a complete application and may also include  
3 environmental studies, analyses, calculations, Design Documents, Plans, surveys, narratives, data  
4 and other documentation.

5 **Governmental Entity** means any federal, state, local or foreign government (including the Local  
6 Jurisdictions) and any political subdivision or any governmental, quasi-governmental, judicial,  
7 public or statutory instrumentality, administrative agency, authority, body or entity.  
8 “Governmental Entity” includes ADOT when acting in the capacity of issuing an Environmental  
9 Approval, but not otherwise.

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

11 **Guarantor** means each of the entities that provides a Guaranty in the applicable form of **Exhibit**  
12 **10-1** (Form of D&C Guaranty) or **Exhibit 10-2** (Form of O&M Guaranty) of the Agreement.

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

15 **Guidelines** has the meaning set forth in **Recital A** of the Agreement.

16 **Hazardous Materials** means any element, chemical, compound, material or substance, whether  
17 solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in  
18 any way under any Environmental Laws, or any other such substances or conditions (including  
19 mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or  
20 pose any threat to human health and safety. The term “Hazardous Materials” includes the  
21 following:

22 (a) Hazardous wastes, hazardous material, hazardous substances, hazardous  
23 constituents, and toxic substances or related materials, whether solid, liquid, or gas, including  
24 substances defined as or included in the definition of “hazardous substance”, “hazardous waste”,  
25 “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive  
26 waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”,  
27 “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic  
28 waste”, “toxic material”, or any other term or expression intended to define, list or classify  
29 substances by reason of properties harmful to health, safety or the indoor or outdoor  
30 environment (including harmful properties such as ignitability, corrosivity, reactivity,  
31 carcinogenicity, toxicity, reproductive toxicity, “TCLP” toxicity” or “EP toxicity” or words of similar  
32 import under any applicable Environmental Laws);

33 (b) Any petroleum, including crude oil and any fraction thereof, and including any  
34 refined petroleum product or any additive thereto or fraction thereof or other petroleum derived  
35 substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive  
36 thereto;

- 1 (c) Any drilling fluids, produced waters and other wastes associated with the  
2 exploration, development or production of crude oil, natural gas or geothermal resources;
- 3 (d) Any flammable substances or explosives;
- 4 (e) Any radioactive materials;
- 5 (f) Any asbestos or asbestos-containing materials;
- 6 (g) Any lead and lead-based paint;
- 7 (h) Any radon or radon gas;
- 8 (i) Any methane gas or similar gaseous materials;
- 9 (j) Any urea formaldehyde foam insulation;
- 10 (k) Electrical equipment which contains any oil or dielectric fluid containing regulated  
11 levels of polychlorinated biphenyls;
- 12 (l) Pesticides;
- 13 (m) Any other chemical, material or substance, exposure to which is prohibited,  
14 limited or regulated by any Governmental Entity or which may or could pose a hazard to the  
15 health and safety of the owners, operators, users or any Persons in the vicinity of the Project or  
16 to the indoor or outdoor environment; and
- 17 (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as  
18 defined above.

19 **Hazardous Materials Management** means procedures, practices and activities to address and  
20 comply with Environmental Laws and Environmental Approvals with respect to Hazardous  
21 Materials encountered, impacted, caused by or occurring in connection with the Work, as well  
22 as investigation and remediation of such Hazardous Materials. Hazardous Materials  
23 Management may include handling, sampling, stock-piling, containment, storage, backfilling in  
24 place, asphalt batching, recycling, treatment, clean-up, remediation, removal, transportation or  
25 off-site disposal of Hazardous Materials, whichever is the most cost-effective approach  
26 authorized under applicable Law.

27 **Hazardous Materials Manager** means the individual described in Section GP 110.08.3.12 of the  
28 Technical Provisions.

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

1 **Historic Property Treatment Plan** means a document that describes a plan, developed and  
2 agreed upon through consultation with involved agencies, Native American Tribes, and other  
3 interested parties, that describes how adverse effects from an undertaking on historic properties  
4 will be mitigated (per 36 CFR 800.6), where historic property is defined as any prehistoric or  
5 historic district, site, building, structure, or object included in, or eligible for inclusion in, the  
6 National Register of Historic Places maintained by the Secretary of the Interior (per 36 CFR  
7 800.16(l)(1)).

8 **Hydraulics and Hydrology Engineer** means the individual described in Section GP 110.08.3.16 of  
9 the Technical Provisions.

10 **Inaccurate Utility Information** means, with respect to any Utility Adjustment of a Utility that lies  
11 underground within the boundary lines of the Project ROW, that one or more of the following  
12 circumstances applies:

13 (a) The Utility Information incorrectly indicates that the subject Utility does not exist  
14 within the boundary lines of the Project ROW;

15 (b) The horizontal centerline of the actual location of the subject Utility lies more than  
16 ten horizontal feet from the horizontal centerline as shown in the Utility Information;

17 (c) The Utility Information incorrectly indicates that the subject Utility is abandoned  
18 (i.e., nonexistent except for its presence in the records, or existent but no longer active for any  
19 type of Utility use); or

20 (d) The Utility Information fails to indicate that the Utility Company holds or is  
21 assumed to hold Prior Rights Documentation with respect to the subject Utility.

22 If any discrepancy exists between the information provided by one component of the Utility  
23 Information and that provided by any other component of the Utility Information, only the more  
24 recent information shall be relevant for purposes of this definition.

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

27 **Indemnified Parties** means ADOT, the State, the Arizona State Transportation Board and the  
28 General Engineering Consultant, and for each of the foregoing, its successors, assigns,  
29 officeholders, officers, directors, agents, representatives, consultants and employees.

30 **Initial Design Submittal** means the applicable design Submittal described in, and satisfying the  
31 conditions of, Section GP 110.10.2.6.4 of the Technical Provisions.

32 **Insolvency Event** means, in respect of any Person:

33 (a) any involuntary case is commenced seeking, at any time during the case,  
34 liquidation, company reorganization, restructuring, controlled management, suspension of

1 payments, scheme of arrangement, appointment of provisional liquidator, custodian, receiver or  
2 administrative receiver, notification, resolution, or petition for winding up, writ of attachment,  
3 execution or similar process, or similar proceeding, under any applicable Law, in any jurisdiction,  
4 including bankruptcy or insolvency Law and such case has not been dismissed or stayed within  
5 60 days;

6 (b) any voluntary case is commenced seeking, at any time during the case, liquidation,  
7 company reorganization, restructuring, controlled management, suspension of payments,  
8 scheme of arrangement, appointment of provisional liquidator, custodian, receiver or  
9 administrative receiver, notification, resolution, or petition for winding up, writ of attachment,  
10 execution or similar process, or similar proceeding, under any applicable Law, in any jurisdiction,  
11 including bankruptcy or insolvency Law;

12 (c) in any voluntary or involuntary case described in clauses (a) and (b) above, the  
13 Agreement or any other Contract Document is rejected, including rejection pursuant to 11 U.S.C.  
14 § 365 or any successor statute; or

15 (d) any inability on the part of that Person to pay its debts as they fall due.

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

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

21 **Instructions to Proposers** means the Instructions to Proposers issued by ADOT on December 3,  
22 2020 as part of the RFP with respect to the Project, including all exhibits, forms and attachments  
23 thereto and any subsequent addenda.

24 **Instrumentation Data** means the data from the monitoring of instrumentation of all geotechnical  
25 Work that requires monitoring, as described in Section CR 416.3.6 of the Technical Provisions.

26 **Instrumentation Plan** means the plan described in, and satisfying the requirements of, Section  
27 DR 416.3.3.5 of the Technical Provisions.

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

30 **Insurance Advisor** means a qualified and reputable insurance broker or independent, unaffiliated  
31 advisor not involved in the Project, experienced in insurance brokerage and underwriting  
32 practices for major bridge, highway or other relevant transportation facility projects.

33 **Insurance Policies** means all of the insurance policies Developer and its Subcontractors are  
34 required to carry in connection with the Project pursuant to Exhibit 11 (Insurance Coverage  
35 Requirements) to the Agreement.

1 **Insurance Review Report** has the meaning set forth in Section 13.1.14(b) of the Agreement.

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

12 **Intelligent Transportation System** means the system to monitor traffic flow, detect traffic and  
13 traffic operational conditions and communicate relevant traffic information to users of the  
14 Project as more particularly described in Section CR 466 of the Technical Provisions.

15 **Interpretive Engineering Decision** has the meaning set forth in Section 5.9.1 of the Agreement.

16 **Issue Resolution Ladder** has the meaning set forth in Section 24.2.2 of the Agreement.

17 **ITS Certifications** means the certification required by ADOT's *ITS Design Guide*.

18 **ITS Construction Manager** means the individual described in Section GP 110.08.3.18 of the  
19 Technical Provisions.

20 **ITS Design Manager** means the individual described in Section GP 110.08.3.17 of the Technical  
21 Provisions.

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

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

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

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

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

30 **Journeyman** has the meaning set forth in Section 923-1.03 of Exhibit 7 (ADOT's OJT Special  
31 Provisions) to the Agreement.

1 **Key Personnel** means those individuals appointed by Developer and approved by ADOT from  
2 time to time to fill the “Key Personnel” positions identified in Section GP 110.08.2 of the Technical  
3 Provisions. The specific individuals appointed by Developer and approved by ADOT to initially fill  
4 certain of the Key Personnel positions are identified in Exhibit 8-2 (Key Personnel) to the  
5 Agreement.

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

8 (a) Any Subcontract with the Lead Engineering Firm in respect of the Project;

9 (b) Any Subcontract between a Developer-Related Entity and the Lead O&M Firm in  
10 respect of the Project;

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

13 (d) Any Subcontract with a firm, other than the Lead Engineering Firm, that will  
14 provide Design Work valued at \$5,000,000.00 or more.

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

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

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

21 **Known or Suspected Hazardous Materials** means Hazardous Materials and Recognized  
22 Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date  
23 based on information or analysis contained or referenced in the Reference Information  
24 Documents as of the Setting Date.

25 **Landscape Area** has the meaning set forth in Section DR 450.3.5 of the Technical Provisions.

26 **Landscaping Establishment Period** has the meaning set forth in Section CR 450.3.4 of the  
27 Technical Provisions.

28 **Landslide** means the sudden or gradual displacement of a mass of rock, earth or debris within or  
29 adjoining a slope in which the center of gravity of the moving mass advances in a downward and  
30 outward direction, where no Developer Act is a proximate cause of the displacement.

31 **Law** means: (a) any law, statute, code, regulation, ordinance, rule or common law; (b) any binding  
32 judgment (other than regarding a Claim or Dispute); (c) any binding judicial, administrative or  
33 executive order or decree (other than regarding a Claim or Dispute); (d) any written directive,

1 guideline, policy requirement or other governmental restriction (including those resulting from  
2 the initiative or referendum process, but excluding those by ADOT within the scope of its  
3 administration of the Contract Documents); or (e) any similar form of decision of or  
4 determination by, or any written interpretation or administration of any of the foregoing by, any  
5 Governmental Entity, in each case which is applicable to or has an impact on the Project or the  
6 Work, whether taking effect before or after the Effective Date, including Environmental Laws.  
7 The term “Laws”, however, excludes Governmental Approvals.

8 **Lead-Based Paint Removal and Abatement Plan** means the plan described in Section DR 420.3.4  
9 of the Technical Provisions and the HZM measures in TP Attachment 420-1 of the Technical  
10 Provisions.

11 **Lead Contractor** means Developer, the entity that will perform the Construction Work.

12 **Lead Engineering Firm** means Kiewit Engineering Group Inc., a corporation incorporated under  
13 the laws of State of Delaware and the entity that will perform the Design Work for Developer.

14 **Lead O&M Firm** means the entity that will perform the O&M Work for Developer during the  
15 Operating Period.

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

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

24 **Lighting Design Report** means the report described in, and satisfying the requirements of,  
25 Section DR 460.3.4 of the Technical Provisions.

26 **Liquidated Damages** means the liquidated damages specified in Sections 11 and 22 of the  
27 Agreement, and in any other part of the Agreement, including the Noncompliance Charges.

28 **Local Jurisdictions** means the City of Phoenix, the County of Maricopa, and the County of Yavapai.

29 **Load Rating Report** means the report described in, and satisfying the requirements of, Section  
30 DR 455.3.6.2.2 of the Technical Provisions.

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

33 **Loss or Losses** means any loss, damage, injury, liability, obligation, cost, response cost, expense  
34 (including attorneys’, accountants’ and expert witnesses’ fees and expenses (including those

1 incurred in connection with the enforcement of any indemnity or other provision of the  
2 Agreement)), fee, charge, judgment, penalty, fine or third party claims. The term “Loss” includes  
3 injury to or death of persons, damage or loss of property, and harm or damage to natural  
4 resources.

5 **Maintenance Coordinator** means the individual described in Section GP 110.08.3.19 of the  
6 Technical Provisions.

7 **Maintenance During Construction** means the operations, maintenance and repair Work in  
8 connection with the Project that Developer is required to perform pursuant to the Contract  
9 Documents prior to South Segment Substantial Completion (if applicable) and Project Substantial  
10 Completion, as more fully described in Section GP 110.12 of the Technical Provisions. For clarity,  
11 Maintenance During Construction is included in the D&C Work.

12 **Maintenance Information System** means the database that tracks Developer’s performance of  
13 maintenance and related information, as more particularly described in Section OMR 400.2.5 of  
14 the Technical Provisions.

15 **Maintenance Unit Device Decal Request** means the Developer’s written request to ADOT for  
16 unit device decals, as described in Section CR 460.3.3 of the Technical Provisions.

17 **Major Closure** has the meaning set forth in Section DR 462.3.3.1 of the Technical Provisions.

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

20 **Materials Design Memorandum** means the memorandum described in Section DR 419.3.1 of the  
21 Technical Provisions.

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

24 **Measurement Record** means, for each Maintenance Element, the measurement record set forth  
25 in the column headed “Measurement Record” in TP Attachment 500-1 of the Technical  
26 Provisions.

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

29 **Meeting Notice** means the notification to ADOT and/or other attendees of a Project-related  
30 meeting that includes the elements described in Section GP 110.02 of the Technical Provisions.

31 **Meeting Schedules and Agendas** means the documentation describing the date, time and  
32 recurrence of a meeting, the items that will be covered in a meeting, and the order in which the  
33 items will be discussed.

- 1 **MIS Architecture** has the meaning set forth in Section OMR 400.2.5.2 of the Technical Provisions.
- 2 **Mockups** means the mockups described in, and satisfying the requirements of, Section CR  
3 450.3.1.2 of the Technical Provisions.
- 4 **Monthly O&M Payment** means 1/12<sup>th</sup> of the applicable Annual O&M Payment.
- 5 **Monthly O&M Work Report** means the report described in Section OMR 400.3.3A of the  
6 Technical Provisions.
- 7 **Monthly Progress Report** means the report described in Section GP 110.06.2.8 of the Technical  
8 Provisions.
- 9 **Monthly Progress Schedule** means the schedule, consistent with the Completion Deadlines,  
10 submitted by Developer as a condition of NTP 2 and with each Payment Request, setting forth  
11 the approved schedule of Work on a monthly basis against which any subsequent schedule  
12 amendments are tracked, as more particularly described in Section GP 110.06.2.7 of the  
13 Technical Provisions.
- 14 **MOT Manager** means the individual described in Section GP 110.08.2.4 of the Technical  
15 Provisions.
- 16 **MOT Task Force** means the task force described in, and satisfying the requirements of, Section  
17 DR 462.2.2 of the Technical Provisions.
- 18 **MOT Task Force Invitees List** means the list described in Section GP 110.02.5 of the Technical  
19 Provisions.
- 20 **MSE Wall Drawings** means the drawings described in Section CR 455.3.2 of the Technical  
21 Requirements.
- 22 **Necessary Schematic ROW Change** means real property (which term is inclusive of all permanent  
23 estates and interests in real property), improvements and fixtures located outside the Schematic  
24 ROW that must be permanently acquired in order for Developer to deliver the Basic Configuration  
25 and satisfy the requirements of the Contract Documents. A Necessary Schematic ROW Change  
26 arises only where indicated in Section 16.4.15 of the Agreement.
- 27 **NEPA Approval** means the approval of a Categorical Exclusion (“CE”) approved by ADOT on  
28 August 6, 2019.
- 29 **NEPA Approval Package** means the package described in, and satisfying the requirements of,  
30 Section DR 420.2.6.1 of the Technical Provisions.
- 31 **Network Administration Plan** means the plan described in, and satisfying the requirements of,  
32 Section GP 110.05.4.2 of the Technical Provisions.

- 1 **Node Building Access Request** means the notice from Developer to ADOT requesting access to a  
2 node building and satisfying the requirements of Section CR 466.3.2.4 of the Technical Provisions.
- 3 **NOI** means the ADEQ form that requests coverage under the AZPDES stormwater construction  
4 general permit.
- 5 **Noncompliance Charges** means the amounts of Liquidated Damages specified in Section 22.4 of  
6 the Agreement.
- 7 **Noncompliance Event** means any Developer breach or failure to perform any one of the  
8 obligations set forth in the Noncompliance Event Tables.
- 9 **Noncompliance Event Tables** means, collectively, the D&C Period Noncompliance Event Table  
10 and O&M Period Noncompliance Table set forth in Exhibit 14 (Noncompliance Event Tables) that  
11 identifies the Noncompliance Events and corresponding cure period, if any, that apply during the  
12 Term. The Noncompliance Event Tables are subject to change in accordance with Section 19.1.2  
13 of the Agreement.
- 14 **Noncompliance Points** means the point(s) ADOT may assess against Developer for the  
15 occurrence of Noncompliance Events, in accordance with Section 19.3 of the Agreement and the  
16 D&C Period Noncompliance Event Table or O&M Period Noncompliance Event Table, as  
17 applicable.
- 18 **Noncompliance Report** has the meaning set forth in Section 19.2.1(c) of the Agreement.
- 19 **Nonconforming Work** means Work that does not conform to the requirements of the Contract  
20 Documents, the Governmental Approvals, applicable Law or the Design Documents.
- 21 **Non-Routine Maintenance Work** means temporary and permanent maintenance and repair  
22 Work, including capital repairs and reconstruction, necessary to:
- 23 (a) correct any Defect in the D&C Work within the O&M Limits that is discovered during the  
24 O&M Period, regardless of whether such Defect is the result of negligence or otherwise;
- 25 (b) correct any Nonconforming Work within the O&M Limits that is discovered during the  
26 O&M Period, regardless of whether such Nonconforming is the result of negligence or  
27 otherwise;
- 28 (c) correct damage to O&M Elements that results from any such Defect or Nonconforming  
29 Work, or from a Developer Act; or
- 30 (d) correct damage to O&M Elements that results from an Incident or Emergency or response  
31 thereto.

- 1 **Notice** means a written notice, notification, correspondence, order or other communication  
2 given under the Agreement to a Party that complies with the prescriptions set forth in Section  
3 27.12 of the Agreement.
- 4 **Notice of Intent** means the ADEQ form that requests coverage under the AZPDES stormwater  
5 construction general permit.
- 6 **Notice of Termination** means the ADEQ form that terminated coverage under the AZPDES  
7 stormwater construction general permit.
- 8 **Notice of Termination for Convenience** means a Notice issued by ADOT to Developer terminating  
9 the Work of Developer for convenience under Section 26.1 of the Agreement.
- 10 **Notification** means any notice to Developer’s O&M Manager or Maintenance Coordinator which  
11 is posted in the Management Information System. In the case of an Emergency, such notice can  
12 be by any effective means.
- 13 **Noxious and Invasive Species Control Plan** means the plan described in Section DR 450.2.4 of  
14 the Technical Provisions.
- 15 **NTP 1** means a written notice issued by ADOT to Developer authorizing Developer to proceed  
16 with the portion of the Work described in Section 9.3 of the Agreement.
- 17 **NTP 2** means a written notice issued by ADOT to Developer pursuant to Section 9.4 of the  
18 Agreement authorizing Developer to proceed with design and construction of the Project.
- 19 **O&M Bonds** means, collectively, the O&M Performance Bond and the O&M Payment Bond.
- 20 **O&M Change** means any alteration or change (including addition) to provisions in the Technical  
21 Provisions, including to Applicable Standards and Safety Standards, that relate to the O&M Work.  
22 Such alterations or changes include revisions to manuals, publications and guidelines, adoption  
23 of new manuals, publications and guidelines, changed, added or replacement standards, criteria,  
24 requirements, conditions, procedures and specifications, including Applicable Standards and  
25 Safety Standards that relate to the O&M Work.
- 26 **O&M Conditions Precedent** means the conditions precedent, set forth in Section 8.6.4 of the  
27 Agreement, to the commencement of the O&M Work.
- 28 **O&M Draw Request** means a draw request and certificate described in Section 15.7.1 of the  
29 Agreement.
- 30 **O&M Elements** means the Elements that Developer shall operate and/or maintain as part of the  
31 O&M Work.
- 32 **O&M Guaranty** has the meaning set forth in Section 12.7.1 of the Agreement.

1 **O&M Limits** shall mean the limits of the Project ROW, excluding areas ADOT will operate and  
2 maintain as defined or depicted in Section OMR 400.1 of the Technical Provisions and the  
3 Schematic Design provided in the Reference Information Documents.

4 **O&M Manager** means the individual described in Section GP 110.08.3.4 of the Technical  
5 Provisions. The O&M Manager is one of the Key Personnel listed in Exhibit 8-2 (Key Personnel) of  
6 the Agreement.

7 **O&M Payment Bond** has the meaning set forth in Section 12.2.2 of the Agreement in the form  
8 of Exhibit 9-3 (Form of O&M Payment Bond) to the Agreement.

9 **O&M Performance Bond** has the meaning set forth in Section 12.2.1 of the Agreement in the  
10 form of Exhibit 9-1 (Form of O&M Performance Bond) to the Agreement.

11 **O&M Period** means the period beginning on the Project Substantial Completion Date and ending  
12 three years after the first to occur of (a) the Project Substantial Completion Date or (b) the Project  
13 Substantial Completion Deadline, as such deadline may be extended by Relief Events.

14 **O&M Period Noncompliance Event Table** means the Noncompliance Event Table, set forth in  
15 Exhibit 14-2 (O&M Period Noncompliance Event Table) to the Agreement, that identifies the  
16 Noncompliance Events and corresponding cure periods, if any, that apply during the O&M Period.  
17 The O&M Period Noncompliance Event Table is subject to change in accordance with Section  
18 19.1.2 of the Agreement.

19 **O&M Price** means the aggregate amount of the Annual O&M Payments set forth in the O&M  
20 Price Breakdown (Exhibit 2-4.2), as adjusted pursuant to Section 15.6.2 of the Agreement. The  
21 O&M Price is the price for all O&M Work that Developer shall perform during the O&M Period.

22 **O&M Price Breakdown** means the breakdown of the O&M Price set forth in Exhibit 2-4.2 (O&M  
23 Price Breakdown) to the Agreement.

24 **O&M Work** means any and all operation, management, administration, maintenance, repair and  
25 preservation work and services, routine, non-routine and otherwise, that Developer is  
26 responsible to perform during the O&M Period as more particularly described in Section 10.1 of  
27 the Agreement and Section OMR 400 of the Technical Provisions.

28 **O&M Work Plan** means the plan for O&M Work, to be prepared and updated by Developer  
29 pursuant to Section OMR 400.2.1 of the Technical Provisions. The O&M Work Plan is part of the  
30 Operations and Maintenance Management Plan.

31 **O&M Work Schedule** means the schedule for O&M Work, to be prepared and updated by  
32 Developer pursuant to Section OMR 400.2.1 of the Technical Provisions. The O&M Work  
33 Schedule is part of the O&M Work Plan.

34 **OJT Goals** has the meaning set forth in Section 11.3.1 of the Agreement.

1 **OJT Special Provisions** means ADOT’s provisions regarding on-the-job training for the Project set  
2 forth in Exhibit 7 (ADOT’s OJT Special Provisions) to the Agreement.

3 **OJT Trainee** has the meaning set forth in Section 923-1.03 of the OJT Special Provisions.

4 **OJT Utilization Plan** means Developer’s ADOT-approved plan for meeting the OJT Goals,  
5 described in Section 11.3.3 of the Agreement.

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

14 **Open Trench Safety and Security Plan** means the plan described in Section GP 110.09.2.1.11 of  
15 the Technical Provisions.

