

EXHIBIT 1

ABBREVIATIONS AND DEFINED TERMS

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

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

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

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|---------------|--|
| HVAC | heatingHeating , ventilation and air conditioning |
| I-10 | Interstate 10 |
| IA | Independent Assurance |
| ID | Identification |
| IQF | Independent Quality Firm |
| IRI | international roughness index |
| ISO | International Standards Organization or International Organization for Standardization |
| ITP | Instructions to Proposers |
| ITS | Intelligent Transportation System |
| ksi | Kips per Square Inch |
| L/DCR | Location/Design Concept Report |
| LAADCR | Landscape Architecture & Aesthetics Design Concept Report |
| LED | Light-emitting Diode |
| LiDAR | Light Detection and Ranging |
| In | Lane |
| LOS | Level of Service |
| LRFD | Load and Resistance Factor Design |
| m2 | Square Meter |
| MAG | Maricopa Association of Governments |
| MASH | Manual for Assessing Safety Hardware |
| mcd | Millicandelas |
| MDR | Materials Design Report |
| MIS | Maintenance Information System |
| MMP | Maintenance Management Plan |
| MOT | Maintenance of Traffic |
| mph | Miles per Hour |
| MQMP | Maintenance Quality Management Plan |
| MR | Maintenance Requirements |
| MS4 | Municipal Separate Storm Sewer System |
| MSE | mechanically stabilized earth |
| MSMP | Maintenance Safety Management Plan |
| MUTCD | Manual of Uniform Traffic Control Devices |
| NAD | North American Datum |
| NAVD | North American Vertical Datum |
| NB | Northbound |
| NCHRP | National Cooperative Highway Research Program |

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|---------------|--|
| NEC | National Electrical Code |
| NEMA | National Electrical Manufacturers Association |
| NEPA | National Environmental Policy Act |
| NESHAP | National Emission Standards for Hazardous Air Pollutants |
| NOI | Notice of Intent |
| NOT | Notice of Termination |
| NTP | Notice to Proceed |
| OJT | On-the-Job Training |
| OSHA | Occupational Safety and Health Administration |
| P3 | Public-Private Partnership |
| PA | Programmatic Agreement |
| PCCP | Portland cement concrete pavement |
| PCMS | portable changeable message signs |
| PDF | Portable Document Format |
| PDS | Pavement Design Summary |
| PIP | Public Involvement Plan |
| PMP | Project Management Plan |
| PPE | personal protective equipment |
| psf | Pounds per Square Foot |
| PSQMP | Professional Services Quality Management Plan |
| QA | Quality Assurance |
| QC | Quality Control |
| QMP | Quality Management Plan |
| REC | Recognized Environmental Condition |
| RFC | Release for Construction |
| RFI | Request for Information |
| RFP | Request for Proposals |
| RFQ | Request for Qualifications |
| RIDs | Reference Information Documents |
| ROD | Record of Decision |
| ROW | right-of-way |
| SB | Southbound |
| SF | Square Foot |
| SHPO | State Historic Preservation Officer |
| SMPP | South Mountain Park/Preserve |
| SPT | Standard Penetration Test |
| SPUI | Single-Point Urban Interchange |

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|---------------|--|
| SR | State Route |
| SRP | Salt River Project |
| SRVWUA | Salt River Valley Water Users Association |
| SUE | Subsurface Utility Engineering |
| SWPPP | Stormwater Pollution Prevention Plan |
| TCE | Temporary Construction Easement |
| TCP | Traffic Control Plan |
| TL | Testing Level |
| TMP | Transportation Management Plan |
| TP | Technical Provisions |
| TRACS | Transportation Accounting System |
| TWG | technical work group |
| UPRR | Union Pacific Railroad |
| UPS | Uninterruptable Power Supply |
| US | United States |
| USACE | United States Army Corps of Engineers |
| USFWS | United States Fish and Wildlife Service |
| USPAP | Uniform Standard of Professional Appraisal Practices |
| UTP | Unshielded Twisted Pair |
| VAC | Volts Alternative Current |
| VLN | virtual local area network |
| WB | westbound |
| WBS | work breakdown structure |

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2 **ACC Submittal Package** has the meaning as set forth in Section DR 436.3.2 of the
3 Technical Provisions.

4 **Acceptance Program** means the program comprised of the quality acceptance
5 (performed by the IQF) and the owner verification (performed by ADOT) meeting the
6 requirements of 23 CFR 637 Subpart B.

7 **Acquisition Packages** means the documents and information for the acquisition of
8 parcels for the Project ROW described in Section DR 470.3.6 of the Technical
9 Provisions.

10 **Adjacent Work** means any project, work, improvement or development to be planned,
11 designed or constructed that could or does impact the Project and/or is adjacent to the
12 Project. Examples of Adjacent Work include proposed subdivisions, other roads
13 constructed by Governmental Entities, site grading and drainage, and other
14 development improvement plans and Utility projects.

1 **Adjusted Baseline Asset Condition Score** means the Baseline Asset Condition Score
2 established by ADOT, as adjusted in years 10 and beyond of the Maintenance Period,
3 to account for age-related weathering and wear as further discussed in
4 Section MR 400.6 of the Technical Provisions.

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

12 **Adjustments** means Utility Adjustments.

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

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

16 **ADOT** means the Arizona Department of Transportation as constituted under the laws
17 of the State of Arizona.

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

31 **ADOT-Caused Delay** means any of the following events, to the extent they result in a
32 delay or interruption in performance of any material Developer obligation under the
33 Agreement, and provided such events are beyond Developer's control and are not due
34 to any act, omission, negligence, recklessness, willful misconduct or breach or violation
35 of contract, the requirements of the Contract Documents or Law by any Developer-
36 Related Entity, and further provided that such events (or the effects of such events)
37 could not have been avoided by the exercise of caution, due diligence or reasonable
38 efforts by Developer:

1 (a) Failure of ADOT to issue NTP 1 within five days after the anticipated
2 issuance date set forth in Section 7.1.2 of the Agreement;

3 (b) Failure of ADOT to issue NTP 2 within ten Business Days after the
4 anticipated issuance date set forth in Section 7.1.4 of the Agreement;~~(c) —ADOT—~~
5 ~~Directed Change;~~

6 (c) ADOT-Directed Change;

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

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

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

27 (ii) ADOT has completed relocation, demolition and clearance, except
28 Utility Adjustments;

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

Documents, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the Contract Documents;

(g) Suspension of Work ordered by ADOT pursuant to Section 18.1 of the Agreement, provided that:

(i) Any suspension of Work arising from Force Majeure Events, litigation, or security threat, rule, order or directive shall not be considered an ADOT-Caused Delay (although it may qualify as a Relief Event under clause (g), (p) or (q), respectively, of the definition of "Relief Event"), despite the fact that ADOT may specifically direct Developer to suspend the Work; and

(ii) Any suspension of Work arising from presence or Release of Hazardous Materials, ADOT's performance of data recovery respecting archeological, paleontological, historical or cultural resources, or ADOT's actions related to endangered or threatened species shall not be considered an ADOT-Caused Delay (although it may qualify as a Relief Event under clause (j), (k), (l) or (n), respectively, of the definition of "Relief Event"), despite the fact that ADOT may specifically direct Developer to suspend the Work;

(h) Failure of ADOT to complete testing and data recovery of cultural resources at the Known Cultural Sites (i) outside the Center Segment within 180 days after issuance of NTP 1 or (ii) inside the Center Segment by issuance of NTP 3; and

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

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

ADOT Condemnation Letter has the meaning set forth in Section DR 470.4.5 of the Technical Provisions.

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

ADOT-Directed Change means:

(a) changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work), including Discriminatory Maintenance Changes, which ADOT has directed Developer to perform as described in Section 15.1 of the Agreement; and

(b) suspensions of the Work that ADOT orders under Section 18.1 of the Agreement, for more than the permitted period of time in set forth in Section 18.1 of the Agreement.

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

ADOT's Recoverable Costs means:

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

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

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

(d) Interest on all the foregoing sums at a floating rate equal to the LIBOR in effect from time to time plus 200 basis points, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

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

[Aesthetics and Landscape Master Plan has the meaning set forth in Section DR 450.2.8 of the Technical Provisions.](#)

[Aesthetics and Landscape Plans has the meaning set forth in Section DR 450.3.3 of the Technical Provisions.](#)

Affiliate means:

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

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

(c) anyAny Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of

the shareholders, members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer under clause (b) of this definition.

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

Affiliated means having the status of an Affiliate.

~~**Aesthetics and Landscape Plans** has the meaning set forth in Section DR 450.3.3 of the Technical Provisions.~~

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

AHERA Asbestos Report has the meaning set forth in Section DR 470.4.7 of the Technical Provisions.

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

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

Amended Compliance Evaluation Report has the meaning set forth in Section CR 420.3.2.7 of the Technical Provisions.

Amended SWPPP has the meaning set forth in Section CR 420.3.2.2 of the Technical Provisions.

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

Annual Routine Maintenance Payment means the annual routine maintenance payments set forth in the Routine Maintenance Breakdown (Exhibit 2-4.3).

Application for Governmental Approvals has the meaning set forth in Section DR 420.2.6.3 of the Technical Provisions.

- 1 **Appraisal** has the meaning set forth in Section DR 470.3.5.1 of the Technical
2 Provisions.
- 3 **Appraisal Review** has the meaning set forth in Section DR 420.2.6.3 of the Technical
4 Provisions.
- 5 **Appraiser and Appraisal Reviewer** has the meaning set forth in Section
6 GP 110.08.3.22 of the Technical Provisions.
- 7 **Appraiser's Parcel File** has the meaning set forth in Section DR 470.3.5.1 of the
8 Technical Provisions.
- 9 **Approved Appraiser** means the appraiser who prepared the ADOT-approved
10 Appraisal.
- 11 **Archaeological Documentation and Reporting** has the meaning as set forth in
12 Section DR 420.3.2 of the Technical Provisions.
- 13 **Arizona 811** shall mean the field locator that performs all requirements as specified in
14 A.R.S. §§ 40-360.21 through 40-360.29 for all underground facilities.
- 15 **As-Built Drainage Report** has the meaning set forth in Section DR 445.3.3 of the
16 Technical Provisions.
- 17 **As-Built Geotechnical Engineer Report** has the meaning set forth in Section
18 DR 416.3.6 of the Technical Provisions.
- 19 **As-Built Load Rating Report** has the meaning set forth in Section CR 455.3.6 of the
20 Technical Provisions.
- 21 **As-Built Schedule** has the meaning set forth in Section GP 110.06.2.12 of the
22 Technical Provisions.
- 23 **Asset Condition Score** means the score for the condition of an Element
24 | ~~following~~[resulting from](#) an Inspection, as more particularly described in Section MR
25 400.6 of the Technical Provisions. Asset Condition Score includes the Baseline Asset
26 | Condition Score ~~established~~.
- 27 **Asset Condition Score Table** means the table for setting forth Asset Condition Scores
28 | for all Elements of all Audible Sections, as more particularly described in ~~TP~~ Section
29 | MR 400.6.1 ~~of the Technical Provisions~~.
- 30 **Asset Condition Scoring** means the process for determining Asset Condition Scores,
31 | as more particularly described in ~~TP~~ Section MR 400.6 [of the Technical Provisions](#).

