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

for

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

Between

ARIZONA DEPARTMENT OF TRANSPORTATION

and

[DEVELOPER]

Dated as of: [_____], 2016

ORIGINAL ISSUED JUNE 12, 2015
ADDENDUM #1 ISSUED JULY 21, 2015
ADDENDUM #2 ISSUED SEPTEMBER 2, 2015

EXHIBIT 1

ABBREVIATIONS AND DEFINED TERMS

[*EXHIBIT 1 SEPARATELY ATTACHED*]

EXHIBIT 2

DEVELOPER'S PROPOSAL COMMITMENTS AND CLARIFICATIONS
[See attached]

EXHIBIT 2-1

DEVELOPER'S SCHEMATIC DESIGN INCLUDING ALTERNATIVE TECHNICAL CONCEPTS

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-2

PRELIMINARY PROJECT BASELINE SCHEDULE

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-3

PROPOSAL COMMITMENTS

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-4

PRICING TABLES

Exhibit 2-4.1	D&C Price Breakdown
Exhibit 2-4.2	Adjustments to D&C Price for Advancement or Delay of NTP 3
Exhibit 2-4.3	Maintenance Price Summary
Exhibit 2-4.4	Routine Maintenance Breakdown
Exhibit 2-4.5	Capital Asset Replacement Work Breakdown

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-5

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-6

DBE CERTIFICATION

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-7

BUY AMERICA CERTIFICATION

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-8

USE OF CONTRACT FUNDS IN LOBBYING CERTIFICATION

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-9

DEBARMENT AND SUSPENSION CERTIFICATION

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 2-10

FORM OF DRUG-FREE WORKPLACE CERTIFICATION

[*NTD – INSERT FROM DEVELOPER'S PROPOSAL*]

EXHIBIT 3

LIST OF REFERENCE INFORMATION DOCUMENTS

[*TO BE PROVIDED WITH FINAL RFP*]

EXHIBIT 4

FEDERAL REQUIREMENTS

	Exhibit Description	No. of Pages
Attachment 1	Federal Requirements for Federal-Aid Construction Projects	4
Attachment 2	FHWA Form 1273	10
Attachment 3	Federal Prevailing Wage Rates	2
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Attachment 6	Certification Regarding Use of Contract Funds for Lobbying	2
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Attachment 8	Appendix A to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Contractor Assurances	2
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ATTACHMENT 1 TO EXHIBIT 4

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

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

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

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

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

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

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

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

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

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

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

CONVICT PRODUCED MATERIALS

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

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

ACCESS TO RECORDS

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

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

ATTACHMENT 2 TO EXHIBIT 4

FHWA FORM 1273

[See attached]

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

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

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

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

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

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of

Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its

subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering

services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation

in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or

agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT 3 TO EXHIBIT 4

FEDERAL PREVAILING WAGE RATES

(Subject to change]

The federal prevailing wage rates for the Work through Final Acceptance shall be those set forth under the general wage decision for highway construction projects in Maricopa County, Arizona as published on the Davis-Bacon wage determination website on the date that is seven days before the Proposal Due Date. Such prevailing wage rates are incorporated herein.

[*The wage decisions and labor classifications in this Attachment 3 to Exhibit 4 will be updated at or before execution of the Agreement with the wage decisions and labor classifications in effect seven days prior to the Proposal Date. Developer is not entitled to any change in the Price due to the differences between the wage decisions and labor classifications herein and those in effect ten days prior to the Proposal Date.]*

[*NTD – INSERT CORRESPONDING DAVIS-BACON WAGE RATE 7 DAYS BEFORE PROPOSAL DUE DATE*]

ATTACHMENT 4 TO EXHIBIT 4

EQUAL EMPLOYMENT OPPORTUNITY
SPECIAL PROVISION 000---006

Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown

Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

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

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

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

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all

foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor’s EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and

maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the contractor’s EEO policy and the contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

11. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results

from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit an Annual EEO Report on Form FHWA-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon. Contractors and subcontractors are required to submit the information in the FHWA-1391 report via LCPtracker system, a labor compliance software monitoring certified payroll and prevailing wage. The staffing figures to be reported should represent the project workforce on board in all or any part of the last annual payroll period preceding the end of July. The report shall be submitted no later than September 1.

ATTACHMENT 5 TO EXHIBIT 4

AFFIRMATIVE ACTION
SPECIAL PROVISION 000 --- 0004

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. General.

In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth in Attachment 4 to this Exhibit 4, the contractor's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. Goals.

a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (per-cent)	Goals for female participation in each trade (per-cent)
See Table 1	6.9%

c. These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction. The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of

minority and female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. Subcontracting.

The contractor shall provide written notification to the Department within ten Business Days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. Covered area.

As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Arizona. The geographical area covered by these goals for other minorities are the boroughs or other geographic areas in the State of Arizona as indicated in Table 1.

5. Reports.

The contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1

Borough or Other Geographic Area	Goals for Minority Participation	County
State of Arizona	15.8% (minority)	Maricopa County

ATTACHMENT 6 TO EXHIBIT 4

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Contract or Subcontract, each prospective Developer and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective Developer/subcontractor certifies, to the best of its knowledge and belief, that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions, and shall include a copy of said form in its proposal or bid, or submit it with the executed Contract or Subcontract.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Developer/subcontractor shall require that the language of this certification be included in all lower tier Subcontracts which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

ATTACHMENT 7 TO EXHIBIT 4

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

Developer shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes for these materials must occur in the United States, with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to Buy America requirements. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the Contract.

A Certificate of Compliance shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except as for the above exception.

BUY AMERICA CERTIFICATE

CERTIFICATE OF COMPLIANCE

Developer hereby certifies that it will comply with the requirements of 23 U.S.C. 313, and the applicable regulations in 23 CFR 635.410.

Date: _____

Signature: _____

Developer's Name: [***NTD – INSERT DEVELOPER'S NAME***]

Title:

ATTACHMENT 8 TO EXHIBIT 4

APPENDIX A TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS: CONTRACTOR ASSURANCES

Note: Whenever in this Attachment 8 to Exhibit 4 references are made to:

(a) "Acts and Regulations," such reference shall be construed to mean (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin), (ii) 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964); and (iii) 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

(b) "contract," such reference shall be construed to mean Agreement;

(c) "contractor," such reference shall be construed to mean Developer; and

(d) "Recipient," such reference shall be construed to mean ADOT.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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

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

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

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

ATTACHMENT 9 TO EXHIBIT 4

APPENDIX E TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS: PERTINENT NON-DISCRIMINATION AUTHORITIES

Note: Whenever in this Attachment 9 to Exhibit 4 references are made to:

(a) "contract," such reference shall be construed to mean Agreement; and

(b) "contractor," such reference shall be construed to mean Developer.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the

programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;

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

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

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

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

EXHIBIT 5

SUBCONTRACTOR REQUEST FORMS

Exhibit 5-1	Professional Services Subcontractor Request Form
Exhibit 5-2	Construction & Maintenance Subcontractor Request Form

EXHIBIT 5-1

PROFESSIONAL SERVICES SUBCONTRACTOR REQUEST FORM

[See attached]

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

Subcontractor		ADOT TRACS No.	
AZ UTRACS No.		ADOT Project No.	
Street Address		Developer	
Telephone No.		Telephone No.	
City, State, ZIP		Developer Amount	$
Email Address (required)		Estimated Subcontract Amount	$
Contact Name (printed)			
Subcontractor Fed EIN No.			
Lower tier to DBE:			

☐ Yes (documentation may be required) ☐ No

Subcontractor Work Scope Items (Provide description of Work)	**$ Amounts**

CERTIFICATION:
Developer certifies it shall provide to ADOT an executed copy of the Subcontract authorized under this Subcontractor Request Form as and when required pursuant to Section 9.4.2.3 of the DBM Agreement.

Authorized Developer Signature	Authorized Lead Subcontractor Signature	Authorized Subcontractor Signature
Title Date	Title Date	Title Date
Authorized Lower-Tier Subcontractor Signature	DBE Liaison Signature	
Title Date	Title Date	

FOR ADOT USE ONLY

Percent of total Professional Services Work subcontracted on the Project to date.	%
Total amount of Professional Services Work subcontracted on the Project to date.	$
Subcontract(s) in Field Reports	☐ Yes ☐ No
	Unit:

Assistant State Engineer – Construction Date	Field Reports Date

EXHIBIT 5-2

CONSTRUCTION & MAINTENANCE SUBCONTRACTOR REQUEST FORM

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION & MAINTENANCE SUBCONTRACTOR REQUEST FORM
P3 Project – Design-Build-Maintain

Subcontractor		ADOT TRACS No.	
AZ UTRACS No.		ADOT Project No.	
Street Address		Developer	
City, State, ZIP		Telephone No.	
Telephone No.		Developer Amount	$
Email Address (required)		Estimated Subcontract Amount	$
Contact Name (printed)		Type of Work: ☐ Construction Work ☐ Capital Asset Replacement Work ☐ Routine Maintenance	
Subcontractor R.O.C. No.			
Subcontractor Fed EIN No.		**I CERTIFY THAT I AM A BONA FIDE TRUCK OWNER/OPERATOR**	
Lower tier to DBE: ☐ Yes (documentation may be required) ☐ No		Signature	Date

Subcontracted Bid Item Nos. (Check box and provide dollar amount for joint/partial Items)	**Subcontracted Non-Pay Items** (Provide Description of Work)
☐$	
☐$	
☐$	
☐$	

CERTIFICATION

Developer certifies the following:

A. Developer shall provide to ADOT an executed copy of the Subcontract authorized under this Subcontractor Request Form as and when required pursuant to Section 9.4.2.3 of the DBM Agreement;

B. Upon execution of the Subcontract authorized under this Subcontractor Request Form, Developer shall provide to Field Office and Field Reports (i) copies of the executed Subcontract containing the above bid items of Work, and (ii) a signed Certification with Regard to the Performance of Previous Contracts or Subcontracts Subject to the EEO Clause and Filing of Required Reports, April 1969;

C. Before commencing work under the Subcontract authorized under this Subcontractor Request Form, Developer shall provide to the Subcontractor copies of the following documents:
   1. Contract Documents (DBM Agreement and Technical Provisions);
   2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246, rev. April 15, 1981);
   3. Standard Federal Equal Employment Opportunity Construction Specifications (Executive Order 11246, rev. April 15, 1981);
   4. Form FHWA 1273 (rev. May 1, 2012);
   5. EEO Compliance Reports (rev. August 1, 2005);
   6. DBE Special Provisions (Exhibit 7 of DBMA Agreement); and
   7. Federal Prevailing Wage Rates (Attachment 3 to Exhibit 4 of DBM Agreement).

Authorized Developer Signature	Authorized Lead Subcontractor Signature	Authorized Subcontractor Signature
Title Date	Title Date	Title Date
Authorized Lower-Tier Subcontractor Signature	DBE Liaison Signature	
Title Date	Title Date	

FOR ADOT USE ONLY

Percent of Construction Work/Capital Asset Replacement Work subcontracted on the Project to date:	%
Total amount of Construction Work/Capital Asset Replacement Work subcontracted on the Project to date:	$
Subcontract in Field Reports	☐ Yes ☐ No
	Org:

Assistant State Engineer – Construction Date	Field Reports Date

EXHIBIT 6

MAXIMUM ALLOWABLE CUMULATIVE DRAW SCHEDULE

Months after NTP 1	Maximum Allowable Cumulative Draw *
1	$ 28,616,817
2	$ 43,113,642
3	$ 52,410,910
4	$ 61,637,765
5	$ 78,351,647
6	$ 92,617,826
7	$ 98,381,024
8	$ 124,430,122
9	$ 137,795,204
10	$ 151,605,789
11	$ 165,416,373
12	$ 177,890,449
13	$ 191,935,420
14	$ 205,521,215
15	$ 218,971,193
16	$ 230,594,732
17	$ 243,925,085
18	$ 259,744,761
19	$ 288,211,798
20	$ 317,669,500
21	$ 346,176,953
22	$ 375,634,655
23	$ 405,092,356
24	$ 431,699,312
25	$ 461,091,572
26	$ 489,495,695
27	$ 518,846,623
28	$ 547,250,746
29	$ 577,121,719
30	$ 606,992,691
31	$ 635,886,234
32	$ 665,733,353
33	$ 694,617,662

Months after NTP 1	Maximum Allowable Cumulative Draw *
34	$ 724,464,781
35	$ 754,311,901
36	$ 781,270,589
37	$ 810,989,943
38	$ 839,672,518
39	$ 869,311,178
40	$ 897,993,752
41	$ 915,468,183
42	$ 929,045,946
43	$ 942,183,560
44	$ 955,757,608
45	$ 968,893,784
46	$ 982,467,833
47	$ 996,041,881
48	$ 1,008,740,185
49	$ 1,022,302,833
50	$ 1,035,421,009
51	$ 1,048,101,912

* All amounts shown are in nominal dollars.