16 **Operations and Maintenance Management Plan** means the plan prepared by Developer which  
17 defines the process and procedures for Developer’s performance of O&M Work as more  
18 particularly described in Section 10.2 of the Agreement and Section OMR 400.2.1.1 of the  
19 Technical Provisions.

20 **Operations and Maintenance Quality Management Plan** means the plan described in, and  
21 satisfying the requirements of, Section GP 110.07.2.1.3 of the Technical Provisions.

22 **Operations and Maintenance Safety Management Plan** means the plan for safety management  
23 with respect to the O&M Work, as more particularly described in Section OMR 400.2.1.2 of the  
24 Technical Provisions. The OMSMP is a supplement to the Safety Management Plan.

25 **Operations Manual** means the manual described in, and satisfying the requirements of, Section  
26 OMR 400.2.1.5 of the Technical Provisions.

27 **Other Personnel** means the individuals described in Section GP 110.08.3 to the Technical  
28 Provisions.

29 **Oversight** means monitoring, inspecting, sampling, measuring, spot checking, attending,  
30 observing, testing, investigating and conducting any other oversight by ADOT respecting any part  
31 or aspect of the Project or the Work, including all the activities described in Section 5.6.2 of the  
32 Agreement.

33 **Owner Verification** means sampling and testing performed by ADOT or ADOT’s representatives  
34 to verify that the Project is constructed in compliance with the Contract Documents.

1 **Paint Draw Downs** means the paint samples described in Section CR 450.3.1.4.2 of the Technical  
2 Provisions.

3 **Pandemic** means the worldwide spread of a new disease designated as an epidemic or pandemic  
4 by the WHO or CDC.

5 **Pandemic Law** means a Law that:

6 (a) Is specifically directed at coping with a Pandemic's threat to health and safety;

7 (b) First takes effect after the Setting Date, excluding a Law that is passed or adopted before,  
8 but becomes effective after, the Setting Date; provided that if a Law passed or adopted  
9 prior to the Setting Date is relaxed or revoked prior to the Setting Date but again passed,  
10 adopted or reinstated after the Setting Date in response to a continuance or resurgence  
11 of Pandemic outbreak, then its later passage, adoption or reinstatement will be treated  
12 as a Law first taking effect after the Setting Date; and

13 (c) Is more burdensome than Laws in effect as of the Setting Date.

14 **Partnering Meetings** has the meaning set forth in Section 24.1.1(a) of the Agreement.

15 **Party** means Developer or ADOT, as the context may require, and "**Parties**" means Developer  
16 and ADOT, collectively.

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

19 **Pavement Mix Designs** means the Shop Drawings and Working Drawings that specify the  
20 components required to construct the pavement and comply with the Contract Documents.

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

23 **Performance Requirements** means, for each O&M Element, the requirements set forth in TP  
24 Attachment 500-1 of the Technical Provisions under the heading "Performance Requirements."

25 **Permitted Closure** means:

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

31 (b) A Closure required due to a Relief Event, provided Developer is using commercially  
32 reasonable efforts to: (i) mitigate the impact of such Relief Event; (ii) reopen the affected

1 segment to traffic; and (iii) minimize the impact of Developer’s activities and the Closure to traffic  
2 flow; or

3 (c) A Closure that does not trigger Liquidated Damages under Section 22.2 or 22.3 of  
4 the Agreement (i.e., at times permitted under in Section DR 462.3 or in Section OMR 400.2.7 of  
5 the Technical Provisions).

6 **Persistent Developer Default** has the meaning set forth in Section 19.4.1 of the Agreement.

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

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

11 **Plans** means the plans described in, and satisfying the requirements of, Section GP 110.10.2.6.1  
12 of the Technical Provisions.

13 **Plant Availability List** means the list described in, and satisfying the requirements of, Section DR  
14 450.3.5.1.

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

17 **Point of Service Agreement** has the meaning set forth in Section 15.5.1 of the Agreement.

18 **Preliminary DBE Utilization Plan** means the plan that Developer submitted in its Proposal  
19 concerning the recruiting and use of Persons to fulfill the DBE Goals.

20 **Preliminary OJT Utilization Plan** means the plan that Developer submitted in its Proposal  
21 concerning the recruiting and use of Persons to fulfill the OJT Goals.

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

27 **Preserve-in-Place Area** has the meaning set forth in Section DR 450.3.5 of the Technical  
28 Provisions.

29 **Price** means either or both of the D&C Price and the O&M Price, as applicable.

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

1 **Principal Investigator** means the individual described in, and satisfying the requirements of,  
2 **Section GP 110.08.3.13** of the Technical Provisions.

3 **Prior Rights Documentation** means documents showing that the Utility Company’s facility  
4 predates the acquisition of the property for street or highway purposes, or that it occupies an  
5 easement or other compensable land right. Such documents provide verification that the Utility  
6 Company is entitled to compensation for the cost of Adjustments required to accommodate the  
7 Project.

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

12 **Professional Services** means all Work performed under the Agreement other than Construction  
13 Work and O&M Work, including the following services and Work:

- 14 (a) Design and engineering;
- 15 (b) Utility Adjustment design;
- 16 (c) Environmental permitting and compliance;
- 17 (d) Public involvement; and
- 18 (e) Surveying.

19 **Professional Services DBE Intended Participation Affidavit Individual** means the affidavit in the  
20 form of Attachment D to the DBE Special Provisions.

21 **Professional Services DBE Intended Participation Affidavit Summary** means the affidavit  
22 summary in the form of Attachment C to the DBE Special Provisions.

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

25 **Professional Services Quality Manager** means the individual filling the position with the  
26 responsibility to cause Developer’s Professional Services staff to implement and follow the  
27 methods and procedures contained in the ADOT-approved Professional Services Quality  
28 Management Plan in the performance of the Work, as more particularly described in **Section GP**  
29 **110.08.3.1** of the Technical Provisions. These methods and procedures include, among others,  
30 procedures to ensure all design products are accurate and checked before release. The individual  
31 filling this position must have the authority to stop Work and must be collocated whenever the  
32 performance of design activities occurs, including design activities related to field design changes.

33 **Prohibited Product** has the meaning set forth in **Section GP 110.13.8** of the Technical Provisions.

1 **Project** means the transportation facilities and all related structures, improvements and systems  
2 to be developed, designed, constructed, operated and maintained, or any of the foregoing,  
3 pursuant to the terms of the Contract Documents, as more particularly described in TP  
4 Attachment 110-1 of the Technical Provisions; provided, however, that, from and after the  
5 Project Substantial Completion Date, the term “Project” is limited to the O&M Elements for  
6 purposes of any provision of the Contract Documents relating to the O&M Work, except to the  
7 extent of Work required for Final Acceptance, warranties from Subcontractors and Suppliers, and  
8 the plant establishment period for the non-O&M Elements of the Project. The term “Project”  
9 does not include Developer’s Temporary Work Areas.

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

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

17 **Project Bond** means any of D&C Performance Bond, D&C Payment Bond, O&M Performance  
18 Bond and O&M Payment Bond provided in accordance with the Agreement.

19 **Project Collateral** means all exhibits, graphics, photography, videography, data, Project  
20 newsletters, fact sheets, mailers, media briefing kits, materials and any other stakeholder-facing  
21 information that Developer provides to ADOT to notify the public.

22 **Project Environmental Commitment Requirements** means the commitments and obligations set  
23 forth in Section TP Attachment 420-1 of the Technical Provisions.

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

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

29 **Project Manager** means the individual described in Section GP 110.08.2.1 of the Technical  
30 Provisions. The Project Manager is one of the Key Personnel listed in Exhibit 8-2 (Key Personnel)  
31 of the Agreement.

32 **Project Plans** means the Project Management Plan and all component plans thereof, DBE  
33 Utilization Plan, OJT Utilization Plan, Document Management Plan, Transportation Management  
34 Plan, Utility Coordination Plan, Traffic Control Plan(s), Crisis Communication Plan, Flex Lanes  
35 Transition Plan and any other plans that are called for under the Contract Documents and similarly  
36 concern processes, management or administration for some aspect of design, construction,

1 operations or maintenance. “Project Plans” do not include “Plans” as defined. Section GP 110.03  
2 of the Technical Provisions sets forth a non-exclusive list of Project Plans.

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

6 (a) Within the lines delineating the outside boundaries of the Project as set forth in  
7 the Schematic ROW or as adjusted in accordance with the Contract Documents (including  
8 adjustments for Developer-Designated ROW);

9 (b) Outside such lines and required for performance of the Work or construction,  
10 operation or maintenance of the Project, including Temporary Construction Easements outside  
11 such lines during their terms, and easements and other property interests for the Project and  
12 other components and features required for roadway function or environmental compliance;

13 (c) Outside such lines and required for permanent ADOT-owned improvements due  
14 to an ADOT-Directed Change; or

15 (d) Outside such lines and required as a Necessary Schematic ROW Change.

16 The term “Project ROW” or “Project Right-of-Way” specifically includes all airspace, surface rights  
17 and subsurface rights within the boundaries of the Project ROW or Project Right-of-Way.

18 The term “Project ROW” or “Project Right-of-Way” specifically excludes:

19 (i) Real property for Developer’s Temporary Work Areas outside the  
20 boundaries set forth in the Schematic ROW;

21 (ii) Replacement Utility Property Interests; and

22 (iii) After Final Acceptance, any real property for county or city streets or other  
23 areas included in the Construction Work that are outside the O&M Limits.

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

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

31 **Project-Specific PIP** means the public involvement plan specific to the Project described in, and  
32 satisfying the requirements of, Section CR 425.2.2 of the Technical Provisions.

1 **Project Substantial Completion** means the occurrence of all of the events and satisfaction of all  
2 of the conditions set forth in Sections 8.6.1(a) of the Agreement with respect to the Project, as  
3 and when confirmed by ADOT’s issuance of a Certificate of Project Substantial Completion for  
4 the Project.

5 **Project Substantial Completion Date** means the date on which ADOT issues the Certificate of  
6 Project Substantial Completion; provided that if Developer prevails in contesting a denial or delay  
7 in issuance of the Certificate of Project Substantial Completion, then it means the latest date that  
8 was available to ADOT to issue the Certificate of Project Substantial Completion in compliance  
9 with Section 8.6.1 of the Agreement.

10 **Project Substantial Completion Deadline** means the date that is 935 days after the date of  
11 issuance of NTP 1, beginning on, and including, the date that ADOT issues NTP 1, as such deadline  
12 may be adjusted by Supplemental Agreement pursuant to the Agreement.

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

15 **Proposal Due Date** means July 20, 2021, the deadline for submission of the Proposal to ADOT  
16 under the RFP.

17 **Proposer** means each entity that was shortlisted based on ADOT’s evaluation of submissions in  
18 response to the Request for Qualifications for the Project issued on October 29, 2019, as  
19 amended.

20 **Proposer’s List** is the Proposer’s List of All Subcontractors, Suppliers, Service Providers and  
21 Manufacturers described in Section 12.05 of Exhibit 6 (ADOT’s DBE Special Provisions) of the  
22 Agreement, which form must be submitted with the Proposal and on a monthly basis with DBE  
23 Monthly Utilization Progress Report.

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

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

32 **Public Records Act** means A.R.S., Title 39, Chapter 1, Article 2.

33 **Public Relations Manager** means the individual described in Section GP 110.08.2.7 of the  
34 Technical Provisions. The Public Relations Manager is one of the Key Personnel listed in Exhibit 8-  
35 2 (Key Personnel) of the Agreement.

- 1 **Pull Box Location Report** means the report described in Section CR 460.3.3 of the Technical  
2 Provisions.
- 3 **Punch List** means the itemized list of the Work that remains to be completed prior to South  
4 Segment Substantial Completion (if applicable), and after Project Substantial Completion has  
5 been achieved and before Final Acceptance, the existence, correction and completion of which  
6 will have no material or adverse effect on the normal and safe use and operation of the Project.
- 7 **Qualified Biologist** means the individual described in Section GP 110.08.3.14 of the Technical  
8 Provisions.
- 9 **Quality Acceptance** means all planned and systematic actions performed by the Quality Manager  
10 in connection with acceptance of D&C Work, as defined in the Contract Documents.
- 11 **Quality Management Plan** means, collectively, the Quality Management Plan General  
12 Requirements, the Professional Services Quality Management Plan, the Construction Quality  
13 Management Plan, and the Operations and Maintenance Quality Management Plan included in  
14 the Project Management Plan and more fully described in Section GP 110.07.2.1 of the Technical  
15 Provisions, in each case approved by ADOT.
- 16 **Quality Management Plan General Requirements** means Volume 1 of the QMP, satisfying the  
17 requirements of Section GP 110.07.2.1.1 of the Technical Provisions.
- 18 **Quality Manager** means the individual described in Section GP 110.08.2.5 of the Technical  
19 Provisions. The Quality Manager is one of the Key Personnel listed in Exhibit 8-2 (Key Personnel)  
20 of the Agreement.
- 21 **Quality Records** means the records and documentation described in Section GP 110.07.2.1.3.2  
22 of the Technical Provisions.
- 23 **Quarterly Safety & Claims Report** means the report described in Section GP 110.09.2.1.12.2 of  
24 the Technical Provisions.
- 25 **Rainfall Records** means the records described in Section CR 420.3.2.2.5.1 of the Technical  
26 Provisions.
- 27 **Reasonable Investigation** means the following activities performed by appropriate, qualified and  
28 experienced professionals exercising due care and skill and Good Industry Practice prior to the  
29 Setting Date:
- 30 (a) Review and analysis of all Technical Provisions;
- 31 (b) Visit and visual, non-intrusive inspection of the Site and surrounding locations,  
32 except areas to which access rights have not been made available by the Setting Date;

1 (c) Review and analysis of all Reference Information Documents (including the  
2 documents identified in the definition of Known or Suspected Hazardous Materials);

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

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

6 (f) Reasonable inquiry with Governmental Entities that issue Environmental  
7 Approvals for the Project or the Work;

8 (g) Review and analysis of Laws applicable to the Project or the Work as of the Setting  
9 Date; and

10 (h) Investigation, review and analysis of available public records of county recorders  
11 for counties in which any part of the Project is located and of public records available at the ASLD  
12 Public Records counter.

13 **Recognized Environmental Conditions** means environmental conditions known to exist within  
14 the Project ROW and which the NEPA Approval requires Developer to avoid disturbing or  
15 otherwise impacting.

16 **Record Drawings** means Plans and related documentation revised to show changes made during  
17 the construction process usually based on modified or edited Final Design Documents Submittals  
18 furnished by Developer as more fully described in Section GP 110.10.2.7.4 of the Technical  
19 Provisions.

20 **Record Retention Period** means a period of five years after the end of the Term, or until all  
21 disputes, if any, concerning the Agreement or the Project have been resolved, whichever occurs  
22 later, or for such longer period as may be required by Law.

23 **Recovery Schedule** means the schedule Developer is required to provide under Section 9.9 of  
24 the Agreement and more fully described in Section GP 110.06.2.10 of the Technical Provisions.

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

30 **Regional General Permit 96** means the Regional General Permit 96 (Routine Transportation  
31 Activities - Arizona) issued by the U.S. Army Corps of Engineers under Section 404 of the Clean  
32 Water Act (33 U.S.C. §1344) for the placement of dredged and fill material into waters of the  
33 United States.

1 **Related Transportation Facilities** means all existing and future highways, streets, and roads,  
2 including upgrades and expansions thereof, that are or willing to be adjacent to, connecting with  
3 or crossing under of over the Project.

4 **Release of Hazardous Materials** means any spill, leak, emission, release, discharge, injection,  
5 escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water,  
6 groundwater or environment, including any exacerbation of an existing release or condition of  
7 Hazardous Materials contamination.

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

11 (a) ADOT's failure to perform or observe any of its covenants or obligations under the  
12 Contract Documents and such failure has a material impact on the Project Schedule or the ability  
13 of the Developer to carry out its obligations under the Contract Documents;

14 (b) ADOT-Directed Change;

15 (c) ADOT-Caused Delay;

16 (d) Force Majeure Event;

17 (e) Utility Company Delay (except with respect to the ADOT Broadband Initiative for  
18 I-17);

19 (f) Inaccurate Utility Information that directly affects the Construction Work, subject  
20 to the following exclusions:

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

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

23 (iii) Where the existence of a Utility in the correct location or size, or of a Utility  
24 Company's Prior Rights Documentation, as applicable, was known to Developer as of the Setting  
25 Date, or would have become known to Developer as of the Setting Date by undertaking a  
26 Reasonable Investigation prior to the Setting Date; and

27 (iv) Inaccurate Utility Information with respect to the ADOT Broadband  
28 Initiative for I-17;

29 (g) Discovery during the D&C Period at, near or on the Project ROW of any Hazardous  
30 Materials (including ADOT Releases of Hazardous Material), excluding Developer Releases of  
31 Hazardous Materials and Known or Suspected Hazardous Materials;

- 1 (h) Any sudden Release of Hazardous Material by a third party who is not acting in  
2 the capacity of a Developer-Related Entity, which (i) occurs after the Setting Date and prior to  
3 the end of the D&C Period, (ii) is required to be reported to a Governmental Entity, and (iii)  
4 renders use of the roadway or construction area unsafe or potentially unsafe absent assessment,  
5 containment or remediation;
- 6 (i) Discovery during the D&C Period on or under the Project ROW of any  
7 archaeological, paleontological or cultural resources, excluding any such resources at the Known  
8 Cultural Resource Sites;
- 9 (j) Discovery during the D&C Period of Differing Site Conditions;
- 10 (k) Discovery during the D&C Period at, near or on the Project ROW of any Threatened  
11 or Endangered Species (regardless of whether the species is listed as threatened or endangered  
12 as of the Setting Date), excluding any such presence of the American Bald Eagle or other species  
13 known to Developer prior to the Setting Date or that would become known to Developer by  
14 undertaking Reasonable Investigation;
- 15 (l) Change in Law or Change in Adjustment Standards, except a Change in Adjustment  
16 Standards that is consistent with the terms and limitations, if any, on changes in Adjustment  
17 Standards set forth in any Utility Agreement to which Developer is a party or which Developer  
18 has assumed;
- 19 (m) Unreasonable delay, beyond Developer’s reasonable control, in obtaining new or  
20 modified Governmental Approvals necessary for implementing an approved ATC;
- 21 (n) Delay or failure of the U.S. Army Corps of Engineers to provide a Section 404  
22 Permit for the Project or portion thereof within 180 days after (i) Developer fulfills all  
23 requirements for issuance of such permit, including preparation and submission of a  
24 Governmental Approval Package, (ii) ADOT has approved such Governmental Approval Package,  
25 (iii) a Section 401 Water Quality Certification has been issued, and (iv) either (A) the U.S. Army  
26 Corps of Engineers determines that the Governmental Approval Package is complete, or (B) if  
27 such determination is unavailable because the U.S. Army Corps of Engineers has generally  
28 suspended processing Section 404 Permits at or after the time of submission, it is likely that the  
29 U.S. Army Corps of Engineers would determine, by 15 days after submission, that the  
30 Governmental Approval Package is complete had it not suspended processing;
- 31 (o) A material change in requirements, terms and conditions of the Section 404  
32 Permit issued by the U.S. Army Corps of Engineers from those set forth in the RIDs, except for  
33 changes attributable to any differences in Developer’s Design Documents from the Schematic  
34 Design that ADOT submitted to the Corps;
- 35 (p) The existence of any agreement, easement, right of entry, covenant, condition,  
36 restriction or other instrument that meets all of the following provisions:

- 1 (i) It encumbers ADOT’s right, title or interest in and to Project ROW;
- 2 (ii) It is not a Utility easement, license or right of use;
- 3 (iii) It either (A) precludes the contemplated Construction Work or (B)  
4 although not precluding the contemplated Construction Work, is materially more burdensome  
5 than usual and customary covenants, conditions, restrictions, obligations, terms and provisions  
6 imposed or required by the U.S. Bureau of Land Management or the Arizona State Lands  
7 Department and the requirements and obligations imposed on Developer by the Contract  
8 Documents;
- 9 (iv) It was not known to any Developer-Related Entity as of the Setting Date;  
10 and
- 11 (v) It could not have become known to Developer as of the Setting Date by  
12 undertaking Reasonable Investigation prior to the Setting Date;
- 13 (q) Issuance of a temporary restraining order, preliminary injunction or other form of  
14 interlocutory relief by a U.S. federal or state court of competent jurisdiction that prohibits  
15 prosecution of any portion of the Work, except if based on any Developer Act;
- 16 (r) Issuance of a rule, order or directive from the U.S. Department of Homeland  
17 Security or comparable State agency regarding specific security threats to the Project or the  
18 region in which the Project is located or which the Project serves, to the extent such rule, order  
19 or directive requires specific changes in Developer’s normal design, construction or operations  
20 or maintenance procedures in order to comply;
- 21 (s) Any Necessary Schematic ROW Change;
- 22 (t) Any damage, interruption or interference to the Work caused by a Defect in the  
23 design, construction or physical condition of the Existing Improvements (excluding, however,  
24 presence of any Hazardous Materials, Differing Site Condition or archaeological, paleontological  
25 or cultural resources) that was not known to Developer as of the Setting Date and could not have  
26 been discovered by Developer through Reasonable Investigation;
- 27 (u) Delay by APS in substantially completing the APS Scope of Work for any APS point  
28 of service by 18 months after Developer (i) faithfully completes the collaborative design effort  
29 described in Section 15.5.3 of the Agreement for such point of service and (ii) consistent  
30 therewith submits to APS and APS accepts a service request letter and lockdown sheet for such  
31 point of service in form and content required by APS; or
- 32 (v) Any interruption or interference to the Construction Work caused by construction  
33 activities that (A) are performed by ADOT’s contractor for the ADOT Broadband Initiative for I-17  
34 facilities or its subcontractors, (B) occur within the Project Right of Way, and (c) occur after the  
35 date that is September 15, 2022 plus, if applicable, the period of any delay in performing such

- 1 construction activities by such broadband contractor or its subcontractors for reasons other than  
2 events beyond its reasonable control.
- 3 **Relief Event Delay** means a delay to a Controlling Work Item, after consumption of all Float  
4 available pursuant to Section 9.8.2 of the Agreement, as a direct result of a Relief Event. For  
5 clarity, Relief Event Delay includes such delays to Controlling Work Items directly attributable to  
6 Developer’s obtaining Environmental Approvals, reevaluations, amendments and supplements  
7 of the NEPA Approval, and other Governmental Approvals in connection with a Relief Event, as  
8 required under Section 6.3.2 of the Agreement. The term “Relief Event Delay” does not include  
9 delay due to loss, damage or destruction described in Section 13.3.8 of the Agreement or, except  
10 as provided otherwise in Section 16.6.1 of the Agreement, delay that is concurrent with another  
11 delay that is not caused by a Relief Event.
- 12 **Relief Event Notice** means the Notice required to be provided by Developer under Section 16.1.2  
13 of the Agreement.
- 14 **Relief Request** has the meaning set forth in Section 16.1.3 of the Agreement.
- 15 **Replacement Utility Property Interest** means any permanent right, title or interest in real  
16 property outside of the Project ROW (e.g., a fee or an easement) which is acquired for a Utility  
17 being reinstalled in a new location as a part of the Utility Adjustment Work. The term specifically  
18 excludes any statutory right of occupancy or permit granted by a Governmental Entity for  
19 occupancy of its real property by a Utility.
- 20 **Representative** means, with respect to any Person, any director, officer, employee, official,  
21 lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer,  
22 accountant, auditor, professional advisor, consultant, engineer, Subcontractor, other person for  
23 whom such Person is, at law, responsible or another representative of such Person and any  
24 professional advisor, consultant or engineer designated by such Person as its "representative."
- 25 **Reputation Management Plan** means the plan described in, and satisfying the requirements of,  
26 Section CR 425.2.2.3 of the Technical Provisions.
- 27 **Request for Change Proposal** means a written notice issued by ADOT to Developer under Section  
28 17.1.2 of the Agreement, advising Developer that ADOT may issue an ADOT-Directed Change or  
29 wishes to evaluate whether to initiate such a change pursuant to Section 17.1 of the Agreement.
- 30 **Request for Information** means the request described in Section GP 110.10.2.7.2 of the Technical  
31 Provisions.
- 32 **Request for Prior Rights Determination** means a request, as described in, and satisfying the  
33 requirements of, Section DR 430.2.4.1 of the Technical Provisions.
- 34 **Request for Proposals** means the request for proposals referenced in Recital E of the Agreement.