Auditable Section means a segment or area of the Project having an identifiable inventory of Elements that is measured separately for maintenance compliance purposes, as further described in Section MR 400.3.1 of the Technical Provisions.

Auditable Sections Table has the meaning set forth in Section MR 400.3.1 of the Technical Provisions.

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

Barrier, End Treatment, and Crash Cushion Certifications has the meaning set forth in Section CR 440.3 of the Technical Provisions.

Base CCI means the CCI published for [NTD: ~~EN~~ENTER MONTH AND YEAR OF THE PROPOSAL DUE DATE].

Base CPI means the CPI published for [NTD: ENTER MONTH AND YEAR OF THE PROPOSAL DUE DATE].

Baseline Asset Condition Score means the sum of the adjectival numeric ratings for each Element multiplied by the weighting factor for each Auditable Section established by ADOT at time the of Final Acceptance, as described in Section 400.6.1 of the Technical Provisions.

Basic Configuration shall have the meaning set forth in Section GP 110.01.3.1 of the Technical Provisions.

Basis of Design Report has the meaning set forth in GP 100.01.2.2 of the Technical Provisions.

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

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

- (a) ~~any~~Any upgrading which is required by the Project;
- (b) ~~replacement~~Replacement devices or materials that are of equivalent standards although not identical;

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

(d) ~~any~~Any upgrading required by applicable Law;

(e) ~~replacement~~Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);

(f) ~~any~~Any upgrading required by the Utility Company's written "standards" meeting the requirements described in Section DR 430 of the Technical Provisions; or

(g) ~~any~~Any discretionary decision by a Utility Company that is contemplated within a particular standard described in clause (f) above.

For fiber optic Utilities, extension of a Utility Adjustment to the nearest splice boxes shall not be considered a Betterment if required by the Utility Company in order to maintain its written telephony standards.

Blast Monitoring Plan has the meaning set forth in Section CR 416.3.4.4 of the Technical Provisions.

Blasters in Charge has the meaning set forth in Section GP 110.08.3.13 of the Technical Provisions.

Blasting Information Report has the meaning set forth in Section CR 416.3.4.5 of the Technical Provisions.

Blasting Plan has the meaning set forth in Section CR 416.3.4.7 of the Technical Provisions.

Blasting Report has the meaning set forth in Section CR 416.3.4.7 of the Technical Provisions.

Blasting Supervisors has the meaning set forth in Section GP 110.08.3.12 of the Technical Provisions.

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

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

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

(c) All budgets, certificates, claims, contract agreements, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information and vehicle jurisdiction data) that is analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Developer or any of its Representatives in connection with the Project; and

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

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

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

Capital Asset Replacement Work means reconstruction, rehabilitation, restoration, renewal, replacement or major capital repair of (a) the pavement Element of the Project, including concurrent replacement of pavement markings and delineators, (b) all or a substantial portion of the signage Elements of the Project, and (c) any Elements to the extent required to be performed and completed prior to the end of the Term in order to meet the Handback Requirements.

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

Capital Asset Replacement Work Schedule means the schedule for Capital Asset Replacement Work, to be prepared and updated by Developer pursuant to Section 8.3.3 of the Agreement. The Capital Asset Replacement Work Schedule is part of the Capital Asset Replacement Work Plan.

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

Certificate of Final Acceptance means the certificate issued by ADOT indicating that the Project has achieved the conditions for Final Acceptance set forth in Section 6.6.4(b) of the Agreement.

Certificate of Substantial Completion means the certificate issued by ADOT indicating that the Project has achieved the conditions for Substantial Completion set forth in Section 6.6.1(a) of the Agreement.

1 **Change in Law** means:

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

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

6 The term “Change in Law” excludes:

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

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

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

12 (iv) Any change in, or new, Law of the State relating to Developer’s
13 general business operations, including licensing and registration fees, income taxes,
14 gross receipts taxes, property taxes, sales and use taxes, social security, Medicare,
15 unemployment and other payroll-related taxes.

16 **Change of Control** means any assignment, sale, financing, grant of security interest,
17 transfer of interest or other transaction of any type or description, including by or
18 through voting securities, asset transfer, contract, merger, acquisition, succession,
19 dissolution, liquidation or otherwise, that results, directly or indirectly, in a change in
20 possession of the power to direct or control or cause the direction or control of the
21 management of Developer or a material aspect of its business. A Change of Control of
22 a shareholder, member, partner or joint venture member of Developer may constitute a
23 Change of Control of Developer if such shareholder, member, partner or joint venture
24 member possesses the power to direct or control or cause the direction or control of the
25 management of Developer. Notwithstanding the foregoing, the following shall not
26 constitute a Change of Control:

27 (a) A change in possession of the power to direct or control the management
28 of Developer or a material aspect of its business due solely to a bona fide transaction
29 involving beneficial interests in the ultimate parent organization of a shareholder,
30 member, partner or joint venture member of Developer, (but not if the shareholder,
31 member, partner or joint venture member is the ultimate parent organization), unless the
32 transferee in such transaction is at the time of the transaction suspended or debarred or
33 subject to a proceeding to suspend or debar from bidding, proposing or contracting with
34 any federal or State department or agency;

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

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

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

Change Request means a written notice issued by Developer to ADOT under Section 15.2 of the Agreement, advising ADOT that Developer seeks a Supplemental Agreement.

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

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

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

Claim Deductible means the following amounts, as applicable, for each separate occurrence of a Relief Event: (a) the first \$50,000 of Extra Work Costs, subject to adjustment as provided in Section 14.3 of the Agreement; and (b) the amount equal to the Delay Costs for the first ten days of delay to the Critical Path due to the Relief Event, subject to an aggregate cap of 100 days.

Collocated Office Layout Plan has the meaning set forth in Section GP 110.05.2.6 of the Technical Provisions.

Color Sample has the meaning set forth in Section CR 450.3.2.3 of the Technical Provisions.

Comment Resolution Form has the meaning set forth in Section GP 110.10.2.15 of the Technical Provisions.

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

Comparable Facility means highways or bridges, as applicable, substantially similar to the Project and associated facilities, including frontage roads, as applicable. For the

purposes of this definition, determination of what highways and bridges are substantially similar to the Project shall be based on any one or more highways or bridges, as applicable, of similar age, design, engineering, construction, topographical features, operating systems and features, or other features or situations, and/or based on a geographical area in which highways or bridges, as applicable, have been or are susceptible to being affected by a common event (such as but not limited to flood or tornado). The presence or absence of tolling and tolling facilities shall not be a factor in determining whether a facility is substantially similar to the Project.

Complete Disposal Documentation has the meaning set forth in Section DR 470.4.7 of the Technical Provisions.

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

Compliance Evaluation Report has the meaning set forth in Section CR 420.3.2.7 of the Technical Provisions.

Computer Disaster Recovery Plan has the meaning set forth in Section GP 110.05.4.1 of the Technical Provisions.

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

Construction Documents means all shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for construction of the Project and/or the Utility Adjustments in accordance with the Contract Documents.

Construction Independent Quality Manager means the person appointed by the IQF who is responsible for management of construction quality acceptance functions, as more particularly described in Section GP 110.08.3.4 of the Technical Provisions.

Construction Manager has the meaning set forth in Section GP 110.08.1.2 of the Technical Provisions. The Construction Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Construction Operations Survey has the meaning set forth in Section CR 425.2.3.1.6 of the Technical Provisions.

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

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

4 **Construction Quality Manager** has the meaning set forth in Section GP 110.08.3.2 of
5 the Technical Provisions.

6 **Construction Survey Report** has the meaning set forth in Section CR 410.3.3 of the
7 Technical Provisions.

8 **Construction Work** means all Work to build or construct, make, form, manufacture,
9 furnish, install, supply, deliver or equip the Project and/or the Utility Adjustments.
10 Construction Work includes landscaping.

11 **Consumer Price Index** means the Consumer Price Index for All Urban Consumers
12 (CPI-U), All Items, for the Phoenix metropolitan statistical area, as published by the
13 United States Department of Labor, Bureau of Labor Statistics, for which the base year
14 is 1982-84 = 100, or if such publication ceases to be in existence, a comparable index
15 selected by ADOT and approved by Developer, acting reasonably. If such index is
16 revised so that the base year differs from that set forth above, the CPI shall be
17 converted in accordance with the conversion factor published by the United States
18 Department of Labor, Bureau of Labor Statistics. If the Bureau of Labor Statistics
19 otherwise alters its method of calculating such index, the Parties shall mutually
20 determine appropriate adjustments in the affected index.

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

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

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

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

1 **CRM Notes** has the meaning set forth in Section GP 110.10.2.1.5 of the Technical
2 Provisions.

3 **Curative Document** has the meaning set forth in Section DR 470.3.6 of the Technical
4 Provisions.

5 **D&C Guaranty** has the meaning set forth in Section 10.4 of the Agreement.

6 **D&C Payment Bond** means the bond required in accordance with Section 10.1.3 of the
7 Agreement.

8 **D&C Performance Bond** means the bond required in accordance with Section 10.1.2
9 of the Agreement.

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

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

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

19 **D&C Work** means all Design Work and Construction Work, including all efforts
20 necessary or appropriate to achieve Final Acceptance and maintenance of the Project
21 during the D&C Period in accordance with the Technical Provisions.

22 **Day** or **day** means calendar day.

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

24 **DBE/OJT Outreach and Compliance Manager** has the meaning set forth in Section
25 110.08.2.11 of the Technical Provisions. The DBE/OJT Outreach and Compliance
26 Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

27 **DBE Performance Plan** means Developer's ADOT-approved plan for meeting the DBE
28 participation goals, described in Section 9.2 of the Agreement.

29 **DBE Monthly Progress Utilization Progress Report** shall have the meaning set forth
30 in Section 18.02.2 if the DBE Special Provisions.

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

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

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

6 (b) ~~a~~A structural deterioration of the affected Element or any other part of the
7 Project;

8 (c) ~~damage~~Damage to a third party's property or equipment;

9 (d) ~~damage~~Damage to the Environment;

10 (e) ~~failure~~Failure of the affected Element or any other part of the Project to
11 meet a requirement of the Contract Documents; or

12 (f) ~~failure~~Failure of an Element to meet the Target for a measurement record
13 as set forth in the columns headed "Target" and "Measurement Record" in the
14 Maintenance Table.