EXHIBIT 7

ADOT'S DBE SPECIAL PROVISIONS

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DBE SPECIAL PROVISIONS

1.0 POLICY

The Arizona Department of Transportation (hereinafter referred to as ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, ADOT has signed an assurance that it will comply with 49 CFR Part 26. The regulations require that Developer take necessary and reasonable steps to ensure that DBEs have an equal and fair opportunity to compete for and perform this Agreement. These special provisions provide detailed information about these requirements, and identify Developer's responsibilities to demonstrate compliance with the requirements.

It is the policy of ADOT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted Agreements. It is also the policy of ADOT to:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

3. Ensure that the DBE program is narrowly tailored in accordance with applicable law;

4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;

5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts;

6. Assist in the development of firms that can compete successfully in the market place outside of the DBE program.

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

8. Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

It is also the policy of ADOT to facilitate and encourage participation of Small Business Concerns (SBCs) in USDOT-assisted contracts, as defined in Section 3.0 of these DBE Special Provisions. ADOT encourages Developer to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing the Work.

2.0 ASSURANCES OF COMPLIANCE AND NON DISCRIMINATION

Any Developer, Subcontractor, Supplier, DBE firm, and Guarantor involved in the performance of work on a federal-aid Agreement shall familiarize themselves with and comply with the terms

and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), and these DBE Special Provisions.

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

3.0 DEFINITIONS AND FORMS

3.01 Definitions

(A) Commercially Useful Function (CUF): Commercially Useful Function and how to credit DBE participation is set out fully in 49 CFR 26.22. In part, 49 CR 26.55(c) defines CUF as follows:

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

(B) Committed DBE: A committed DBE firm is one that was identified by Developer, typically on a DBE Intended Participation Affidavit form, to meet DBE Goals as a condition of performance, and includes any substituted DBE that has subsequently been contracted to meet assigned contract goals.

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

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

(1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.

(E) **Joint Check:** a two-party check between a Subcontractor, DBE and/or non-DBE, a Developer and/or the regular dealer of material supplies.

(F) **Joint Venture:** An association of a DBE firm with one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Agreement and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(G) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(H) **Non-DBE:** Any firm that is not a DBE.

(I) **Race-conscious:** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

(J) **Race-neutral:** A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(K) **Small Business Concern (SBC):** A business that meets all of the following conditions:

(1) Operates as a for-profit business registered to do business in Arizona;

(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;

(3) Is independently owned and operated;

(4) Is not dominant in its field on a national basis; and

(5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(L) **Socially and Economically Disadvantaged Individuals:** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) "Women;"

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

3.02 List of Forms

The following forms are referenced in and attached to these DBE Special Provisions or the Agreement. All forms are also available at www.azdot.gov/bec and from the BECO, 1135 N. 22nd Avenue (second floor), mail drop 154A, Phoenix, Arizona 85009, phone (602) 712-7761.

Name of Form	Attachment to DBE Special Provisions
Construction DBE Intended Participation Affidavit Summary	Attachment A
Construction DBE Intended Participation Affidavit Individual	Attachment B
Professional Services DBE Intended Participation Summary	Attachment C
Professional Services DBE Intended Participation Individual	Attachment D
Construction & Maintenance Subcontractor Request Form	Exhibit 5-1 to Agreement (not attached to DBE Special Provisions)
Professional Services Subconsultant Request Form	Exhibit 5-2 to Agreement (not attached to DBE Special Provisions)
Bidder's List of Subcontractors and Suppliers	Attachment E
DBE Monthly Utilization Progress Report	Attachment F
Monthly DBE Subconsultant/Subcontractor Payment Form	Attachment G
Monthly Non-DBE Subconsultant/Subcontractor Payment Form	Attachment H
DBE Certificate of Final Payments Construction and Professional Services	Attachment I
Summary of Final Payments for Construction	Attachment J
Summary of Final Payments for Professional Services	Attachment K
DBE Substitution or Termination Request	Attachment L

4.0 WORKING WITH DBES

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

Arizona Department of Transportation

Business Engagement and Compliance Office
1135 N. 22nd Avenue (second floor), Mail Drop 154A
Phoenix, AZ 85009
Phone (602) 712-7761
FAX (602) 712-8429
Email: DeveloperCompliance@azdot.gov

5.0 APPLICABILTY

ADOT has established an overall annual goal for DBE participation on Federal-aid Agreements. ADOT intends for the goal to be met with a combination of race conscious and race neutral efforts. Race conscious participation occurs where Developer uses a percentage of DBEs, as defined herein, to meet the contract-specific goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a contract through customary competitive procurement procedures or is awarded a subcontract on a contract that does not carry a DBE contract goal.

Developer shall meet the DBE Goals specified in the Agreement, or establish that it was unable to meet the DBE Goals despite making Good Faith Efforts to do so. Developer is encouraged to obtain DBE participation above and beyond the DBE Goals.

6.0 CERTIFICATION AND REGISTRATION

6.01 DBE Certification

Certification as a DBE shall be predicated on:

1. The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".

2. The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

3. The submission of any additional information that ADOT may require to determine the firm's eligibility to participate in the DBE program.

4. The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with ADOT at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at www.adot.dbesystem.com.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is grounds for denial or removal of certification.

Arizona is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT's projects. A list of DBE firms certified by

the AZUCP is available on the Internet at www.adot.dbesystem.com. The list will indicate contact information and types of work for which each DBE firm is certified. ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that the DBE has the necessary licenses or registrations to perform the work.

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

6.02 SBC Registration and Utilization

49 CFR Part 26.39 requires that ADOT's DBE Program include an element to incorporate contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted-contracts. SBCs are for-profit businesses that are registered with ADOT to do business in Arizona and meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code. SBCs can register online at the AZ UTRACS website at www.adot.dbesystem.com.

ADOT's registration of SBCs is not a representation of qualifications and/or abilities. Developer bears all risks of ensuring that SBC firms that Developer selects to work on the Project are able to perform the Work.

While the SBC component of the DBE program does not require utilization goals on the Project, ADOT strongly encourages Developer to utilize small businesses on this Project that are registered as SBCs in AZ UTRACS, in addition to DBEs meeting the certification requirement. Developer and its Subcontractors can visit AZ UTRACS at https://adot.dbesystem.com/ to search for registered SBCs that can be used on the Project. However, note that SBCs that are not DBEs shall not be counted towards meeting DBE Goals.

7.0 DBE FINANCIAL INSTITUTIONS

ADOT thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the state of Arizona and makes reasonable efforts to use these institutions. ADOT encourages Developer to use such institutions on USDOT assisted-contracts. However, use of a DBE financial institution will not be counted toward DBE Goals.

ADOT encourages Developer to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 TIME IS OF THE ESSENCE

TIME IS OF THE ESSENCE IN RESPECT TO THESE DBE PROVISIONS.

9.0 COMPUTATION OF TIME

In computing any period of time described in this DBE Special Provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, Federal, or State holiday, the period extends to the next day that is not a Saturday, Sunday, Federal or State holiday.

10.0 DBE GOALS

Only DBE firms certified in the State of Arizona Unified Certification Program (AZUCP) prior to the DBE starting work on the Project shall count toward attaining the DBE Goals. Developer, as part of its Good Faith Efforts to meet the DBE Goals, may expand its search to a reasonably wider geographic area, including other states, provided that all out of state DBEs submit applications to ADOT to become certified in Arizona prior to beginning any Work for DBE credit.

11.0 DBE PARTICIPATION ABOVE THE GOAL (RACE NEUTRAL PARTICIPATION)

Additional DBE participation above the DBE participation required to meet the DBE Goals is an important aspect of ADOT's DBE program. Developer is strongly encouraged to use additional DBEs above the DBE Goals in performing the Work in an effort to help ADOT meet its overall DBE goal and help ADOT meet the maximum feasible portion of its DBE goals through race neutral as outlined in 49 CFR Part 26. There are fewer administrative requirements on the part of Developer when using race neutral DBEs (DBEs not listed on the Construction DBE Intended Participation Affidavit Summary to meet DBE contract goals). For example, if a DBE is not listed on the Construction DBE Intended Participation Affidavit Summary, Developer does not have to submit a Construction DBE Intended Participation Affidavit Individual form, Developer's Subcontract certification process follows the same process of any other Subcontract, and Developer does not have to replace the DBE if the DBE fails to perform. Therefore these DBEs are treated as any other Subcontractor on the Project but will count towards the overall DBE utilization.

12.0 DBE POST AWARD SUBMISSIONS

12.01 Final DBE Utilization Plan (After NTP 1)

Within 30 days after issuance of NTP 1, Developer shall revise and convert its Preliminary DBE Utilization Plan included in its Proposal into a more detailed, final DBE Utilization Plan and submit it to ADOT for approval in its good faith discretion, as more particularly set forth in Section 9.2.5 of the Agreement.

In an effort to verify compliance with DBE requirements, ADOT will evaluate throughout the course of the work Developer's efforts to execute its approved DBE Utilization Plan. Developer shall manage the approved DBE Utilization Plan to achieve the DBE Goals and to provide documentation that it is making Good Faith Efforts to do so. Developer, through consultation with ADOT, shall revise and update the DBE Utilization Plan at least quarterly prior to Substantial Completion, or more frequently as appropriate, detailing changes in or additional Good Faith Efforts it will undertake to meet the DBE Goals and how it will make up for any shortfalls in projected DBE utilization. All official revisions must be submitted to ADOT for review and approval.

12.02 DBE Commitment Affidavits (After NTP 1)

Not less than 12 Business Days before any Design Work begins on the Project, Developer shall submit to ADOT for review and comment Professional Services DBE Intended Participation Affidavit Summary for each DBE firm identified at that time to perform initial Design Work. Thereafter, as each further Professional Services DBE is identified, Developer shall submit to ADOT for review and comment, not less than 12 Business Days before such DBE commences Design Work, a Professional Services DBE Intended Participation Affidavit Individual form for such DBE. Developer shall receive no DBE credit for Professional Services performed by DBEs prior to the required submission and resolution of any comments from ADOT.

Not less than 12 Business Days before any Construction Work begins on the Project, or before beginning any Capital Asset Replacement Work, Developer shall submit to ADOT for review and comment Construction DBE Intended Participation Affidavit Summary for each DBE firm identified at that time to perform Construction Work or Capital Asset Replacement Work. Thereafter, as each further Construction DBE or Capital Asset Replacement Work DBE is identified, Developer shall submit to ADOT for review and comment, not less than 12 Business Days before such DBE commences Construction Work or Capital Asset Replacement Work, a Construction DBE Intended Participation Affidavit Individual form for such DBE. Developer shall receive no DBE credit for Construction Work or Capital Asset Replacement Work performed by DBEs prior to the required submission and resolution of any comments from ADOT.

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

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

2. A separate DBE Intended Participation Affidavit must be submitted for each DBE used to meet the DBE Goals. Developer shall indicate each DBE's name, address, a description of the work the DBE will perform, proposed Subcontract amount and the NAICS code applicable to the kind of work the firm would perform on the Project. A list of certified DBEs with their respective NAICS code can be located on the DBE Directory at AZ UTRACS website www.adot.dbesystem.com. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item. The intended DBE must complete and sign the form, as specified therein, to confirm its participation.