1 **Request for Qualifications** means the request for qualifications referenced in Recital C of the  
2 Agreement.

3 **Required Minimum O&M Insurance Policies** has the meaning set forth in Section 13.1.14(b)(i) of  
4 the Agreement.

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

10 **Results of Internal Audits** has the meaning set forth in Section GP 110.07.2.1 of the Technical  
11 Provisions.

12 **RFC Submittal** means the Submittal described in, and satisfying the requirements of, Section GP  
13 110.10.2.6.6 of the Technical Provisions.

14 **RFI Log** means the log described in Section GP 110.10.2.7.2 of the Technical Provisions.

15 **RFP Documents** means all of the information and materials supplied to Developer in connection  
16 with the issuance of the RFQ and the RFP, including Instructions to Proposers, the Contract  
17 Documents, and the Reference Information Documents and any addenda issued in connection  
18 with any of the foregoing.

19 **Rock Engineer/Blasting Professional** means the individual described in Section GP 110.08.3.7 of  
20 the Technical Provisions.

21 **Routine Maintenance** means all maintenance Work by Developer other than Non-Routine  
22 Maintenance Work.

23 **Safety Compliance** means any and all improvements, repair, reconstruction, rehabilitation,  
24 restoration, renewal, replacement and changes in configuration or procedures respecting the  
25 Project to correct a specific safety condition or risk of the Project that ADOT has determined to  
26 exist through investigation or analysis.

27 **Safety Compliance Order** means an order or directive from ADOT to Developer to implement  
28 Safety Compliance.

29 **Safety Corrective Measure** means a Submittal describing the corrective measures Developer  
30 plans to take to address errors and deficiencies Developer discovers through a safety  
31 performance analysis, as described in Section GP 110.09.2.1.12.1 of the Technical Provisions.

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

1 **Safety Manager** means the individual described in Section GP 110.08.2.6 of the Technical  
2 Provisions. The Safety Manager is one of the Key Personnel listed in Exhibit 8-2 (Key Personnel)  
3 of the Agreement.

4 **Safety Performance Analysis Report** means the report described in Section GP 110.09.2.1.12.1  
5 of the Technical Provisions.

6 **Safety Standards** means those provisions of the Technical Provisions that ADOT indicates that it  
7 considers to be important measures to protect public safety, worker safety or the safety of  
8 property. As a matter of clarification, provisions of the Technical Provisions primarily directed at  
9 durability of materials or equipment, where the durability is primarily a matter of life cycle cost  
10 rather than protecting public or worker safety, are not Safety Standards.

11 **Salvage Operation Plan** means the plan described, and satisfying the requirements of, Section  
12 CR 450.3.2.4 of the Technical Provisions.

13 **Schedule Narrative** means the narrative described in, and satisfying the requirements of, Section  
14 GP 110.06.2.4 of the Technical Provisions.  
15

16 **Schedule of Values** means the itemized allocation of Developer’s pricing for each component of  
17 the Work.

18 **Schematic Design** means the strip map that ADOT prepared depicting ADOT’s conceptual design  
19 for the Project, as included in the Reference Information Documents entitled “Schematic Design  
20 Maps.pdf”.

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

24 **Section 401 Water Quality Certification** means the certification review, conducted by the  
25 Arizona Department Environmental Quality as authorized under the Clean Water Act (33 U.S.C.  
26 §1251 et seq.), that has established the requirements to comply with state water quality  
27 standards under Regional General Permit 96, or the review required to determine compliance  
28 with state water quality standards when a Section 404 Permit is required.

29 **Section 404 MOA** means the Second Amended and Superseded Memorandum of Agreement  
30 dated September 20, 2017 and entered into by and among U.S. Army Corps of Engineers’ Los  
31 Angeles District, Arizona Division Office of the FHWA, and ADOT.

32 **Section 404 Permit** means the Regional General Permit 96 or any Section 404 Individual Permit.

33 **Section 404 Individual Permit** means any Section 404 individual permit that may be required for  
34 the Project based upon the Final Design and the Schematic ROW.

35 **Seeded Area** has the meaning set forth in Section DR 450.3.5 of the Technical Provisions.

1 **Segment Limits Map** means the map of the Project’s design segments, as described in, and  
2 satisfying the requirements of, Section GP 110.10.2.5.2 of the Technical Provisions.

3 **Service Line** means a utility line other than a main utility line, including any meter, that connects  
4 or may be connected to a main utility line and services or is available to service individuals,  
5 businesses and other entities. A Service Line is that portion of a utility line that extends from the  
6 tap of the main utility line, including such tap, through and including any meter, to a consumer’s  
7 or potential consumer’s residence(s), business(es) or other improvement(s), facility(ies),  
8 equipment or the like, whether existing, planned or potential / possible. Additionally, any and all  
9 utility lines that connect to a Service Line, including any and all meters, but excluding main utility  
10 lines, are Service Lines.

11 **Service Line Adjustment** means any work or adjustment to a Service Line to accommodate a  
12 Utility Adjustment.

13 **Setting Date** means June 20, 2021.

14 **Sewage Discharge Prevention Plan** means the plan described in Section CR 430.2.2.2 of the  
15 Technical Provisions.

16 **Shop Drawings and Working Drawings** means the drawings described in Section GP 110.10.2.7.1  
17 of the Technical Provisions.

18 **Sign Inventory** means the inventory of Project signs, as more particularly described Section DR  
19 460.2.3 of the Technical Provisions.

20 **Signing Concept Plan** means the plan described in, and satisfying the requirements of, Section  
21 DR 460.3.3.3 of the Technical Provisions.

22 **Site** means Schematic ROW, Developer-Designated ROW, Replacement Utility Property Interests,  
23 any ROW where Work for the Project is to be performed and Developer’s Temporary Work Areas.

24 **Site Documentation** means the documentation described in Section GP 110.11.2 of the Technical  
25 Provisions.

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

28 **Soils Management Plan** means the plan described in, and satisfying the requirements of, Section  
29 CR 450.3.2.5 of the Technical Provisions.

30 **South Segment** means the portion of the Project from the most southerly terminus of the Project  
31 to and including the temporary transition zone into the general purpose lanes as more  
32 particularly depicted in the Schematic Design provided in the Reference Information Documents.

1 **South Segment Substantial Completion** means the occurrence of all of the events and  
2 satisfaction of all of the conditions set forth in Section 8.6.2(b) of the Agreement with respect to  
3 the South Segment, as and when confirmed by ADOT's issuance of a Certificate of South Segment  
4 Substantial Completion.

5 **Specialty Inspector** means an inspector that obtains specialized training or certification to Inspect  
6 an Element as part of the O&M Work, where then-current FHWA guidance, ADOT guidance or  
7 Good Industry Practice provides that such specialized training or certification is desired to order  
8 to Inspect that Element.

9 **Stakeholder Inquiry Report** means the Submittal used to report community member-initiated  
10 inquiries, as more particularly described in Section CR 425.2.2.11 of the Technical Provisions.

11 **Stakeholder Management System** means the system created by ADOT to manage, monitor, log,  
12 respond to and document all inquiries and comments from Project stakeholders.

13 **Starting O&M Period Insurance Benchmarking Premiums** has the meaning set forth in Section  
14 13.1.14(d) of the Agreement.

15 **State** means the State of Arizona.

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

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

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

22 **Structure Calculations Report** means the report described in, and satisfying the requirements of,  
23 Section DR 455.3.6.2.1 of the Technical Provisions.

24 **Structure Identification Number** means the numbers that ADOT uses to identify new and existing  
25 structures.

26 **Structure Type Study Report** means the report described in, and satisfying the requirements of,  
27 Section DR 455.3.1 of the Technical Provisions.

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

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

1 **Submittal** means any individual document, individual work product item or other written or  
2 electronic end product or item required under the Contract Documents to be delivered or  
3 submitted to ADOT, including those items identified in the Design Submittal Schedule. The term  
4 “Submittal” does not include notices, correspondence or invoices for payment. When used in its  
5 lower case spelling, the term “submittal” shall have its plain language meaning.

6 **Summary of Final Payments for Construction** means the summary in the form of Attachment F  
7 to of the DBE Special Provisions.

8 **Summary of Final Payments for Professional Services** means the summary in the form of  
9 Attachment G to of the DBE Special Provisions.

10 **Supplemental Agreement** means a written order issued by ADOT to Developer delineating  
11 changes in the Work or in the terms and conditions of the Contract Documents in accordance  
12 with Sections 16 or 17 of the Agreement, and establishing, if appropriate, an adjustment to the  
13 Contract Price or a Completion Deadline.

14 **Supplier** means any Person not performing work at or on the Site that supplies machinery,  
15 equipment, materials, hardware, software, systems or any other appurtenance to the Project to  
16 Developer or to any Subcontractor in connection with the performance of the Work. Persons who  
17 merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other  
18 items or persons to or from the Site shall not be deemed to be performing Work at the Site.

19 **Surety** means each properly licensed surety company, insurance company or other Person  
20 approved by ADOT, which has issued any Project Bond.

21 **Survey Manager** means the individual described in Section GP 110.08.3.5 of the Technical  
22 Provisions.

23 **Tangible Net Worth** means the difference between (a) the sum of paid-in capital stock plus  
24 preferred stock plus retained earnings, less (b) the sum of treasury stock plus minority interest  
25 plus intangible assets (e.g., goodwill, patents, licenses), all determined in accordance with the  
26 U.S. Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange  
27 Commission in connection with financial statements filed pursuant to the Securities Exchange  
28 Act of 1934.

29 **Target** means, for each Element, the target for the Measurement Record set forth in the column  
30 headed “Target” in TP Attachment 500-1 of the Technical Provisions.

31 **Technical Provisions** means the Project-specific technical provisions entitled “Technical  
32 Provisions” for “I-17, Anthem Way TI to Jct. SR 69 (Cordes Junction)”, bearing Project No. 017 MA  
33 229 H6800 01C, as the same may be revised from time to time pursuant to the Agreement.

34 **Temporary Construction Easement** means temporary easements or other temporary property  
35 interests granting rights of use to ADOT or Developer, for the limited purposes of carrying out  
36 Construction Work or providing detour routes during the Construction Work. Temporary

1 Construction Easements are distinguished from Developer’s Temporary Work Areas by the fact  
2 that a Temporary Construction Easement is utilized either to directly carry out the activity of  
3 constructing the physical facilities making up the Project or to divert traffic to enable such  
4 construction activity.

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

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

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

11 (b) Issuance of a final, non-appealable order by a court of competent jurisdiction that  
12 causes impossibility of performance of a fundamental obligation by Developer or ADOT under  
13 the Contract Documents or impossibility of exercising a fundamental right of Developer or ADOT  
14 under the Contract Documents, and such impossibility cannot be avoided or cured through  
15 severability and reformation of the Contract Documents as provided in Section 27.16 of the  
16 Agreement; or

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

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

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

26 **Termination Compensation** means each measure of compensation owing from ADOT to  
27 Developer upon termination of the Agreement prior to the stated expiration of the Term, as set  
28 forth in Section 26 of the Agreement.

29 **Termination for Convenience** means a termination of the Agreement made pursuant to Section  
30 26.1 of the Agreement.

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

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

- 1 **Third Party Intellectual Property** means any Intellectual Property owned by any Person unrelated  
2 to Developer or its Affiliates or Subcontractors and which is incorporated into the Project.
- 3 **Threatened or Endangered Species** means any species listed by the USFWS as threatened or  
4 endangered pursuant to the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 *et seq.* or  
5 any species listed as threatened or endangered pursuant to the State endangered species act.
- 6 **Time Impact Analysis** means an analysis, as described in, and satisfying the requirements of,  
7 **Section GP 110.06.2.11** of the Technical Provisions.
- 8 **Traffic Control Plans** means the plans described in, and satisfying the requirements of, **Section**  
9 **DR 462.3.2** of the Technical Provisions.
- 10 **Traffic Operations Center** means ADOT’s central hub for remotely operating and monitoring ITS  
11 elements on state highways.
- 12 **Traffic Software** means the software described in **Section DR 460.2.2** of the Technical Provisions.
- 13 **Transportation Management Plan** means the plan prepared by Developer for the management  
14 of traffic during construction, as more particularly described in 23 C.F.R. 630 Subpart J and  
15 **Section DR 462.2.3** of the Technical Provisions.
- 16 **TWG Minutes** means the meeting minutes described in **Section GP 110.02.4** of the Technical  
17 Provisions.
- 18 **Uniform Act** means the Federal Uniform Relocation Assistance and Real Property Acquisition  
19 Policies Act, 42 USC §§ 4601 *et seq.*, P.L. 91-646, as amended.
- 20 **Utility** or **utility** means a public, private, cooperative, municipal or government line, facility or  
21 system used for the carriage, transmission or distribution of cable television, electric power, heat,  
22 telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons,  
23 telecommunications, sewage, storm water not connected with the drainage of the Project, and  
24 similar substances that directly or indirectly serve the public. The term “Utility” or “utility”  
25 includes (a) private irrigation facilities that are available on a common carriage basis throughout  
26 the relevant service area, and (b) the facilities of the ADOT Broadband Initiative for I-17.
- 27 The term “Utility” or “utility” specifically excludes:
- 28 (a) Stormwater facilities providing drainage for the Project ROW;
- 29 (b) Street lights and traffic signals;
- 30 (c) ITS facilities; and
- 31 (d) FMS facilities.

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

5 **Utility Adjustment** means each relocation (temporary or permanent), abandonment, Protection  
6 in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities),  
7 replacement, reinstallation, or modification of existing Utilities necessary to accommodate  
8 construction, operation, maintenance or use of the Project. For any Utility crossing the Project  
9 ROW, the Utility Adjustment Work for each crossing of the Project ROW by that Utility shall be  
10 considered a separate Utility Adjustment. For any Utility installed longitudinally within the  
11 Project ROW, the Utility Adjustment Work for each continuous segment of that Utility located  
12 within the Project ROW shall be considered a separate Utility Adjustment. “Utility Adjustment”  
13 does not include development of new Utility facilities in order to bring Utility services to the  
14 Project.

15 **Utility Adjustment Coordinator** means the individual described in Section GP 110.08.3.11 of the  
16 Technical Provisions.

17 **Utility Adjustment Package** means the package described in Section CR 430.3.2 of the Technical  
18 Provisions.

19 **Utility Adjustment Plan** means the plans clearly laying out the necessary Utility Adjustments, as  
20 described in Section DR 430.3.1 of the Technical Provisions.

21 **Utility Adjustment Work** means all efforts and costs necessary to accomplish the required Utility  
22 Adjustments, whether provided by Developer or a Utility Company, including all coordination,  
23 design, design review, permitting, construction, inspection, maintenance of records,  
24 relinquishment of Existing Utility Property Interests, preparation of Utility Adjustment plans and  
25 drawings, and assistance for ADOT’s acquisition of Replacement Utility Property Interests. The  
26 term also includes any reimbursement of Utility Companies that is Developer’s responsibility  
27 pursuant to Section 7.4.4 of the Agreement. Any Utility Adjustment Work furnished or performed  
28 by Developer is part of the Work. Any Utility Adjustment Work furnished or performed by a Utility  
29 Company is not part of the Work.

30 **Utility Agreement** means an agreement between Developer and a Utility Company, or between  
31 ADOT and a Utility Company that Developer assumes, that establishes the rights and obligations  
32 of Developer and the Utility Company with respect to one or more Utility Adjustments. In the  
33 case of an agreement with a Utility Company that holds prior rights, ADOT may be a party to the  
34 agreement together with Developer. Such an agreement may be general or comprehensive or  
35 may address only certain aspects of a Utility Adjustment.

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

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

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

5 (a) A Utility Company’s failure to provide material information necessary for  
6 Developer to present to the Utility Company a proposed design package for the applicable Utility  
7 Adjustment and proposed Utility Agreement for negotiation, within 45 days after (i) ADOT  
8 receives Developer’s request for ADOT’s assistance as described in Section 7.4.7(b) of the  
9 Agreement, and (ii) ADOT receives satisfactory evidence that Developer satisfied the “conditions  
10 to assistance” set forth in Section 7.4.7(c)(i) of the Agreement;

11 (b) A Utility Company’s failure to negotiate and execute a Utility Agreement that  
12 ADOT has approved as containing commercially reasonable material terms, schedule and  
13 conditions consistent with Section 7.4.2(b) of the Agreement within 90 days after:

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

17 (ii) ADOT receives Developer’s request for ADOT’s assistance as described in  
18 Section 7.4.7(b) of the Agreement; and

19 (iii) ADOT receives satisfactory evidence that Developer satisfied the  
20 “conditions to assistance” set forth in Section 7.4.7(c)(i) of the Agreement;

21 (c) A Utility Company’s failure to timely perform its other obligations under the  
22 applicable, executed Utility Agreement, provided that the schedule in the applicable Utility  
23 Agreement sets forth reasonable timelines for the Utility Company to perform its other  
24 obligations, as determined by ADOT in its good faith discretion; or

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

29 Notwithstanding the foregoing, any delay by a Utility Company caused by, among other things,  
30 the failure of any Developer-Related Entity (i) to locate or design the Project diligently, (ii) to carry  
31 out the Work in accordance with the Contract Documents, the Adjustment Standards, the  
32 applicable Utility Agreement, the NEPA Approval, other Governmental Approval and applicable  
33 Law, or (iii) to cooperate with reasonable requests from the Utility Company shall not be  
34 considered Utility Company Delay.

35 **Utility Company Project** means the design and construction by or at the direction of a Utility  
36 Company (or by Developer pursuant to Section 7.4.6 of the Agreement) of a new Utility other

1 than as part of a Utility Adjustment. Betterments are not Utility Company Projects. Utility  
2 Company Projects shall be entirely the financial obligation of the Utility Company.

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

5 **Utility Information** means the information regarding Utilities available through Reasonable  
6 Investigation, including information regarding Utilities in the Reference Information Documents  
7 or in recorded instruments with a county recorder for a county in which any part of the Project  
8 is located, together with any other information ADOT provided to Developer prior to the Setting  
9 Date with regard to identification of Utilities. The Utility Information includes:

- 10 (a) Survey information regarding existing utilities;
- 11 (b) Utility maps included as an overlay on the survey;
- 12 (c) As-built maps for existing Utilities;
- 13 (d) Prior Rights Documentation; and
- 14 (e) Other information as to the existence or nature of any rights or interests of any  
15 Utility Company relating to use or occupancy of real property. In the event of any conflict within  
16 the various components of the Utility Information, the more accurate information will prevail.

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

20 **Utility Record Drawings** means the drawings described in, and satisfying the requirements of,  
21 **Section CR 430.3.1.4** of the Technical Provisions.

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

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

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

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

30 **Work** means all of the work and services required under the Contract Documents, including all  
31 administrative, design, engineering, assistance with ADOT's ROW acquisition, support services,  
32 Utility Adjustment Work to be furnished or provided by Developer, reimbursement of Utility

1 Companies for Utility Adjustment Work furnished or provided by such Utility Companies or their  
2 contractors and consultants, procurement, professional, manufacturing, supply, installation,  
3 construction, supervision, management, testing, verification, labor, materials, equipment,  
4 maintenance, documentation and other duties and services to be furnished and provided by  
5 Developer as required by the Contract Documents, including all efforts necessary or appropriate  
6 to achieve Final Acceptance and to satisfy the Performance Requirements, except for those  
7 efforts that the Contract Documents expressly specify will be performed by Persons other than  
8 the Developer-Related Entities. For the avoidance of doubt, Work includes all D&C Work and all  
9 O&M Work.

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**EXHIBIT 2**

**DEVELOPER'S PROPOSAL COMMITMENTS AND CLARIFICATIONS**

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**EXHIBIT 2-1**

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

<b>Developer's Schematic Design</b>
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)
<b>Developer's Alternative Technical Concepts</b>
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.
<b>Alternative Design Concepts (ADCs)</b>
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 Widening	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**

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**PRICING TABLES**

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

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**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"	<b>\$26,522,500</b>

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	Signage		\$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"	<b>\$322,514,000</b>
46	D&C Price (Line 20 + Line 27 + Line 45)	Total	<b>\$362,077,500</b>

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.

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**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
<b>TOTAL</b>	<b>\$844,454</b>	<b>\$109,495</b>	<b>\$260,048</b>	<b>\$562,884</b>	<b>\$64,701</b>	<b>\$238,238</b>	<b>\$2,079,820</b>

3 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.

Form R

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.

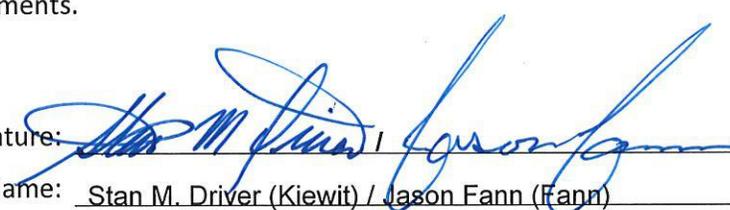
The undersigned certifies on behalf of Kiewit-Fann Joint Venture that:  
(Name of entity making certification)

*(check one of the following boxes)* \***Kiewit-Fann Joint Venture is newly formed Joint Venture. See Form R for Kiewit and Fann, Joint Venture Members and Equity Members.**

- \* It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- \* It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Stan M. Driver (Kiewit) / Jason Fann (Fann)

Title: Senior Vice President (Kiewit)/President and COO (Fann)

Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Proposer

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

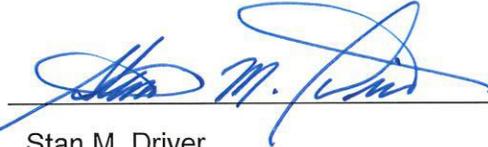
The undersigned certifies on behalf of Kiewit Infrastructure West Co. that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:   
Name: Stan M. Driver  
Title: Senior Vice President  
Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Equity Member

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of Fann Contracting, Inc. that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Jason Fann

Title: President and COO

Date: June 16, 2021

If not Proposer,  
relationship to Proposer: Equity Member

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of Kiewit Engineering Group Inc. that:  
(Name of entity making certification)

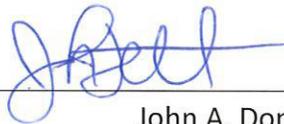
*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:



Name:

John A. Donatelli

Title:

President, Infrastructure Engineering

Date:

July 16, 2021

If not Proposer, Relationship  
To Proposer:

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of DBi Services, LLC that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:   
Name: Joseph G. Ferguson  
Title: Secretary  
Date: 7/16/2021

If not Proposer,  
relationship to Proposer: \_\_\_\_\_

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of Lee Engineering, LLC that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Dave Bruggeman, PE, PTOE

Title: Principal

Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of CONSOR Engineers LLC, dba Apex Design that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Melissa M. Rosas

Title: Senior Vice President

Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

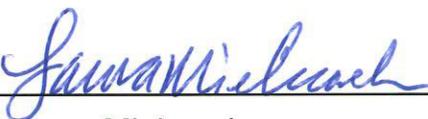
The undersigned certifies on behalf of Wheat Design Group, Inc. that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:   
Name: Laura Mielcarek  
Title: President  
Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form R

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.

The undersigned certifies on behalf of Terracon Consultants, Inc. that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:   
Name: Brent M. Borchers, P.E.  
Title: Senior Principal  
Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of T.Y. Lin International that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature:   
Name: James Barr  
Title: Vice President  
Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of Y2K Engineering, LLC. that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Yung Koprowski

Title: Principal

Date: July 16, 2021

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

**Form R**

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

**To be executed by the Proposer, Equity Members, Major Non-Equity Members and known Subcontractors.**

The undersigned certifies on behalf of Pinyon Environmental, Inc. that:  
(Name of entity making certification)

*(check one of the following boxes)*

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

*(check one of the following boxes)*

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Scott Epstein, ENV-SP

Title: Principal-Strategic Implementation

Date: 7/16/21

If not Proposer,  
relationship to Proposer: Key Subcontractor

**Note:** The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

1

**EXHIBIT 2-6**

2

**DBE ASSURANCE & PROJECT GOAL DECLARATION**

3

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

## Form H-1

### DBE ASSURANCE & PROJECT GOAL DECLARATION

Name of Proposer Kiewit-Fann Joint Venture

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

ADOT TRACS No. 17 MA 229 H6800 01C

Project Number NHPP-017-A(228)S

It is understood and agreed by the Proposer that it has carefully examined all documents included in this Request for Proposal and acknowledges that Arizona Department of Transportation ("ADOT") has established DBE Goals for the Project that were calculated in relation to the price of the various components of the Project as listed below (the "DBE Goals"):

- **Professional Services DBE Goal** – **10.16%** of the total D&C Price allocated to Professional Services, consisting of the price from Parts A and B of Form N-1 other than "Initial Core Office Lease and Equipment" in Part A; and
- **Construction DBE Goal** – **10.88%** of the total D&C Price allocated to Construction Work, consisting of the price in Part C of Form N-1 and "Initial Core Office Lease and Equipment" in Part A of Form N-1.