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

27 **Demolition Closeout Documents** has the meaning set forth in Section DR 470.4.7 of
28 the Technical Provisions.

29 **Deputy Maintenance Manager** has meaning set forth in Section GP 110.08.3.26 of the
30 Technical Provisions.

31 **Design Changes** has the meaning set forth in Section GP 110.10.2.3.3 of the Technical
32 Provisions.

33 **Design Documents** means all drawings (including plans, profiles, cross-sections,
34 notes, elevations, sections, details and diagrams), specifications, reports, studies,
35 calculations, electronic files, records and submittals necessary for, or related to, the

1 design of the Project and/or the Utility Adjustments in accordance with the Contract
2 Documents, the Governmental Approvals and applicable Law.

3 **Design Exception** shall have the meaning as defined in the ADOT Design Exception
4 and Design Variance Process Guide.

5 **Design Exception and Design Variance Report** has the meaning set forth in
6 Section DR 440.3.5 of the Technical Provisions.

7 **Design Manager** shall have the meaning set forth in Section GP 110.08.2.3 of the
8 Technical Provisions.

9 **Design Manager Approved Shop and Working Drawings** has the meaning set forth
10 in Section GP 110.10.2.3.1 of the Technical Provisions.

11 **Design Survey Report** has the meaning set forth in Section DR 410.3.3 of the
12 Technical Provisions.

13 **Design Variance** shall have the meaning as defined in the ADOT Design Exception
14 and Design Variance Process Guide.

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

17 **Detailed Pricing Documents** shall have the meaning set forth in Section 23.1 of the
18 Agreement.

19 **Detour Plans** shall have the meaning set forth in Section DR 462.3.1.4 of the Technical
20 Provisions.

21 **Developer** means [_____] ***[Insert name of Developer]***, a [_____] ***[Insert***
22 ***entity type]***, together with its successors and assigns.

23 **Developer-Acquired Parcel** means any real property (which term is inclusive of all
24 estates, easements, leases, and other interests in real property, permanent or
25 temporary) in the Project ROW or for Replacement Utility Property Interests for which
26 Developer is to perform ROW Services as specified in the Contract Documents, but
27 excluding Developer's Temporary Work Areas.

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

29 **Developer-Designated ROW** means any permanent interest in real property (which
30 term is inclusive of all estates and interests in real property), improvements and fixtures
31 outside of the Schematic ROW that Developer determines is necessary or advisable to
32 be acquired for the Project. The term specifically includes (a) any easements required
33 for drainage for the Project, (b) Temporary Construction Easements to the extent
34 located outside of the Schematic ROW and outside of ADOT Additional Property, **and**

~~(c)~~ the necessity to condemn an entire parcel even though only a portion of the parcel is required as Developer-Designated ROW, and (d) any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes (1) Replacement Utility Property Interests, (2) Developer's Temporary Work Areas, and (3) any property within the GRIC lands.

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

Developer-Related Entity means:

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

Developer Release of Hazardous Materials means:

- (a) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-Related Entity;
- (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Developer-Related Entity, regardless of cause; or
- (c) ~~use~~Use, containment, storage, management, handling, transport and disposal of any Hazardous Materials by any Developer-Related Entity in violation of the requirements of the Contract Documents or any applicable Law or Governmental Approval.

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

Developer's Temporary Work Areas means areas in which Developer carries out on a temporary basis Project-specific activities in connection with the Work not within the Project ROW boundaries identified in the NEPA Approval, such as construction work

1 sites, field office locations, staging areas, storage areas, lay-down areas, earth work
2 material borrow sites, and other locations for the convenience of Developer.
3 Developer's Temporary Work Areas do not include Temporary Construction Easements.

4 **Deviation** means:

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

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

10 **Differing Site Conditions** means:

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

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

18 The term Differing Site Conditions shall specifically exclude:

19 (i) All such subsurface, latent or surface conditions which (A) were known to
20 Developer prior to the Setting Date, (B) could have been reasonably anticipated as
21 potentially present by an experienced civil works contractor based on the information
22 contained in the Reference Information Documents, or (C) would have become known
23 to Developer by undertaking Reasonable Investigation;

24 (ii) ~~changes~~Changes in surface topography;

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

27 (iv) Utility facilities;

28 (v) Hazardous Materials, including contaminated groundwater;

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

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

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

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

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

Discriminatory Maintenance Change means:

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

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

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

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

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

Document Management Plan has the meaning set forth in Section GP 110.04.2 of the Technical Provisions.

Drainage Master Plan has the meaning set forth in Section DR 445.3.2 of the Technical Provisions.

Drainage Master Plan Update has the meaning set forth in Section DR 445.3.2 of the Technical Provisions.

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

Drilled Shaft Installation Plan has the meaning set forth in Section CR 416.3.1 of the Technical Provisions.

Drilled Shaft Load Test Program has the meaning set forth in Section 416.3.1 of the Technical Provisions.

Drilled Shaft Load Test Report has the meaning set forth in Section 416.3.1 of the Technical Provisions.

Drilled Shaft Quality Assurance Report has the meaning set forth in Section 416.3.1 of the Technical Provisions.

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

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

Element means a discrete portion of the Project (e.g., a sign).

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

Emergency Incident Report has the meaning set forth in Section MR 400.4 of the Technical Provisions.

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

Environmental Analysis has the meaning set forth in Section CR 417.3.2.1 of the Technical Provisions.

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

(a) ~~the~~**The** NEPA Approval;

(b) ~~other~~**Other** approvals and permits required under NEPA; and

(c) ~~any~~**Any** revision, modification, supplement or amendment of the foregoing approvals and permits.

Environmental Compliance Manager has the meaning set forth in Section GP 110.08.2.9 of the Technical Provisions. The Environmental Compliance Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

1 **Environmental Law** means any Law applicable to the Project or the Work regulating or
2 imposing liability or standards of conduct that pertains to the environment, Hazardous
3 Materials, contamination of any type whatsoever, or environmental health and safety
4 matters, and any lawful requirements and standards that pertain to the environment,
5 Hazardous Materials, contamination of any type whatsoever, or environmental health
6 and safety matters, set forth in any permits, licenses, approvals, plans, rules,
7 regulations or ordinances adopted, or other criteria and guidelines promulgated,
8 pursuant to Laws applicable to the Project or the Work, as such have been or are
9 amended, modified, or supplemented from time to time (including any present and
10 future amendments thereto and reauthorizations thereof) including those relating to:

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

13 (b) Air, soil, surface and subsurface strata, stream sediments, surface water,
14 and groundwater;

15 (c) Releases of Hazardous Materials;

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

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

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

21 (g) Notification, documentation, and record keeping requirements relating to
22 the foregoing.

23 Without limiting the above, the term “Environmental Laws” shall also include the
24 following:

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

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

28 (iii) Section 4(f) of the U.S. Department of Transportation Act of 1966 (49
29 U.S.C. § 303[c])

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xviii) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;

(xix) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;

(xx) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;

(xxi) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;

(xxii) General (A.R.S. §49- 101 to 191);

(xxiii) Water Quality Control (A.R.S. §49-201 to 391);

- (xxiv) Air Quality (A.R.S. §49-401 to 581);
- (xxv) Solid Waste Management (A.R.S. §49-701 to 881);
- (xxvi) Hazardous Waste Disposal (A.R.S. §49 -901 to 971);
- (xxvii) Underground Storage Tank Regulation (A.R.S. §49-1001 to 1091);
- (xxviii) Light Pollution (A.R.S. §49-1101);
- (xxix) Water Infrastructure Finance Program (A.R.S. §49-1201 to 1221); and
- (xxx) Natural Gas Facilities (A.R.S. §49-1301).

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

Environmental Management Program has the meaning set forth in Section DR 420.2.2 of the Technical Provisions.

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

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

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

Equipment Demobilization Plan has the meaning set forth in Section GP 110.05.4.1 of the Technical Provisions.

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

1 **Erosion Control Coordinator** has the meaning set forth in Section GP 110.08.3.17 of
2 the Technical Provisions.

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

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

5 **Eviction Memorandum** has the meaning set forth in Section DR 470.436 of the
6 Technical Provisions.

7 **Existing Conditions Site Documentation** has the meaning set forth in Section
8 GP 110.04.3 of the Technical Provisions.

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

13 **Extra Work** means any Work in the nature of additional work, altered work or deleted
14 work which is directly attributable to occurrence of a Relief Event and absent the Relief
15 Event would not be required by the Contract Documents. The term For clarity, the term
16 “Extra Work” includes additional work necessary for Developer to obtain Environmental
17 Approvals, reevaluations, amendments and supplements of the NEPA Approval, and
18 other Governmental Approvals required under Section 4.3.2 of the Agreement in
19 connection with a Relief Event; the Term “Extra Work” does not include Relief Event
20 Delay.

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

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

28 **Final Acceptance** means, for Project, the occurrence of all of the events and
29 satisfaction of all of the conditions set forth in Section 6.6.4(b) of the Agreement, as and
30 when confirmed by ADOT’s issuance of a Certificate of Final Acceptance.

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

34 **Final ADA Compliance and Feasibility Report** has the meaning set forth in
35 Section DR 440.3.4 of the Technical Provisions.

1 **Final Bridge Hydraulics Report** has the meaning set forth in Section DR 457.3.8 of
2 the Technical Provisions.

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

4 **Final Design** means, depending on the context: (a) the RFC Documents; (b) the design
5 concepts set forth in the RFC Documents; or (c) the process of development of the RFC
6 Documents.

7 **Final Design Submittal** has the meaning set forth in Section GP 110.10.2.27.4 of the
8 Technical Provisions.

9 **Final Drainage Report** has the meaning set forth in Section DR 445.3.3 of the
10 Technical Provisions.

11 **Final Geotechnical Engineering Report** has the meaning set forth in
12 Section DR 416.3.2 of the Technical Provisions.

13 **Final Irrigation Water Use and Conservation Plan** has the meaning set forth in
14 Section DR 450.2.7 of the Technical Provisions.

15 **Final MDR** has the meaning set forth in Section DR 419.3.4 of the Technical Provisions.

16 **Final Meeting Notes** has the meaning set forth in Section GP 110.02 of the Technical
17 Provisions.

18 **Final PDS** has the meaning set forth in Section DR 419.3.4 of the Technical Provisions.

19 **Final Railroad Submittal Package** has the meaning set forth in Section DR 436.3.1 of
20 the Technical Provisions.

21 **Final Technical Noise Analysis and Mitigation Report** has the meaning set forth in
22 Section DR 420.3.5 of the Technical Provisions.