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

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

5. All DBE commitment amounts must be finalized between the DBE and Developer prior to submittal of DBE Intended Participation Affidavits. Developer is not permitted to inflate DBE awards or overstate DBE award amounts on a DBE Intended Participation Affidavit with the knowledge that the DBE will actually

perform a small portion of the Work. Reduction of DBE commitment amounts after submittal of the DBE Intended Participation Affidavit and resolution of ADOT's comments thereon, whether occurring prior to or after the DBE firm starts Work on the Project, without good cause, may be grounds for ADOT declaring that Developer has failed to make Good Faith Efforts, and Developer may be subject to remedies for such failure as outlined in Section 15.01 "Continuing Good Faith Efforts" of these DBE Special Provisions. Scheduling conflicts are not evidence of good cause as this should have been considered prior to submittal of DBE Intended Participation Affidavits. Since Developer is required to use ADOT-approved DBEs submitted on DBE Intended Participation Affidavit forms to meet DBE Goals, Developer is responsible for ensuring DBEs are available and ready to perform when needed on the Project prior to submission of DBE Intended Participation Affidavits.

6. Developer bears the risk of late submission or late delivery by the postal service or a delivery service. Late submittal of DBE Intended Participation Affidavits may result in denial of DBE credit.

ADOT may reject the DBE Intended Participation Affidavit if it is inaccurate or incomplete, including for lack of accurate and complete DBE certification and licensing information. ADOT shall have the right to review DBE Intended Participation Affidavits to ensure that DBEs are certified and licensed for the type of Work being proposed. If Developer fails to correctly complete and submit a DBE Intended Participation Affidavit within the specified time frame and fails to resolve ADOT comments thereon before the DBE begin Work on the Project, ADOT may deny DBE credit and/or will withhold progress payments until such time as the required submissions are received and all ADOT comments are resolved.

12.03 DBE Subcontractor Request Forms

During the course of the Work, Developer shall submit to ADOT copies of completed and signed Professional Services or Construction & Maintenance Subcontractor Request Forms along with copies of Subcontracts, purchase orders, invoices, and all other required documents for all Committed DBEs, at all tiers, that were listed on a Professional Services or Construction DBE Intended Participation Affidavit pursuant to Section 12.02 of these DBE Special Provisions.

Professional Services or Construction & Maintenance Subcontractor Request Forms, executed Subcontracts and all required documents outlined on the forms, must be submitted to ADOT for all DBEs, starting work on the Project by the 15th of each month.

If Developer fails to correctly complete and submit a Professional Services or Construction & Maintenance Subcontractor Request Form and executed DBE Subcontract within the specified time frames and fails to resolve all comments from ADOT before the DBE begins work on the Project, ADOT may deny DBE credit and/or will withhold progress payments until such time as the required submissions are received and ADOT comments thereon resolved.

12.04 DBE and Subcontractor Information Upload to DBE System (After NTP 2)

Within 15 days after a DBE Subcontractor/Supplier request is processed by ADOT pursuant to Section 12.03 of these DBE Special Provisions, and before the DBE begins work on the Project, Developer shall log into ADOT's web-based DBE System (https://adot.dbesystem.com) and enter and/or verify that the following information, at a minimum, is uploaded into the system.

Such entry and verification of information is required in order to register commitments made through the DBE Intended Participation Affidavits, and to track DBE utilization for each DBE Goal, Subcontractor payments and prompt pay requirements:

1. Name of DBE Subcontractor or Supplier
2. Contact information
3. Subcontract amount
4. Subcontract award date
5. Estimated work start date
6. Work description

Developer must also ensure that the same information is entered into ADOT's web-based DBE System for all Non-DBE Subcontractors/Suppliers. This information must be entered and/or verified in ADOT's web-based DBE System monthly throughout the course of the D&C Work as all DBE, as well as Non-DBE, Subcontracts are executed by Developer.

12.05 Bidders List – AZUTRACS Vendor Registration

49 CFR Part 26.11 require DOTs to collect certain information from all contractors and Subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects some of this information via a Bidder's List of Subcontractors and Suppliers and the rest of the information is collected when firms register their companies as a vendor on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal; a centralized database for companies that are "ready, willing and able" to do business with ADOT. ADOT uses the Bidder's List and AZ UTRACS Vendor Registration information to help calculate ADOT's triennial and individual DBE contract goals. This information will be maintained as confidential to the extent allowed by federal and state law.

Developer must also maintain Bidder's Lists throughout the D&C Work with the name, contact information, and other required information listed on the Bidder's List form for every firm quoting, bidding or expressing an interest in providing subcontract services for the Project. Developer must submit Bidder's List forms with the required information outlined on the forms every month for all new firms that quote, bid or express interest in Subcontracts with Monthly DBE Utilization Progress Reports as outlined in Section 18.02.2 of these DBE Special Provisions.

Along with submitting Bidder's Lists monthly, Developer shall ensure that all Subcontractors are registered as a vendor in AZUTRACS and provide an AZUTRACS Vendor Number for each Subcontractor on the Bidder's List form submitted each month.

To determine if a Subcontractor is registered as a vendor, search by firm name at: https://adot.dbesystem.com/FrontEnd/VendorSearchRegistry.asp?TN=adot&XID=5475. If the firm is listed at the bottom of the page in the Search Results, it is registered as a vendor. If it is not listed, the firm shall register by going to this website https://adot.dbesystem.com/FrontEnd/StartRegistry.asp?TN=adot&XID=6761.

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

If Developer fails to correctly complete and submit Bidder's List of Subcontractors and Suppliers that bid, quoted or expressed interest in working on the Project each month, with the monthly reports required pursuant to Section 18.01 of these DBE Special Provisions, ADOT may withhold payment until such time as ADOT receives the required submissions.

13.0 DBE LIAISONS AND COMPLIANCE OVERSIGHT COMMITTEE

13.01 DBE Liaisons

ADOT's Business Engagement & Compliance Office's Contract Compliance & Training Officer, in conjunction with the ADOT Project Manager or other designated representative, are ADOT's primary DBE liaisons with Developer regarding DBE compliance monitoring and oversight for this Project.

Developer shall establish a DBE program administration process that will ensure nondiscrimination in the award and administration of contracts and subcontracts and shall eliminate barriers to the participation of DBEs and small businesses on the Project. Developer's DBE/OJT Outreach and Compliance Manager shall be responsible for the management and implementation of Developer's DBE Utilization Plan and shall report to Developer's Project Manager. This individual shall serve as Developer's DBE liaison with ADOT for the Project. The name of this designated DBE liaison shall be included on all DBE Intended Participation Affidavit Summary forms.

13.02 Compliance Oversight Committee

ADOT will convene an interdisciplinary Compliance Oversight Committee to monitor and oversee DBE compliance and progress towards meeting DBE Goals. The Compliance Oversight Committee will include representatives of ADOT's General Engineering Consultant (GEC) for the Project, FHWA, ADOT's Business Engagement & Compliance Office and other entities. Developer's DBE liaison and Project Manager (or designee responsible for the management of professional services and construction activities of the Project) shall meet with the Compliance Oversight Committee on a monthly basis. In addition, during any significant Capital Asset Replacement Work, Developer's DBE liaison and Maintenance Manager (or designee responsible for the management of the Capital Asset Replacement Work) shall meet with the Compliance Oversight Committee on a monthly basis. The purpose of the monthly meetings will be to review information in the submitted DBE Monthly Utilization Progress Reports, and monitor whether the utilization of DBEs is consistent with Developer's DBE commitment and approved DBE Utilization Plan. The Compliance Oversight Committee will also review procurements and DBE participation from the previous month, projected DBE procurements/participation for upcoming months, review Developer's Good Faith Efforts to meet DBE Goals, identify and resolve impediments to successful DBE participation, and proactively work to resolve any DBE compliance issues that may arise.

14.0 DBE COMPLIANCE RECORDS

Developer shall keep documents and records pertaining to DBE outreach, participation, procurements, utilization, payments, Good Faith Efforts and other compliance activities for five

years after the Substantial Completion Date. These records and documents shall be subject to ADOT's rights of inspection, copying and audit set forth in Sections 23.4 and 23.5 of the DBM Agreement.

15.0 CONTINUING GOOD FAITH EFFORTS AND CONTRACT PERFORMANCE

15.01 Continuing Good Faith Efforts

The following is a list of the minimum types of continuing Good Faith Efforts Developer must make during the D&C Work and Capital Asset Replacement Work to help ensure that DBEs have optimal opportunity to successfully perform on the Project and that Developer meet the DBE Goals. These efforts shall include the following:

1. Contacting ADOT's BECO to request assistance as needed to help identify certified DBEs, either by e-mail, or by telephone. Developer must document its contact with BECO, and indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The telephone number for the BECO is (602) 712-7761 and the email address is contractorcompliance@azdot.gov. The contact must be made in sufficient time before the DBE is needed to allow BECO to provide effective assistance. Developer will not be considered to have made Good Faith Efforts if Developer fails to contact the BECO and communicate any difficulties in finding DBEs.

2. Conducting market research to identify small business Subcontractors and Suppliers and soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the relevant Work. This may include attending pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals at reasonable locations, including Developer's website, written notices or emails to all DBEs listed in ADOT's directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the Project. Developer shall solicit this interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the Subcontract. Developer shall determine with certainty if DBEs are interested by taking appropriate steps to follow-up initial solicitations.

3. Selecting portions of the relevant Work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Project work items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation, even when Developer might otherwise prefer to perform these Work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

4. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Project in a timely manner to assist them in responding to a solicitation with their offer for the Subcontract.

5. Negotiating in good faith with interested DBEs. It is Developer's responsibility to make a portion of the relevant Work available to the DBE Subcontractors and Suppliers, and to select those portions of relevant Work or material needs consistent with the available DBE Subcontractors and Suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the relevant Work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform such Work.

   Pro forma mailings to DBEs requesting bids are not alone sufficient to constitute good faith negotiation.

   Developer using good business judgment would consider a number of factors in negotiating with Subcontractors, including DBE Subcontractors, and would take a firm's price and capabilities as well as DBE Goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Developer's failure to meet the DBE Goals, as long as such costs are reasonable. Also, the ability or desire of Developer to perform the Work with its own organization does not relieve Developer of the responsibility to make Good Faith Efforts. However, Developer is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, is subject to Section 14.0 of these DBE Special Provisions.

6. Avoiding rejection of the DBE because its quotation for the relevant Work was not the lowest received. However, nothing in this paragraph shall be construed to require Developer to accept unreasonable quotes in order to satisfy DBE Goals. Developer must submit to ADOT copies of each DBE and non-DBE Subcontractor quote submitted to Developer when a non-DBE Subcontractor was selected over a DBE for a Subcontract. ADOT shall have the right to review whether DBE prices were substantially higher and contact the DBEs listed on a Developer's solicitation to inquire as to whether they were contacted by Developer.

7. Substantiating rejection of DBEs as being unqualified with sound reasons based on a thorough investigation of their capabilities. Developer's or a DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in Developer's efforts to meet the DBE Goals.

8. Making efforts to assist interested DBEs such as formal or informal mentoring, assistance with obtaining bonding, lines of credit, or insurance as required by the Agreement or Developer.

9. Making efforts to assist interested DBEs in obtaining necessary equipment supplies, materials, or related assistance or services.

10. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal

minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

11. Making efforts to identify firms that might potentially be certified as DBEs and assisting those firms with DBE certification and opportunities to submit bids or proposals to participate as Subcontractors, subconsultants, truckers, Suppliers and other service providers on the Project.

12. Making efforts to recruit and utilize non-engineering design and construction related DBE firms such as graphic design and printing, marketing, outreach, training, employment services and catering companies to help meet DBE Goals.

If ADOT determines at any time during the term of the DBM Agreement, at its sole discretion, that Developer's DBE utilization and Good Faith Efforts to meet the DBE goals during performance of the work are not consistent with its commitment to meet DBE Goals or make Good Faith Efforts to meet the DBE Goals as indicated in its Proposal, outlined in its DBE Utilization Plan or monthly reports required pursuant to Section 18.01 of these DBE Special Provisions, ADOT will request that Developer submit, in writing, Good Faith Effort documentation and a corrective action plan to ADOT outlining how it plans to meet DBE Goals. Developer shall have fourteen (14) calendar days to submit this information to ADOT. Failure to respond shall result in progress payment being withheld until the requested information is provided to ADOT.