#### COMPLETE DETAILS BELOW

Proposer listed above hereby commits to meet or exceed ALL the DBE Goals listed above or to aggressively exercise Good Faith Efforts to the satisfaction of ADOT to do so, in accordance with the DBE Special Provisions.

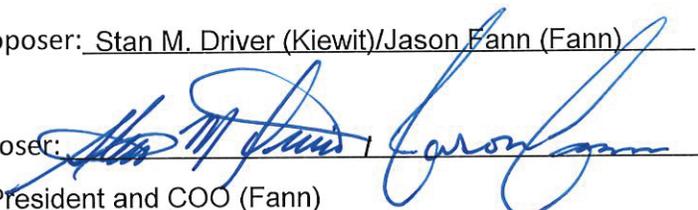
In fulfilling Proposer's commitment, Proposer will follow the DBE Utilization Plan that ADOT approves for this Project, and adhere to all DBE provisions set forth in the Contract Documents and applicable regulations referenced in 49 CFR Part 26 and ADOT's DBE Program Plan.

If Proposer reasonably believes that aggressive Good Faith Efforts will produce DBE participation below any of the DBE Goals ADOT has established for the Project as set forth above, indicate below the percentages that Proposer reasonably believes can be achieved through aggressive Good Faith Efforts. No such percentages will excuse Proposer from aggressively exercising Good Faith Efforts to achieve the DBE Goals of record.

- **Achievable Professional Services DBE Goal:** 10.16 % of the total D&C Price allocated to Professional Services, consisting of the price from Parts A and B of Form N-1 other than "Initial Core Office Lease and Equipment" in Part A; and

- **Achievable Construction DBE Goal:** 10.88 % of the total D&C Price allocated to Construction Work, consisting of the price in Part C of Form N-1 and “Initial Core Office Lease and Equipment” in Part A of Form N-1.

Print Name of Authorized Officer of Proposer: Stan M. Driver (Kiewit)/Jason Fann (Fann)

Signature of Authorized Officer of Proposer:  \_\_\_\_\_

Title: Senior Vice President (Kiewit) / President and COO (Fann)

Date: July 16, 2021

1

**EXHIBIT 2-7**

2

**BUY AMERICA CERTIFICATION**

3

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

**Form U**

**BUY AMERICA CERTIFICATION**

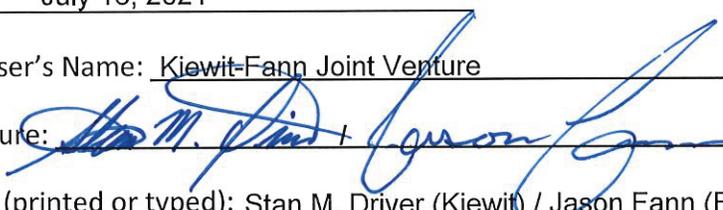
*[To be signed by authorized signatory(ies) of Proposer]*

The undersigned certifies on behalf of itself, the Developer and all Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Proposer, the Developer and all Subcontractors shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Project only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Notwithstanding any other provision of this certification, this requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Contract Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Project be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. At Proposer's request, ADOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it, the Developer and all Subcontractors will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by ADOT.
- D. All material fully incorporated into the Project must be certified to comply with Buy America on the appropriate material certification documents. Material certification documents must be signed by the appropriate material Suppliers and not the Developer or Subcontractors.

Date: July 16, 2021

Proposer's Name: Kiewit-Fann Joint Venture

Signature: 

Name (printed or typed): Stan M. Driver (Kiewit) / Jason Fann (Fann)

Title: Senior Vice President (Kiewit) / President and COO (Fann)

1

**EXHIBIT 2-8**

2

**CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

3

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

**Form S**

**CERTIFICATION REGARDING USE OF  
CONTRACT FUNDS FOR LOBBYING**

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. 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;

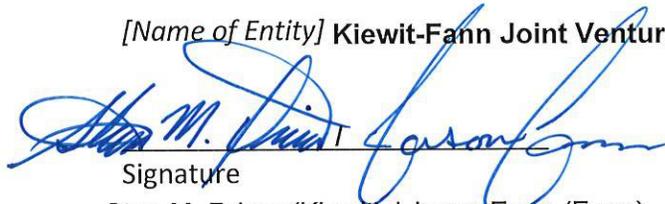
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with 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.

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.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

[Name of Entity] **Kiewit-Fann Joint Venture**

Date: July 16, 2021



Signature

Stan M. Driver (Kiewit) / Jason Fann (Fann)

Print Name

Senior Vice President (Kiewit)/President & COO (Fann)

Title

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that a separate form is signed for the Proposer, each partner, member or joint venture member of the Proposer and each other Equity Member and Major Non-Equity Member.]*

**Form S**

**CERTIFICATION REGARDING USE OF  
CONTRACT FUNDS FOR LOBBYING**

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. 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;

2. 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.

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.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

*[Name of Entity]* **Kiewit Infrastructure West Co.**

Date: July 16, 2021

  
\_\_\_\_\_  
Signature

Stan M. Driver

Print Name

Senior Vice President

Title

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that a separate form is signed for the Proposer, each partner, member or joint venture member of the Proposer and each other Equity Member and Major Non-Equity Member.]*

Form S

**CERTIFICATION REGARDING USE OF  
CONTRACT FUNDS FOR LOBBYING**

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. 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;

2. 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.

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.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

*Fann Contracting, Inc*

Date: June 16, 2021

  
\_\_\_\_\_  
Signature  
Jason Fann

\_\_\_\_\_  
Print Name  
President and COO

\_\_\_\_\_  
Title

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that a separate form is signed for the Proposer, each partner, member or joint venture member of the Proposer and each other Equity Member and Major Non-Equity Member.]*

**Form S**

**CERTIFICATION REGARDING USE OF  
CONTRACT FUNDS FOR LOBBYING**

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. 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;

2. 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.

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.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

*Kiewit  
Engineering  
Group Inc.*

Date: July 16\_\_\_\_\_, 2021\_\_



Signature

John A. Donatelli

Print Name

President, Infrastructure Engineering

Title

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that a separate form is signed for the Proposer, each partner, member or joint venture member of the Proposer and each other Equity Member and Major Non-Equity Member.]*

Form S

**CERTIFICATION REGARDING USE OF  
CONTRACT FUNDS FOR LOBBYING**

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

1. 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;

2. 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.

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.

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

[Name of Entity]

DBi Services LLC

Date: July 16, 2021



Signature

Joseph G. Ferguson

Print Name

Secretary

Title

*[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that a separate form is signed for the Proposer, each partner, member or joint venture member of the Proposer and each other Equity Member and Major Non-Equity Member.]*

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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.

**Form T**

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

**FINANCED IN PART BY THE U.S. GOVERNMENT**

Name of Proposer: Kiewit-Fann Joint Venture  
Stan M. Driver (Kiewit) and \_\_\_\_\_ Senior Vice President (Kiewit-Equity Member)  
I, Jason Fann (Fann), am the President/COO (Fann-Equity Member) of the  
Proposer and hereby certify that the Proposer, the Developer and all of its Subcontractors  
identified in this Proposal

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in the Project;
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 2 of this certification; and
4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, State or local) terminated for cause or default.

If the Proposer is unable to certify to any of the statements in this certification, it shall attach an explanation to this certification.

I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 U.S.C. § 3801 *et seq.* (Administrative Remedies for False Claims and Statements) are applicable hereto.

Name of Proposer Kiewit-Fann Joint Venture

Street Address of Proposer 3888 E. Broadway Rd.

City, State, Zip

Phoenix, AZ 85040-2924

Telephone Number of Firm

(602) 437-7878

Signature of Certifying Officer

  
Stan M. Driver, Sr. Vice President (Kiewit) / Jason Fann, President/COO (Fann)

Date

July 16, 2021

**Note:** The above certification merely certifies that a Proposer, Developer and its Subcontractors are not declared by the federal government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the federal government or any of its agencies.

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**EXHIBIT 3**

**LIST OF REFERENCE INFORMATION DOCUMENTS**

No.	File Name	Date Added to RIDs
<b>01 Environmental</b>		
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"> <li>a. I-17 Anthem to SR69 - Army Corp Approved PJD GIS Files – 20200414.zip</li> <li>b. I-17 Anthem to SR69 - Army Corp Approved PJD – 20200414.kmz</li> <li>c. I-17 Anthem to SR69 - Army Corp Signed PJD Approval Letter – 20200414.pdf</li> <li>d. I-17 Anthem to SR69 - Pre-JD Appendix 1 Request for Corps JD - 20190510.pdf</li> <li>e. I-17 Anthem to SR69 - Pre-JD Appendix 2 Pre JD Form - 20190510.pdf</li> <li>f. I-17 Anthem to SR69 - Pre-JD Aquatic Resources Upload Sheet - 20190510.xlsm</li> <li>g. I-17 Anthem to SR69 - Pre-JD Map - 20190510.kmz</li> <li>h. I-17 Anthem to SR69 - Pre-JD Table of Aquatic Resources in Review Area - 20190510.pdf</li> </ul>	4/17/20 4/17/20 4/17/20 2/13/20 2/13/20 2/13/20 2/13/20

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-Builts and Inspection Reports 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"> <li>• F0429 - Plans - Segment 1B&amp;2 (Rev 08-20-21).pdf</li> <li>• F0429 - Quantities - Section 1B &amp; 2 (Rev 08-20-21).pdf</li> <li>• F042901C_Special Provisions.pdf</li> </ul>	10/26/21
<b>03 Geotechnical</b>		
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 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"> <li>• Bridge Hydraulic Report – July 2015.pdf</li> <li>• HEC-1.zip</li> <li>• HEC-RAS.zip</li> </ul>	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"> <li>• 2040_I-17_loaded_network_truck.zip</li> <li>• 2040_I-17_nobuild_truck.zip</li> </ul>	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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**EXHIBIT 4**  
**FEDERAL REQUIREMENTS**

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

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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.

\* \* \* \* \*

xii. 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.

1 **ATTACHMENT 3 TO EXHIBIT 4**

2 **FEDERAL PREVAILING WAGE RATES**

3  
4 The federal prevailing wage rates for the Work through Final Acceptance shall be those set forth below.

5  
6 General Decision Number: AZ20210008 01/01/2021

7  
8 Superseded General Decision Number: AZ20200008

9  
10 State: Arizona

11  
12 Construction Type: Highway

13  
14 Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma  
15 Counties in Arizona.

16  
17  
18 **HIGHWAY CONSTRUCTION PROJECTS**

19  
20  
21 Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for  
22 calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which  
23 the contract is awarded (and any solicitation was issued) on or after January 1,  
24 2015. If this contract is covered by the EO, the contractor must pay all workers in  
25 any classification listed on this wage determination at least \$10.95 per hour (or the  
26 applicable wage rate listed on this wage determination, if it is higher) for all hours  
27 spent performing on the contract in calendar year 2021. If this contract is covered  
28 by the EO and a classification considered necessary for performance of work on  
29 the contract does not appear on this wage determination, the contractor must pay  
30 workers in that classification at least the wage rate determined through the  
31 conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage  
32 rate, if it is higher than the conformed wage rate). The EO minimum wage rate will  
33 be adjusted annually. Please note that this EO applies to the above-mentioned  
34 types of contracts entered into by the federal government that are subject to the  
35 Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-  
36 Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional  
37 information on contractor requirements and worker protections under the EO is  
38 available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).



1 Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-  
2 Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter,  
3 Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade  
4 operation), Slip Form (power driven lifting device for concrete forms), Soil  
5 Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine  
6 (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger  
7 (2 or more drums).

8  
9 MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough),  
10 Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all  
11 types 3<6 cu yd), Tractor (dozer, pusher-all).

12  
13 GROUP 3:

14 ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring  
15 Machine (including Mole, Badger & similar type directional/horizontal),  
16 Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom  
17 attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder,  
18 Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking  
19 Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid),  
20 Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth  
21 Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman  
22 & similar types), Tower Crane or similar type.

23  
24 MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete  
25 Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker,  
26 Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

27  
28 GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane  
29 (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel  
30 10 cu yd and over.

31  
32 All Operators, Oilers, and Motor Crane Drivers on equipment with Booms,  
33 except concrete pumping truck booms, including Jibs, shall receive \$0.01 per  
34 hour per foot over 80 ft in addition to regular rate of pay

35  
36 Premium pay for performing hazardous waste removal \$0.50 per hour over  
37 base rate.

38  
39 -----  
40 IRON0075-004 08/01/2019  
41

1 COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

2

3 Rates Fringes

4

5 Ironworker, Rebar .....\$ 27.80 19.05

6

7 Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson

8 Zone 2: 050 to 100 miles - Add \$4.00

9 Zone 3: 100 to 150 miles - Add \$5.00

10 Zone 4: 150 miles & over - Add \$6.50

11

12 -----

13 \* LABO1184-008 06/01/2020

14

15 Rates Fringes

16

17 Laborers:

18 Group 1 .....\$ 20.93 6.06

19 Group 2 .....\$ 20.93 6.06

20 Group 3 .....\$ 21.63 6.06

21 Group 4 .....\$ 22.57 6.06

22 Group 5 .....\$ 23.43 6.06

23

24 LABORERS CLASSIFICATIONS:

25

26 GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only:

27 General/Cleanup Laborer. Maricopa County Only: Flagger.

28

29 GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer),  
30 Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine  
31 Grader, Guinea Chaser, Power Type Concrete Buggy

32

33 GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine,  
34 Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator  
35 and Tender of Pneumatic and Electric Tools (not herein separately classified),  
36 Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-  
37 Cast Manhole Erector, Rigger and Signal Man-Pipeline

38

39 GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer,  
40 Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite;  
41 Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using  
42 boson's chair or safety belt); Tamper (mechanical all types).

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GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill  
Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead  
Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed  
Control, Scissor Lift, Hydro Mobile Scaffold Builder.

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PAIN0086-001 04/01/2017

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.

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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		

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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
16			

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

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 21 =====

22  
 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](http://www.dol.gov/whd/govcontracts).

36  
 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)).

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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

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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

1 **ATTACHMENT 4 TO EXHIBIT 4**

2 **EQUAL EMPLOYMENT OPPORTUNITY**  
3 **SPECIAL PROVISION 000---006**

4 Standard Federal Equal Employment Opportunity  
5 Construction Contract Specifications (Executive Order 11246)

6 **1.** As used in these specifications:

7 a. "Covered area" means the geographical area described in the solicitation from which this  
8 contract resulted;

9 b. "Director" means Director, Office of Federal Contract Compliance Programs, United States  
10 Department of Labor, or any person to whom the Director delegates authority;

11 c. "Employer identification number" means the Federal Social Security number used on the  
12 Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and

13 d. "Minority" includes:

14 (i) Black (all persons having origins in any of the Black African racial groups not of  
15 Hispanic origin);

16 (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American  
17 or other Spanish Culture or origin, regardless of race);

18 (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples  
19 of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);  
20 and

21 (iv) American Indian (all persons having origins in any of the original peoples of North  
22 American and maintaining identifiable tribal affiliations through membership and  
23 participation or community identification).

24 **2.** Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work  
25 involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the  
26 provisions of these specifications and the Notice which contains the applicable goals for minority and  
27 female participation and which is set forth in the solicitations from which this contract resulted.

28 **3.** If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the  
29 U.S. Department of Labor in the covered area either individually or through an association, its affirmative  
30 action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in  
31 accordance with that plan for those trades which have unions participating in the Hometown Plan.  
32 Contractors must be able to demonstrate their participation in and compliance with the provisions of any  
33 such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is  
34 individually required to comply with its obligations under the EEO clause, and to make a good faith effort  
35 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

1 back to the Contractor by the union or, if referred, not employed by the contractor, this shall  
2 be documented in the file with the reason therefor, along with whatever additional actions  
3 the contractor may have taken.

- 4 d. Provide immediate written notification to the Director when the union or unions with which  
5 the contractor has a collective bargaining agreement has not referred to the contractor a  
6 minority person or woman sent by the contractor, or when the contractor has other  
7 information that the union referral Process has impeded the contractor's efforts to meet its  
8 obligations.
- 9 e. Develop on-the-job training opportunities and/or participate in training programs for the area  
10 which expressly include minorities and women, including upgrading programs and  
11 apprenticeship and OJT Trainee programs relevant to the contractor's employment needs,  
12 especially those programs funded or approved by the Department of Labor. The contractor  
13 shall provide notice of these programs to the sources compiled under 7b above.
- 14 f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and  
15 training programs and requesting their cooperation in assisting the contractor in meeting its  
16 EEO obligations; by including it in any policy manual and collective bargaining agreement; by  
17 publicizing it in the company newspaper, annual report, etc.; by specific review of the policy  
18 with all management personnel and with all minority and female employees at least once a  
19 year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees  
20 at each location where construction work is performed.
- 21 g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under  
22 these specifications with all employees having any responsibility for hiring, assignment, layoff,  
23 termination or other employment decisions including specific review of these items with  
24 onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the  
25 initiation of construction work at any job site. A written record shall be made and maintained  
26 identifying the time and place of these meetings, persons attending, subject matter discussed,  
27 and disposition of the subject matter.
- 28 h. Disseminate the contractor's EEO policy externally by including it in any advertising in the  
29 news media, specifically including minority and female news media, and providing written  
30 notification to and discussing the contractor's EEO policy with other contractors and  
31 subcontractors with whom the contractor does or anticipates doing business.
- 32 i. Direct its recruitment efforts, both oral and written, to minority, female and community  
33 organizations, to schools with minority and female students and to minority and female  
34 recruitment and training organizations serving Contractor's recruitment area and  
35 employment needs. Not later than one month prior to the date for the acceptance of  
36 applications for apprenticeship or other training by any recruitment source, the Contractor  
37 shall send written notification to organizations such as the above, describing the openings,  
38 screening procedures, and tests to be used in the selection process.
- 39 j. Encourage present minority and female employees to recruit other minority persons and  
40 women and, where reasonable, provide after school, summer and vacation employment to  
41 minority and female youth both on the site and in other areas of a contractor's workforce.

- 1 k. Validate all tests and other selection requirements where there is an obligation to do so under  
2 41 CFR Part 60-3.
- 3 l. Conduct, at least annually, an inventory and evaluation at least of all minority and female  
4 personnel for promotional opportunities and encourage these employees to seek or to  
5 prepare for, through appropriate training, etc., such opportunities.
- 6 m. Ensure that seniority practices, job classifications, work assignments and other personnel  
7 practices, do not have a discriminatory effect by continually monitoring all personnel and  
8 employment related activities to ensure that the contractor's EEO policy and the contractor's  
9 obligations under these specifications are being carried out.
- 10 n. Ensure that all facilities and company activities are non-segregated except that separate or  
11 single-user toilet and necessary changing facilities shall be provided to assure privacy  
12 between the sexes.
- 13 o. Document and maintain a record of all solicitations of offers for subcontracts from minority  
14 and female construction contractors and suppliers, including circulation of solicitations to  
15 minority and female contractor associations and other business associations.
- 16 p. Conduct a review, at least annually, of all supervisors' adherence to and performance under  
17 the contractor's EEO policies and affirmative action obligations.

18 **8.** Contractors are encouraged to participate in voluntary associations which assist in fulfilling one  
19 or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint  
20 contractor-union, contractor-community, or other similar group of which the contractor is a member and  
21 participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these  
22 specifications provided that the contractor actively participates in the group, makes every effort to assure  
23 that the group has a positive impact on the employment of minorities and women in the industry, ensures  
24 that the concrete benefits of the program are reflected in the contractor's minority and female workforce  
25 participation, makes a good faith effort to meet its individual goals and timetables, and can provide access  
26 to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The  
27 obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall  
28 not be a defense for the contractor's noncompliance.

29 **9.** A single goal for minorities and a separate single goal for women have been established. The  
30 contractor, however, is required to provide equal employment opportunity and to take affirmative action  
31 for all minority groups, both male and female, and all women, both minority and non-minority.  
32 Consequently, the contractor may be in violation of the Executive Order if a particular group is employed  
33 in a substantially disparate manner (for example, even though the contractor has achieved its goals for  
34 women generally, the contractor may be in violation of the Executive Order if a specific minority group of  
35 women is underutilized).

36 **10.** Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors  
37 prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those  
38 programs and activities are federally funded or not. The factors prohibited from serving as a basis for  
39 action or inaction which discriminates include race, color, national origin, sex, age, and  
40 handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's  
41 impacts, access, benefits, participation, treatment, services, contracting opportunities, training

1 opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the  
2 functions of right-of-way, research, planning, and design.

3 **11.** The contractor shall not enter into any subcontract with any person or firm debarred from  
4 Government contracts pursuant to Executive Order 11246.

5 **12.** The contractor shall carry out such sanctions and penalties for violation of these specifications  
6 and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing  
7 subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its  
8 implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who  
9 fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive  
10 Order 11246, as amended.

11 **13.** The contractor, in fulfilling its obligations under these specifications, shall implement specific  
12 affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these  
13 specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity.  
14 If the contractor fails to comply with the requirements of the Executive Order, the implementing  
15 regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

16 **14.** The contractor shall designate a responsible official to monitor all employment related activity to  
17 ensure that the company EEO policy is being carried out, to submit reports relating to the provisions  
18 hereof as may be required by the Government and to keep records. Records shall at least include for each  
19 employee the name, address, telephone numbers, construction trade, union affiliation if any, employee  
20 identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice,  
21 OJT Trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade,  
22 rate of pay, and locations at which the work was performed. Records shall be maintained in an easily  
23 understandable and retrievable form; however, to the degree that existing records satisfy this  
24 requirement, contractors shall not be required to maintain separate records.

25 **15.** Nothing herein provided shall be construed as a limitation upon the application of other laws  
26 which establish different standards of compliance or upon the application of requirements for the hiring  
27 of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the  
28 Community Development Block Grant Program).

29 **16.** In addition to the reporting requirements set forth elsewhere in this contract, the contractor and  
30 the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall  
31 submit an Annual EEO Report on Form FHWA-1391 (Appendix C to 23 CFR, Part 230), and in accordance  
32 with the instructions included thereon. Contractors and subcontractors are required to submit the  
33 information in the FHWA-1391 report via LCPtracker system, a labor compliance software monitoring  
34 certified payroll and prevailing wage. The staffing figures to be reported should represent the project  
35 workforce on board in all or any part of the last annual payroll period preceding the end of July. The report  
36 shall be submitted no later than September 1.

1 **ATTACHMENT 5 TO EXHIBIT 4**

2 **AFFIRMATIVE ACTION**  
3 **SPECIAL PROVISION 000 --- 0004**

4 Notice of Requirement for Affirmative Action to  
5 Ensure Equal Employment Opportunity (Executive Order 11246)

6 1. General.

7 In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal  
8 Employment Opportunity Construction Contract Specifications" as set forth in Attachment 4 to this Exhibit  
9 4, the contractor's attention is directed to the specific requirements for utilization of minorities and  
10 females as set forth below.

11 2. Goals.

12 a. Goals for minority and female participation are hereby established in accordance with 41  
13 CFR 60-4.

14 b. The goals for minority and female participation expressed in percentage terms for the  
15 contractor's aggregate work force in each trade on all construction work in the covered  
16 area, are as follows:  
17

Goals for  
minority participation  
in each trade  
(per-cent)  
See Table 1

Goals for  
female participation  
in each trade  
(per-cent)  
6.9%

18 c. These goals are applicable to all the contractor's construction work (whether or not it is  
19 Federal or federally assisted) performed in the covered area. If the contractor performs  
20 construction work in a geographical area located outside of the covered area, it shall apply  
21 the goals established for such geographical area where the work is actually performed.  
22 With regard to this second area, the contractor also is subject to the goals for both its  
23 federally involved and non-federally involved construction. The contractor's compliance  
24 with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its  
25 implementation of the Standard Federal Equal Employment Opportunity Construction  
26 Contract Specifications Special Provision and its efforts to meet the goals. The hours of  
27 minority and female employment and training must be substantially uniform throughout  
28 the length of the contract, and in each trade, and the contractor shall make a good faith  
29 effort to employ minorities and women evenly on each of its projects. The transfer of  
30 minority and female employees or OJT Trainees from contractor to contractor or from  
31 project to project for the sole purpose of meeting the contractor's goals shall be a  
32 violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4.  
33 Compliance with the goals will be measured against the total work hours performed.