23 **Final Utility Clearance Letter** has the meaning set forth in Section DR 430.2.4.3 of the
24 Technical Provisions.

25 **Final Utility Report** has the meaning set forth in Section DR 430.3.3 of the Technical
26 Provisions.

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

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

1 date, or early completion date and late completion date, for activities shown on the
2 Project Schedule.

3 **Flood Event** means storms and floods for which the Governor of the State has
4 proclaimed a state of emergency, when the damaged work of the Project is located
5 within the territorial limits to which such proclamation is applicable.

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

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

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

20 (b) ~~any~~Any act of terrorism, riot, insurrection, civil commotion or sabotage that
21 causes direct physical damage to, or otherwise directly causes interruption to
22 construction or direct losses during operation of, the Project or the Site;

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

27 (d) ~~nuclear~~Nuclear explosion that causes direct physical damage to the Project or
28 the Site, or radioactive contamination of the Project or the Site;

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

33 (f) ~~any~~Any governor-declared Emergency within the limits of the Project ROW,
34 except one consisting of or arising out of traffic accidents; and

35 (g) ~~one~~One or more earthquakes , including all foreshocks and aftershocks, where
36 such earthquakes include ground shaking, liquefaction, settlement, and/or ground

1 movements that directly impact, and cause damage to, temporary or permanent works
2 of the Project.

3 **Foundation Report** has the meaning set forth in Section DR 455.3.1 of the Technical
4 Provisions.

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

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

10 **Geotechnical Manager** has the meaning set forth in Section GP 110.08.3.10 of the
11 Technical Provisions.

12 **Geotechnical Supplement** has the meaning set forth in Section DR 416.3.2 of the
13 Technical Provisions.

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

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

23 **Governmental Approval** means any permit, license, consent, concession, grant,
24 franchise, authorization, waiver, certification, exemption, filing, lease, registration or
25 ruling, variance or other approval, guidance, protocol, agreement, mitigation agreement,
26 or memoranda of agreement/understanding, and any amendment or modification of any
27 of them, required by or with, or provided by, Governmental Entities, including State,
28 local, or federal regulatory agencies, agents, or employees, which authorize or pertain
29 to the Work or the Project, but excluding any such approvals given by or required from
30 any Governmental Entity in its capacity as a Utility Company. Governmental Approvals
31 include Environmental Approvals.

32 **Governmental Approval Package** has the meaning set forth in Section DR 420.2.6.2
33 of the Technical Provisions.

34 **Governmental Entity** means any federal, state, local or foreign government and any
35 political subdivision or any governmental, quasi-governmental, judicial, public or
36 statutory instrumentality, administrative agency, authority, body or entity other than
37 ADOT.

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

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

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

7 **Handback** has the meaning set forth in Section MR 501 of the Technical Provisions.

8 **Handback Plan** means the plan for satisfying the Handback Requirements, as more
9 particularly described in Section 8.11.3 of the Agreement and ~~TP~~ Section MR 501.2.2 of
10 the Technical Provisions.

11 **Handback Transition Plan** means the plan for transitioning maintenance of the Project
12 from Developer to ADOT at the end of the Maintenance Term, as more particularly
13 described in Section 24.13 of the Agreement and Section MR 501.2.5 of the Technical
14 Provisions.

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

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

25 (a) Hazardous wastes, hazardous material, hazardous substances,
26 hazardous constituents, and toxic substances or related materials, whether solid, liquid,
27 or gas, including substances defined as or included in the definition of "hazardous
28 substance", "hazardous waste", "hazardous material", "extremely hazardous waste",
29 "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous
30 waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste",
31 "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or
32 expression intended to define, list or classify substances by reason of properties
33 harmful to health, safety or the indoor or outdoor environment (including harmful
34 properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity,
35 reproductive toxicity, "TCLP" toxicity" or "EP toxicity" or words of similar import under
36 any applicable Environmental Laws);

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

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

(d) ~~any~~Any flammable substances or explosives;

(e) ~~any~~Any radioactive materials;

(f) ~~any~~Any asbestos or asbestos-containing materials;

(g) ~~any~~Any lead and lead-based paint;

(h) ~~any~~Any radon or radon gas;

(i) ~~any~~Any methane gas or similar gaseous materials;

(j) ~~any~~Any urea formaldehyde foam insulation;

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

~~(l) — pesticides;~~

~~(l) —~~ any Pesticides;

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

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

Hazardous Materials Management means procedures, practices and activities to address and comply with Environmental Laws and Environmental Approvals with respect to Hazardous Materials encountered, impacted, caused by or occurring in connection with the Work, as well as investigation and remediation of such Hazardous Materials. Hazardous Materials Management may include sampling, stock-piling, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, transportation and/or off-site disposal of Hazardous Materials, whichever is the most cost-effective approach authorized under applicable Law.

1 **Hazardous Materials Management Plan (HMMP)** means the plan prepared by
2 Developer for the safe handling, storage, treatment and/or disposal of Hazardous
3 Materials both within and outside the Project ROW, as more particularly described in
4 Section DR 420.2.3 of the Technical Provisions.

5 **Hazardous Materials Manager** has the meaning set forth in Section GP 110.08.3.14 of
6 the Technical Provisions.

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

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

15 **Hydraulics Engineer** has the meaning set forth in Section GP 110.08.3.18 of the
16 Technical Provisions.

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

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

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

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

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

36 If any discrepancy exists between the information provided by one component of the
37 Utility Information or public and/or private records and that provided by any other

component of the Utility Information or public and/or private utility records, only the more recent information shall be relevant for purposes of this definition.

Incident means a localized disruption to the free flow of traffic on or safety of users of the Project that ~~is beyond the control of Developer-Related Entities and~~ does not result from actions or omissions of Developer-Related Entities.

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

Independent Quality Firm means the independent firm identified in the Proposal (or such other firm approved by ADOT in ADOT's sole discretion) responsible for performing independent quality assurance material testing, inspection, and audits of the Construction Quality Management Plan. The initial ADOT-approved IQF is [] [NTD – INSERT NAME], a [] [NTD – INSERT ENTITY TYPE].

Initial ADA Compliance and Feasibility Report has the meaning set forth in Section DR 440.3.4 of the Technical Provisions.

Initial Bridge Hydraulics Report has the meaning set forth in Section DR 457.3.8 of the Technical Provisions.

Initial Design Submittal has the meaning set forth in Section GP 110.10.2.27.3 of the Technical Provisions.

Initial Geotechnical Engineering Report has the meaning set forth in Section DR 416.3.2 of the Technical Provisions.

Initial Irrigation Water Use and Conservation Plan has the meaning set forth in Section DR 450.2.7 of the Technical Provisions.

Initial Load Rating Report has the meaning set forth in Section DR 455.3.7.2.2 of the Technical Provisions.

Initial MDR has the meaning set forth in Section DR 419.3.4 of the Technical Provisions.

Initial PDS has the meaning set forth in Section DR 419.3.4 of the Technical Provisions.

Initial Utility Clearance Letter has the meaning set forth in Section DR 430.2.4.3 of the Technical Provisions.

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

1 **Inspection** means ~~an activity planned for a detailed inspection of~~ a specific Element
2 within an Auditable Section and carried out by duly qualified personnel. For each such
3 Inspection, an entry shall be recorded into the Maintenance Information System (MIS),
4 which entry shall include the results of the Inspection and any corresponding actions
5 required of Developer. When used in its lower case spelling, the term “inspection” shall
6 have its plain language meaning.

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

10 **Instrumentation Data** has the meaning set forth in Section CR 416.3.6 of the Technical
11 Provisions.

12 **Instrumentation Plan** has the meaning set forth in Section CR 416.3.6 of the Technical
13 Provisions.

14 **Instrumentation Report** has the meaning set forth in Section CR 416.3.6 of the
15 Technical Provisions.

16 **Intellectual Property** means all current and future legal and/or equitable rights and
17 interests in know-how, patents (including applications), copyrights (including moral
18 rights), trademarks (registered and unregistered), service marks, trade secrets, designs
19 (registered and unregistered), utility models, circuit layouts, plant varieties, business
20 and domain names, inventions, solutions embodied in technology, and other intellectual
21 activity, and applications of or for any of the foregoing, subsisting in or relating to the
22 Project, Project design data or Project traffic data. Intellectual Property includes traffic
23 management algorithms, and software used in connection with the Project (including
24 software used for management of traffic on the Project), and software source code.
25 Intellectual Property is distinguished from physical embodiments and other
26 documentation that disclose Intellectual Property.

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

31 **Interim Asset Condition Recovery Plan** means each plan to perform Maintenance
32 Services necessary to bring the condition of Elements up to the Adjusted Baseline
33 Asset Condition Score, as more particularly described in Section MR 400.6.4 of the
34 Technical Provisions.

35 **Interim Asset Condition Score for Year 10** has the meaning set forth in Section MR
36 400.6.3 of the Technical Provisions.

1 Interim Asset Condition Score for Year 20 has the meaning set forth in Section MR
2 400.6.3 of the Technical Provisions.

3 Interpretive Engineering Decision has the meaning set forth in Section 3.9.1 of the
4 Agreement.

5 Irrigation Systems Design has the meaning set forth in Section 110.08.3.20 of the
6 Technical Provisions.

7 Issue Resolution Ladder shall have the meaning set forth in Section 22.2.3.1 of the
8 Agreement.

9 ITS Certifications ~~shall have means~~ the ~~meaning set forth in Section CR 466.3.3~~
10 ~~of certification required by the Technical Provisions~~ ADOT Draft Intelligent Transportation
11 Systems Specifications for South Mountain Freeway included in the RIDs.

12 ITS Inventory shall have the meaning set forth in Section DR 466.2.3 of the Technical
13 Provisions.

14 ITS Master Plan shall have the meaning set forth in Section DR 466.3.2 of the
15 Technical Provisions.

16 ITS Master Plan Update shall have the meaning set forth in Section DR 466.3.2 of the
17 Technical Provisions.

18 ITS Testing Documentation ~~shall have means documentation of~~ the ~~meaning set~~
19 ~~forth~~ ITS test results as identified in Section CR 466.3.24 of the Technical Provisions.

20 ITS Training Material shall have the meaning set forth in Section CR 466.3.6 of the
21 Technical Provisions.

22 Key Personnel means those individuals appointed by Developer and approved by
23 ADOT, from time to time, to fill the "Key Personnel" positions identified in
24 Section GP 110.08.2 of the Technical Provisions. The specific individuals appointed by
25 Developer and approved by ADOT to initially fill certain of the Key Personnel positions
26 are identified in Exhibit 9-2 to the Agreement.