Completion and submission of Good Faith Effort documentation and corrective action plan is not a guarantee that ADOT will approve Good Faith Efforts. ADOT will consider the quality, quantity, and intensity of the different kinds of efforts Developer has made and/or proposes to make. Mere pro forma efforts are not sufficient Good Faith Efforts to meet the DBE Goals and requirements.

15.02 Contract Performance

Developer shall utilize the specific DBEs listed to perform the Work and supply the materials for which each is listed on the Intended Participation Affidavit Summary unless Developer obtains ADOT's written consent. Absent consent from ADOT, Developer shall not be entitled to any payment for work or material that is not performed or supplied by the listed DBE.

Developer shall cause all items of work designated that Developer has designed for award to DBEs to be performed by the designated DBE or an ADOT-approved DBE substitute. Developer shall notify ADOT in writing if any work assigned or projected to be performed by a DBE will not be performed by the DBE as soon as this information is known. Developer shall make Good Faith Effort to replace the DBE with another DBE as soon as possible in accordance with Section 15.01 of these DBE Special Provisions.

Developer shall not perform or allow or suffer a non-DBE to perform work items subcontracted to a DBE without prior approval by ADOT. The DBE must perform a Commercially Useful Function (CUF) as more particularly provided in Section 16.05 of these DBE Special Provisions.

Developer is required to use DBEs identified to meet DBE Goals. Developer shall ensure the DBE is available to meet project scheduling, perform work and meet other applicable requirements of the Contract Documents.

ADOT's audit rights under the Agreement include site visits, reviews and records audits to monitor that DBEs are performing a CUF and that Developer is complying with DBE requirements in the Contract Documents and the DBE Utilization Plan. The reviews may include, among other activities, interviews of DBEs and their employees and Developer and its employees. Developer shall inform ADOT in advance when each DBE will be working on the Project, to help facilitate these reviews. Developer shall cooperate during the site visits and reviews. ADOT's staff will make reasonable efforts not to disrupt Work.

16.0 CREDITING DBE PARTICIPATION TOWARD MEETING GOAL

16.01 General Requirements

Only the value of the Work actually performed by the DBE in an area of Work for which it is certified can be credited toward DBE participation. ADOT will give credit toward the DBE Goals only after the DBE has been paid for the Work performed.

ADOT will credit toward the DBE Goals the entire amount of the portion of a Project that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the Work, or equipment leased by the DBE. ADOT will not credit supplies and equipment the DBE Subcontractor purchases or leases from Developer or its Affiliates.

Developer bears the responsibility to determine whether the DBE possesses the proper license(s) to perform the Work and, if DBE credit is requested, that the DBE Subcontractor is certified for the type of Work.

To count toward meeting a DBE Goal, the DBE firm must be certified in each NAICS code applicable to the kind of Work the firm will perform on the Project. NAICS codes for each DBE can be found on the AZUTRACS DBE/SBC Search tab at adotdbesystem.com. General descriptions of all NAICS codes can be found at http://www.naics.com/search/.

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

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

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

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

With the exception of bond premiums, all Work must be attributed to specific bid/work items. Where Work applies to several items, the DBE subcontracting arrangement must specify unit

price and amount attributable to each bid/work item. DBE credit for any individual item of Work by the DBE shall be the amount to be paid to the DBE for which it performs a CUF, as more particularly provided in Section 16.05 of these Special Provisions.

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

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

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

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

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

Developer shall receive credit for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the Work, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

16.02 Effect of Loss of DBE Eligibility

If ADOT deems a DBE ineligible (decertified) or suspended as a DBE in accordance with 49 CFR 26.87 and 26.88, the DBE will not be considered toward meeting the DBE Goals; provided, however, that such firm will be considered toward meeting the DBE Goals if its Subcontract was executed before the DBE suspension or decertification is effective, in which case Developer will continue to receive credit toward the DBE Goals for the firm's work.

16.03 DBE Certification Status

If Developer learns or suspects that a DBE Subcontractor or Supplier has been decertified during the course of its Work, Developer shall contact ADOT BECO to verify the DBE decertification and to ascertain the impact of the decertification on its ability to meet the DBE Goals.

Developer shall regularly check and verify the certification status of Developer's DBE Subcontractors at www.adot.dbesystem.com.

16.04 Police Officers

ADOT will not give DBE credit for procuring DPS officers. For Projects on which officers from other agencies are supplied, ADOT will give DBE credit only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

16.05 Commercially Useful Function

Developer can credit payments to a DBE Subcontractor toward the DBE Goals only if the DBE performs a Commercially Useful Function (CUF) on the Project. A DBE performs a CUF when it is responsible for execution of the Work under its Subcontract and carries out its responsibilities by actually performing, managing, and supervising, the Work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Project, for negotiating price, determining quality and quantity, ordering and installing (where applicable) materials, and paying for the materials itself that it uses on the Project.

To determine where a DBE is performing a commercially useful function, ADOT will evaluate the amount of Work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the Work it is actually performing, the DBE credit claimed for its performance of the Work, and other relevant factors.

A DBE will not be considered to perform a CUF if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, ADOT will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Subcontract with its own work force, or if the DBE subcontracts a greater portion of the work under its Subcontract than would be expected on the basis of normal industry practice for the type of work involved, ADOT will presume that the DBE is not performing a CUF.

Developer shall ensure and confirm that all DBEs selected for Subcontract work on the Project, for which it seeks to claim credit toward the DBE Goals, perform a CUF. Further, Developer shall verify that each DBE fully performs its designated tasks in accordance with the provisions of this section of these DBE Special Provisions. For the purposes of determining a CUF, the DBE's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE firm, and over which the DBE has exclusive use and control, and absolute priority, as evidenced by the leasing agreement from a firm not owned in whole or part by Developer or its Affiliate.

If Developer becomes aware of any change in the nature of a DBE's Work (for example, a DBE Subcontractor issues a second tier Subcontract to a non-DBE), Developer shall promptly report the change to ADOT and BECO.

When a DBE is presumed not to be performing a CUF as provided above, the DBE or Developer may present evidence to rebut this presumption. ADOT will determine if the firm is not performing a CUF given the type of work involved and based on normal industry practices.

Decisions on CUF matters are subject to review by the FHWA, but are not administratively appealable to USDOT. In order to obtain this review, the affected party must contact ADOT in

writing to request a review within seven days after ADOT delivers written notice of its decision. The request must be accompanied with any documentation to support the affected party's case. ADOT will transmit the request for review with any supporting documentation to the FHWA.

16.06 Trucking

ADOT will use the following factors in determining whether a DBE trucking company is performing a CUF:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Project, and there cannot be a contrived arrangement for the purpose of meeting the DBE Goals.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Project on every day that credit is to be given for trucking.

3. Developer will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services that the DBE lessee provides on the Project.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the Project provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example: DBE Firm X uses two of its own trucks on a Project. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

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

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

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

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

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

16.07 Materials and Supplies

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

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

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

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

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

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

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, ADOT will credit toward DBE Goals the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with

fees customarily allowed for similar services. ADOT will not credit the cost of the materials and supplies themselves toward the DBE Goals.

ADOT will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer or a transaction expediter) on a project-by-project basis. The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer or Supplier) for one project does not mean it will qualify for the same classification on another project. Developer shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer or Supplier for the Project. Developer may contact ADOT for assistance in this determination.

16.08 Effect of Agreement Changes

The dollar amount of any Supplemental Agreements or Directive Letters that increase or decrease the Work in which DBE participation has been committed will be commensurately added to or subtracted from the total DBM Agreement base figure used to compute the percentage of actual dollars paid to DBEs. Developer shall reflect the revised total dollar values in DBE Monthly Utilization Progress Reports and in the ADOT DBE System as part of Developer payment reporting.

If as a result of a Supplemental Agreement or Directive Letter, the scope or quantity of work being done by a DBE Subcontractor is decreased, Developer shall exercise Good Faith Efforts to obtain additional DBE participation so that the resulting DBE participation will equal or exceed the DBE Goals.

If a Supplemental Agreement or Directive Letter increases the scope or quantity of work being done by a DBE Subcontractor, the DBE shall be given the opportunity to complete the additional work and receive additional compensation beyond its original Subcontract amount.

17.0 JOINT CHECKS

17.01 Requirements

The use of joint checks payable to both a Subcontractor and Supplier is available to all Subcontractors and is not limited to only DBEs. A DBE Subcontractor and a material Supplier (or equipment Supplier) may request permission for the use of joint checks for payments from Developer to the DBE Subcontractor and the Supplier. In order to maintain DBE credit when joint checks are issued, all the conditions in this subsection must be satisfied.

1. The DBE Subcontractor must be independent from Developer, the Lead Subcontractor and the Supplier, and must perform a CUF. The DBE Subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE Subcontractor may not be utilized as an extra participant in a transaction, contract, or subcontract in order to obtain the appearance of DBE participation.

2. Developer, the DBE Subcontractor, and the material Supplier must establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBEs do not participate.

3. A material or supply contract may not bear an excessive ratio relative to the DBE Subcontractor's normal capacity.

4. There may not be any exclusive arrangement between Developer or the Lead Subcontractor and the DBE in the use of joint checks that may bring into question whether the DBE is independent of Developer or the Lead Subcontractor.

5. The arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the Supplier.

6. Developer, the Lead Subcontractor and the payor of the joint check may not establish or control establishing the terms of the agreement between the DBE Subcontractor and the Supplier.

7. The DBE must have the right and obligation to receive the check from the payor and to deliver the check to the Supplier.

8. Developer and the Lead Subcontractor cannot require the DBE Subcontractor to use a specific Supplier, and Developer and the Lead Subcontractor may not participate in the negotiation of unit prices between the DBE Subcontractor and the Supplier.

17.02 Procedure and Compliance

1. ADOT must approve in writing the agreement for the use of joint checks in writing before any joint checks are issued. Developer shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to contractorcompliance@azdot.gov.

2. After obtaining authorization for the use of joint checks, Developer or the Lead Subcontractor, the DBE, and the Supplier must retain documentation to allow for efficient monitoring of the joint check agreement.

3. Developer shall submit to contractorcompliance@azdot.gov copies of canceled checks with the payment information for the period in which the joint check was issued or shall make such copies available for review at the time of the onsite CUF review. Developer shall promptly report to ADOT any change from the approved joint check arrangement, and shall require the DBE and Supplier to likewise report to ADOT.

18.0 DBE UTILIZATION REPORTING

18.01 DBE System Payment Reporting

ADOT is required to collect DBE and non-DBE participation data for all Federal-aid contracts to measure DBE goal attainment and as a mechanism to monitor and track prompt payment to Subcontractors. Developer is notified that such record keeping is also required by ADOT for tracking and reporting DBE participation to USDOT. Accordingly, Developer shall submit monthly reports to ADOT of all payments made to DBE and non-DBE Subcontractors as set forth in Section 13.8.1 of the DBM Agreement

18.02 Project Schedule & DBE Utilization Progress Reports

18.02.1 Project Schedule

Developer shall submit to ADOT a narrative with each Monthly Project Baseline Schedule Update, as required in Section 13.2.3.2 of the DBM Agreement. The narrative shall include a log of applicable DBE participation activities in the Project Schedule for which Developer intends to claim credit for attaining the DBE Goals. The log shall include the proposed start/finish dates, durations, and dollar values of the DBE participation activities.

18.02.2 DBE Monthly Utilization Progress Reports

Developer shall submit to ADOT as part of each monthly Draw Request a DBE Monthly Utilization Progress Report for DBE activities completed during the preceding month. Each report shall include:

- Progress on various components of the DBE Utilization Plan
- Current month and year-to-date summary of DBE Subcontract awards compared to total Subcontract awards
- Progress toward the DBE Goals
- Summary of work items not yet completed or subcontracted which are targeted for DBE utilization in the coming month and quarter
- Bidder's List Forms of firms who quoted or bid on Subcontracts during the previous month (using Bidder's List Form).
- A separate DBE Intended Affidavit Summary for each of (a) Professional Services, (b) Construction for all DBEs authorized under Sections 12.02 and 12.03 of these DBE Special Provisions to work on the Project during the previous month.
- Non-DBE Subcontract awards for Professional Services and Construction Subcontractors, including Small Business Concerns (SBCs).
- Amounts earned by and paid to all Professional Services and Construction DBEs and non-DBEs the previous month (using Monthly Subconsultant/Subcontractor Payment Forms).
- Certification of Final DBE Payment, as and when required under Section 18.02.2 of these DBE Special Provisions.
- Issues encountered and/or resolved pertaining to DBEs working on the Project that could impact Developer's ability to meet the DBE Goals.