1 3. Subcontracting.

2 The contractor shall provide written notification to the Department within ten Business Days of award of  
3 any construction subcontract in excess of \$10,000 at any tier for construction work under the contract  
4 resulting from this solicitation. The notification shall list the name, address and telephone number of the  
5 subcontractor; employer identification number of the subcontractor; estimated dollar amount of the  
6 subcontract; estimated starting and completion dates of the subcontract; and the geographical area in  
7 which the contract is to be performed.

8 4. Covered area.

9 As used in this special provision, and in the contract resulting from this solicitation, the geographical area  
10 covered by these goals for female participation is the State of Arizona. The geographical area covered by  
11 these goals for other minorities are the boroughs or other geographic areas in the State of Arizona as  
12 indicated in Table 1.

13 5. Reports.

14 The contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance  
15 Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order  
16 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting  
17 requirements that he will be expected to fulfill.

18 Table 1

19

Borough or Other Geographic Area	Goals for Minority Participation	County
State of Arizona	15.8% (minority)	Maricopa County

20

1 **ATTACHMENT 6 TO EXHIBIT 4**

2 **APPENDIX A TO DOT STANDARD TITLE VI ASSURANCES AND**  
3 **NON-DISCRIMINATION PROVISIONS: CONTRACTOR ASSURANCES**

4 Note: Whenever in this Attachment 6 to Exhibit 4 references are made to:

5 (a) "Acts and Regulations," such reference shall be construed to mean (i) Title VI of the Civil  
6 Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race,  
7 color, national origin), (ii) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs of  
8 the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964); and  
9 (iii) 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil  
10 Rights Act of 1964);

11 (b) "contract," such reference shall be construed to mean Agreement;

12 (c) "contractor," such reference shall be construed to mean Developer; and

13 (d) "Recipient," such reference shall be construed to mean ADOT.

14 During the performance of this contract, the contractor, for itself, its assignees, and successors in interest  
15 (hereinafter referred to as the "contractor") agrees as follows:

16 1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with  
17 the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S.  
18 Department of Transportation, Federal Highway Administration, as they may be amended from time to  
19 time, which are herein incorporated by reference and made a part of this contract.

20 2. Non-discrimination: The contractor, with regard to the work performed by it during the contract,  
21 will not discriminate on the grounds of race, color, or national origin in the selection and retention of  
22 subcontractors, including procurements of materials and leases of equipment. The contractor will not  
23 participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including  
24 employment practices when the contract covers any activity, project, or program set forth in Appendix B  
25 of 49 CFR Part 21.

26 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all  
27 solicitations, either by competitive bidding, or negotiation made by the contractor for work to be  
28 performed under a subcontract, including procurements of materials, or leases of equipment, each  
29 potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under  
30 this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color,  
31 or national origin.

32 4. Information and Reports: The contractor will provide all information and reports required by the  
33 Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records,  
34 accounts, other sources of information, and its facilities as may be determined by the Recipient or the  
35 Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and  
36 instructions. Where any information required of a contractor is in the exclusive possession of another who  
37 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.

1 **ATTACHMENT 7 TO EXHIBIT 4**

2 **APPENDIX E TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS:**  
3 **PERTINENT NON-DISCRIMINATION AUTHORITIES**

4 Note: Whenever in this Attachment 7 to Exhibit 4 references are made to:

5 (a) "contract," such reference shall be construed to mean Agreement; and

6 (b) "contractor," such reference shall be construed to mean Developer.

7 During the performance of this contract, the contractor, for itself, its assignees, and successors in interest  
8 (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination  
9 statutes and authorities; including but not limited to:

10 Pertinent Non-Discrimination Authorities:

11 • Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits  
12 discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

13 • The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42  
14 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired  
15 because of Federal or Federal-aid programs and projects);

16 • Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the  
17 basis of sex);

18 • Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits  
19 discrimination on the basis of disability); and 49 CFR Part 27;

20 • The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits  
21 discrimination on the basis of age);

22 • Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended,  
23 (prohibits discrimination based on race, creed, color, national origin, or sex);

24 • The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and  
25 applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504  
26 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to  
27 include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors,  
28 whether such programs or activities are Federally funded or not);

29 • Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the  
30 basis of disability in the operation of public entities, public and private transportation systems, places of  
31 public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by  
32 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.

1  
2  
3  
4

**EXHIBIT 5**

**SUBCONTRACTOR REQUEST FORMS**

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

1  
2  
3  
4

**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

1  
2  
3  
  
  
  
  
  
  
  
  
4

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)	
_____	
_____	
_____	
_____	
_____	
_____	

5 **CERTIFICATION:**  
 6 Developer certifies that it shall not permit or suffer the Subcontractor named herein to commence work until Developer submits to ADOT  
 7 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  
 8 executed copy of the Subcontract authorized under this Subcontractor Request Form when required by Section 11.4.2(c) of the Agreement.

10 Authorized Developer Signature _____	Authorized Subcontractor Signature _____	Authorized Lower-Tier Signature _____
11 _____	_____	_____
12 Title _____ Date _____	Title _____ Date _____	Title _____ Date _____

14 DBE Liaison Signature \_\_\_\_\_

15 \_\_\_\_\_

16 Title \_\_\_\_\_ Date \_\_\_\_\_



**FOR ADOT USE ONLY**

19 Percent of total Professional Services Work subcontracted on the Project to date: \_\_\_\_\_ %

20 Total amount of Professional Services Work subcontracted on the Project to date. \$ \_\_\_\_\_

21 Subcontract(s) in Field Reports:  Yes  No

23 For Assistant State Engineer – Construction & Materials \_\_\_\_\_ Date \_\_\_\_\_ Field Reports \_\_\_\_\_ Date \_\_\_\_\_

1

**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. _____ Lower tier to: _____ Labor Compliance Name (printed) _____ Labor Compliance Email (required) _____	ADOT TRACS No. _____ ADOT Project No. 17 MA 229 H6800 01C Developer _____ Telephone No. _____ Developer Amount \$ _____ Estimated Subcontract Amount \$ _____ Type of Work: <input type="checkbox"/> Construction Work
--	---

a)  
**I CERTIFY THAT I AM A BONA FIDE TRUCK OWNER/OPERATOR**

4 DBE:  Yes (documentation may be required)  No

<b>Subcontracted Bid Item Nos</b>	<b>Subcontracted Description of Work</b>
(Check box and provide dollar amount for joint/partial Items)	

<input type="checkbox"/> \$	

**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 _____
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Title _____	Date _____	Title _____	Date _____	Title _____	Date _____
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DBE Liaison Signature \_\_\_\_\_

Title _____	Date _____	Title _____	Date _____
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**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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1 **DBE SPECIAL PROVISIONS**

2

3 **1.0 POLICY**

4 The Arizona Department of Transportation (hereinafter referred to as ADOT) has established a  
5 Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S.  
6 Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received Federal financial assistance  
7 from the U.S. Department of Transportation and as a condition of receiving this assistance, ADOT has  
8 signed an assurance that it will comply with 49 CFR Part 26. The regulations require that Developer take  
9 necessary and reasonable steps to ensure that DBEs have an equal and fair opportunity to compete for  
10 and perform the Agreement. These special provisions provide detailed information about these  
11 requirements, and identify Developer’s responsibilities to demonstrate compliance with the  
12 requirements.

13 It is the policy of ADOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive  
14 and participate in USDOT-assisted agreements. It is also the policy of ADOT to:

- 15 1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- 16 2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted  
17 contracts;
- 18 3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- 19 4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as  
20 DBEs;
- 21 5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- 22 6. Assist in the development of firms that can compete successfully in the market place  
23 outside of the DBE program; and
- 24 7. Promote the use of DBEs in all types of federally-assisted contracts and procurement  
25 activities.

26 It is also the policy of ADOT to facilitate and encourage participation of Small Business Concerns (SBCs) in  
27 USDOT-assisted contracts, as defined in Section 3.0 of these DBE Special Provisions. ADOT encourages  
28 Developer to take reasonable steps to eliminate obstacles to SBCs’ participation and to utilize SBCs in  
29 performing the Work.

30 **2.0 ASSURANCES OF COMPLIANCE AND NON-DISCRIMINATION**

31 Any Developer, Subcontractor, Supplier, DBE firm, and Guarantor involved in the performance of work on  
32 a federal-aid agreement shall familiarize themselves with and comply with the terms and conditions of  
33 the United States Department of Transportation (USDOT) DBE Program as the terms appear in 49 C.F.R.  
34 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.



- 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](http://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](mailto:contractorcompliance@azdot.gov)

1 **5.0 APPLICABILITY**

2 ADOT has established an overall annual goal for DBE participation on Federal-aid agreements. ADOT  
3 intends for the goal to be met with a combination of race conscious and race neutral efforts. Race  
4 conscious participation occurs where Developer uses a percentage of DBEs, as defined herein, to meet  
5 the contract-specific goal. Race neutral efforts are those that are, or can be, used to assist all small  
6 businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race  
7 neutral as when a DBE wins a contract through customary competitive procurement procedures or is  
8 awarded a subcontract on a contract that does not carry a DBE contract goal.

9 Developer shall meet the DBE Goals specified in the Agreement, or establish that it was unable to meet  
10 the DBE Goals despite making Good Faith Efforts to do so. Developer is encouraged to obtain DBE  
11 participation above and beyond the DBE Goals.

12 **6.0 CERTIFICATION AND REGISTRATION**

13 **6.01 DBE Certification**

14 Certification as a DBE shall be predicated on:

- 15 1. The completion and execution of an application for certification as a "Disadvantaged  
16 Business Enterprise".
- 17 2. The submission of documents pertaining to the firm(s) as stated in the application(s),  
18 including but not limited to a statement of social disadvantage and a personal financial  
19 statement.
- 20 3. The submission of any additional information that ADOT may require to determine the  
21 firm's eligibility to participate in the DBE program.
- 22 4. The information obtained during the on-site visits to the offices of the firm and to active  
23 job-sites.

24 Applications for certification may be filed online with ADOT at any time through the Arizona Unified  
25 Transportation Registration and Certification System (AZ UTRACS) website at <https://utracs.azdot.gov>.

26 DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant  
27 to the certification process. Failure or refusal to provide such information is grounds for denial or removal  
28 of certification.

29 Arizona is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by  
30 the AZUCP are eligible for credit on ADOT's projects. A list of DBE firms certified by the AZUCP is available  
31 on the Internet at <https://utracs.azdot.gov>. The list will indicate contact information and types of work  
32 for which each DBE firm is certified. ADOT does not guarantee the accuracy and/or completeness of this  
33 information, nor does ADOT represent that the DBE has the necessary licenses or registrations to perform  
34 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

1                   **6.02    SBC Registration and Utilization**

2    49 CFR Part 26.39 requires that ADOT’s DBE Program include an element to incorporate contracting  
3    requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted-contracts.  
4    SBCs are for-profit businesses that are registered with ADOT to do business in Arizona and meet the Small  
5    Business Administration (SBA) size standards for average annual revenue criteria for its primary North  
6    American Industry Classification System (NAICS) code. SBCs can register online at the AZ UTRACS website  
7    at <https://utracs.azdot.gov>.

8    ADOT’s registration of SBCs is not a representation of qualifications and/or abilities. Developer bears all risks  
9    of ensuring that SBC firms that Developer selects to work on the Project are able to perform the Work.

10   While the SBC component of the DBE program does not require utilization goals on the Project, ADOT  
11   strongly encourages Developer to utilize small businesses on this Project that are registered as SBCs in AZ  
12   UTRACS, in addition to DBEs meeting the certification requirement. Developer and its Subcontractors can  
13   visit AZ UTRACS at <https://utracs.azdot.gov> to search for registered SBCs that can be used on the Project.  
14   However, note that SBCs that are not DBEs shall not be counted towards meeting DBE Goals.

15                   **7.0    DBE FINANCIAL INSTITUTIONS**

16   ADOT thoroughly investigates the full extent of services offered by financial institutions owned and  
17   controlled by socially and economically disadvantaged individuals in the state of Arizona and makes  
18   reasonable efforts to use these institutions. ADOT encourages Developer to use such institutions on USDOT  
19   assisted-contracts. However, use of a DBE financial institution will not be counted toward DBE Goals.

20   ADOT encourages Developer to research the Federal Reserve Board website at [www.federalreserve.gov](http://www.federalreserve.gov) to  
21   identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income  
22   filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board’s National Information  
23   Center database.

24                   **8.0    TIME IS OF THE ESSENCE**

25   TIME IS OF THE ESSENCE IN RESPECT TO THESE DBE PROVISIONS.

26                   **9.0    COMPUTATION OF TIME**

27   In computing any period of time described in this DBE Special Provision, such as calendar days, the day  
28   from which the period begins to run is not counted, and when the last day of the period is a Saturday,  
29   Sunday, Federal, or State holiday, the period extends to the next day that is not a Saturday, Sunday, or  
30   Federal or State holiday.

31                   **10.0   DBE GOALS**

32   Only DBE firms certified in the State of Arizona Unified Certification Program (AZUCP) prior to the DBE  
33   starting work on the Project shall count toward attaining the DBE Goals. Developer, as part of its Good  
34   Faith Efforts to meet the DBE Goals, may expand its search to a reasonably wider geographic area,  
35   including other states, provided that all out of state DBEs submit applications to ADOT to become certified  
36   in Arizona prior to beginning any Work for DBE credit.

1 **11.0 DBE PARTICIPATION ABOVE THE GOAL (RACE NEUTRAL PARTICIPATION)**

2 Additional DBE participation above the DBE participation required to meet the DBE Goals is an important  
3 aspect of ADOT’s DBE program. Developer is strongly encouraged to use additional DBEs above the DBE  
4 Goals in performing the Work in an effort to help ADOT meet its overall DBE goal and help ADOT meet the  
5 maximum feasible portion of its DBE goals through race neutral as outlined in 49 CFR Part 26. There are  
6 fewer administrative requirements on the part of Developer when using race neutral DBEs (DBEs not listed  
7 on the Construction or Professional Service DBE Intended Participation Affidavit Summary to meet DBE  
8 contract goals). For example, if a DBE is not listed on the Construction DBE Intended Participation Affidavit  
9 Summary, Developer does not have to submit a Construction DBE Intended Participation Affidavit Individual  
10 form, Developer’s Subcontract certification process follows the same process of any other Subcontract, and  
11 Developer does not have to replace the DBE if the DBE fails to perform. Therefore, these DBEs are treated  
12 as any other Subcontractor on the Project but will count towards the overall DBE utilization.

13 **12.0 DBE POST AWARD SUBMISSIONS**

14 **12.01 Final DBE Utilization Plan (After NTP 1)**

15 Within 30 days after issuance of NTP 1, Developer shall revise and convert its Preliminary DBE Utilization  
16 Plan included in its Proposal into a more detailed, final DBE Utilization Plan and submit it to ADOT for  
17 approval in its good faith discretion, as more particularly set forth in Section 11.2.5 of the Agreement.

18 In an effort to verify compliance with DBE requirements, ADOT will evaluate throughout the course of the  
19 work Developer’s efforts to execute its approved DBE Utilization Plan. Developer shall manage the  
20 approved DBE Utilization Plan to achieve the DBE Goals and to provide documentation that it is making  
21 Good Faith Efforts to do so. Developer, through consultation with ADOT, shall revise and update the DBE  
22 Utilization Plan at least quarterly prior to Project Substantial Completion, or more frequently as  
23 appropriate, detailing changes in or additional Good Faith Efforts it will undertake to meet the DBE Goals  
24 and how it will make up for any shortfalls in projected DBE utilization. All official revisions must be  
25 submitted to ADOT for review and approval.

26 **12.02 DBE Commitment Affidavits (After NTP 1)**

27 Before any Design Work begins on the Project, Developer shall submit to ADOT for review and comment  
28 Professional Services DBE Intended Participation Affidavit Summary form along with Professional Services  
29 DBE Intended Participation Affidavit Individual forms for each DBE firm identified at that time to perform  
30 initial Design Work. Thereafter, as each further Professional Services DBE is identified, Developer shall  
31 submit to ADOT for review and comment, before such DBE commences Design Work, a Professional  
32 Services DBE Intended Participation Affidavit Individual form for such DBE. Developer shall receive no DBE  
33 credit for Professional Services performed by DBEs prior to the required submission and resolution of any  
34 comments from ADOT.

35 Before beginning any Construction Work on the Project, Developer shall submit to ADOT for review and  
36 comment a Construction DBE Intended Participation Affidavit Summary form along with Construction DBE  
37 Intended Participation Affidavit Individual forms for each DBE firm identified at that time to perform  
38 Construction Work. Thereafter, as each further Construction DBE is identified, Developer shall submit to  
39 ADOT for review and comment, before such DBE commences Construction Work, a Construction DBE  
40 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.

1 ADOT may reject the DBE Intended Participation Affidavit if it is inaccurate or incomplete, including for  
2 lack of accurate and complete DBE certification and licensing information. ADOT shall have the right to  
3 review DBE Intended Participation Affidavits to ensure that DBEs are certified and licensed for the type of  
4 Work being proposed. If Developer fails to correctly complete and submit a DBE Intended Participation  
5 Affidavit within the specified time frame and fails to resolve ADOT comments thereon before the DBE  
6 begin Work on the Project, ADOT may deny DBE credit and/or will withhold progress payments until such  
7 time as the required submissions are received and all ADOT comments are resolved.

### 8 **12.03 DBE Subcontractor Request Forms**

9 During the course of the Work, Developer shall submit to ADOT copies of completed and signed  
10 Professional Services and Construction Work Subcontractor Request Forms along with copies of  
11 Subcontracts, purchase orders, invoices, and all other required documents for all Committed DBEs, at all  
12 tiers, that were listed on a Professional Services or Construction DBE Intended Participation Affidavit  
13 pursuant to Section 12.02 of these DBE Special Provisions.

14 Professional Services or Construction Work Subcontractor Request Forms, executed Subcontracts and all  
15 required documents outlined on the forms, must be submitted to ADOT for Committed DBEs, prior to  
16 start of work. Developer shall submit all other types of Subcontracts pursuant to Section 11.4.2(c) of the  
17 Agreement.

18 If Developer fails to correctly complete and submit a Professional Service or, Construction Work  
19 Subcontractor Request Form and executed DBE Subcontract within the specified time frames and fails to  
20 resolve all comments from ADOT, ADOT may deny DBE credit and/or will withhold progress payments  
21 until such time as the required submissions are received and ADOT comments thereon resolved.

### 22 **12.04 DBE and Subcontractor Information Upload to the DOORS (After NTP 2)**

23 Within ten days after a DBE Subcontractor/Supplier request is processed by ADOT pursuant to Section  
24 12.03 of these DBE Special Provisions, Developer shall log into the ADOT DBE and OJT Online Reporting  
25 System (“DOORS”) and enter and/or verify that the following information, at a minimum, is uploaded into  
26 the system. Such entry and verification of information is required in order to register commitments made  
27 through the DBE Intended Participation Affidavits, and to track DBE utilization for each DBE Goal,  
28 Subcontractor payments and prompt pay requirements:

- 29 1. Name of DBE Subcontractor or Supplier
- 30 2. Contact information
- 31 3. Subcontract amount
- 32 4. Subcontract award date
- 33 5. Estimated work start date
- 34 6. Work description

35 Developer must also ensure that the same information is entered into the DOORS for all Non-DBE  
36 Subcontractors/Suppliers. This information must be entered and/or verified in the DOORS monthly

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

### 3 **12.05 Proposer’s List and AZUTRACS Registration**

4 49 CFR Part 26.11 require DOTs to collect certain information from all contractors and Subcontractors  
5 who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT  
6 collects some of this information via the Proposer’s List of All Subcontractors, Suppliers, Service Providers  
7 and Manufacturers in the AZ UTRACS (<https://utracs.azdot.gov/BiddersListInfo/>) and the rest of the  
8 information is collected when firms register their companies as a vendor on the Arizona Unified  
9 Transportation Registration and Certification System (AZ UTRACS) web portal at <https://utracs.azdot.gov>;  
10 a centralized database for companies that seek to do business with ADOT. ADOT uses the Proposer’s List  
11 and AZ UTRACS Vendor Registration information to help calculate ADOT’s triennial and individual DBE  
12 contract goals. This information will be maintained as confidential to the extent allowed by federal and  
13 state law.

14 Developer must also maintain Proposer’s List throughout the Term for every firm quoting, bidding or  
15 expressing an interest in providing subcontract services for the Project. Developer must submit Proposer’s  
16 List with the required information every month for all new firms that quote, bid or express interest in  
17 Subcontracts with Monthly DBE Utilization Progress Reports as outlined in Section 18.02.2 of these DBE  
18 Special Provisions.

19 Along with submitting Proposer’s List on a monthly basis, Developer shall ensure that all Subcontractors  
20 are registered as a vendor in AZUTRACS and provide an AZUTRACS Vendor Number for each Subcontractor  
21 on the Proposer’s List submitted each month.

22 To determine if a Subcontractor is registered as a vendor, search by firm name at:  
23 <https://utracs.azdot.gov>. If the firm is listed at the bottom of the page in the Search Results, it is registered  
24 as a vendor. If it is not listed, the firm shall register by going to this website <https://utracs.azdot.gov>.

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

27 If Developer fails to correctly complete and submit Proposer’s List that bid, quoted or expressed interest  
28 in working on the Project each month, with the monthly reports required pursuant to Section 18.02 of  
29 these DBE Special Provisions, ADOT may withhold payment until such time as ADOT receives the required  
30 submissions.

## 31 **13.0 DBE LIAISONS AND COMPLIANCE OVERSIGHT COMMITTEE**

### 32 **13.01 DBE Liaisons**

33 ADOT’s Business Engagement & Compliance Office’s Contract Compliance & Training Officer, in  
34 conjunction with the ADOT Project Manager or other designated representative, are ADOT’s primary DBE  
35 liaisons with Developer regarding DBE compliance monitoring and oversight for this Project.

36 Developer shall establish a DBE program administration process that will ensure nondiscrimination in the  
37 award and administration of contracts and subcontracts and shall eliminate barriers to the participation  
38 of DBEs and small businesses on the Project. Developer’s DBE/OJT Outreach and Compliance Manager

1 shall be responsible for the management and implementation of Developer's DBE Utilization Plan and  
2 shall report to Developer's Project Manager. This individual shall serve as Developer's DBE liaison with  
3 ADOT for the Project. The name of this designated DBE liaison shall be included on all DBE Intended  
4 Participation Affidavit Summary forms.

### 5 **13.02 Compliance Oversight Committee**

6 ADOT will convene an interdisciplinary Compliance Oversight Committee to monitor and oversee DBE  
7 compliance and progress towards meeting DBE Goals. The Compliance Oversight Committee will include  
8 representatives of ADOT's General Engineering Consultant (GEC) for the Project, FHWA, ADOT's Business  
9 Engagement & Compliance Office and other entities. Developer's DBE liaison and Project Manager (or  
10 designee responsible for the management of professional services and construction activities of the  
11 Project) shall coordinate and meet with the Compliance Oversight Committee on a monthly basis. The  
12 purpose of the monthly meetings will be to review information in the submitted DBE Monthly Utilization  
13 Progress Reports, and monitor whether the utilization of DBEs is consistent with Developer's DBE  
14 commitment and approved DBE Utilization Plan. The Compliance Oversight Committee will also review  
15 procurements and DBE participation from the previous month, review projected DBE  
16 procurements/participation for upcoming months, review Developer's Good Faith Efforts to meet DBE  
17 Goals, identify and resolve impediments to successful DBE participation, and proactively work to resolve  
18 any DBE compliance issues that may arise.

### 19 **14.0 DBE COMPLIANCE RECORDS**

20 Developer shall keep documents and records pertaining to DBE outreach, participation, procurements,  
21 utilization, payments, Good Faith Efforts and other compliance activities for five years after the Project  
22 Substantial Completion Date. These records and documents shall be subject to ADOT's rights of  
23 inspection, copying and audit set forth in Sections 25.4 and 25.5 of the Agreement.