27 Key Professional Services Firm means:

28 (a) ~~the~~ The Independent Quality Firm, and

29 (b) ~~each~~ Each firm, other than the Lead Engineering Firm, that will provide
30 Acquisition Services or Design Work valued at \$10,000,000.00 or more.

31 Key Subcontract means any one of the following Subcontracts for Work Developer
32 causes to be performed:

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

(b) ~~the~~The Lead Subcontract;

(c) ~~all~~All Subcontracts with a single Subcontractor, other than the Lead Subcontractor, that will be responsible for 20% or more of the Construction Work;

(d) ~~all~~All Maintenance Services Subcontracts; and

(e) ~~all~~All Subcontracts with a Key Professional Services Firm in respect of the Project.

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

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

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

Known or Suspected Hazardous Materials means:

(a) Hazardous Materials and Recognized Environmental Conditions that are known or reasonably suspected to exist as of the Setting Date based on information or analysis contained or referenced in the Reference Information Documents as of the Setting Date; provided, however, that, with respect to any parcel, neither knowledge nor reasonable suspicion of Hazardous Materials or Recognized Environmental Conditions shall be based solely on information or analysis contained or referenced in a Phase 1 Environmental Site Assessment Report unless the Reference Information Documents also contain a Phase 2 Environmental Site Assessment Report for the same parcel as of the Setting Date;

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

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

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

Laboratory Test Location has the meaning set forth in Section CR 420.3.2.2.2 of the Technical Provisions.

Landform Graphic Layout Artist has the meaning set forth in Section GP 110.08.3.21 of the Technical Provisions.

Landscape Architect has the meaning set forth in Section GP 110.08.3.19 of the Technical Provisions.

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

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

Lead Engineering Firm means [] [NTD – Insert Name], a [] [NTD – Insert Entity Type].

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

Lead Subcontract means that certain agreement, if any, between Developer and the Lead Subcontractor of even date herewith for the performance of all of Developer's obligations set forth in the Agreement during the D&C Period, including the D&C Work.

Lead Subcontractor means the Subcontractor with which Developer enters into contract under the Lead Subcontract.

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

Letters of Introduction has the meaning set forth in Section DR 470.3.3 of the Technical Provisions.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention

1 agreement, any lease in the nature of a security instrument and the filing of or
2 agreement to file any financing statement under the Uniform Commercial Code of any
3 jurisdiction).

4 **Lighting Design Report** has the meaning set forth in Section DR 460.3.6 of the
5 Technical Provisions.

6 **Liquidated Damages** means the liquidated damages specified in Sections 9, 19 and 20
7 of the Agreement, and in any other part of the Agreement.

8 **Load Rating Report** has the meaning set forth in Section DR 455.3.7.2.2 of the
9 Technical Provisions.

10 **Look-Ahead Schedule** has the meaning set forth in Section GP 110.06.2.9 of the
11 Technical Provisions.

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

18 **Maintenance Annual Report** has the meaning set forth in Section GP 110.07.2.1.4.1 of
19 the Technical Provisions.

20 **Maintenance Bonds** means, collectively, the Maintenance Performance Bond and
21 Maintenance Payment Bond.

22 **Maintenance Draw Request** means a draw request and certificate described in
23 Section 13.6.1.

24 **Maintenance During Construction** means any and all management, administration,
25 maintenance, repair, preservation, modification, reconstruction, rehabilitation,
26 restoration, renewal and replacement to be performed by Developer in connection with
27 the Project prior to Substantial Completion. For clarity, Maintenance During
28 Construction is included in the D&C Work.

29 **Maintenance Guaranty** has the meaning set forth in Section 10.4.4 of the Agreement.

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

33 **Maintenance Management Plan** means the plan prepared by Developer and which
34 defines the process and procedures for the maintenance of the Project for the

Maintenance Period as more particularly described in Section MR 400.2.1 of the Technical Provisions.

Maintenance Manager has the meaning set forth in Section GP 110.08.2.10 of the Technical Provisions. The Maintenance Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Maintenance NTP means a written notice issued by ADOT to Developer authorizing Developer to proceed with the Maintenance Services.

Maintenance Payment Bond has the meaning set forth in Section 10.2.3 of the Agreement.

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

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

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

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

Maintenance QC Manager has the meaning set forth in Section GP 110.08.3.6 of the Technical Provisions.

Maintenance Quality Management Plan has the meaning set forth in Section 8.10 of the Agreement and Section GP 110.07.2.1.4 of the Technical Provisions.

Maintenance Safety Management Plan means the plan for safety management with respect to the Maintenance Services, as more particularly described in Section MR 400.2.7 of the Technical Provisions.

Maintenance Services means any and all management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including Routine Maintenance, Capital Asset Replacement Work and Handback Work, to be performed by Developer in connection with the Project [after Substantial Completion during the Maintenance Period.](#)

1 **Maintenance Services Conditions Precedent** means the conditions precedent, set
2 forth in Section 6.6.3 of the Agreement, to the commencement of the Maintenance
3 Services.

4 ~~**Maintenance Services During Construction** means any and all management,~~
5 ~~administration, maintenance, repair, preservation, modification, reconstruction,~~
6 ~~rehabilitation, restoration, renewal and replacement to be performed by Developer in~~
7 ~~connection with the Project prior to Substantial Completion.~~

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

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

15 (a) ~~at~~At least 50% of the aggregate value of the Maintenance Services ~~during~~
16 ~~the Maintenance Period~~ (excluding Capital Asset Replacement Work and Handback
17 Requirements Work); or

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

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

21 ~~**Maintenance Services** means any and all management, administration, maintenance,~~
22 ~~repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and~~
23 ~~replacement, including Routine Maintenance, Capital Asset Replacement Work and~~
24 ~~Handback Requirements Work, to be performed by Developer. Maintenance Services~~
25 ~~includes both Maintenance Services During Construction and Maintenance Services~~
26 ~~After Substantial Completion.~~

27 **Maintenance Table** means TP Attachment 500-1 attached to the Technical Provisions.

28 **Major Lane Closure Package** has the meaning set forth in Section DR 462.3.3.1 of the
29 Technical Provisions.

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

33 **Meeting Notes** has the meaning set forth in Section GP 110.02 of the Technical
34 Provisions.

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

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

5 **MIS Architecture** has the meaning set forth in [Section MR 400.2.4 of the Technical](#)
6 [Provisions.](#)

7 **Mockups** has the meaning set forth in Section CR 450.3.1.1 of the Technical
8 Provisions.

9 **Monthly Disbursement** has the meaning set forth in [Section 13.5.5](#) of the Agreement.

10 **Monthly Progress Report** has the meaning set forth in Section GP 110.06.2.8 of the
11 Technical Provisions.

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

17 **Monthly Safety Report** has the meaning set forth in Section GP 110.09.2.1.11.2 of the
18 Technical Provisions.

19 **MOT Task Force** has the meaning set forth in Section DR 462.2.2 of the Technical
20 Provisions.

21 **MOT Task Force Invitees List** has the meaning set forth in Section DR 462.2.2 of the
22 Technical Provisions.

23 **MSE Wall and Falsework Shop and Working Drawings** has the meaning set forth in
24 [Section CR 455.3.2 of the Technical Provisions.](#)

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

31 **NEPA Approval** shall mean the South Mountain Freeway (Loop 202), Interstate 10
32 (Papago Freeway) to Interstate 10 (Maricopa Freeway), Record of Decision, issued by
33 the Federal Highway Administration on March 5, 2015.

1 **NEPA Approval Package** has the meaning set forth in Section DR 420.2.6.1 of the
2 Technical Provisions.

3 **NESHAP Notification** has the meaning set forth in Section DR 470.4.7 of the Technical
4 Provisions.

5 **Network Administration Plan** has the meaning set forth in Section GP 110.05.4.2 of
6 the Technical Provisions.

7 **NOI Form** has the meaning set forth in Section CR 420.3.1 of the Technical Provisions.

8 **Non-Conformance Report** has the meaning set forth in Section GP 110.07.2.1.1 of the
9 Technical Provisions.

10 **Noncompliance Event** means any Developer failure to meet any one of the
11 requirements set forth in the Noncompliance Event Tables.

12 **Noncompliance Event Tables** means, collectively, the D&C Period Noncompliance
13 Event Table and Maintenance Period Noncompliance Table.

14 **Noncompliance Charges** means the liquidated amounts specified in Section 20.4 of
15 the Agreement.

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

20 **Nonconforming Work** means Work that does not conform to the requirements of the
21 Contract Documents, the Governmental Approvals, applicable Law or the Design
22 Documents.

23 **Non-Discriminatory Maintenance Change** means any alteration or change (including
24 addition) to provisions in the Technical Provisions and Safety Standards that relate to
25 the Maintenance Services and are of general application to Comparable Facilities.
26 Such alterations or changes include revisions to manuals, publications and guidelines,
27 adoption of new manuals, publications and guidelines, changed, added or replacement
28 standards, criteria, requirements, conditions, procedures and specifications, including
29 Safety Standards that relate to the Maintenance Services and are of general application
30 to Comparable Facilities; provided, however, that, for purposes of changes in Price
31 permitted pursuant to Section 14 of the Agreement, a Non-Discriminatory Maintenance
32 Change that is required to implement a Change in Law shall be treated as a Change in
33 Law rather than a Non-Discriminatory Maintenance Change.

34 **Non-Maintained Elements** means those Elements constructed by Developer which are
35 located outside of the Maintenance Services Limits.

1 **Notice of Determination** has the meaning set forth in Section 17.2.1.3 of the
2 Agreement.

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

6 **Notice of Termination** has the meaning set forth in Section CR 420.3.1 of the
7 Technical Provisions.

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

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

14 **Noxious and Invasive Species Control Plan** has the meaning set forth in Section DR
15 450.2.5 of the Technical Provisions.

16 **Noxious and Invasive Species Control Plan Update** has the meaning set forth in
17 Section DR 450.2.5 of the Technical Provisions.

18 **NTP 1** means a written notice issued by ADOT to Developer authorizing Developer to
19 proceed with the portion of the Work described in Section 7.4.3 of the Agreement.

20 **NTP 2** means a written notice issued by ADOT to Developer pursuant to Section 7.4.4
21 of the Agreement authorizing Developer to proceed with design and construction of the
22 Project, except construction or other ground-disturbing activities in the Center Segment.

23 **NTP 3** means a written notice issued by ADOT to Developer pursuant to Section 7.4.67
24 of the Agreement authorizing Developer to proceed with construction and other ground-
25 disturbing activities of the Center Segment.

26 **NTP 3 Window** means the period of time commencing July 11, 2018, inclusive, and
27 ending September 10, 2018, inclusive.