During the course of Capital Asset Replacement Work, Developer shall submit to ADOT, as part of each Draw Request to pay for Capital Asset Replacement Work, a DBE Monthly Utilization Progress Report for DBE activities completed on Capital Asset Replacement Work during the preceding month. Each report shall include comparable information and documentation as described above.

Developer must also submit satisfactory evidence in its DBE Monthly Utilization Progress Reports that it is making Good Faith Efforts, as specified in its DBE Utilization Plan, to meet the DBE Goals. If a DBE Goal is not being met or estimated DBE procurements or subcontract targets have not been met for the month, Developer must explain why and how it will remedy the shortfall.

18.02.3 Certification of Final DBE Payments

Developer shall submit to ADOT with its DBE Monthly Utilization Progress Report a DBE Certificate of Final Payments for Construction and Professional Services form for each DBE that completes its Work on the Project during the preceding month. The form shall include the actual dollar amount committed and actually paid to each DBE firm for the accepted creditable work and shall be submitted after all work is completed for the identified DBE, including any outstanding retainage.

The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. ADOT will use this certification and other information available to determine applicable DBE credit allowed to date and the extent to which the DBE firms were fully paid for that Work. Developer shall acknowledge that by the act of filing the forms, the information is supplied to obtain payment regarding the Project under a federal-aid contract.

18.02.4 Annual and Final DBE Utilization Reports

Developer shall prepare and submit to ADOT by each anniversary date of the execution of the DBM Agreement an annual report of progress with DBE utilization. Such report shall cumulatively summarize all of the past months and years' progress reports toward meeting the DBE Goals, as well as addressing Developer's progress or challenges with the implementation of any of the components of its DBE Utilization Plan.

Within 60 days after Substantial Completion, Developer shall prepare and submit to ADOT a Final DBE Utilization Summary Report. The Final DBE Utilization Summary Report must include a summary of Professional Services and Construction DBE utilization, payments to such DBEs, and, separately, payments for all the Design Work and Construction Work. In addition, if the DBE Goal for Professional Services or Construction is not met, the Final DBE Utilization Summary Report must include documentation of Good Faith Efforts taken by Developer prior to and throughout performance of the D&C Work in accordance with 49 CFR Part 26, Appendix A and Section 15.01 of these DBE Special Provisions. A Summary of Final DBE Payments for Professional Services and A Summary of Final DBE Payments for Construction form must be included with the Final DBE Utilization Summary Report, in accordance with Section 20.0 of these DBE Special Provisions.

Within 60 days after completion of any Capital Asset Replacement Work, Developer shall prepare and submit to ADOT a Final DBE Utilization Summary Report. The Final DBE Utilization Summary Report must include a summary of Capital Asset Replacement Work DBE utilization, payments to such DBEs, and payments for all such Capital Asset Replacement Work. In addition, if the DBE Goal for such Capital Asset Replacement Work is not met, the Final DBE Utilization Summary Report must include documentation of Good Faith Efforts taken by Developer prior to and throughout performance of such Capital Asset Replacement Work in accordance with 49 CFR Part 26, Appendix A and Section 15.01 of these DBE Special Provisions. A Summary Certification of Final DBE Payments for such Capital Asset Replacement Work must be included with the Final DBE Utilization Summary Report, in accordance with Section 20.0 of these DBE Special Provisions.

18.02.5 Report Review and Sanctions

As indicated in Section 13.02 of these DBE Special Provisions, ADOT will convene an interdisciplinary Compliance Oversight Committee that will meet with Developer monthly to

review and verify information contained in submitted monthly, annual and final reports to monitor and oversee Developer's DBE compliance and progress towards meeting the DBE Goals.

19.0 DBE TERMINATION/SUBSTITUTION

19.01 General Requirements

Developer shall make all reasonable efforts to avoid all reasons to terminate/substitute a Committed DBE listed on the DBE Intended Participation Affidavit Summary. At a minimum, Developer shall negotiate in good faith, make timely payments and/or extend deadlines to the level that it will not jeopardize timely performance of Developer's obligations under the Agreement. Developer shall apply reasonable methods to resolve performance disputes and shall provide documentation to ADOT before attempting to substitute or terminate a Committed DBE. Developer shall cause all Subcontractors who are parties to a Subcontract with a Committed DBE to adhere to the foregoing requirements.

19.02 Developer Notice of Termination/Substitution

Developer shall notify ADOT in writing if any Work assigned to or projected to be performed by a Committed DBE will not be performed by the Committed DBE as soon as this information is known. Developer shall contact ADOT promptly at the first sign of any reason for cause of a Committed DBE termination/substitution.

Developer shall not terminate or permit or suffer termination of a Committed DBE without ADOT's written approval. Developer shall not complete or allow or suffer completion of the Work contracted to the Committed DBE with its own or the Lead Subcontractor's forces or with a non-DBE firm. Before submitting a formal request to ADOT for DBE termination/substitution, Developer shall give, or cause the party to the Subcontract with the Committed DBE to give, a written notice to the Committed DBE Subcontractor with a copy to ADOT of its intent to terminate and/or substitute the Committed DBE and identifying the reason for the action. The notice shall allow the Committed DBE a minimum of five days to respond to the notice advising Developer or the contracting party and ADOT of the Committed DBE's position. ADOT will consider both Developer's request and the DBE firm's response and explanation before approving Developer's termination and substitution request.

19.03 Developer Request of Termination/Substitution

Developer shall formally request the termination and/or substitution of a Committed DBE by submitting to ADOT a written DBE Substitution or Termination Request form and supporting documentation. The submission shall include at the minimum the following information:

1. The date Developer determined the Committed DBE to be unwilling, unable or ineligible to perform.

2. A brief statement of facts describing and citing specific actions or inaction by the Committed DBE giving rise to Developer's assertion that the Committed DBE is unwilling, unable, or ineligible to perform.

3. A brief statement of the Committed DBE's capacity and ability to perform the Work as determined by the subcontracting party.

4. A brief statement of facts regarding actions taken by Developer, that Developer believes constitute Good Faith Efforts toward enabling the Committed DBE to perform.

5. The total dollar amount currently paid for Work performed by the Committed DBE.

6. The total dollar amount remaining to be paid to the Committed DBE for Work completed, but for which the Committed DBE has not received payment, and with which Developer has no dispute.

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

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

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

19.04 Good Cause

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

1. Fails or refuses to execute a written Subcontract.

2. Fails or refuses to perform the Work of its Subcontract in a way consistent with normal industry practices and standards; provided, however, that good cause does not exist if the failure or refusal of the Committed DBE to perform such Work results from the bad faith, failure to pay, material breach or discriminatory action of Developer or the subcontracting party.

3. Fails or refuses to meet Developer's reasonable, nondiscriminatory bond requirements.

4. Is the subject of a voluntary or involuntary petition in bankruptcy, becomes insolvent, or exhibits credit unworthiness.

5. Is ineligible to work on public works contracts because of suspension and debarment proceedings pursuant to federal or state law.

6. It is not a responsible Developer.

7. Voluntarily withdraws from the Subcontract and provides to ADOT written notice of its withdrawal.

8. Is ineligible to receive DBE credit for the type of Work required.

9. A DBE owner dies or becomes disabled with the result that is unable to complete its Work on the Subcontract.

10. Other documented good cause that ADOT determines compels the termination and/or substitution of the Committed DBE.

19.05 Good Faith Effort for DBE Termination/Substitution

The termination of a DBE with ADOT's approval shall not relieve Developer of its obligations under these Special Provisions. If ADOT approves the termination of a Committed DBE, Developer shall make Good Faith Efforts as identified in Section 13.01 of these DBE Special Provisions and 49 CFR Part 26, Appendix A to find another DBE Subcontractor to substitute for the original DBE. Developer shall direct the Good Faith Efforts, at finding another DBE to perform at least the same amount of Work under as the Committed DBE that was terminated, to the extent needed to meet the DBE Goals. Developer shall provide documentation of such Good Faith Efforts to ADOT within seven days after ADOT delivers a request therefor.

Developer's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that Good Faith Efforts have been made to replace the Committed DBE. The fact that Developer has the ability and/or desire to perform the subject Work with its own forces does not relieve Developer of the obligation to make Good Faith Effort to find the replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

ADOT will not credit the unpaid portion of the terminated Committed DBE's Subcontract toward the DBE Goals. If ADOT has eliminated items of Work subcontracted to a Committed DBE, then Developer shall still make Good Faith Efforts to replace the Committed DBE with another DBE for the extent necessary to meet the DBE Goals. ADOT will review the quality, thoroughness, and intensity of those efforts.

When a DBE substitution is necessary, Developer shall submit a new DBE Intended Participation Affidavit and Intended Participation Affidavit Summary to ADOT for review and comment with the substitute DBE's name, description of work, NAICS code and dollar value of Work. All the provisions of Sections 12.02 and 12.03 of these Special Provisions shall apply with respect to the proposed substitute DBE.

In the event Developer is unable, after substantial Good Faith Efforts, to obtain another certified DBE, ADOT may lower the affected DBE Goal. However, ADOT must approve this in writing prior to a Non-DBE starting the Work that had been subcontracted to the Committed DBE.

20.0 SUMMARY OF CERTIFICATION OF FINAL DBE PAYMENTS

In anticipation of final payment for Construction work and subsequently for any instance of Capital Asset Replacement Work, Developer shall submit to ADOT a Summary Certification of Final DBE Payments. Developer shall submit such Summary for the Professional Services and Construction components of the Work not later than 60 days prior to Substantial Completion.

Developer shall submit such Summary for an instance of Capital Asset Replacement Work not later than 60 days prior to its completion. The form shall include a list of all DBEs that worked on the applicable Design Work, Construction Work or Capital Asset Replacement Work, dollar amounts committed, Subcontract amount and total amount paid. Developer shall acknowledge that by the act of filing the forms, the information is supplied to obtain payment regarding the Project as a federal-aid contract.

The Summary Certification of Final DBE Payments shall be submitted with the Final DBE Utilization Summary Report, in accordance with Section 18.02.4 of these DBE Special Provisions. ADOT will use these reports, forms and other documentation to determine if Developer and DBE firms have satisfied the DBE Goals and the extent to which DBE credits were allowed.

21.0 SUSPECTED DBE FRAUD

ADOT will bring to the attention of the USDOT any appearance of false, fraudulent or dishonest conduct in connection with the DBE program and this Agreement, so that USDOT can take steps such as referral to the U.S. Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.

ATTACHMENTS EXHIBIT 7

TO DBE SPECIAL PROVISIONS – FORMS

Name of Form	Attachment to DBE Special Provisions
Construction DBE Intended Participation Affidavit Summary	Attachment A
Construction DBE Intended Participation Affidavit Individual	Attachment B
Professional Services DBE Intended Participation Affidavit Summary	Attachment C
Professional Services DBE Intended Participation Affidavit Individual	Attachment D
Bidder's List of Subcontractors and Suppliers	Attachment E
DBE Monthly Utilization Progress Report	Attachment F
Monthly DBE Subconsultant/ Subcontratcor Payment Form	Attachment G
Monthly Non-DBE Subconsultant/ Subcontractor Payment Form	Attachment H
DBE Certificate of Final Payments Construction and Professional Services	Attachment I
Summary of Final Payments for Construction	Attachment J
Summary of Final Payments for Professional Services	Attachment K
DBE Substitution or Termination Request	Attachment L

ATTACHMENT A

CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY

To be completed by Developer/Contractor

ADOT Project/TRACS No.: _____

Developer/Contractor: _____

This form must reflect the information included on the Construction Affidavit submitted for each DBE during the month.

DBE Information: (Attach additional sheets as necessary.)