### 24 **15.0 CONTINUING GOOD FAITH EFFORTS AND CONTRACT PERFORMANCE**

#### 25 **15.01 Continuing Good Faith Efforts**

26 The following is a list of the minimum types of continuing Good Faith Efforts Developer must make during  
27 the D&C Work to help ensure that DBEs have optimal opportunity to successfully perform on the Project  
28 and that Developer meet the DBE Goals. These efforts shall include the following:

- 29 1. Contacting ADOT's BECO to request assistance as needed to help identify certified DBEs,  
30 either by e-mail, or by telephone. Developer must document its contact with BECO, and  
31 indicate the type of contact, the date and time of the contact, the name of the person(s)  
32 contacted, and any details related to the communication. The telephone number for the  
33 BECO is (602) 712-7761 and the email address is contractcompliance@azdot.gov. The  
34 contact must be made in sufficient time before the DBE is needed to allow BECO to  
35 provide effective assistance. Developer will not be considered to have made Good Faith  
36 Efforts if Developer fails to contact the BECO and communicate any difficulties in finding  
37 DBEs.
- 38 2. Conducting market research to identify small business Subcontractors and Suppliers and  
39 soliciting through all reasonable and available means the interest of all certified DBEs who  
40 have the capability to perform the relevant Work. This may include attending pre-bid and

1 business matchmaking meetings and events, advertising and/or written notices, posting  
2 of notices of sources sought and/or requests for proposals at reasonable locations,  
3 including Developer’s website, written notices or emails to all DBEs listed in ADOT’s  
4 directory of transportation firms that specialize in areas of work desired (as noted in the  
5 DBE directory) and which are located in the area or surrounding areas of the Project.  
6 Developer shall solicit this interest as early in the acquisition process as practicable to  
7 allow DBEs to respond to the solicitation and submit a timely offer for the Subcontract.  
8 Developer shall determine with certainty if DBEs are interested by taking appropriate  
9 steps to follow-up initial solicitations.

10 3. Selecting portions of the relevant Work to be performed by DBEs in order to increase the  
11 likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking  
12 out Project work items into economically feasible units (for example smaller tasks or  
13 quantities) to facilitate DBE participation, even when Developer might otherwise prefer  
14 to perform these Work items with its own forces. This may include, where possible,  
15 establishing flexible time frames for performance and delivery schedules in a manner that  
16 encourages and facilitates DBE participation.

17 4. Providing interested DBEs with adequate information about the plans, specifications, and  
18 requirements of the Project in a timely manner to assist them in responding to a  
19 solicitation with their offer for the Subcontract.

20 5. Negotiating in good faith with interested DBEs. It is Developer’s responsibility to make a  
21 portion of the relevant Work available to the DBE Subcontractors and Suppliers, and to  
22 select those portions of relevant Work or material needs consistent with the available  
23 DBE Subcontractors and Suppliers, so as to facilitate DBE participation. Evidence of such  
24 negotiation includes the names, addresses, and telephone numbers of DBEs that were  
25 considered; a description of the information provided from the plans and specifications  
26 for the relevant Work selected for subcontracting; and evidence as to why additional  
27 agreements could not be reached for DBEs to perform such Work.

28 Pro forma mailings to DBEs requesting bids are not alone sufficient to constitute good  
29 faith negotiation.

30 Developer using good business judgment would consider a number of factors in  
31 negotiating with Subcontractors, including DBE Subcontractors, and would take a firm’s  
32 price and capabilities as well as DBE Goals into consideration. However, the fact that there  
33 may be some additional costs involved in finding and using DBEs is not in itself sufficient  
34 reason for a Developer’s failure to meet the DBE Goals, as long as such costs are  
35 reasonable. Also, the ability or desire of Developer to perform the Work with its own  
36 organization does not relieve Developer of the responsibility to make Good Faith Efforts.  
37 However, Developer is not required to accept higher quotes from DBEs if the price  
38 difference is excessive or unreasonable. Documentation, such as copies of all other bids  
39 or quotes, is subject to Section 14.0 of these DBE Special Provisions.

40 6. Avoiding rejection of the DBE because its quotation for the relevant Work was not the  
41 lowest received. However, nothing in this paragraph shall be construed to require  
42 Developer to accept unreasonable quotes in order to satisfy DBE Goals. Developer must

1 submit to ADOT copies of each DBE and non-DBE Subcontractor quote submitted to  
2 Developer when a non-DBE Subcontractor was selected over a DBE for a Subcontract.  
3 ADOT shall have the right to review whether DBE prices were substantially higher and  
4 contact the DBEs listed on a Developer’s solicitation to inquire as to whether they were  
5 contacted by Developer.

6 7. Substantiating rejection of DBEs as being unqualified with sound reasons based on a  
7 thorough investigation of their capabilities. Developer’s or a DBE’s standing within its  
8 industry, membership in specific groups, organizations or associations and political or  
9 social affiliations (for example, union vs. non-union employee status) are not legitimate  
10 causes for the rejection or non-solicitation of bids in Developer’s efforts to meet the DBE  
11 Goals.

12 8. Making efforts to assist interested DBEs such as formal or informal mentoring, assistance  
13 with obtaining bonding, lines of credit, or insurance as required by the Agreement or  
14 Developer.

15 9. Making efforts to assist interested DBEs in obtaining necessary equipment supplies,  
16 materials, or related assistance or services.

17 10. Effectively using the services of available minority/women community organizations;  
18 minority/women contractors’ groups; local, state, and Federal minority/women business  
19 assistance offices; and other organizations as allowed on a case-by-case basis to provide  
20 assistance in the recruitment and placement of DBEs.

21 11. Making efforts to identify firms that might potentially be certified as DBEs and assisting  
22 those firms with DBE certification and opportunities to submit bids or proposals to  
23 participate as Subcontractors, truckers, Suppliers and other service providers on the  
24 Project.

25 12. Making efforts to recruit and utilize non-engineering design and construction related DBE  
26 firms such as graphic design and printing, marketing, outreach, training, employment  
27 services and catering companies to help meet DBE Goals.

28 If ADOT determines at any time during the term of the Agreement, at its sole discretion, that Developer’s  
29 DBE utilization and Good Faith Efforts to meet the DBE goals during performance of the work are not  
30 consistent with its commitment to meet DBE Goals or make Good Faith Efforts to meet the DBE Goals as  
31 indicated in its Proposal, outlined in its DBE Utilization Plan or monthly reports required pursuant to  
32 Section 18.02 of these DBE Special Provisions, ADOT may require that Developer submit, in writing, Good  
33 Faith Effort documentation and a corrective action plan to ADOT outlining how it plans to meet DBE Goals.  
34 Developer shall have 14 days to submit this information to ADOT. Failure to respond shall result in  
35 progress payment being withheld until the requested information is provided to ADOT.

36 Completion and submission of Good Faith Effort documentation and corrective action plan is not a  
37 guaranty that ADOT will approve Good Faith Efforts. ADOT will consider the quality, quantity, and intensity  
38 of the different kinds of efforts Developer has made and/or proposes to make. Mere pro forma efforts  
39 are not sufficient Good Faith Efforts to meet the DBE Goals and requirements.

40 **15.02 Contract Performance**

1 Developer shall utilize the specific DBEs listed to perform the Work and supply the materials for which  
2 each is listed on the Intended Participation Affidavit Summary unless Developer obtains ADOT's written  
3 consent. Absent consent from ADOT, Developer shall not be entitled to any payment for work or material  
4 that is not performed or supplied by the listed DBE.

5 Developer shall cause all items of work that Developer has designated for award to DBEs to be performed  
6 by the designated DBE or an ADOT-approved DBE substitute. Developer shall notify ADOT in writing if any  
7 work assigned or projected to be performed by a DBE will not be performed by the DBE as soon as this  
8 information is known. Developer shall make Good Faith Efforts to replace the DBE with another DBE as  
9 soon as possible in accordance with Section 15.01 of these DBE Special Provisions.

10 Developer shall not perform or allow or suffer a non-DBE to perform work items subcontracted to a DBE  
11 without prior approval by ADOT. The DBE must perform a Commercially Useful Function (CUF) as more  
12 particularly provided in Section 16.05 of these DBE Special Provisions.

13 Developer is required to use DBEs identified to meet DBE Goals. Developer shall ensure the DBE is  
14 available to meet project scheduling, perform work and meet other applicable requirements of the  
15 Contract Documents.

16 ADOT's audit rights under the Agreement include site visits, reviews and records audits to monitor that  
17 DBEs are performing a CUF and that Developer is complying with DBE requirements in the Contract  
18 Documents and the DBE Utilization Plan. The reviews may include, among other activities, interviews of  
19 DBEs and their employees and Developer and its employees. Developer shall inform ADOT in advance  
20 when each DBE will be working on the Project, to help facilitate these reviews. Developer shall cooperate  
21 during the site visits and reviews. ADOT's staff will make reasonable efforts not to disrupt Work.

22 **16.0 CREDITING DBE PARTICIPATION TOWARD MEETING GOAL**

23 **16.01 General Requirements**

24 Only the value of the Work actually performed by the DBE in an area of Work for which it is certified  
25 before the Subcontract execution date or, if applicable, Subcontract amendment execution date in each  
26 NAICS code applicable to such Work can be credited toward DBE participation. ADOT will give credit  
27 toward the DBE Goals only after the DBE has been paid for the Work performed.

28 ADOT will credit toward the DBE Goals the entire amount of the portion of a Project that is performed by  
29 the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the Work, or  
30 equipment leased by the DBE. ADOT will not credit supplies and equipment the DBE Subcontractor  
31 purchases or leases from Developer or its Affiliates.

32 Developer bears the responsibility to determine whether the DBE possesses the proper license(s) to  
33 perform the Work and, if DBE credit is requested, that the DBE Subcontractor is certified for the type of  
34 Work.

35 To count toward meeting a DBE Goal, the DBE firm must be certified in each NAICS code applicable to the  
36 kind of Work the firm will perform on the Project. NAICS codes for each DBE can be found on the  
37 AZUTRACS DBE/SBC Search tab at <https://adotdoors.dbesystem.com>. General descriptions of all NAICS  
38 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.

1                   **16.02 Effect of Loss of DBE Eligibility**

2 If ADOT deems a DBE ineligible (decertified) or suspended as a DBE in accordance with 49 CFR 26.87 and  
3 26.88, the DBE will not be considered toward meeting the DBE Goals; provided, however, that such firm will  
4 be considered toward meeting the DBE Goals if its Subcontract was executed before the DBE suspension or  
5 decertification is effective, in which case Developer will continue to receive credit toward the DBE Goals for  
6 the firm’s work.

7                   **16.03 DBE Certification Status**

8 If Developer learns or suspects that a DBE Subcontractor or Supplier has been decertified during the  
9 course of its Work, Developer shall contact ADOT BECO to verify the DBE decertification and to ascertain  
10 the impact of the decertification on its ability to meet the DBE Goals.

11 Developer shall regularly check and verify the certification status of Developer’s DBE Subcontractors at  
12 <https://adotdoors.dbesystem.com>.

13                   **16.04 Police Officers**

14 ADOT will not give DBE credit for procuring DPS officers. For Projects on which officers from other agencies  
15 are supplied, ADOT will give DBE credit only for the broker fees charged, and will not include amounts  
16 paid to the officers. The broker fees must be reasonable.

17                   **16.05 Commercially Useful Function**

18 Developer can credit payments to a DBE Subcontractor toward the DBE Goals only if the DBE performs a  
19 Commercially Useful Function (CUF) on the Project. A DBE performs a CUF when it is responsible for  
20 execution of the Work under its Subcontract and carries out its responsibilities by actually performing,  
21 managing, and supervising, the Work involved. To perform a commercially useful function, the DBE must  
22 also be responsible, with respect to materials and supplies used on the Project, for negotiating price,  
23 determining quality and quantity, ordering and installing (where applicable) materials, and paying for the  
24 materials itself that it uses on the Project.

25 To determine where a DBE is performing a commercially useful function, ADOT will evaluate the amount  
26 of Work subcontracted, industry practices, whether the amount the firm is to be paid under the  
27 Agreement is commensurate with the Work it is actually performing, the DBE credit claimed for its  
28 performance of the Work, and other relevant factors.

29 A DBE will not be considered to perform a CUF if its role is limited to that of an extra participant in a  
30 transaction or contract through which funds are passed in order to obtain the appearance of DBE  
31 participation. In determining whether a DBE is such an extra participant, ADOT will examine similar  
32 transactions, particularly those in which DBEs do not participate.

33 If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its  
34 Subcontract with its own work force, or if the DBE subcontracts a greater portion of the work under its  
35 Subcontract than would be expected on the basis of normal industry practice for the type of work  
36 involved, ADOT will presume that the DBE is not performing a CUF.

1 Developer shall ensure and confirm that all DBEs selected for Subcontract work on the Project, for which  
2 it seeks to claim credit toward the DBE Goals, perform a CUF. Further, Developer shall verify that each  
3 DBE fully performs its designated tasks in accordance with the provisions of this section of these DBE  
4 Special Provisions. For the purposes of determining a CUF, the DBE's equipment will mean either  
5 equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or  
6 leased by the DBE firm, and over which the DBE has exclusive use and control, and absolute priority, as  
7 evidenced by the leasing agreement from a firm not owned in whole or part by Developer or its Affiliate.

8 If Developer becomes aware of any change in the nature of a DBE's Work (for example, a DBE  
9 Subcontractor issues a second tier Subcontract to a non-DBE), Developer shall promptly report the change  
10 to ADOT and BECO.

11 When a DBE is presumed not to be performing a CUF as provided above, the DBE or Developer may  
12 present evidence to rebut this presumption. ADOT will determine if the firm is not performing a CUF given  
13 the type of work involved and based on normal industry practices.

14 Decisions on CUF matters are subject to review by the FHWA, but are not administratively appealable to  
15 USDOT. In order to obtain this review, the affected party must contact ADOT in writing to request a review  
16 within seven days after ADOT delivers written notice of its decision. The request must be accompanied  
17 with any documentation to support the affected party's case. ADOT will transmit the request for review  
18 with any supporting documentation to the FHWA.

#### 19 **16.06 Trucking**

20 ADOT will use the following factors in determining whether a DBE trucking company is performing a CUF:

- 21 1. The DBE must be responsible for the management and supervision of the entire trucking  
22 operation for which it is responsible on a particular Project, and there cannot be a  
23 contrived arrangement for the purpose of meeting the DBE Goals.
- 24 2. The DBE must itself own and operate at least one fully licensed, insured, and operational  
25 truck used on the Project on every day that credit is to be given for trucking.
- 26 3. Developer will receive credit for the total value of transportation services provided by the  
27 DBE using trucks it owns, insures and operates, and using drivers it employs.
- 28 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is  
29 certified as a DBE. The DBE who leases trucks from another DBE receives credit for the  
30 total value of the transportation services that the DBE lessee provides on the Project.

31 The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that  
32 leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of  
33 transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value  
34 of transportation services on the Project provided by DBE-owned trucks or leased trucks with DBE  
35 employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit  
36 only for the fee or commission it receives as a result of the lease arrangement.

37 Example: DBE Firm X uses two of its own trucks on a Project. It leases two trucks from DBE Firm Y and six  
38 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.

1 Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite  
2 transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

3 With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular  
4 dealer, ADOT will credit toward DBE Goals the entire amount of the fees or commissions charged by the  
5 DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for  
6 the delivery of materials or supplies required on a job site, provided the fees are determined to be  
7 reasonable and not excessive as compared with fees customarily allowed for similar services. ADOT will  
8 not credit the cost of the materials and supplies themselves toward the DBE Goals.

9 ADOT will credit expenditures with DBEs for material and supplies (e.g., whether a firm is acting as a  
10 regular dealer or a transaction expeditor) on a project-by-project basis. The fact that a DBE firm qualifies  
11 under a classification (manufacturer, regular dealer or Supplier) for one project does not mean it will  
12 qualify for the same classification on another project. Developer shall be responsible for verifying whether  
13 a DBE qualifies as a DBE manufacturer, regular dealer or Supplier for the Project. Developer may contact  
14 ADOT for assistance in this determination.

15 **16.08 Effect of Changes to the Agreement**

16 The base figure used to compute the percentage of actual dollars paid to DBEs shall be adjusted in  
17 accordance with Section 11.2.8 of the Agreement on account of any Supplemental Agreements or  
18 Directive Letters that increase or decrease the Work in which DBE participation has been committed or is  
19 intended. Developer shall reflect the revised total dollar values in DBE Monthly Utilization Progress  
20 Reports and in the DOORS as part of Developer payment reporting.

21 If, as a result of a Supplemental Agreement or Directive Letter, the scope or quantity of work being done  
22 by a DBE Subcontractor is decreased, Developer shall exercise Good Faith Efforts to obtain additional DBE  
23 participation so that the resulting DBE participation will equal or exceed the DBE Goals.

24 If a Supplemental Agreement or Directive Letter increases the scope or quantity of work being done by a  
25 DBE Subcontractor, the DBE shall be given the opportunity to complete the additional work and receive  
26 additional compensation beyond its original Subcontract amount.

27 **17.0 JOINT CHECKS**

28 **17.01 Requirements**

29 The use of joint checks payable to both a Subcontractor and Supplier is available to all Subcontractors and  
30 is not limited to only DBEs. A DBE Subcontractor and a material Supplier (or equipment Supplier) may  
31 request permission for the use of joint checks for payments from Developer to the DBE Subcontractor and  
32 the Supplier. In order to maintain DBE credit when joint checks are issued, all the conditions in this  
33 subsection must be satisfied.

- 34 1. The DBE Subcontractor must be independent from Developer and the Supplier, and must  
35 perform a CUF. The DBE Subcontractor must be responsible for negotiating the price of  
36 the material, determining quality and quantity, ordering the materials, installing (where  
37 applicable), and paying for the material. The DBE Subcontractor may not be utilized as an  
38 extra participant in a transaction, contract, or subcontract in order to obtain the  
39 appearance of DBE participation.

- 1 2. Developer, the DBE Subcontractor, and the material Supplier must establish that the use  
2 of joint checks in similar transactions is a commonly recognized business practice in the  
3 industry, particularly with respect to similar transactions in which DBEs do not participate.
- 4 3. A material or supply contract may not bear an excessive ratio relative to the DBE  
5 Subcontractor's normal capacity.
- 6 4. There may not be any exclusive arrangement between Developer and the DBE in the use  
7 of joint checks that may bring into question whether the DBE is independent of  
8 Developer.
- 9 5. The arrangement for joint checks must be in writing, and for a specific term (for example,  
10 one year, or a specified number of months) that does not exceed a reasonable time to  
11 establish a suitable credit line with the Supplier.
- 12 6. Developer and the payor of the joint check may not establish or control establishing the  
13 terms of the agreement between the DBE Subcontractor and the Supplier.
- 14 7. The DBE must have the right and obligation to receive the check from the payor and to  
15 deliver the check to the Supplier.
- 16 8. Developer cannot require the DBE Subcontractor to use a specific Supplier, and Developer  
17 may not participate in the negotiation of unit prices between the DBE Subcontractor and  
18 the Supplier.

19 **17.02 Procedure and Compliance**

- 20 1. ADOT must approve in writing the agreement for the use of joint checks in writing before  
21 any joint checks are issued. Developer shall submit a DBE joint check request form,  
22 available from the BECO website, along with the joint check agreement, to ADOT.
- 23 2. After obtaining authorization for the use of joint checks, Developer, the DBE and the  
24 Supplier must retain documentation to allow for efficient monitoring of the joint check  
25 agreement.
- 26 3. Developer shall submit to ADOT copies of canceled checks with the payment information  
27 for the period in which the joint check was issued or shall make such copies available for  
28 review at the time of the onsite CUF review. Developer shall promptly report to ADOT any  
29 change from the approved joint check arrangement, and shall require the DBE and  
30 Supplier to likewise report to ADOT.  
31

1 **18.0 DBE UTILIZATION REPORTING**

2 **18.01 DOORS Payment Reporting**

3 ADOT is required to collect DBE and non-DBE participation data for all Federal-aid contracts to measure  
4 DBE goal attainment and as a mechanism to monitor and track prompt payment to Subcontractors.  
5 Developer is notified that such record keeping is also required by ADOT for tracking and reporting DBE  
6 participation to USDOT. Accordingly, Developer shall submit monthly reports to ADOT of all payments  
7 made to DBE and non-DBE Subcontractors as set forth in Section 15.10.1 of the Agreement

8 **18.02 Project Schedule & DBE Utilization Progress Reports**

9 **18.02.1 Project Schedule**

10 Developer shall submit to ADOT a Schedule Narrative with each monthly Project Baseline  
11 Schedule Update, as required in Section 15.2.3(b) of the Agreement and Section GP 110.06.2.4 of the  
12 Technical Provisions. The Schedule Narrative shall include a log of applicable DBE participation activities  
13 in the Project Schedule for which Developer intends to claim credit for attaining the DBE Goals. The log  
14 shall include the proposed start/finish dates, durations, and dollar values of the DBE participation  
15 activities.

16 **18.02.2 DBE Monthly Utilization Progress Reports**

17 Developer shall submit to ADOT as part of each monthly Draw Request a DBE Monthly Utilization  
18 Progress Report for DBE activities completed during the preceding month. Each report shall include:

- 19
- 20 • Progress on various components of the DBE Utilization Plan;
  - 21 • Current month and year-to-date summary of DBE Subcontract awards compared to  
22 total Subcontract awards;
  - 23 • Progress toward the DBE Goals;
  - 24 • Summary of work items not yet completed or subcontracted which are targeted for  
25 DBE utilization in the coming month and quarter;
  - 26 • Proposer’s List of firms who quoted or bid on Subcontracts during the previous month  
27 (using (<https://utracs.azdot.gov/BiddersListInfo/>));
  - 28 • A separate DBE Intended Affidavit Summary for each of (a) Professional Services and  
29 (b) Construction Work for all DBEs authorized under Sections 12.02 of these DBE Special  
30 Provisions to work on the Project during the previous month;
  - 31 • Non-DBE Subcontract awards for Professional Services and Construction Work  
32 including Small Business Concerns (SBCs);
  - 33 • Amounts earned by and paid to all Professional Services and Construction DBEs and  
34 non-DBEs the previous month;
  - 35 • Certification of Final DBE Payment, as and when required under Section 18.02.3 of  
36 these DBE Special Provisions; and
  - 37 • Issues encountered and/or resolved pertaining to DBEs working on the Project that  
could impact Developer’s ability to meet the DBE Goals.

38 Developer must also submit satisfactory evidence in its DBE Monthly Utilization Progress Reports  
39 that it is making Good Faith Efforts, as specified in its DBE Utilization Plan, to meet the DBE Goals. If a DBE

1 Goal is not being met or estimated DBE procurements or subcontract targets have not been met for the  
2 month, Developer must explain why and how it will remedy the shortfall.

3 **18.02.3 Certification of Final DBE Payments**

4 Developer shall submit to ADOT with its DBE Monthly Utilization Progress Report a DBE Certificate  
5 of Final Payments for Construction Work and Professional Services form for each DBE that completes its  
6 Work on the Project during the preceding month. The form shall include the actual dollar amount  
7 committed and actually paid to each DBE firm for the accepted creditable work and shall be submitted  
8 after all work is completed for the identified DBE, including any outstanding retainage.

9 The form shall be certified under penalty of perjury, or other applicable legal requirements, to be  
10 accurate and complete. ADOT will use this certification and other information available to determine  
11 applicable DBE credit allowed to date and the extent to which the DBE firms were fully paid for that Work.  
12 Developer shall acknowledge that by the act of filing the forms, the information is supplied to obtain  
13 payment regarding the Project under a federal-aid contract.

14 **18.02.4 Annual and Final DBE Utilization Reports**

15 Developer shall prepare and submit to ADOT by each anniversary date of the execution of the  
16 Agreement an annual report of progress with DBE utilization. Such report shall cumulatively summarize  
17 all of the past months and years' progress reports toward meeting the DBE Goals, as well as addressing  
18 Developer's progress or challenges with the implementation of any of the components of its DBE  
19 Utilization Plan.