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

29 **OJT Monthly Progress Report** has the meaning set forth in Section 7.0 of the OJT
30 Special Provisions.

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

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

OJT Trainee Status Report has the meaning set forth in Section 7.0 of the OJT Special Provisions.

OJT Trainee means (a) a minority, female, veteran or economically disadvantaged individual enrolled in either a State of Arizona registered apprenticeship program or a Developer/Subcontractor OJT program that has been approved by ADOT and FHWA and (b) any other individual ADOT approves for enrollment in such an apprenticeship or OJT program and for credit toward the OJT Goals in accordance with Section 9.0 of the OJT Special Provisions.

OJT Utilization Plan means Developer's ADOT-approved plan for meeting the OJT Goals, described in Section 9.3 of the Agreement.

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

Original Documents has the meaning set forth in Section DR 470.2.3 of the Technical Provisions.

Original Issued Title Policy has the meaning set forth in Section DR 470.4.3 of the Technical Provisions.

Original Letter of Acceptance has the meaning set forth in Section DR 420.2.6.2 of the Technical Provisions.

Original Recorded Instruments of Conveyance has the meaning set forth in Section DR 470.4.3 of the Technical Provisions.

Other Disputes means all Disputes other than D&C Disputes. By way of example, Other Disputes shall include but not be limited to Disputes concerning environmental obligations; maintenance obligations; ROW acquisition obligations; the calculation of costs; or any other Dispute not specifically categorized as a D&C Dispute.

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

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

1 **Partnering Meetings** shall have the meaning set forth in Section 22.1.1.1 of the
2 Agreement.

3 **Party** means Developer or ADOT, as the context may require, and **Parties** means
4 Developer and ADOT, collectively.

5 **Paint Draw Downs** has the meaning set forth in Section CR 450.3.1.2 of the Technical
6 Provisions.

7 **Pavement Mix Design** has the meaning set forth in Section CR 419.3.4 of the
8 Technical Provisions.

9 **Paving Plan** has the meaning set forth in Section CR 419.3.3 of the Technical
10 Provisions.

11 **Payment Submittal** has the meaning set forth in Section DR 470.4.4 of the Technical
12 Provisions.

13 **Performance Requirements** means, for each Element of the Project, the requirements
14 set forth in the Maintenance Table under the heading "Performance Requirements".

15 **Permanent Cure** means, for purposes of administering the Asset Condition Score and
16 Noncompliance Points regime, a remedy or repair that restores the Element at issue to
17 a condition of full functionality, durability and appearance as initially designed.

18 **Permitted Closure** means:

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

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

28 (c) aA Lane Closure required due to a Relief Event.

29 **Persistent Developer Default** has the meaning set forth in Section 17.4.1 of the
30 Agreement.

31 **Person** means any individual, corporation, joint venture, limited liability company,
32 company, voluntary association, partnership, trust, unincorporated organization or
33 Governmental Entity.

1 **Phase I Environmental Site Assessment Report** has the meaning set forth in
2 Section DR 470.3.4 of the Technical Provisions.

3 **Phase II Environmental Site Assessment Report** has the meaning set forth in
4 Section DR 470.3.4 of the Technical Provisions.

5 **Phasing and Construction Report** has the meaning set forth in Section DR 462.3.4 of
6 the Technical Provisions.

7 **Photographs of the Property and All Improvements** has the meaning set forth in
8 Section DR 470.4.7 of the Technical Provisions.

9 **Photometric Analysis Strip Map** has the meaning set forth in Section DR 460.3.6 of
10 the Technical Provisions.

11 **Planned Maintenance Activities** has the meaning set forth in Section MR 400.2 of the
12 [Technical Provisions](#).

13 **Plans** has the meaning set forth in Section GP 110.10.2.2.1 of the Technical Provisions.

14 **Plant Inventory** has the meaning set forth in Section DR 450.2.3 of the Technical
15 Provisions.

16 **Plant Inventory Update** has the meaning set forth in Section DR 450.2.3 of the
17 Technical Provisions.

18 **Plating Report** has the meaning set forth in Section DR 450.2.6 of the Technical
19 Provisions.

20 **Preliminary Drainage Report** has the meaning set forth in Section DR 445.3.3 of the
21 Technical Provisions.

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

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

28 **Prime Rate** means the prime rate as published from time to time by the board of
29 governors of the federal reserve system in statistical release H.15 or any publication
30 that may supersede it.

31 **Principal Investigator** has the meaning set forth in Section GP 110.08.3.15 of the
32 Technical Provisions.

1 **Prior Rights Documentation** means documents showing that the Utility Company's
2 facility predates the acquisition of the property for street or highway purposes, or that it
3 occupies an easement or other compensable land right. Such documents provide
4 verification that the Utility Company is entitled to compensation for the cost of
5 Adjustments required to accommodate the Project.

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

11 **Professional Services** means all Work performed under the Agreement other than
12 Construction Work, including the following services and Work:

- 13 (a) ~~design~~Design and engineering;
- 14 (b) Utility Adjustment design;
- 15 (c) ~~environmental~~Environmental permitting and compliance;
- 16 (d) ~~public~~Public involvement;
- 17 (e) ROW Services; and
- 18 (f) ~~surveying~~Surveying.

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

28 **Professional Services Quality Management Plan** has the meaning set forth in
29 Section GP 110.07.2.1.2 of the Technical Provisions.

30 **Progress Utility Report** has the meaning set forth in Section DR 430.3.3 of the
31 Technical Provisions.

32 **Project** means the transportation facilities and all related structures, improvements and
33 systems to be developed, designed, constructed, operated and maintained, or any of
34 the foregoing, pursuant to the terms of the Contract Documents, as more particularly
35 described in TP Attachment 110-1 to the Technical Provisions; provided, however, that,

from and after the Substantial Completion Date, “Project” does not include the Non-Maintained Elements for purposes of any provision of the Contract Documents relating to Maintenance Services, except to the extent of Work required for Final Acceptance, the D&C Warranty and the plant establishment period for the Non-Maintained Elements.

Project Administration Section of the PMP has the meaning set forth in Section GP 110.04.1 of the Technical Provisions.

Project Baseline Schedule means the schedule, consistent with the Completion Deadlines, submitted by Developer and approved by ADOT as a condition of NTP2, setting forth the ~~approved~~ schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section GP 110.06.2.6 of the Technical Provisions.

Project Collocated Office has the meaning set forth in Section GP 110.05.2 of the Technical Provisions.

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

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

Project Manager has the meaning set forth in Section GP 110.08.2.1 of the Technical Provisions. The Project Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Project Office means any facility/location at which the Developer and ADOT are to co-locate until Substantial Completion, and meeting the requirements set forth in Section GP 110.05.2 of the Technical Provisions including any Core Office or Field Office as described therein.

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

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

(b) ~~outside~~Outside such lines and required for performance of the Work or construction, operation or maintenance of the Project, including Temporary Construction Easements outside such lines during their terms, and easements and other property

interests for the Project and other components and features required for roadway function or environmental compliance.

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

(i) ~~real~~[Real](#) property for Developer's Temporary Work Areas outside the boundaries set forth in the Schematic ROW;

(ii) Replacement Utility Property Interests; and

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

Project ROW Quality Control Specialist has the meaning set forth in Section GP 110.08.3.8 of the Technical Provisions.

Project ROW Status Report has the meaning set forth in Section DR 470.2.3 of the Technical Provisions.

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

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

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

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

Proposed Geotechnical Software and Verification Data has the meaning set forth in Section DR 416.2.3 of the Technical Provisions.

Proposed Traffic Software and Verification Data has the meaning set forth in Section DR 460.2.2 of the Technical Provisions.

[Proposed Updates to MMP](#) has the meaning set forth in [Section MR 400.3.4 of the Technical Provisions](#).

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

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

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

13 **Public Involvement Plan** has the meaning set forth in Section CR 425.2.2 of the
14 Technical Provisions.

15 **Public Relations Officer** has the meaning set forth in Section GP 110.08.2.6 of the
16 Technical Provisions. The Public Relations Officer is one of the Key Personnel listed in
17 Exhibit 9-2 of the Agreement.

18 **Public Release Notification** has the meaning set forth in Section CR 425.2.3.1.3 of the
19 Technical Provisions.

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

21 **Pull Box GPS Locations** has the meaning set forth in Section CR 460.3.4 of the
22 Technical Provisions.

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

27 **Qualified Biologist** has the meaning set forth in Section GP 110.08.3.16 of the
28 Technical Provisions.

29 **Quality Management Plan** means, collectively, the Design Quality Management Plan,
30 the Construction Quality Management Plan, the Maintenance Quality Management Plan
31 included in the Project Management Plan and more fully described in Section GP
32 110.07.2.1 of the Technical Provisions.

33 **Quality Management Plan – General Requirements** has the meaning set forth in
34 Section GP 110.07.2.1.1 of the Technical Provisions.

1 **Quality Manager** shall have the meaning set forth in Section GP 110.08.1.4 of the
2 Technical Provisions. The Quality Manager is one of the Key Personnel listed in
3 Exhibit 9-2 of the Agreement.

4 **Quality Records** has the meaning set forth in Section GP 110.07.2.1.1 of the Technical
5 Provisions.

6 **Railroad Submittal Package** has the meaning set forth in Section DR 436.3.1 of the
7 Technical Provisions.

8 [Rainfall Records](#) has the meaning set forth in [Section CR 420.3.2.5.1 of the Technical](#)
9 [Provisions.](#)

10 **Ramp Meter Warrant Analysis** shall have the meaning set forth in Section DR
11 466.3.3.5 of the Technical Provisions.

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

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

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

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

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

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

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

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

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

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

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

1 **Record Drawings** means construction drawings and related documentation revised to
2 show significant changes made during the construction process; usually based on
3 marked-up RFC Documents furnished by Developer; also known as as-built plans, and
4 more fully described in Section GP 110.10.2.3.4 of the Technical Provisions.

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

8 **Reference Information Documents** means those documents listed in **Exhibit 3** to the
9 Agreement. Except as expressly provided in the Contract Documents, the Reference
10 Information Documents are not considered Contract Documents and were provided to
11 Developer for informational purposes only and without representation or warranty by
12 ADOT.

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

16 **Release for Construction Submittal** has the meaning set forth in
17 | Section GP 110.10.2.27.5 of the Technical Provisions.

18 **Release of Hazardous Materials** means any spill, leak, emission, release, discharge,
19 injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil,
20 air, water, groundwater or environment, including any exacerbation of an existing
21 release or condition of Hazardous Materials contamination.