AZ UTRACS Vendor Registration #	Name of DBE Firm	Scope of Work	Total Minimum Contract Amount	Adjustments	Total Amount Toward DBE Goal
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
				(1) Total Dollar Value of Commitments	$0.00
				(2) Contract Bid Total	$
				Percent of Contract Bid (Divide Line 1 by Line 2)	#DIV/0!

_____ _____

(DBE Liaison Officer) (Signature & Date)

_____ _____

(Project Manager) (Signature & Date)

BECO Form 106DBM

ATTACHMENT B

CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT INDIVIDUAL

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

CONSTRUCTION DBE INTENDED PAERTICIPATION AFFIDAVIT INDIVIDUAL

(Submit one per DBE)

To be completed by the DBE firm or supplier

Type of DBE Operation: (Please check one box)

- ☐ Trucker
- ☐ Broker (Fees/Commission)
- ☐ Regular Dealer (60% DBE credit)
- ☐ Manufacturer

ADOT Project/TRACS # _____

AZ UTRACS Registration # _____

Name of DBE Firm_____

Directions:

The form must be signed by an authorized officer of the DBE firm.
The DBE firm must be certified within the NAICS Code/work category to be performed
This form must be filed out in its entirety. Leave no blank spaces, use N/A or enter "0" if section does not apply
A separate form must be submitted for each proposed DBE firm (Attach additional sheets as necessary).

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (Trucking, Hauling, Uniformed Officers, Etc.)

NAICS Code	Scope of Work	Applicable Licenses (if any)	Unit/Hourly Estimate	Unit/Hourly Price	Total Minimum Contract Amount
					$ -
					$ -
					$ -
					$ -
				Total	$ -

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY LUMP SUM (Trucking, Hauling, Uniformed Officers, Etc.)

NAICS Code	Scope of Work	Applicable Licenses (if any)	Total Minimum Contract Amount
			$ -
			$ -
			$ -
			$ -
		Total	$ -

2. (Trucking) The undersigned affirms that of the trucking/hauling work quoted above, the following applies:

	# of trucks	Dollar Amount
Total DBE-owned	_____	$ _____
Total DBE leased	_____	$ _____
Total non-DBE leased w/DBE driver	_____	$ _____
Total non-DBE leased w/o DBE driver	_____	$ _____

3. (Brokerage) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Unit Price Bid $_____ Fees/Commissions Portion of Bid $_____or_____%

4. The undersigned will sublet and/or award $_____of work bid to a non-DBE firm.

5. The undersigned will sublet and/or award $_____of work to another certified DBE firm.

Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the prime contractor receive award of this contract from the Purchaser.

I, _____ confirm that _____

(Authorized DBE firm officer, print name and title) (Name of DBE firm)

will be participating in the above project. The DBE firm will be performing the scope as describe above for _____

(total DBE credit dollar value)

_____ _____

(Authorized DBE firm officer Signature) (Date)

ATTACHMENT C

PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY

To be completed by Developer or Consultant

Consultant:	**Project/Tracs No:**
Project Description:	

Directions:

This Affidavit must reflect the information included on the individual *Professional Services Affidavit* for each DBE Subconsultant or DBE Tier-Subconsultant submitted during the month.

	Name of DBE Firm	Consultant, Sub,Tier-Sub or Vendor	Type of Services To be Provided	Total $ Amount Awarded to DBE Firm**	$ Amount subcontracted to another DBE firm**	$ Amount subcontracted to NonDBE Firm**	$ Amount performed by the DBE firm	% of work performed by the DBE firm (CUF) *
1				$0.00	$0.00	$0.00	$0.00	#DIV/0!
2				$0.00	$0.00	$0.00	$0.00	#DIV/0!
3				$0.00	$0.00	$0.00	$0.00	#DIV/0!
4				$0.00	$0.00	$0.00	$0.00	#DIV/0!
5				$0.00	$0.00	$0.00	$0.00	#DIV/0!
6				$0.00	$0.00	$0.00	$0.00	#DIV/0!
7				$0.00	$0.00	$0.00	$0.00	#DIV/0!
8				$0.00	$0.00	$0.00	$0.00	#DIV/0!
9				$0.00	$0.00	$0.00	$0.00	#DIV/0!
10				$0.00	$0.00	$0.00	$0.00	#DIV/0!
11				$0.00	$0.00	$0.00	$0.00	#DIV/0!
12				$0.00	$0.00	$0.00	$0.00	#DIV/0!
13				$0.00	$0.00	$0.00	$0.00	#DIV/0!
14				$0.00	$0.00	$0.00	$0.00	#DIV/0!
15				$0.00	$0.00	$0.00	$0.00	#DIV/0!
			TOTAL:	$0.00	$0.00	$0.00	$0.00	

Total $ Amount toward DBE Goal	$0
(1) Total Contract/Task Order Amount **	
(2) Total % of DBE Commitment	#DIV/0!
(3) Contract DBE Goal	

Developer/Project Manager _____

Signature _____

DBE Liaison Officer _____

Signature _____

BECO Form 206DBM

ATTACHMENT D

PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT INDIVIDUAL

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT INDIVIDUAL

Developer/Consultant/Subconsultant:	
DBE Subconsultant:	
***DBE Tier-Subconsultant:**	
- Subcontracted by:	**AZ UTRACS Vendor Registration No.:**
Project/Tracs No.:	**Project Description:**

**Tier-Subconsultants refers to any subconsultant that is contracted to another subconsultant at any level.*

Directions:

1. This Affidavit must be completed by ALL DBE Subconsultant(s) and DBE Tier-Subconsultant(s) and signed by an officer or principal of the to the Consultant/Subconsultant
2. A separate Affidavit must be submitted for EACH proposed Subconsultant DBE firm.
3. List all full and partial services to be provided by the above named DBE Subconsultant(s).
4. All partial services provided must be fully explained. If not, the DBE will be considered to be responsible for the entire services to be performed. Attach additional sheets as necessary.

Type of Services to be Provided	NAICS Code	BTR License (if applicable)	Total $ Amount Awarded to DBE Firm**	$ Amount subcontracted to another DBE firm**	$ Amount subcontracted to NonDBE Firm**	$ Amount performed by the DBE firm	% of work performed by the DBE firm (CUF) ***
						$0.00	#DIV/0!
					Total $ Amount toward DBE Goal	$0.00	

** Total Proposed DBE Amount must include the original and any additional amount applied to the Contract or Task Order.

Subconsultant Certification:

I certify that:

1. *My firm has made an arrangement/agreement with the above named Consultant/Subconsultant to do work listed above for the proposed Project.*
2. *My firm agrees to the proposed DBE commitment above and agrees to perform the services in accordance with the DBE provisions of*
3. **** My firm will complete 100% of the work listed above or intends to subcontract_____% of the work to another DBE firm and/or_____% to another*
   Name of DBE or non-DBE firm:
   ***Note:** If percentage of work subcontracted out is greater than 70% of the DBE's work amount, the DBE is deemed not performing a commercially*
   DBE's participation is NOT counted toward the DBE goal.
4. *If I subcontract any work to a non-certified DBE firm, I must inform the Consultant because the work will NOT count toward the DBE goal and it will LOWER*
   commitment if a proposed certified DBE is unable or unwilling to perform the work or any part of the intended work.
5. *I understand that failure to comply with the information shown on this form will be considered grounds for contract sanctions and other remedies*
6. *I declare under penalty of perjury in the second degree, and any other applicable state or federal laws that the statements made on this document of my knowledge.*

DBE Owner_____**Signature** _____

DBE Liaison Officer_____**Signature** _____

BECO Form 205DBM

ATTACHMENT E

BIDDER'S LIST OF SUBCONTRACTORS AND SUPPLIERS

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

DESIGN BUILD

BIDDERS LIST BIDDER'S LIST OF SUBCONTRACTOR AND SUPPLIERS

(OF ALL SUBCONTRACTORS, SUPPLIERS, SERVICE PROVIDERS AND MANUFACTURERS THAT BID OR QUOTED ON THIS PROJECT)

This form must be submitted to **ADOT** with the Proposal, and on a monthly basis with Monthly DBE Utilization Progress Report. You may make copies of this form.

Along with submitting this Bidders list, all prime contractors and subcontractors on this contract must be register as a vendor on AZUTRACS and provide a AZUTRACS Vendor Number to be awarded this contract. To determine if your firm or subcontractor on this contract is registered as a vendor, click here and search by firm name https://adot.dbesystem.com/FrontEnd/VendorSearchRegistry.asp?TN=adot&XID=5475. If the firm is listed at the bottom of the page in the Search Results, it is registered as a vendor. If it is not listed it must register by going to this website https://adot.dbesystem.com/FrontEnd/StartRegistry.asp?TN=adot&XID=6761.

Visit the AZ UTRACS website at: **https://adot.dbesystem.com** for further information or contact the Business Engagement and Compliance Office (BECO)-Contract Compliance Office at (602) 712-7761, or email us at contractorcompliance@azdot.gov.

Project #: _____ **TRACS #:** _____

The information below is complete and accurate to the best of my knowledge:

Developer/Subcontractor Name: _____

AZUTRACS Vendor # _____

Developer DBE Liasion: _____

Subconsultant/Subcontractor Name	Phone	Email	AZ UTRACS Vendor # (If known)	Select one D = DBE N = Non-DBE S = SBC

Project#: _____ **TRACS#:** _____

BECO Form DB104C (Rev 01-29-15)

Subconsultant/Subcontractor Name	Phone	Email	AZ UTRACS Vendor #	Select one D = DBE N = Non-DBE S = SBC

ATTACHMENT F

DBE MONTHLY UTILIZATION PROGRESS REPORT

[See attached]

Arizona Department of Transportation

DESIGN BUILD

DBE Monthly Utilization Progress Report

(Due by 15th day of each month)

Contract/Agreement #_____Project_____

Developer_____ Month_____Year_____ Date Submitted_____

1. **OUTREACH & RECRUITMENT:** Description DBE and small business bid-specific marketing, recruitment, outreach and community engagement efforts made during the month aimed at professional services and construction firms. Also include description of efforts Developer/Subconsultants/Subcontractors made to recruit and utilize non-engineering design and construction related DBE firms this month.

2. **DBE BUSINESS CAPACITY BUILDING:** Description of DBE capacity-building assistance provided to DBEs this month, such as help with record-keeping and compliance, bonding, financing, access to supplies and other capabilities.

3. **DBE TECHNICAL ASSISTANCE:** Description of specific technical assistance measures that Developer undertook this month to help DBEs and small businesses such as training workshops, technical and financial assistance, support services, mentor/protégé relationships, recruiting and encouraging potential DBEs to get certified, etc.

4. **DBE PROCUREMENTS/AWARDS:** List actual number and total dollar amounts of DBE Procurements successfully awarded made during the month.

5. **DISCREPANCIES/GOOD FAITH EFFORTS:** If actual dollar amounts of DBE Procurements for the month is less than the month's projected awards, explain why and list Good Faith Efforts that will be made, during what time period, to make up the shortfall amount.

6. **DBE PROCUREMENT PROJECTIONS:** List number, scope of work and total dollar amounts of DBE Procurements projected for the coming month and quarter.

7. **PROMPT PAY ISSUES:** Description of any Subcontractor prompt payment issues encountered during the month.

8. **DBE SUBSTITUTION/REPLACEMENT:** Description of any substitution/replacement of DBEs requests made the month.

9. **OTHER ISSUES:** Description of any other issues encountered and/or resolved pertaining to DBEs working on the Project that could impact Developer's ability to meet Project DBE Goals.

10. **DEVIATIONS/REVISIONS TO DBE UTILIZATION PLAN:** List any deviation from or revisions needed to Developer's approved DBE Utilization Plan.