20 Not later than 30 days prior to Final Acceptance, Developer shall prepare and submit to ADOT a  
21 Final DBE Utilization Summary Report. The Final DBE Utilization Summary Report must include a summary  
22 of Professional Services and Construction DBE utilization, payments to such DBEs, and, separately,  
23 payments for all the Design Work and Construction Work. In addition, if the DBE Goal for Professional  
24 Services or Construction Work is not met, the Final DBE Utilization Summary Report must include  
25 documentation of Good Faith Efforts taken by Developer prior to and throughout performance of the D&C  
26 Work in accordance with 49 CFR Part 26, Appendix A and Section 15.01 of these DBE Special Provisions. A  
27 Summary of Final DBE Payments for Professional Services and A Summary of Final DBE Payments for  
28 Construction form must be included with the Final DBE Utilization Summary Report, in accordance with  
29 Section 18.02.4 of these DBE Special Provisions.

30 **18.02.5 Report Review and Sanctions**

31 As indicated in Section 13.02 of these DBE Special Provisions, ADOT will convene an  
32 interdisciplinary Compliance Oversight Committee that will meet with Developer monthly to review and  
33 verify information contained in submitted monthly, annual and final reports to monitor and oversee  
34 Developer's DBE compliance and progress towards meeting the DBE Goals.

35 **19.0 DBE TERMINATION/SUBSTITUTION**

36 **19.01 General Requirements**

37 Developer shall make all reasonable efforts to avoid all reasons to terminate/substitute a Committed DBE  
38 listed on the DBE Intended Participation Affidavit Summary. At a minimum, Developer shall negotiate in

1 good faith, make timely payments and/or extend deadlines to the level that it will not jeopardize timely  
2 performance of Developer’s obligations under the Agreement. Developer shall apply reasonable methods  
3 to resolve performance disputes and shall provide documentation to ADOT before attempting to  
4 substitute or terminate a Committed DBE. Developer shall cause all Subcontractors who are parties to a  
5 Subcontract with a Committed DBE to adhere to the foregoing requirements.

6 **19.02 Developer Notice of Termination/Substitution**

7 Developer shall notify ADOT in writing if any Work assigned to or projected to be performed by a  
8 Committed DBE will not be performed by the Committed DBE within 24 hours of any sign of any reason  
9 for potential DBE termination/substitution.

10 Developer shall not terminate or permit or suffer termination of a Committed DBE without ADOT’s written  
11 approval. Developer shall not complete or allow or suffer completion of the Work contracted to the  
12 Committed DBE with its own forces or with a non-DBE firm. Before submitting a formal request to ADOT  
13 for DBE termination/substitution, Developer shall give, or cause the party to the Subcontract with the  
14 Committed DBE to give, a written notice to the Committed DBE Subcontractor with a copy to ADOT of its  
15 intent to terminate and/or substitute the Committed DBE and identifying the reason for the action. The  
16 notice shall allow the Committed DBE a minimum of five days to respond to the notice advising Developer  
17 or the contracting party and ADOT of the Committed DBE’s position. ADOT will consider both Developer’s  
18 request and the DBE firm’s response and explanation before approving Developer’s termination and  
19 substitution request.

20 **19.03 Developer Request of Termination/Substitution**

21 Developer shall formally request the termination and/or substitution of a Committed DBE by  
22 submitting to ADOT a written DBE Substitution or Termination Request form and supporting  
23 documentation. The submission shall include at the minimum the following information:

- 24 1. The date Developer determined the Committed DBE to be unwilling, unable or ineligible  
25 to perform;
- 26 2. A brief statement of facts describing and citing specific actions or inaction by the  
27 Committed DBE giving rise to Developer’s assertion that the Committed DBE is unwilling,  
28 unable, or ineligible to perform;
- 29 3. A brief statement of the Committed DBE’s capacity and ability to perform the Work as  
30 determined by the subcontracting party;
- 31 4. A brief statement of facts regarding actions taken by Developer, that Developer believes  
32 constitute Good Faith Efforts toward enabling the Committed DBE to perform;
- 33 5. The total dollar amount currently paid for Work performed by the Committed DBE;
- 34 6. The total dollar amount remaining to be paid to the Committed DBE for Work completed,  
35 but for which the Committed DBE has not received payment, and with which Developer  
36 has no dispute;



1                   **19.05 Good Faith Effort for DBE Termination/Substitution**

2   The termination of a DBE with ADOT’s approval shall not relieve Developer of its obligations under these  
3   DBE Special Provisions. If ADOT approves the termination of a Committed DBE, Developer shall make Good  
4   Faith Efforts as identified in Section 15.01 of these DBE Special Provisions and 49 CFR Part 26, Appendix A  
5   to find another DBE Subcontractor to substitute for the original DBE. Developer shall direct the Good Faith  
6   Efforts, at finding another DBE to perform at least the same amount of Work under as the Committed DBE  
7   that was terminated, to the extent needed to meet the DBE Goals. Developer shall provide documentation  
8   of such Good Faith Efforts to ADOT within seven days after ADOT delivers a request therefor.

9   Developer’s inability to find a replacement DBE at the original price is not alone sufficient to support a  
10   finding that Good Faith Efforts have been made to replace the Committed DBE. The fact that Developer  
11   has the ability and/or desire to perform the subject Work with its own forces does not relieve Developer  
12   of the obligation to make Good Faith Effort to find the replacement DBE, and it is not a sound basis for  
13   rejecting a prospective replacement DBE’s reasonable quote.

14   ADOT will not credit the unpaid portion of the terminated Committed DBE’s Subcontract toward the DBE  
15   Goals. If ADOT has eliminated items of Work subcontracted to a Committed DBE, then Developer shall still  
16   make Good Faith Efforts to replace the Committed DBE with another DBE for the extent necessary to meet  
17   the DBE Goals. ADOT will review the quality, thoroughness, and intensity of those efforts.

18   When a DBE substitution is necessary, Developer shall submit a new DBE Intended Participation Affidavit  
19   and Intended Participation Affidavit Summary to ADOT for review and comment with the substitute DBE's  
20   name, description of work, NAICS code and dollar value of Work. All the provisions of Sections 12.02 and  
21   12.03 of these DBE Special Provisions shall apply with respect to the proposed substitute DBE. Approval  
22   from ADOT must be obtained prior to the substituted DBE beginning work.

23                   **20.0 CERTIFICATION OF FINAL DBE PAYMENTS**

24   In anticipation of final payment for Construction Work, Developer shall submit to ADOT a DBE Certification  
25   of Final Payments, Construction and Professional Services, a Summary of Final Payments for Construction,  
26   and a Summary of Final Payments for Professional Services. Developer shall submit such forms not later  
27   than 30 days prior to Final Acceptance. The forms shall include a list of all DBEs that worked on the  
28   applicable Design Work or Construction Work, dollar amounts committed, Subcontract amount and total  
29   amount paid. Developer shall acknowledge that by the act of filing the forms, the information is supplied  
30   to obtain payment regarding the Project as a federal-aid contract.

31   ADOT will use the DBE Certification of Final Payments, Construction and Professional Services, Summary  
32   of Final Payments for Construction, and Summary of Final Payments for Professional Services, together  
33   with the Final DBE Utilization Summary Report, to determine if Developer and DBE firms have satisfied  
34   the DBE Goals and the extent to which DBE credits were allowed.

35                   **21.0 SUSPECTED DBE FRAUD**

36   ADOT will bring to the attention of the USDOT any appearance of false, fraudulent or dishonest conduct  
37   in connection with the DBE program and this Agreement, so that USDOT can take steps such as referral  
38   to the U.S. Department of Justice for criminal prosecution, referral to the USDOT Inspector General for  
39   possible initiation of suspension and debarment proceedings against the offending parties or application  
40   of “Program Fraud Civil Remedies” rules provided in 49 CFR Part 31.

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**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

4

**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]

1

ARIZONA DEPARTMENT OF TRANSPORTATION

2

<b>SUMMARY OF FINAL PAYMENTS CONSTRUCTION</b>	
<b>Developer Name:</b>	<b>Project Number:</b>
<b>Name of DBE Liaison:</b>	<b>Date Submitted:</b>

3

	<b>DBE Firm Name</b>	<b>AZ UTRACS Vendor Number</b>	<b>Scope of Work</b>	<b>DBE Affidavit Amount *if applicable</b>	<b>Final Amount Paid From Certification of DBE Final Payment Form</b>
1.					
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12.					

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BECO Form 115DBM

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ARIZONA DEPARTMENT OF TRANSPORTATION

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	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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**ATTACHMENT G**

**SUMMARY OF FINAL PAYMENTS FOR PROFESSIONAL SERVICES**

[See attached]

**ARIZONA DEPARTMENT OF TRANSPORTATION**

<b><u>SUMMARY OF FINAL PAYMENTS</u></b> <b><u>PROFESSIONAL SERVICES</u></b>	
<b>Developer Name:</b>	<b>Project Number:</b>
<b>Name of DBE Liaison:</b>	<b>Date Submitted:</b>

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount <small>*if applicable</small>	Final Amount Paid <small>From Certification of DBE Final Payment Form</small>
1.					
2.					
3.					
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5.					
6.					
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9.					
10.					
11.					
12.					

**ARIZONA DEPARTMENT OF TRANSPORTATION**

	<b>DBE Firm Name</b>	<b>AZ UTRACS Vendor Number</b>	<b>Scope of Work</b>	<b>DBE Affidavit Amount *if applicable</b>	<b>Final Amount Paid From Certification of DBE Final Payment Form</b>
13.					
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25.					

**Developer/Project Manager Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**DBE Liaison Officer Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

BECO Form 215DBM

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**ATTACHMENT H**

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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

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

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

5 The contractor shall provide training and see that all OJT Trainees are afforded opportunities to participate  
6 in as much training as is practically possible to provide. Due to turnover and attrition of OJT Trainees in  
7 any one OJT Trainee slot, it is expected that continuous OJT Trainee replacements may be necessary  
8 during the D&C Period.

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

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

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

23 **923-1.02 Subcontractor OJT Trainees:**

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

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

32 **923-1.03 Definitions:**

33 **Banking-Carryover Hours:**

34 OJT hours completed by an OJT Trainee that exceeds the amount of required hours on the project and are  
35 eligible to be credited to a future project. Banked-Carryover hours will only be credited when the same  
36 OJT Trainee that completed the excess hours is used on the future project.  
37

1 **Business Engagement and Compliance Office (BECO):**

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

6 **Classification/Craft**

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

9 **Disadvantaged Persons:**

10 A person who meets one of the following:

- 11 (1) Receives, or is a member of a family and/or household, which receives cash payments  
12 under a Federal, State, or local income-based public assistance program;
- 13 (2) Is a member of a family and/or household that receives (or has been determined within  
14 the 6-month period prior to registration for the program involved to be eligible to receive)  
15 Food Stamps/EBT card under the Food Stamp Act of 1977;
- 16 (3) Is a foster child on behalf of whom State or local government payments are made;
- 17 (4) Does not have a high school diploma or GED; or
- 18 (5) Is from a family whose total annual household income is below the federal poverty limits.

19 **Journeyman:**

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

21 **OJT Trainee:**

22 A person who is:

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

27 **Show Cause Notice:**

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

1 **923-1.04 OJT Training Programs:**

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

7 The Department recognizes the following OJT Training programs:

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

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

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

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

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

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

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

34 **923-1.05 OJT Liaison:**

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

1 **923-2 Online Resources:**

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

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

6 **923-3 Requirements:**

7 **923-3.01 Documentation:**

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

10 **(A) OJT Commitment/Schedule:**

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

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

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

23 **(B) OJT Enrollment and Progression:**

24 **(1) OJT Enrollment:**

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

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

31 To receive OJT credit, apprentice’s current apprentice certificate or proof of registration from a union or  
32 approved apprenticeship program shall be uploaded into LCPTracker by the contractor within five business  
33 days after the apprentice’s start date, in addition to completing the OJT enrollment information in the  
34 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

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

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

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

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

12 **923-3.03 Banking-Carryover Hours:**

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

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

22 **923-3.04 OJT Project Completion and Banked Hours Request:**

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

25 **923-4 Method of Measurement:**

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

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

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

32 **923-5 [Reserved]**

33

1 **923-6 Monitoring and Compliance Mechanisms:**

2 **(A) Monthly Reporting**

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

5 **(B) Monitoring**

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

8 **(C) Site Visits:**

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

18 **(D) Compliance Determination:**

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

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

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

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

34 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

1  
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**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

1

1 **EXHIBIT 9**

2 **FORMS OF PERFORMANCE AND PAYMENT BONDS**

3

Exhibit 9-1	Form of O&M Performance Bond <sup>1</sup>
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

4 <sup>1</sup> If the bond is to secure the performance or payment obligations of the Lead O&M Firm rather than  
5 Developer, then:

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

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

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

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

19

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 Obligee for a contract for performance and completion of the Bonded Obligations,  
8 through a procurement process approved by the Obligee, arrange for a contract to be prepared for  
9 execution by the Obligee and the contractor selected with the Obligee'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 Obligee 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 Obligee resulting from the Principal's default, but not to exceed the Bonded Sum; or

14 d. deliver to Obligee 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 Obligee 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 Obligee to Surety demanding that Surety perform its obligations under  
22 this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. 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 Obligee shall be entitled to enforce  
25 any remedy available to the Obligee 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 Obligee 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 Obligee to Surety shall  
29 not be greater than those of the Obligee 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.]<sup>1</sup>[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.]<sup>2</sup>

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: \_\_\_\_\_  
\_\_\_\_\_

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

<sup>2</sup> 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

1 **EXHIBIT 9-2**

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

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

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

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

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

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

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

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

21 Surety shall not be liable under the O&M Performance Bond to Primary Obligee, Ultimate Obligee, or  
22 either of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to  
23 Principal (or in the case Surety arranges for performance of the O&M Work, to Surety) in accordance with  
24 the terms of the Agreement as to payments and shall perform all other obligations to be performed under  
25 the Agreement in all material respects at the time and in the manner therein set forth such that no  
26 material default by Primary Obligee shall have occurred and be continuing under the Agreement.

27 The aggregate liability of Surety under the O&M Performance Bond to Primary Obligee and Ultimate  
28 Obligee is limited to the penal sum of the O&M Performance Bond. Ultimate Obligee's rights hereunder  
29 are subject to the same defenses, except defenses available under bankruptcy law, that Principal and/or  
30 Surety have against Primary Obligee, provided that the defense of breach or default by Primary Obligee  
31 under the Agreement shall be available against Ultimate Obligee only if Ultimate Obligee has received  
32 notice and 60 days prior opportunity to cure such breach or default, or such longer period to cure as may  
33 be reasonable to diligently effect cure. The total liability of Surety shall in no event exceed the amount  
34 recoverable from Principal by Primary Obligee under the Agreement.

35 The rights of Primary Obligee under the O&M Performance Bond are subordinate in all respects to  
36 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 \_\_\_\_\_



1  
2  
3

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Seal)

4  
5

[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]

SURETY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6

1 **EXHIBIT 9-4**

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

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

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

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

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

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

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

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

21 Surety shall not be liable under the O&M Payment Bond to Primary Obligee, Ultimate Obligee, or either  
22 of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to Principal  
23 (or in the case Surety arranges for performance of the O&M Work, to Surety) in accordance with the terms  
24 of the Agreement as to payments and shall perform all other obligations to be performed under the  
25 Agreement in all material respects at the time and in the manner therein set forth such that no material  
26 default by Primary Obligee shall have occurred and be continuing under the Agreement.

27 The aggregate liability of Surety under this O&M Payment Bond to Primary Obligee and Ultimate Obligee  
28 is limited to the penal sum of the O&M Payment Bond. Ultimate Obligee's rights hereunder are subject to  
29 the same defenses, except defenses available under bankruptcy law, that Principal and/or Surety have  
30 against Primary Obligee, provided that the defense of breach or default by Primary Obligee under the  
31 Agreement shall be available against Ultimate Obligee only if Ultimate Obligee has received notice and 60  
32 days prior opportunity to cure such breach or default, or such longer period to cure as may be reasonable  
33 to diligently effect cure. The total liability of Surety shall in no event exceed the amount recoverable from  
34 Principal by Primary Obligee under the Agreement.

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

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  
8 By: \_\_\_\_\_  
9 Its: \_\_\_\_\_  
10 (Seal)

11 Surety: \_\_\_\_\_

12  
13 By: \_\_\_\_\_  
14 Its: \_\_\_\_\_  
15 (Seal)

1  
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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

1 remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has  
2 destroyed the Guarantor’s rights of subrogation and reimbursement against Developer by the operation  
3 of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to,  
4 notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of  
5 any of the obligations of Developer under any of the Contract Documents, or of default in the payment or  
6 performance of any such obligations, enforcement of any right or remedy with respect thereto or notice  
7 of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which  
8 directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security  
9 given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship  
10 defenses under applicable law.

11 **6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed  
12 Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may  
13 now have or may hereafter acquire against Developer that arises from the performance of Guarantor  
14 hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement,  
15 exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT  
16 against Developer, or any other security or collateral that ADOT now has or hereafter acquires, whether  
17 or not such claim, right or remedy arises in equity, under contract, by statute, under common law or  
18 otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint  
19 venture members of Developer to Guarantor is subordinated to all of the Guaranteed Obligations.  
20 Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation,  
21 no payments with respect to any such indebtedness shall be made by Developer or any shareholders,  
22 partners, members, joint venture members of Developer to Guarantor without the prior written consent  
23 of ADOT. Any payment by Developer or any shareholders, partners, members, joint venture members of  
24 Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor  
25 as trustee for ADOT.

26 **7. Waivers by Guarantor if Real Property Security.** If the Guaranteed Obligations are  
27 or become secured by real property or an estate for years, Guarantor unconditionally and irrevocably  
28 waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured  
29 by real property. This means, among other things:

30 a. ADOT may collect from Guarantor without first foreclosing on any real or  
31 personal property collateral pledged by Developer; and

32 b. If ADOT forecloses on any real property collateral pledged by Developer:

33 (1) The amount of the Guaranteed Obligation may be reduced only  
34 by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more  
35 than the sale price; and

36 (2) ADOT may collect from Guarantor even if ADOT, by foreclosing  
37 on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

38 **8. Cumulative Rights.** All rights, powers and remedies of ADOT hereunder will be in  
39 addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in  
40 equity or otherwise.

41 **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 17<sup>th</sup> 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

1 If to Guarantor: Kiewit Infrastructure Group Inc.  
2 1550 Mike Fahey Street  
3 Omaha, NE 68102  
4 Attention: Tobin Schropp  
5 Telephone : (402) 342-2052  
6 Email: [toby.schropp@kiewit.com](mailto:toby.schropp@kiewit.com)

7 Either Guarantor or ADOT may from time to time change its address for the purpose of  
8 notices by a similar notice specifying a new address, but no such change is effective until it is actually  
9 received by the party sought to be charged with its contents.

10 Notices shall be deemed received when actually received in the office of the addressee  
11 (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the  
12 U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email  
13 communication shall be deemed received when actual receipt at the email address of the addressee is  
14 confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Mountain Standard  
15 Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day  
16 following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page  
17 of the fax must have been received before 4:00 p.m.).

18 **14. Captions.** The captions of the various Sections of this Guaranty have been inserted  
19 only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of  
20 this Guaranty.

21 **15. Assignability.** This Guaranty is binding upon and inures to the benefit of the  
22 successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior  
23 written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any  
24 assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its  
25 obligations and liabilities under this Guaranty.

26 **16. Construction of Agreement.** Ambiguities or uncertainties in the wording of this  
27 Guaranty will not be construed for or against any party, but will be construed in the manner that most  
28 accurately reflects the parties' intent as of the date hereof.

29 **17. No Waiver.** Any forbearance or failure to exercise, and any delay by ADOT in  
30 exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be  
31 construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or  
32 remedy.

33 **18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.**

34 a. The obligations of Guarantor under this Guaranty will not be reduced, limited,  
35 impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary,  
36 involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of  
37 Developer or by any defense which Developer may have by reason of the order, decree or decision of any  
38 court or administrative body resulting from any such proceeding. ADOT is not obligated to file any claim  
39 relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or  
40 similar proceeding, and the failure of ADOT so to file will not affect Guarantor's obligations under this  
41 Guaranty.



1  
2 above.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written

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 infeasible 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

1 any of the obligations of Developer under any of the Contract Documents, or of default in the payment or  
2 performance of any such obligations, enforcement of any right or remedy with respect thereto or notice  
3 of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which  
4 directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security  
5 given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship  
6 defenses under applicable law.

7           **6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed  
8 Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may  
9 now have or may hereafter acquire against Developer that arises from the performance of Guarantor  
10 hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement,  
11 exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT  
12 against Developer, or any other security or collateral that ADOT now has or hereafter acquires, whether  
13 or not such claim, right or remedy arises in equity, under contract, by statute, under common law or  
14 otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint  
15 venture members of Developer to Guarantor is subordinated to all of the Guaranteed Obligations.  
16 Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation,  
17 no payments with respect to any such indebtedness shall be made by Developer or any shareholders,  
18 partners, members, joint venture members of Developer to Guarantor without the prior written consent  
19 of ADOT. Any payment by Developer or any shareholders, partners, members, joint venture members of  
20 Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor  
21 as trustee for ADOT.

22           **7. Waivers by Guarantor if Real Property Security.** If the Guaranteed Obligations  
23 are or become secured by real property or an estate for years, Guarantor unconditionally and irrevocably  
24 waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured  
25 by real property. This means, among other things:

26                   a. ADOT may collect from Guarantor without first foreclosing on any real or  
27 personal property collateral pledged by Developer; and

28                   b. If ADOT forecloses on any real property collateral pledged by Developer:

29                               (1) The amount of the Guaranteed Obligation may be reduced only  
30 by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more  
31 than the sale price; and

32                               (2) ADOT may collect from Guarantor even if ADOT, by foreclosing  
33 on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

34           **8. Cumulative Rights.** All rights, powers and remedies of ADOT hereunder will be in  
35 addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in  
36 equity or otherwise.

37           **9. Representations and Warranties.** Guarantor represents and warrants that:

38                   a. it is a corporation duly organized, validly existing, and in good standing  
39 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 17<sup>th</sup> 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

1 If to Guarantor: Kiewit Infrastructure Group Inc.  
2 1550 Mike Fahey Street  
3 Omaha, NE 68102  
4 Attention: David J. Miles  
5 Telephone : \_\_\_\_\_  
6 Email: \_\_\_\_\_  
7 Facsimile: \_\_\_\_\_

8 Either Guarantor or ADOT may from time to time change its address for the purpose of  
9 notices by a similar notice specifying a new address, but no such change is effective until it is actually  
10 received by the party sought to be charged with its contents.

11 Notices shall be deemed received when actually received in the office of the addressee  
12 (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the  
13 U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email  
14 communication shall be deemed received when actual receipt at the email address of the addressee is  
15 confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Mountain Standard  
16 Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day  
17 following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page  
18 of the fax must have been received before 4:00 p.m.).

19 **14. Captions.** The captions of the various Sections of this Guaranty have been  
20 inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the  
21 provisions of this Guaranty.

22 **15. Assignability.** This Guaranty is binding upon and inures to the benefit of the  
23 successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior  
24 written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any  
25 assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its  
26 obligations and liabilities under this Guaranty.

27 **16. Construction of Agreement.** Ambiguities or uncertainties in the wording of this  
28 Guaranty will not be construed for or against any party, but will be construed in the manner that most  
29 accurately reflects the parties' intent as of the date hereof.

30 **17. No Waiver.** Any forbearance or failure to exercise, and any delay by ADOT in  
31 exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be  
32 construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or  
33 remedy.

34 **18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.**

35 a. The obligations of Guarantor under this Guaranty will not be reduced,  
36 limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or  
37 involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or  
38 arrangement of Developer or by any defense which Developer may have by reason of the order, decree  
39 or decision of any court or administrative body resulting from any such proceeding. ADOT is not obligated  
40 to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy,



1  
2 above.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written

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.

1 (e) The policy shall include coverage for (i) foundations, including pilings, but  
2 excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery  
3 accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent  
4 defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty  
5 work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, using  
6 form LEG 3 or equivalent, (v) physical damage resulting from design error or omission but excluding the  
7 cost of making good such design error or omission, (vi) physical damage resulting from mechanical  
8 breakdown or electrical apparatus breakdown, (vii) demolition and debris removal coverage, (viii) the  
9 increased replacement cost due to any change in applicable codes or other Laws, (ix) expense to reduce  
10 loss, (x) building ordinance compliance, with the building ordinance exclusion deleted, and (xi) "soft cost  
11 expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees  
12 and costs associated with such damage or loss or replacement thereof).