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

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

30 (b) ADOT-Directed Change;

31 (c) Non-Discriminatory Maintenance Change;

32 (d) Safety Compliance Orders;

33 (e) ADOT-Caused Delay;

34 (f) Force Majeure Event;

- 1 (g) Utility Company Delay;
- 2 (h) Inaccurate Utility Information that directly affects the Construction Work,
3 including Construction Work on ADOT Additional Properties, subject to the following
4 exclusions:
- 5 (i) Excluding Construction Work on any Developer-Designated ROW;
- 6 (ii) Excluding Inaccurate Utility Information with respect to Service
7 Lines; and
- 8 (iii) Excluding where the existence of a Utility in the correct location
9 and/or size, or of a Utility Company's Prior Rights Documentation, as applicable, was
10 known to Developer as of the Setting Date, or would have become known to Developer
11 as of the Setting Date by undertaking a Reasonable Investigation with Utility Companies
12 prior to the Setting Date, including by requesting and reviewing Utility plans provided by
13 Utility Companies;
- 14 (i) Discovery at, near or on the Project ROW, excluding Developer-
15 Designated ROW and Replacement Utility Property Interests, of any Hazardous
16 Materials (including ADOT Release(s) of Hazardous Material), excluding Developer
17 Releases of Hazardous Materials and Known or Suspected Hazardous Materials;
- 18 (j) Any sudden spill of Hazardous Material by [ADOT or](#) a third party who is
19 not acting in the capacity of a Developer-Related Entity, which (i) occurs after the
20 Setting Date, (ii) is required to be reported to a Governmental Entity, and (iii) renders
21 use of the roadway or construction area unsafe or potentially unsafe absent
22 assessment, containment and/or remediation;
- 23 (k) Discovery on or under the Project ROW, excluding Developer-Designated
24 ROW and Replacement Utility Property Interests, of any archaeological, paleontological
25 or cultural resources, excluding any such resources at the Known Cultural Resource
26 Sites;
- 27 (l) Differing Site Conditions;
- 28 (m) Discovery at, near or on the Project ROW, excluding Developer-
29 Designated ROW and Replacement Utility Property Interests, of any Threatened or
30 Endangered Species (regardless of whether the species is listed as threatened or
31 endangered as of the Setting Date), excluding any such presence of the American Bald
32 Eagle or other species known to Developer prior to the Setting Date or that would
33 become known to Developer by undertaking Reasonable Investigation;
- 34 (n) Change in Law or Change in Adjustment Standards, except a Change in
35 Adjustment Standards that is consistent with the terms and limitations, if any, on
36 changes in Adjustment Standards set forth in any Utility Agreement to which Developer
37 is a party;

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

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

(q) Any Necessary Schematic ROW Change; or

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

Relief Event Delay means a delay to a Controlling Work Item, after consumption of all Float available pursuant to Section 7.3.2 of the Agreement, as a direct result of a Relief Event that could not be avoided by Developer; ~~provided, however, that such delay excludes.~~ For clarity, Relief Event Delay includes such delays to Controlling Work Items directly attributable to Developer's obtaining Environmental Approvals, reevaluations, amendments and supplements of the NEPA Approval, and other Governmental Approvals in connection with a Relief Event, as required under Section 4.3.2 of the Agreement. Relief Event Delay does not include delay due to loss, damage or destruction described in Section 11.3.7 of the Agreement.

Relief Event Notice means the Notice required to be provided by Developer under Section 14.1.1 of the Agreement.

Relief Request has the meaning set forth in Section 14.1.2 of the Agreement.

Relocation Agent has the meaning set forth in Section GP 110.08.23 of the Technical Provisions.

Relocation Payment Claim Submissions has the meaning set forth in Section DR 470.4.2 of the Technical Provisions.

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

Remaining Useful Life Report has the meaning set forth in Section MR 501.3 of the Technical Provisions.

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

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

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

11 **Request for Design Exception** has the meaning set forth in Section DR 440.3.5 of the
12 Technical Provisions.

13 **Request for Design Variance** has the meaning set forth in Section DR 440.3.5 of the
14 Technical Provisions.

15 **Request for Information** has the meaning set forth in Section GP 110.10.2.3.2 of the
16 Technical Provisions.

17 **Request for Pedestrian Access Modification/Closure** has the meaning set forth in
18 Section DR 462.3.1.3 of the Technical Provisions.

19 **Request for Proposals** has the meaning as set forth in Recital E of the Agreement.

20 **Requests for all Relocation Supplements** has the meaning set forth in
21 Section DR 470.4.2 of the Technical Provisions.

22 **Request for Qualifications** has the meaning as set forth in Recital C of the Agreement.

23 **Request for Written Acceptance of the Utility Work** has the meaning set forth in
24 Section CR 430.3.1.2 of the Technical Provisions.

25 **Response to ADOT-initiated RFIs** has the meaning set forth in
26 Section GP 110.10.2.3.2 of the Technical Provisions.

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

29 **Retained Parcels** means the parcels for which ADOT will retain responsibility for
30 acquisition, relocation and demolition work, as more specifically identified in the
31 Acquisition/Relocation Status Report contained in TP Attachment 470-3 of the Technical
32 Provisions.

33 **Revised PMP** has the meaning set forth in Section GP 110.04 of the Technical
34 Provisions.

1 **RFC Documents** means the complete final construction drawings (including plans,
2 profiles, cross-sections, notes, elevations, sections, details and diagrams),
3 specifications, reports, studies, calculations, electronic files, records, and submittals
4 necessary or related to the construction of the Project and any Utility Adjustments, and
5 satisfying the requirements presented in Section GP 110.10.2.2.5 of the Technical
6 Provisions.

7 **RFC Submittal** has the meaning set forth in Section GP 110.10.2.2.5 of the Technical
8 Provisions.

9 **RFI Log** has the meaning set forth in Section GP 110.10.2.3.2 of the Technical
10 Provisions.

11 **RFP Documents** means all of the information and materials supplied to Developer in
12 connection with the issuance of the RFQ, the RFP, including Instructions to Proposers,
13 the Contract Documents, and the Reference Information Documents and any addenda
14 issued in connection therewith.

15 **Roadway** means that portion of the right-of-way required for construction, limited by the
16 outside edges of slopes, including ditches, channels and all structures pertaining to the
17 work.

18 **Rock Engineer/Blasting Professional** has the meaning set forth in Section
19 GP 110.08.3.11 of the Technical Provisions.

20 **ROW Acquisition Manager** means the person described in Section 110.08.1.7 of the
21 Technical Provisions. The ROW Acquisition Manager is one of the Key Personnel listed
22 in Exhibit 9-2 of the Agreement.

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

25 **ROW Activity Plan Update** has the meaning set forth in Section DR 470.2.4 of the
26 Technical Provisions.

27 **ROW Electronic Files** has the meaning set forth in Section DR 470.3.1 of the
28 Technical Provisions.

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

33 **ROW Exhibit and Legal Description** has the meaning set forth in Section DR 470.3.1
34 of the Technical Provisions.

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

1 **ROW Submittal** shall mean any ROW Exhibit, Legal Descriptions, Appraisals,
2 Acquisition Package, Condemnation Package, and all other Submittals relating to a
3 single [Project](#) ROW parcel submitted to ADOT for review and approval.

4 **Routine Maintenance** means all Maintenance Services other than Capital Asset
5 Replacement Work.

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

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

13 **Safety Compliance Order** means an order or directive from ADOT to Developer to
14 implement Safety Compliance.

15 **Safety Corrective Measure** has the meaning set forth in Section GP 110.09.2.1.11.1 of
16 the Technical Provisions.

17 **Safety Management Plan** has the meaning set forth in Section GP 110.09.2.1 of the
18 Technical Provisions.

19 **Safety Manager** shall have the meaning set forth in Section GP 110.08.1.5 of the
20 Technical Provisions. The Safety Manager is one of the Key Personnel listed in
21 Exhibit 9-2 of the Agreement.

22 **Safety Performance Analysis Report** has the meaning set forth in
23 Section GP 110.09.2.1.11.1 of the Technical Provisions.

24 **Safety Standards** means those provisions of the Technical Provisions that ADOT
25 indicates that it considers to be important measures to protect public safety, worker
26 safety or the safety of property. As a matter of clarification, provisions of the Technical
27 Provisions primarily directed at durability of materials or equipment, where the durability
28 is primarily a matter of life cycle cost rather than protecting public or worker safety, are
29 not Safety Standards.

30 **Salvage Operation Plan** has the meaning set forth in Section DR 450.2.4 of the
31 Technical Provisions.

32 **Salvage Operation Plan Update** has the meaning set forth in Section DR 450.2.4 of
33 the Technical Provisions.

34 **Schedule Narrative** has the meaning set forth in Section GP 110.06.2.4 of the
35 Technical Provisions.

1 **Schematic Design** means the strip map that ADOT prepared depicting ADOT's
2 conceptual design for the Project, as included in the Reference Information Documents
3 entitled "South Mountain Freeway – Schematic Design."

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

7 **Section 401 Water Quality Certification** means the certification review, conducted by
8 the Arizona Department Environmental Quality and required under the Clean Water Act,
9 to determine compliance with state water quality standards when an individual Section
10 404 Permit is required.

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

15 **Segment Limits Map** shall have the meaning set forth in Section GP 110.10.2.1.7 of
16 the Technical Provisions.

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

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

27 **Sign Inventory** has the meaning set forth in Section DR 460.2.3 of the Technical
28 Provisions.

29 **Signing Concept Plan** has the meaning set forth in Section DR 460.3.4.3 of the
30 Technical Provisions.

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

34 **Site Documentation** has the meaning set forth in Section GP 110.04.3 of the Technical
35 Provisions.

1 **Specialty Inspector** means an inspector that obtains specialized training or certification
2 to Inspect an Element as part of the Maintenance Services, where then-current FHWA
3 or ADOT guidance, or Good Industry Practice, provides that such specialized training or
4 certification is desired in order to Inspect that Element.

5 **Specifications** has the meaning set forth in Section GP 110.10.2.2.2 of the Technical
6 Provisions.

7 **Specialty Inspection** means an inspection performed by a Specialty Inspector, as
8 required in Section MR 400.3.2.2 of the Technical Provisions.

9 **Stakeholder Inquiry Form** has the meaning set forth in Section CR 425.2.3.1.6 of the
10 Technical Provisions.

11 **State** means the State of Arizona.

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

14 **Stormwater Management Plan** has the meaning set forth in Section CR 420.3.2 of the
15 Technical Provisions.

16 **Stormwater Pollution Prevention Plan** has the meaning set forth in
17 Section CR 420.3.1 of the Technical Provisions.

18 **Structure Calculations Report** has the meaning set forth in Section DR 445.3.7.2.1 of
19 the Technical Provisions.

20 **Structure Type Study Report** has the meaning set forth in Section DR 455.3.1 of the
21 Technical Provisions.