11. **PROGRESS TOWARDS MEETING PROJECT DBE GOALS/COMMITMENTS:**

Total Professional Services Current Monthly DBE Payment Amount $_____
(from current Month's Professional Services DBE Subconsultant/Subcontractor Payment Form)

Total Cumulative Professional Services DBE Payment Amount to Date $_____
(from Previous Months' DBE Professional Services DBE Subconsultant/Subcontractor Payment Forms)

Total Cumulative Professional Services Payment to Developer $_____

Current DBE <u>Professional Services</u> DBE Utilization _____%

****

Total Construction Current Monthly DBE Payment Amount $_____
(from current Month's Construction DBE Subconsultant/Subcontractor Payment Form)

Total Cumulative Construction DBE Payment Amount to Date $_____
(from Previous Months' DBE Construction DBE Subconsultant/Subcontractor Payment Forms)

Total Cumulative Construction Payment to Developer $_____

Current DBE <u>Construction</u> DBE Utilization _____%

<u>REQUIRED ATTACHMENTS</u>

- **Professional Services DBE Intended Affidavit Summary Forms** for all Professional Services DBEs submitted and approved by ADOT to work on the project during the month.
- **Construction DBE Intended Affidavit Summary Forms** for all Construction DBEs submitted and approved by ADOT to work on the project during the month.
- **Monthly Non-DBE Subcontract Awards Form** one for Professional Services and one for Construction listing all Non-DBE Subcontract awards during the current month. Indicate which firms are Small Business Concerns (SBCs).
- **Update Table/Diagram of Anticipated Project DBE Utilization Schedule** that illustrates projected work sequencing of DBE utilization during in each phase/segment for each year of the Project.
- **Monthly DBE Subconsultant/Subcontractor Payment Forms** with amounts earned by and paid to all Professional Services and Construction DBEs during the previous month.
- **Monthly Non-DBE Subconsultant/Subcontractor Payment Forms** with amounts earned by and paid to all Professional Services and Construction DBEs during the previous month. Indicate which firms are Small Business Concerns (SBCs)
- **Certification of Final DBE Payment Forms** for all Professional Services and Construction DBEs who completed work and received final payment during the month.
- **Bidder's Lists Forms** of all firms that quoted or bid on subcontracts during the month.
- **Any other "Good Faith Efforts" documentation**

Developer Project Manager Name_____Developer Project Manager Signature_____

Developer DBE Liaison Name_____ Developer DBE Liaison Signature _____

ATTACHMENT G

MONTHLY DBE SUBCONSULTANT/SUBCONTRATCOR PAYMENT FORM

[See attached]

Arizona Department of Transportation

DESIGN BUILD

Monthly DBE Subcontractor/Subconsultant Payment Form

Developer _____ Payment Reporting Period: (From:_____To:_____)

ADOT Payment Date: _____ Committed DBE Goal:_____% Actual DBE % to Date:_____%

All Contractors making payments to DBE Subcontractors, Consultants, Subconsultants, Regular Dealers, and Ser Providers regardless of their tier, are required to complete and submit this form to ADOT until all final payments ar Failure to submit with this form, and comply with Arizona's prompt payment law may cause progress payments to Developer to be withheld. Submit one copy of this form to ADOT with Monthly DBE Utilization Reports by the 15th of each month.

____PROFESSIONAL SERVICES _____CONSTRUCTION ____ CAPITAL ASSET REPLACEMENT WORK

Name of Subcontractor/Subconsultant	Original Subcontract Award Amount	Payment Date	Current Month Payment Amount	Cumulative Payment to Date
Monthly Total Payments to DBEs				
Cumulative Total Paid DBEs to Date				

_____ _____ _____

DBE Liasion Name Signature Date

_____ _____ _____

Developer Project Manager Name Signature Date

ATTACHMENT H

MONTHLY NON-DBE SUBCONSULTANT/SUBCONTRACTOR PAYMENT FORM

[See attached]

Arizona Department of Transportation

DESIGN BUILD

Monthly Non-DBE Subcontractor/Subconsultant Payment Form

Developer _____ Payment Reporting Period: (From:_____To:_____)

ADOT Payment Date: _____ Committed DBE Goal:_____% Actual DBE % to Date:_____%

All Contractors making payments to Subcontractors, Consultants, Subconsultants, Regular Dealers, and Service Providers regardless of their tier, are required to complete and submit this form to ADOT until all final payments are made. Failure to submit with this form, and comply with Arizona's prompt payment law may cause progress payme to Developer to be withheld. Submit one copy of this form to ADOT with Monthly DBE Utilization Reports by the 15 of each month. List Small Business Concerns (SBCs) followed by other subcontractors.

____PROFESSIONAL SERVICES _____CONSTRUCTION ____ CAPITAL ASSET REPLACEMENT WORK

Name of Subcontractor/Subconsultant	Original Subcontract Award Amount	Payment Date	Current Month Payment Amount	Cumulative Payment to Date	SBC? Check if Yes
Monthly Total Payments to Non-DBE Subcontractors					
Cumulative Total Paid Non-DBE Subcontractor's To Date					

_____ _____ _____

DBE Liasion Name Signature Date

_____ _____ _____

Developer Project Manager Name Signature Date

ATTACHMENT I

DBE CERTIFICATE OF FINAL PAYMENTS CONSTRUCTION AND PROFESSIONAL SERVICES

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

DESIGN BUILD

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATE OF FINAL PAYMENTS

CONSTRUCTION AND PROFESSIONAL SERVICES

(Submit one form for each DBE involved in the Project)

DEVELOPER/SUBCONSULTANT/SUBCONTRACTOR CERTIFICATION

The undersigned Developer/Subconsultant/Subcontractor for Project # _____herby, certifies that full payment was made, to the firm indicated for material and/or work performed under this agreement as follows:

DBE FIRM AZ UTRACS Vendor Registration # _____ ☐ Construction ☐ Professional Services

Name of DBE Firm _____ was paid the amount of $_____.

DBE Work Start Date _____ DBE work end date: _____

This certificate is made under Federal and State Laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three years from project acceptance date. In the event the DBE was not paid in accordance with the intended participation affidavits submitted by the Developer/Subconsultant/Subcontractor, all documentation supporting the developer's position as to why the DBE was not fully paid should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Check One: ☐ Developer ☐ Subcontractor/ Subconsultant

Company Name: _____

Name: _____

Title: _____

Signature: _____ **Date:** _____

DBE FIRM CERTIFICATION

The undersigned Subcontractor/Subconsultant/Supplier/Manufacturer for the above named project hereby certified that the payment amount listed above was received and/or justification provided by Developer/Subconsultant/Subcontractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAWS, THAT THE STATEMENT MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

Check One: ☐ Sub/Supplier/Manufacturer ☐ Lower-tier Sub/Supplier/Manufacturer

DBE Firm Name: _____

Name: _____

Title: _____

Signature: _____ **Date:** _____

BECO Form #DB____ (Rev 2-19-15)

ATTACHMENT J

SUMMARY OF FINAL PAYMENTS FOR CONSTRUCTION

[See attached]

Arizona Department of Transportation
Design Build

SUMMARY OF FINAL PAYMENTS CONSTRUCTION	
Developer Name:	**Project Number:**
Name of DBE Liaison:	**Date Submitted:**

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

BECO Form 115DBM

Arizona Department of Transportation
Design Build

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					

Developer/Project Manager Signature: _____ Date: _____

DBE Liaison Officer Signature: _____ Date: _____

ATTACHMENT K

SUMMARY OF FINAL PAYMENTS FOR PROFESSIONAL SERVICES

[See attached]

Arizona Department of Transportation
Design Build

SUMMARY OF FINAL PAYMENTS
PROFESSIONAL SERVICES

Developer Name:	**Project Number:**
Name of DBE Liaison:	**Date Submitted:**

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

BECO Form 215DBM

Arizona Department of Transportation
Design Build

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					
22.					
23.					
24.					
25.					

Developer/Project Manager Signature: _____ Date: _____

DBE Liaison Officer Signature: _____ Date: _____

ATTACHMENT L

DBE SUBSTITUTION OR TERMINATION REQUEST

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

DESIGN BUILD

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBSTITUTION OR TERMINATION REQUEST

☐ **PROFESSIONAL SERVICES** ☐ **CONSTRUCTION**

Contract Number (TRACS): _____ **Developer/Contractor Name:** _____

Requester Name: _____ **Phone Number:** _____ **Email:** _____

Type of request: ☐ Reduction of DBE scope (Attach documentation) ☐ DBE Substitution ☐ DBE Termination

Is this request due to an ADOT change of scope? ☐ Yes (Attach documentation) ☐ No

Name of DBE listed on DBE Affidavits to be ☐ **replaced** ☐ **removed:** _____

Subcontract Amount: $_____ **Amount of Subcontract Remaining:** $_____

DBE Work Scope of Work Items: _____

Indicate the cause for DBE termination/substitution:

- ☐ **Fails or refuses to execute written contract**
- ☐ **Fails or refuses to perform work in accordance with normal industry standards**
- ☐ **Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements**
- ☐ **Becomes bankrupt, insolvent or exhibits credit unworthiness**
- ☐ **Is ineligible to work because of suspension or debarment proceedings**
- ☐ **It is not a responsible contractor**
- ☐ **Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal**
- ☐ **Is ineligible to receive DBE credit for the type of work required**
- ☐ **A DBE owner dies or becomes disabled resulting in inability to complete its work on the contract**
- ☐ **Other documented cause** (Attach documentation)

Proposed Replacement DBE Subcontractor Name: _____*if applicable

Proposed Replacement Subcontract Amount: $_____

☐ **Proposed DBE Subcontractor is not a DBE** (Attach Good Faith Effort (GFE) documentation)

NOTE: The original DBE subcontractor has **five working days** to respond to the Developer/Contractor's request and advise the ADOT and the Developer/Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ADOT should not approve the Developer/Contractor's request.

_____ _____
Prime Contractor Signature **Date**

_____ _____
ADOT Engineer Signature **Date**

FOR BECO USE ONLY

Request is: Approved ☐ Not Approved ☐

BECO Representative: _____

Signature: _____

Date: _____

BECO Form DB108C (Rev. 01-31-15)

EXHIBIT 8

OJT SPECIAL PROVISIONS

1.0 Overview

Training and upgrading of minorities, women, the economically disadvantaged, and veterans toward journeyman status is a primary objective of these OJT Special Provisions. Accordingly, Developer shall make every effort to enroll minority, women, economically disadvantaged, and veteran trainees (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield these trainees) to the extent that such persons are available within a reasonable area of recruitment. Developer is also encouraged to recruit Native American Indian trainees as the Project is located close to Native American lands. Developer shall demonstrate the steps taken in pursuance thereof, which ADOT will consider in determining whether Developer is in compliance with these OJT Special Provisions. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, regardless of whether a member of a minority group, a woman, economically disadvantaged, or a veteran.

Developer shall provide on-the-job training (OJT) aimed at developing full journeymen in the type of trade or job classification involved.

Guidelines and procedures for the OJT program are available online at http://azdot.gov/business/business-engagement-and-compliance/on-the-job-training-program/ojt-contract-compliance.

2.0 Definitions and Forms

2.01 Definitions

"Economically Disadvantaged Person" means a person who:

- Receives, or is a member of a family and/or household, which receives, cash payments under a Federal, State, or local income-based public assistance program.
- Is a member of a family and/or household that receives (or has been determined within the six-month period prior to registration for the program involved to be eligible to receive) food stamps/EBT card under the Food Stamp Act of 1977.
- Was a foster child on behalf of whom State or local government payments were made.
- Does not have a high school diploma or GED.
- Is from a family whose total annual household income is below the federal poverty limits. See Appendix A of the OJT Guidelines and Procedures document found at http://azdot.gov/business/business-engagement-and-compliance/on-the-job-training-program/ojt-contract-compliance.

"Journey-Level Status" applies to a person who has completed a registered apprenticeship program or is an experienced worker, not a trainee, and is fully qualified and able to perform all of the duties of a specific trade without supervision.

"OJT Trainee" means (a) a minority, female, veteran or economically disadvantaged individual enrolled in 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.

"Program Completion" means the point in time when an OJT Trainee working on the Project has completed at least 2,000 hours in the same work/craft classification, a registered apprenticeship program, or has achieved Journey-Level Status.

2.02 List of Forms

The following forms are referenced in and attached to these OJT Special Provisions. All forms are also available online at http://azdot.gov/business/business-engagement-and-compliance/on-the-job-training-program/ojt-contract-compliance.