13 (f) The policy shall provide a deductible or self-insured retention not exceeding  
14 \$1,000,000 per occurrence; provided however, for the perils of windstorm, flood and earthquake, the  
15 deductible may be expressed as a percentage of the policy limit not to exceed 5%.

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

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

22 If Non-Routine Maintenance Work will entail construction or reconstruction that either has an  
23 estimated cost at or above \$250,000 or presents, in ADOT's opinion, material risk of harm or loss to  
24 property and improvements that may be affected by the Work, then Developer shall procure and keep in  
25 force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

26 (a) The policy shall provide coverage for "all risks" of direct physical loss or damage  
27 to the portions or elements of the Project under construction or reconstruction, including the perils of  
28 earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, subsidence, and terrorism;  
29 shall contain extensions of coverage that are typical for the nature of the construction or reconstruction  
30 work; and shall contain only those exclusions that are typical for the nature of the construction or  
31 reconstruction work (including the sublimits noted below). The policy may exclude coverage of physical  
32 loss or damage caused by third parties that are not Developer-Related Entities.

33 (b) The policy shall cover all (i) property, roads, buildings, bridge structures, other  
34 structures, fixtures, materials, supplies, foundations, pilings that are in the course of construction or  
35 reconstruction, including all existing property and improvements that are within the construction or  
36 reconstruction work zone and are or will be affected by the Work, and (ii) machinery and equipment that  
37 are part of or in the course of the construction.

38 (c) The policy shall provide coverage per occurrence sufficient to reinstate the  
39 insured property for a limit not less than the probable maximum loss, without risk of co-insurance;  
40 provided, however, that the policy may also include the sublimits set forth in clause (e) below and a  
41 sublimit for existing property improvements of not less than \$5,000,000 per occurrence. Developer and  
42 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.

1 (e) ADOT and the Indemnified Parties shall be named as additional insureds, using  
2 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  
3 act or omission of a named insured shall vitiate coverage of the other named insureds and the additional  
4 insureds.

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

7 (g) The policy shall provide that the insurance afforded the Developer shall be  
8 primary and that any insurance carried by ADOT, its agents, officials, employees or the State of Arizona  
9 shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E), via ISO form CG 20 01  
10 04 13 or its equivalent.

11 (h) The policy shall provide a deductible or self-insured retention not to exceed  
12 \$1,000,000 per occurrence.

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

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

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

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

25 (b) The policy shall insure against the legal liability of the insureds named in Section  
26 4(d) of this Exhibit 11, relating to claims by third parties for accidental death, bodily injury or illness,  
27 property damage, personal injury and advertising injury, and shall include the following specific coverages:

28 (i) Contractual liability;

29 (ii) Premises/operations;

30 (iii) Independent contractors;

31 (iv) Products and completed operations coverage for claims made  
32 within an extended reporting period of eight years after substantial completion of any  
33 work of installation, construction, reconstruction, replacement or other capital  
34 improvement performed during the policy period (with acknowledgement that the  
35 Project constitutes the premises and not a product), provided that Developer may satisfy  
36 the products and completed operations coverage by annually renewing its corporate  
37 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.

1 (iv) Each such professional liability policy shall be kept in force until  
2 the earlier of (A) eight years after the insured's Professional Services in connection with  
3 the installation, construction, reconstruction, replacement or other capital improvement  
4 have concluded, or (B) ten years after issuance of NTP 2.

5 (v) The date of inception of coverage in all cases must precede the  
6 effective date of the applicable Subcontract.

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

10 **8. Workers' Compensation Insurance**

11 At all times when Work is being performed by any employee of Developer or any Subcontractor,  
12 Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers'  
13 compensation insurance for the employee in conformance with applicable Law. Developer and/or the  
14 Subcontractors, whichever is the applicable employer, shall be the named insured on these policies. The  
15 workers' compensation insurance policy shall contain the following endorsements:

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

18 (b) A voluntary compensation endorsement;

19 (c) An alternative employer endorsement;

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

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

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

26 **9. Employer's Liability Insurance**

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

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

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

1 (c) The policy shall have a limit of not less than \$25,000,000 each accident,  
2 \$25,000,000 disease – employee and \$25,000,000 disease – policy during the D&C Period, and not less  
3 than \$10,000,000 each accident, \$10,000,000 disease – employee and \$10,000,000 disease – policy during  
4 the O&M Period, in each case with limits reinstating annually.

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

7 **10. Subcontractors' Insurance**

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

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

22 (i) Each policy shall cover accidental death, bodily injury and  
23 property damage liability arising from the ownership, maintenance or use of all owned,  
24 non-owned and hired vehicles connected with performance of the Work. The policy shall  
25 contain extensions of coverage that are typical for a project of the nature of the Project,  
26 and shall contain only those exclusions that are typical for a project of the nature of the  
27 Project.

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

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

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

34 (c) At all times when Work is being performed by any employee of a Subcontractor,  
35 Developer shall cause Subcontractor to procure and keep in force, or cause to be procured and kept in  
36 force, a policy of workers' compensation insurance for the employee in conformance with applicable Law.  
37 Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy  
38 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.

1  
2  
3

**EXHIBIT 12**

**CONTRACT MODIFICATION REQUEST FORM**

[See attached]



**ALTERNATIVE DELIVERY  
CONTRACT MODIFICATION REQUEST**

CM @ R <input type="checkbox"/> Design-Build-Operate-Maintain <input type="checkbox"/>
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Request # \_\_\_\_\_

Page \_\_\_\_ of \_\_\_\_

<b>Contractor:</b>	<b>Project No.:</b>	<b>TRACS No.:</b>	<b>Date:</b>
<b>Project Manager:</b>	<b>Design Firm:</b>	<b>Initiator:</b>	

**Request Change (What):**

*Rough order of magnitude*     
 FA     
 NFA  
 \$ \_\_\_\_\_     
 \$ \_\_\_\_\_

**Reason/Justification (Why):**

<b>General Supplemental Agreement Types:</b>  <i>If Other, please explain:</i>	<b>List Technical Managers:</b>
--	---------------------------------

**ADOT Recommendation:**

<b>Concept Recommended</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	<b>Date:</b>	
<b>Attachment</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<input type="checkbox"/>	<i>Senior/Resident Engineer</i>	
<b>Concept Recommended</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	<b>Date:</b>	
<b>Attachment</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<input type="checkbox"/>	<i>Construction Manager</i>	
<b>Concept Recommended</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	_____	<b>Date:</b>	
<b>Attachment</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	<input type="checkbox"/>	<i>Sr. Deputy State Engineer, Operations State Engineer's Office</i>	

<b>Concept Recommended</b> Yes <input type="checkbox"/> No <input type="checkbox"/> <b>Eligible for Federal Reimbursement</b> Yes <input type="checkbox"/> No <input type="checkbox"/>
--

_____ Date: _____
FHWA

***Any decision to approve the change to contract terms will be within the sole discretion of ADOT and is dependent on the documentation that is submitted into the Supplemental Agreement Tracking System (SATS).***

1 **EXHIBIT 13**

2 **COMPENSATION AMOUNT SPECIFICATIONS**

3 This Exhibit 13 sets forth the methods for calculating the Compensation Amounts owing from ADOT to  
4 Developer under the Agreement.

5 **1. EXTRA WORK COSTS**

6 At the sole discretion of ADOT, Extra Work Costs shall be determined on either a negotiated lump  
7 sum or force account basis, as described in this Section 1.

8 **1.1 Negotiated Lump Sum**

9 **1.1.1** When Extra Work Costs are determined on a lump sum basis, such Extra Work  
10 Costs shall be negotiated based on:

- 11 (a) Estimated costs of labor;
- 12 (b) Estimated costs of material;
- 13 (c) Estimated costs of equipment;
- 14 (d) Actual fees and charges (e.g., permit fees, plan check fees, review fees and  
15 charges) of Governmental Entities in connection with Governmental Approvals required to perform the  
16 Extra Work;
- 17 (e) Extra insurance costs and extra costs of bonds and letters of credit;
- 18 (f) Other estimated direct costs; and
- 19 (g) Estimated risk associated with the lump sum pricing.

20 **1.1.2** Except as set forth in Section 1.1.3 below, negotiated lump sum Extra Work Costs  
21 shall also include a 15% markup for Developer indirect costs, field office overhead, and profit. Where the  
22 Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the  
23 Subcontractor's indirect costs, field office overhead, and profit. The negotiated lump sum shall not include  
24 any home office overhead of Developer or Subcontractors.

25 **1.1.3** Where Extra Work is performed by Subcontractors, Developer may only include  
26 a supplemental markup of five percent of the Subcontractor's costs as Extra Work Costs. Developer's five  
27 percent markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the  
28 Extra Work. ADOT will apply such 5% markup to the Subcontractor's Extra Work Costs less the  
29 Subcontractor's 15% markup for overhead and profit.

30 **1.1.4** The price of a negotiated lump sum for Extra Work Costs shall be based on the  
31 original allocations of pricing to comparable activities, materials, and equipment, as indicated in Exhibit  
32 2-4 (Pricing Tables) and other sources of Developer's Proposal pricing information (such as the Detailed

1 Pricing Documents or DPDs), whenever possible. Price negotiations for lump sum Extra Work Costs shall  
2 be on an Open Book Basis.

3 **1.1.5** In pricing any negotiated lump sum for Extra Work Costs, Developer shall include  
4 sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption from  
5 such sales or use taxes under applicable Law.

6 **1.2 Force Account**

7 When Extra Work Costs are determined on a force account basis, ADOT will pay Developer  
8 for the direct costs of labor, materials and equipment used, and fees and charges of Governmental Entities  
9 in connection with Governmental Approvals required, to perform the Extra Work, plus markup for labor  
10 burden costs, indirect costs, overhead and profit, as set forth in and as limited by this Section 1.2.

11 **1.2.1 Labor**

12 **1.2.1.1** Extra Work Costs for Force Account Work shall include the cost of labor  
13 for workers used in the actual and direct performance of the Force Account Work and labor costs directly  
14 attributable to pursuing and obtaining Governmental Approvals, if any, required to perform the Force  
15 Account Work. Workers include foremen and classifications below foremen, in each case actually engaged  
16 in the performance of the Extra Work or in direct charge of specific operations included in the Force  
17 Account Work. Costs, salaries, or any expenses associated with Project superintendence personnel or on-  
18 Site clerical staff, except as provided in Section 1.2.5 below, are not allowable labor costs under this  
19 Section 1.2.1. In no case shall an officer or director of Developer, an Affiliate or any Subcontractor, nor  
20 those persons who own more than one percent of Developer, an Affiliate or any Subcontractor, be  
21 considered Project superintendence personnel, workers or foremen under this Section 1.2.1.

22 **1.2.1.2** For workers who are allowable to include in labor costs in accordance  
23 with Section 1.2.1 above, the Force Account Work Cost of labor, whether the employer is Developer, an  
24 Affiliate, or a Subcontractor, will be the sum of the following.

25 **(a) Regular Pay**

26 Regular pay (RP), which will be determined as follows:

27 
$$RP = (WR + FR) \times 1.5$$

28 Where:

29 WR = hourly wage as determined by payroll records;

30 FR = fringe benefit rate as determined by payroll records; and

31 1.5 = the labor multiplier providing for a 35 percent labor burden rate  
32 and 15 percent markup for indirect costs, overhead and profit. ADOT views the burden for labor as the  
33 total of all indirect labor costs necessary for a worker to perform the work that the worker is hired to  
34 perform. Therefore, such burden includes Social Security and Medicare Tax, Worker's Compensation (that  
35 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 
$$OT = [(WR \times 1.5) + FR] \times 1.5$$

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

1 rate (HERR) in such circumstances will be determined in accordance with the following formula (which  
2 does not include operators):

3 
$$\text{HERR} = (F \times \{[1.15 \times R] / 176\}) + \text{HOC}$$

4 Where:

5 F = ADOT adjustment factor to R as follows: 0.933;

6 R = the then current monthly rate as published in the then current RRBB; and

7 HOC = hourly operation cost;

8 provided, however, that the following provisions (a) through (k) shall apply.

9 (a) Developer shall not charge for those pieces of equipment with a rental rate of  
10 \$5.00 per hour or less as listed in the RRBB.

11 (b) An overhead and profit adjustment of 15 percent of the rates provided in the  
12 RRBB is included in the above formula.

13 (c) If ADOT concurs that it is necessary to use equipment owned by Developer, an  
14 Affiliate or a Subcontractor that is not listed in the RRBB, ADOT will establish a suitable rental rate for that  
15 equipment. Developer may furnish any cost data which might assist ADOT in the establishment of the  
16 rental rate. If the rental rate established by ADOT is \$5.00 per hour or less, the provisions of  
17 Section 1.2.3.1(a) above shall apply.

18 (d) The hourly operating cost (HOC) as provided above shall include the major costs  
19 of equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable  
20 parts, up to one necessary attachment per piece of equipment, maintenance, depreciation, storage and  
21 insurance.

22 (e) When multiple attachments are necessary or included for a piece of equipment,  
23 only the attachment having the highest rate will be included for the purpose of calculating Force Account  
24 Work costs, provided that the attachment has been approved by ADOT as being necessary to the Force  
25 Account Work.

26 (f) The cost of labor for operators of rented equipment shall be determined as  
27 provided in Section 1.2.1 above ("Labor").

28 (g) For costs of equipment to be eligible for inclusion in Force Account Work costs,  
29 the equipment must be in good working condition and suitable for the purpose for which the equipment  
30 is to be used. Developer shall handle and use the equipment to provide normal output or normal  
31 production. All equipment is subject to approval by ADOT. Equipment that is not in good working order  
32 or that is not of proper size for efficient performance of the Force Account Work may be rejected by ADOT.  
33 Rental time shall apply to eligible equipment used for Force Account Work to establish or calculate the  
34 Extra Work Costs related thereto or resulting therefrom until such time as ADOT directs that the use of  
35 such equipment be discontinued or until completion of the relevant work.

1 (h) Unless otherwise specified, manufacturer's ratings and manufacturer approved  
2 modifications shall be used to classify equipment for the determination of applicable rental rates.  
3 Equipment which has no direct power unit must be powered by a unit of at least the minimum rating  
4 recommended by the manufacturer.

5 (i) Extra Work Costs shall not include the costs of small tools. Individual pieces of  
6 equipment or tools not listed in the RRBB and having a replacement value of \$400 or less, regardless of  
7 whether consumed by use, shall be considered to be small tools, ineligible to be included in Force Account  
8 Work costs.

9 (j) Rental time will not be allowed while equipment is inoperative due to  
10 breakdowns.

11 (k) For each piece of equipment to be used to perform Force Account Work, whether  
12 owned by Developer, an Affiliate or a Subcontractor (and, therefore, covered by this Section 1.2.3.1) or  
13 rented (and covered by Section 1.2.3.3 below), equipment use hours shall be recorded and charged to the  
14 nearest one-half hour and Developer shall provide ADOT with the following additional information: the  
15 manufacturer's name; equipment type; year of manufacture; model number; type of fuel used;  
16 horsepower rating; attachments required, together with their size or capacity; and any other information  
17 necessary to determine the Extra Work Costs.

### 18 **1.2.3.2 Stand-By Time**

19 Force Account Work costs for equipment owned by Developer, an Affiliate or a  
20 Subcontractor that is in operational condition and is standing by with ADOT's approval for participation in  
21 the Force Account Work shall be determined in accordance with the following stand-by rate (SBR) formula:

$$22 \text{ SBR} = F \times (R / 176) \times 0.5$$

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

24 Stand-by hours will be limited to not more than eight hours in a 24-hour day or  
25 40 hours in a week. No hours will be allowed or included and Force Account Work costs shall not be paid  
26 for equipment that is inoperable. No hours shall be allowed or included and Extra Work Costs shall not be  
27 paid for equipment that is not operating because the Force Account Work has been suspended by  
28 Developer. Developer shall request ADOT's approval for stand-by time no less than 48 hours prior to  
29 commencement of such stand-by time.

### 30 **1.2.3.3 Outside Rented Equipment**

31 In cases where a piece of equipment to be used for Force Account Work is rented  
32 or leased by Developer from a third party (not an Affiliate or Subcontractor) exclusively for such Force  
33 Account Work, the Extra Work Costs shall be determined in accordance with the following formula:

$$34 \text{ (Rental Invoice} \times 1.10) + \text{HOC}$$

35 The above formula includes a 10 percent mark-up of the rental invoice for all  
36 overhead and incidental costs of furnishing the equipment.

1 **1.2.3.4 Moving of Equipment**

2 (a) The rental time (including owned equipment) to be included in calculating Extra  
3 Work Costs for needed equipment shall be the time the equipment is in operation on the Force Account  
4 Work being performed, and, in addition, shall include no more than the time required to move the  
5 equipment to the location of the Force Account Work and return the equipment to the original location  
6 or to another location requiring no more time than that required to return the equipment to its original  
7 location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site  
8 of the Force Account Work on other than the Force Account Work either before or after the Force Account  
9 Work. Loading and transporting costs will be included in Force Account Work costs, in lieu of moving time,  
10 when the equipment is moved by means other than its own power. However, moving time back to the  
11 original location or loading and transporting costs will not be included in the calculation of Force Account  
12 Work costs if the equipment is used at the site of the Force Account Work on other than the Force Account  
13 Work.

14 (b) For use of equipment moved from one location on the Site to another location  
15 on the Site exclusively for the Force Account Work, the cost of transferring and/or moving the equipment  
16 to the site of the Force Account Work and returning it the original location may be included in the Extra  
17 Work Costs as specified in this Section 1.2.3.4.

18 (c) For use of equipment moved from a location not on the Site to a location on the  
19 Site, the original location of the equipment to be hauled to the Site shall be subject to ADOT’s prior  
20 approval for the purpose of determining allowable Force Account Work costs.

21 (d) Where the move of the equipment is made by common carrier, the Force Account  
22 Work costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount  
23 to cover profit, overhead and indirect costs. If Developer hauls the equipment with its own forces, costs  
24 will be included in the Force Account Work costs for hauling the unit plus the driver’s wages and the cost  
25 of loading and unloading the equipment.

26 (e) For the purposes of determining Extra Work costs, the maximum rental period  
27 for the day that the equipment is moved to the location on the Site where the Force Account Work is  
28 performed and the day that the use of the equipment is discontinued for Force Account Work shall be the  
29 actual time that the equipment is in operation on the Force Account Work.

30 **1.2.4 Fees and Charges of Governmental Entities**

31 Extra Work Costs for Force Account Work shall include fees and charges paid to  
32 Governmental Entities for Governmental Approvals required to perform the Force Account Work.  
33 Developer shall not markup, and ADOT will not pay any markup on, such fees and charges.

34 **1.2.5 Superintendence**

35 Developer shall not include any part of the salary or expense of anyone connected with  
36 Developer’s forces above the grade of foreman and having general supervision of the Force Account Work  
37 in the Extra Work Costs covering labor items as specified above (see Section 1.2.1), except when  
38 Developer’s organization, including its Equity Members and Lead Contractor, is entirely occupied with  
39 Force Account Work, in which case the salaries of the superintendent may be included in the Extra Work

1 Costs for labor items specified above when the nature of the Force Account Work is such that their services  
2 in the nature of superintendent are required.

3 **1.2.6 Compensation**

4 Developer shall accept ADOT's payment of the Extra Work Costs as set forth above as  
5 payment in full for all Extra Work done on a force account basis. In addition, ADOT will pay Developer an  
6 amount equal to 65 percent of the Force Account Work costs compensation as calculated above times the  
7 applicable sales tax rate to cover sales tax. Accordingly, the amount for sales tax shall be calculated as  
8 follows:

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

10 ADOT shall not pay any other or additional amount for or on account of sales tax with  
11 respect to the Force Account Work or the Extra Work Costs related thereto or resulting therefrom.

12 **1.2.7 Statements**

13 **1.2.7.1** Receipted invoices for all materials used and transportation charges  
14 must accompany and support all Developer's statements submitted in support of Force Account Work  
15 costs. If materials used on the Force Account Work are not specifically purchased for such Force Account  
16 Work but are taken from Developer's stock, then, instead of invoices, the statements must contain or be  
17 accompanied by an affidavit of Developer certifying that such materials were taken from stock, that the  
18 quantity claimed was actually used, and that the price and transportation claimed represent the actual  
19 cost to Developer. For transportation costs of materials taken from Developer's stock, Developer shall  
20 include certified payroll records. All such costs for materials from Developer's stock shall be subject to  
21 ADOT's approval.

22 **1.2.7.2** Developer shall submit for approval, and shall ensure that  
23 Subcontractors submit for approval, an equipment list for all equipment to be used during the  
24 performance of the Force Account Work no less than 72 hours prior to the start of any Force Account  
25 Work.

26 **1.2.7.3** Developer shall submit payrolls broken down by day and other cost data  
27 documents for all Force Account Work within 30 days after completion of such Force Account Work. ADOT  
28 will not make any payment prior to that time. All invoiced work must have documentation for payment.  
29 ADOT will not make any payment for Extra Work performed on a force account basis until Developer has  
30 furnished duplicate itemized statements of the Extra Work Costs of such Force Account Work detailing  
31 the following:

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

34 (b) Designation, dates, daily hours, total hours, rental rate (as calculated in  
35 accordance with Section 1.2.3.1 for owned equipment, and Section 1.2.3.3 for outside rented equipment),  
36 and amount for each unit of equipment;

37 (c) Quantities of materials, prices, and amounts; and

1 (d) Transportation charges on materials, FOB the jobsite.

2 **1.2.8 Force Account Work by Affiliates**

3 **1.2.8.1** The direct costs of an Affiliate’s labor, materials, and equipment used  
4 in performing Force Account Work shall be limited in accordance with Section 11.7 of the Agreement.

5 **1.2.8.2** If an employee or worker of an Affiliate engages in work or tasks that  
6 duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of  
7 the Affiliate’s labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra  
8 Work Costs.

9 **1.2.9 Force Account Work by Subcontractors**

10 When Force Account Work is performed by Subcontractors, Developer is permitted, and  
11 Extra Work Costs may include, a supplemental markup of five percent of the Subcontractor’s costs. This  
12 markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the Force  
13 Account Work. ADOT will apply such 5% markup to the Subcontractor’s Force Account Work costs less the  
14 Subcontractor’s allowable markups for overhead and profit.

15 **1.2.10 Bonds**

16 If, in connection with the Relief Event resulting in Extra Work, ADOT requires an increase  
17 in the amount of a Project Bond, then ADOT will pay an additional amount equal to the lesser of (a) the  
18 incremental increase in the cost of such Project Bond(s) attributable thereto, or (b) .05 percent of the  
19 total amount otherwise calculated as the Force Account Work costs.

20 **1.2.11 Non-Allowable Charges**

21 If Developer performs Force Account Work, then ADOT will only compensate Developer  
22 for what is stated in the above provisions of this Section 1.2 (“Force Account”). However, in no case will  
23 Developer be reimbursed or paid for, and Extra Work Costs shall not include, the following items:

24 (a) Profit in excess of that provided in this Section 1.2;

25 (b) Loss of profit or lost opportunity to earn profit;

26 (c) Home office overhead;

27 (d) Consequential damages, including loss of bonding capacity, loss of bidding  
28 opportunities, or insolvency;

29 (e) Indirect costs or expenses of any nature;

30 (f) Attorneys’ fees, claims preparation expenses, or costs of litigation; and

31 (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

1  
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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

1  
2  
3

**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
<b>Reporting &amp; Complying Activities</b>						
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
<b>Contract Activities</b>						
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
<b>Project Management Activities</b>						

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
<b>Environmental Activities</b>						
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
<b>Utilities Activities</b>						
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
<b>Design and Construction Activities</b>						
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
<b>PLANNING AND REPORTING</b>						
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
<b>TP ATTACHMENT</b>						
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	<b>Reference 6 – Ponding, Flooding, Drainage and Slopes</b>	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the Ponding, Flooding, Drainage and Slopes section (Reference 6) of <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	<b>Reference 7 – ITS and Flex Lanes Elements</b>	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a Performance Requirement or the Target for a Measurement Record as identified under the 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

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**EXHIBIT 15**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

**ADOT Authorized Representative(s)**

**All Matters:**

- Annette Riley
- Floyd Roehrich, Jr

**Design:**

- Annette Riley

**Construction:**

- Andrew Roth

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**Developer’s Authorized Representative(s)**

**All Matters:**

- Allen Mills, Project Manager

**Designee:**

- Nicholas Wiatrowski, Area Manager