22 **Subcontract** means any agreement by Developer with any other Person, Subcontractor
23 or Supplier to perform any part of the Work or provide any materials, equipment or
24 supplies for any part of the Work, or any such agreement at a lower tier, between a
25 Subcontractor and its lower tier Subcontractor or a Supplier and its lower tier Supplier,
26 at all tiers.

27 **Subcontractor** means any Person with whom Developer has entered into any
28 Subcontract to perform any part of the Work or provide any materials, equipment or
29 supplies for the Project on behalf of Developer and any other Person with whom any
30 Subcontractor has further subcontracted any part of the Work, at all tiers.

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

33 **Submittal** means any individual document, individual work product item or other written
34 or electronic end product or item required under the Contract Documents to be

delivered or submitted to ADOT, and as identified in the Submittal Schedule. “Submittal” does not include notices, correspondence or invoices for payment. When used in its lower case spelling, the term “submittal” shall have its plain language meaning.

Submittal Schedule has the meaning set forth in Section GP 110.10.2.1.7 of the Technical Provisions.

Substantial Completion means the occurrence of all of the events and satisfaction of all of the conditions set forth in Sections 6.6.1(a) and 6.6.3 of the Agreement, as and when confirmed by ADOT’s issuance of a Certificate of Substantial Completion for the Project.

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

Substantial Completion Deadline means the deadline for Substantial Completion set forth in the Preliminary Project Baseline Schedule at Exhibit 2-2 of the Agreement, as such deadline may be adjusted by Supplemental Agreement pursuant to the Agreement.

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

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

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

Survey Manager has the meaning set forth in Section GP 110.08.3.9 of the Technical Provisions.

SWPPP Record has the meaning set forth in Section CR 420.3.2.2 of the Technical Provisions.

Systems Engineering Checklist shall have the meaning set forth in Section DR 466.3.1 of the Technical Provisions.

Tangible Net Worth means the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined in accordance with Generally Accepted Accounting Principles and as interpreted by the

Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

Target means, for each Element, the target for the measurement record set forth in the column headed "Target" in the Maintenance Table.

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

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

Temporary Cure means, for purposes of administering the Asset Condition Score and Noncompliance Point regimes, a remedy or repair that restores the Element at issue to a condition that protects the public and, as necessary, other Elements. The Temporary Cure is not necessarily required to have the durability, aesthetic finish, or, to some extent, the full function of the Element as initially designed.

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

Termination by Court Ruling means any of the following:

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

(b) ~~issuance~~issuance of a final, non-appealable order by a court of competent jurisdiction that causes impossibility of performance of a fundamental obligation by Developer or ADOT under the Contract Documents or impossibility of exercising a fundamental right of Developer or ADOT under the Contract Documents, and such impossibility cannot be avoided or cured through severability and reformation of the Contract Documents as provided in Section 25.15 of the Agreement; or

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

(i) ~~permanently~~Permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Project, except where

1 such injunction or prohibition is attributable to Developer's acts, omissions, negligence,
2 willful misconduct, fraud, breach of an obligation under the Contract Documents or
3 violation of Law or an applicable Governmental Approval, or

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

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

10 **Test Blast Report** has the meaning set forth in Section CR 416.3.4.6 of the Technical
11 Provisions.

12 Test Plot Slope Cut Plan has the meaning set forth in Section CR 416.3.4.1 of the
13 Technical Provisions.

14 **Third-Party Agreement** means any agreement listed in Table 408-1 of Section DR 408
15 of the Technical Provisions.

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

19 **Third Party Release of Hazardous Material** means any spill of Hazardous Material by
20 a third party who is not acting in a capacity of a Developer-Related Entity.

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

25 **Time Impact Analysis** has the meaning set forth in Section GP 110.06.2.11 of the
26 Technical Provisions.

27 **TMP Update** has the meaning set forth in Section DR 462.2.3 of the Technical
28 Provisions.

29 **Traffic Control Plans** has the meaning set forth in Section DR 462.3.2 of the Technical
30 Provisions.

31 **Traffic Report** has the meaning set forth in Section DR 460.3.2 of the Technical
32 Provisions.

1 **Transportation Management Plan** means the plan prepared by Developer for the
2 management of traffic during construction, as more particularly described in 23 CFR
3 630 Subpart J and Section DR 462.2.3 of the Technical Provisions.

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

8 **TWG Report** has the meaning set forth in Section GP 110.02.3 of the Technical
9 Provisions.

10 **Uncured Noncompliance Points** means Noncompliance Points assessed on account
11 of breaches or failures that remain uncured. Uncured Noncompliance Points also
12 includes Noncompliance Points assessed for breaches or failures that have no
13 applicable cure period as identified in the applicable Noncompliance Event Table.

14 **Unedited Blast Videotapes** has the meaning set forth in Section CR 416.3.4.7 of the
15 Technical Provisions.

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

18 **Updated Basis of Design Report** has the meaning set forth in Section GP 110.01.2.2
19 of the Technical Provisions.

20 [Updated Drainage Master Plan has the meaning set forth in Section DR 445.3.2 of the](#)
21 [Technical Provisions.](#)

22 **Updated Future Projects List** has the meaning set forth in Section GP 110.01.3.2.1 of
23 the Technical Provisions.

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

27 **Utility** or **utility** means a public, private, cooperative, municipal and/or government line,
28 facility or system used for the carriage, transmission and/or distribution of cable
29 television, electric power, heat, telephone, telegraph, water, gas, oil, petroleum
30 products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water
31 not connected with the drainage of the Project, and similar substances that directly or
32 indirectly serve the public. The term “Utility” or “utility” specifically excludes:

- 33 (a) ~~storm~~[Storm](#) water facilities providing drainage for the Project ROW;
- 34 (b) ~~street~~[Street](#) lights and traffic signals;

(c) ITS ~~and IVHS~~ facilities; and

(d) ~~water~~Water wells held for private use. The necessary appurtenances to each utility facility shall be considered part of such utility.

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

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

Utility Adjustment Coordinator has the meaning set forth in Section GP 110.08.2.8 of the Technical Provisions. The Utility Adjustment Coordinator is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

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

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

1 **Utility Company Delay** means delay to the Critical Path caused by:

2 (a) A Utility Company's failure to provide material information necessary for
3 Developer to present to the Utility Company a proposed design package for the
4 applicable Utility Adjustment and proposed Utility Agreement for negotiation within 45
5 days after (i) ADOT receives satisfactory evidence that Developer satisfied the
6 "conditions to assistance" set forth in Section 5.10.7.2(a) of the Agreement, and
7 (ii) ADOT receives Developer's request for ADOT's assistance as described in
8 Section 5.10.7.2(b) of the Agreement;

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

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

15 (ii) ADOT receives satisfactory evidence that Developer satisfied the
16 "conditions to assistance" set forth in Section 5.10.7.2(a) of the Agreement, and

17 (iii) ADOT receives Developer's request for ADOT's assistance as
18 | described in Section 5.10.7.2(b) of the Agreement;~~or~~

19 (c) A Utility Company's failure to timely perform its obligations under the
20 applicable, executed Utility Agreement, provided that the schedule in the applicable
21 Utility Agreement sets forth reasonable timelines for the Utility Company to perform its
22 | obligations, as determined by ADOT in its good faith discretion~~;~~ or
23 |

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

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

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

Utility Coordination Plan has the meaning set forth in Section DR 430.2.2.1 of the Technical Provisions.

Utility Information means the information regarding Utilities included in the Reference Information Documents, together with any other information ADOT provided to Developer prior to the Setting Date with regard to identification of Utilities. The Utility Information includes:

- (a) survey~~Survey~~ information regarding existing utilities;
- (b) utility~~Utility~~ maps included as an overlay on the survey;
- (c) as~~As~~-built maps for existing Utilities;
- (d) Prior Rights Documentation; and
- (e) other~~Other~~ information as to the existence or nature of any rights or interests of any Utility Company relating to use or occupancy of real property. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

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

Utility Report has the meaning set forth in Section DR 430.3.3 of the Technical Provisions.

1 **Utility Service Request Letter** has the meaning set forth in Section DR 430.3.5 of the
2 Technical Provisions.

3 **Vacated Parcel Notification** has the meaning set forth in Section DR 470.4.7 of the
4 Technical Provisions.

5 **Vehicle Project Logo** has the meaning set forth in Section GP 110.05.4.3 of the
6 Technical Provisions.

7 [Visual Analysis has the meaning set forth in Section DR 450.2.9 of the Technical](#)
8 [Provisions.](#)

9 **Warranty** means the warranty of the D&C Work provided by Developer pursuant to
10 [Section 12.1.2](#) of the Agreement.

11 **Warranty Bond** has the meaning set forth in [Section 10.1.1](#) of the Agreement.

12 **Warranty Term** has the meaning set forth in [Section 12.1.2](#) of the Agreement.

13 [Water Quality Records has the meaning set forth in Section CR 420.3.2.8 of the](#)
14 [Technical Provisions.](#)

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

28 **Written Developer Construction Inspection Approval Letter and Utility Record**
29 **Drawings** has the meaning set forth in Section CR 430.3.3 of the Technical Provisions.

30 [Written Documentation of UPRR's Authorization of Work has the meaning set forth](#)
31 [in Section DR 436.3.4 of the Technical Provisions.](#)

32 **Written Notification of Demolition Completion** has the meaning set forth in Section
33 DR 470.4.7 of the Technical Provisions.

34 **Written Recommendation to Facilitate the Displacee's Move** has the meaning set
35 forth in Section DR 470.4.2 of the Technical Provisions.

1 **Written Request to Access Existing ADOT Node Buildings** shall have the meaning
2 set forth in Section CR 466.3.1.6 of the Technical Provisions.

3 **Written Request for ITS Element Number** shall have the meaning set forth in
4 Section DR 466.3.3 of the Technical Provisions.

5 ~~**Written Request for Traffic Signal Modifications** has the meaning set forth in~~
6 ~~**Section CR 460.3.3 of the Technical Provisions.**~~

7 **Written Request for Lane Closure** has the meaning set forth in Section DR 462.3.3.1
8 of the Technical Provisions.

9 **Written Request for Maintenance Unit Device Decals** has the meaning set forth in
10 Section CR 460.3.4 of the Technical Provisions.

11 **Written Request for Temporary Phasing Controller Programming** has the meaning
12 set forth in Section CR 460.3.3 of the Technical Provisions.

13 ~~**Written Request for Traffic Signal Modifications** has the meaning set forth in~~
14 ~~**Section CR 460.3.3 of the Technical Provisions.**~~

15 **Written Responses to Review Comments** has the meaning set forth in Section
16 GP 110.10.2.1.5 of the Technical Provisions.

17 [END OF EXHIBIT 1]