Name of Form	Attachment to OJT Special Provisions
OJT Trainee Enrollment	Attachment A
OJT Trainee Completion/Termination	Attachment B
OJT Trainee Status Report	Attachment C
OJT Monthly Progress Report	Attachment D
OJT Annual Progress Report	Attachment D
Final OJT Summary Report	Attachment E

3.0 Training Goals

The ADOT OJT participation goals for the Construction Work on the Project (the "OJT Goals") are:

- Minimum of 142,800 OJT Trainee hours on the Project
- Minimum of 51 OJT Trainees must each complete at least 2,000 hours solely on the Project in the same trade or work classification
- Minimum of ten OJT Trainees must complete hours on the Project necessary to achieve Journey-Level Status (minimum of 2,000 hours must be completed by these OJT Trainees solely on the Project)

Some of the same individual OJT trainees can be used to satisfy each of the OJT Goals. However, Developer shall make every possible effort to provide additional trainees with training and shall see that all trainees are afforded every opportunity to participate in as much training as is practically possible to provide.

Due to turnover and attrition of trainees in any one trainee slot, it is expected that continuous trainee replacements may be necessary during the Construction Work. Developer is encouraged to enroll sufficient numbers of OJT Trainees (well beyond the minimum number of OJT Trainees required to meet the OJT Goals) to help ensure that it will meet the OJT Goals if

some OJT Trainees drop out of training. Developer and its Subcontractors must carefully screen, hire and support trainees that are likely to meet or exceed the 2,000 hours of OJT on the Project, eventually earn journey level status and be retained as part of its workforce.

The number of OJT Trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, Developer shall submit to ADOT for review and comment the number of trainees to be trained in each selected classification and training program to be used. Furthermore, Developer shall specify the starting time for training in each of the classifications. Developer will be credited for each OJT Trainee employed to work on the Project that is currently enrolled or becomes enrolled in an ADOT-approved apprenticeship program.

4.0 Subcontractors

If Developer subcontracts a portion of the Project work, it shall determine how many, if any, of the OJT Trainees are to be trained by Subcontractors, provided, however, that Developer shall retain the primary responsibility for meeting or satisfy the requirements for Good Faith Efforts to meet the OJT Goals. Developer shall also insure that these OJT Special Provisions are made applicable to such Subcontract. Where feasible, 25 percent of OJT Trainees in each occupation shall be in their first year of apprenticeship or training.

5.0 OJT Utilization Plan; Training Guidelines

5.01 OJT Utilization Plan

ADOT will approve Developer’s OJT Utilization Plan if it is reasonably calculated to meet the equal employment opportunity obligations of Developer and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period.

Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Bureau of Apprenticeship and Training will also be considered an acceptable training program provided they are being administered in a manner consistent with the equal employment obligations of Federal aid highway construction contracts.

Additionally, in-house training programs may be approved on a case-by-case basis. Approval or acceptance of a training program shall be obtained from ADOT prior to commencing work on the classification covered by the program.

5.02 Training Guidelines

Developer’s DBE/OJT Outreach and Compliance Manager shall be responsible for monitoring and administering Developer’s implementation of the ADOT-approved OJT Utilization Plan and monitoring the trainees’ progress. The DBE/OJT Outreach and Compliance Manager shall serve as the point of contact for ADOT regarding information, reporting, documentation, and conflict resolution relating to the Developer’s OJT Utilization Plan implementation.

Developer shall furnish each OJT Trainee a copy of the program he/she will follow in providing the training and shall provide each OJT Trainee with a certification showing the type and length of training satisfactorily completed.

No employee shall be employed as an OJT Trainee in any classification in which such employee has successfully completed a training course and achieved journeyman status or in which such employee has been employed as a journeyman. Developer shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, Developer's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the ADOT-approved OJT Utilization Plan.

It is the intention of these OJT Special Provisions that training is to be provided in the construction crafts rather than clerk typists or secretarial type positions. Training may be permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Acceptance of training in such lower level management positions shall be on a case-by-case basis, and approval shall be obtained from ADOT prior to commencing such work. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration. Some off site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

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

It is normally expected that an OJT Trainee will begin his training on the Project as soon as feasible after start of the Construction Work utilizing the skill involved and remain on the Project as long as training opportunities exist in the OJT Trainee’s work classification or until the OJT Trainee has completed the training program. However, when such training opportunities involve Work that is suspended or interrupted under the Agreement, Developer may continue training under other ADOT contracts regardless of their funding, except that no reimbursement for such training shall be made on non-federal aid contracts.

It is not required that all OJT Trainees be on board for the entire length of the Construction Work. Developer will have fulfilled its responsibilities under these OJT Special Provisions if and when it has provided acceptable training to meet the OJT Goals.

6.0 Trainee Wages

Developer shall cause all OJT Trainees to be paid at least 60 percent of the minimum journeyman's rate for each classification based on the approved apprenticeship or training program. In that case, the appropriate rates approved by the Department of Labor or Transportation in connection with the existing program will apply to all OJT Trainees being trained for the same classification who are covered by these OJT Special Provisions.

7.0 Submittals and Reporting

Developer shall utilize and cause its Subcontractors to utilize OJT Trainees enrolled in a State of Arizona Registered Apprenticeship Program or a Developer/Subcontractor's own OJT Program that has been approved by ADOT and FHWA. All Developer/ Subcontractor OJT Programs used to train OJT Trainees must be submitted to ADOT for approval at least 60 days prior to the program being used to train OJT Trainees on the Project. Developer/ Subcontractor OJT Programs not receiving prior ADOT approval shall cause Developer to be de denied OJT Training credit for OJT Trainees enrolled in the unapproved program.

During the course of Construction Work, Developer shall submit the following forms and reports to ADOT:

- An OJT Trainee Enrollment Form for each proposed OJT Trainee hired for the Project throughout the course of Construction Work as each individual is hired. Developer shall submit to ADOT such forms at the times specified in Section 9.3.4 of the Agreement.
- An OJT Trainee Completion/Termination Form when an OJT Trainee completes 2000 or more hours in the same construction trade or job classification, achieves Journey-Level Status or terminates employment with Developer or one of its Subcontractors working on the Project. Developer shall submit to ADOT such Forms by the 15th of every month with the OJT Monthly Progress Report.
- OJT Trainee Status Report form outlining monthly status of each OJT Trainee currently working on Project. Developer shall submit to ADOT such form by the 15th of every month with the OJT Monthly Progress Report.
- OJT Monthly Progress Report form, which Developer shall submit to ADOT by the 15th day following each month from and after the month in which Construction Work commences. The OJT Monthly Progress Report shall include the OJT Program Trainee Enrollment form for each Trainee enrolled during the previous month, the OJT Trainee Completion/Termination form for OJT Trainees completing required number of hours or terminating from the program during the month, the OJT Trainee Status Report form outlining current status of each trainee, an updated Project OJT Schedule for the upcoming quarter and projected through Substantial Completion, progress being made on the OJT Utilization Plan and any Good Faith Effort documentation to meet the OJT Goals.
- An OJT Annual Progress Report form, which Developer shall submit to ADOT within 15 days after each anniversary of the month in which Construction Work commences. The OJT Annual Progress Report shall report on the training of OJT Trainees completed in the previous 12 months and shall include cumulative information submitted in the OJT Monthly Progress Reports submitted during the previous 12 months.
- Final OJT Summary Report prior to Final Acceptance. The final report shall include training hours and OJT program completion data for all OJT Trainees that worked on the Project. The report shall also provide an accurate account of total OJT Trainee hours and identification of each OJT Trainee by name, ethnicity, gender, veteran or disadvantaged. Additionally, Developer must indicate the status of all OJT Trainees that worked on the Project by indicating if the OJT Trainee completed 2,000 or more hours, graduated to journeyman status or terminated from the OJT program. The Final OJT Summary Report shall also contain Good Faith Effort documentation if Developer fails to meet any of the OJT Goals. Developer may submit the Final OJT Summary Report in a format of Developer's choosing, provided that all the requested information is included.

Prior to commencement of any Construction Work, Developer shall submit to ADOT an OJT Training Schedule which will indicate each trainee's name, sex, race/ethnicity, the approved training program in which the OJT Trainee is enrolled, the approximate number of hours each OJT Trainee will be trained, the crafts to which the OJT Trainees belong and the estimated period of time that they will be employed as trainees.

Developer shall submit to ADOT monthly, as part of its Draw Request, a supplemental or revised OJT Schedule updated with all required information regarding any new OJT Trainee.

Developer shall enter OJT Trainee hours worked on a weekly basis into ADOT's web-based Labor Compliance System, LCPtracker. OJT Trainee hours not entered into LCPtracker by the 15th of each month for the preceding month will be considered delinquent.

Developer shall provide for the maintenance of records and furnish periodic reports documenting its performance under these OJT Special Provisions. Developer shall also retain the training records for all OJT Trainees for a period of five years following Substantial Completion of the Project. Such records shall be available for inspection or review by ADOT and the Federal Highway Administration.

8.0 Compliance and Oversight Committee

ADOT will convene an interdisciplinary Compliance Oversight Committee to monitor and oversee OJT compliance and progress towards meeting the OJT Goals. The Compliance Oversight Committee will include representatives of ADOT's General Engineering Consultant (GEC) for the Project, FHWA, ADOT's Business Engagement & Compliance Office and other entities. Developer's DBE/OJT Outreach and Compliance Manager and Project Manager (or designee responsible for the project management of professional services and construction activities of the Project) shall meet with the Compliance Oversight Committee on a monthly basis. The purpose of the monthly meetings will be to review information in submitted OJT Monthly Progress Reports, and to monitor whether the utilization of OJT Trainees is consistent with the OJT Goal commitment and approved OJT Utilization Plan. The Compliance Oversight Committee will also review OJT Trainee status from the previous month, review projected OJT recruitment and hiring for upcoming months, review Developer's Good Faith Efforts to meet the OJT Goals, identify and resolve impediments to successful OJT Trainee participation, and proactively work to resolve any OJT compliance issues that may arise.

9.0 Continuing Good Faith Efforts

Developer shall be obligated to provide additional information and documentation that demonstrates its continued Good Faith Efforts from the Effective Date through Final Acceptance to meet the OJT Goals. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, proactive and continuous result-oriented recruitment, training and retention measures in accordance with (23 CFR 230.409(g)(4)). Good Faith Efforts shall be taken as hiring opportunities arise. Whenever a Developer requests ADOT approval of someone other than a minority, woman, economically disadvantaged individual, and veteran for credit towards its annual training goal, the Developer shall submit documented evidence of its Good Faith Efforts to fill that position with a minority, woman, economically disadvantaged individual, and veteran.

ADOT shall conduct periodic site visits to Developer's worksite to review OJT compliance, as part of a FHWA required contractor compliance program review process. Developer's DBE/OJT

Outreach and Compliance Manager must be available to meet with ADOT staff as well as be available to respond to periodic emails and phone calls from ADOT to check on the progress of OJT Trainees. ADOT will make reasonable efforts to minimize disruption to Developer's work.

If ADOT determines at any time during the Construction Work that Developer's OJT participation and Good Faith Efforts to meet the OJT Goals during performance of the Construction Work are not consistent with its commitment to meet the OJT Goals or make Good Faith Efforts to meet the OJT Goals or with the provisions of the approved OJT Utilization Plan, ADOT shall have the right to enforce remedies as provided in Sections 19.6 and 20.5 of the Agreement.

Completion and submission of Good Faith Effort documentation and, if required, a corrective action plan is not a guarantee that ADOT will approve Good Faith Efforts. ADOT will consider the quality, quantity, and intensity of the different kinds of efforts Developer has made and/or proposes to make, whether any failure is due to circumstance beyond the control of Developer, and any other extenuating circumstances. The efforts employed by Developer should be those that one could reasonably expect Developer to make if Developer were actively trying to obtain OJT participation sufficient to meet the OJT Goals. Mere pro forma efforts are not sufficient Good Faith Efforts to meet the OJT Goals and requirements.

Attachment A

OJT TRAINEE ENROLLMENT FORM

TRAINEE INFORMATION (Please print clearly) First Name:		Middle:		Last Name:	
Street Address:			City, ST Zip:		
Mailing Address:			City, ST Zip:		
Home Phone:			Cell Phone:		
E-mail Address:			Gender:	☐ Male ☐ Female	
Ethnicity:	☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Hispanic ☐ Native Hawaiian or Other Pacific Islander ☐ White ☐ Other _____ Disadvantaged: ☐ Yes ☐ No Are you 18 years of age or older? ☐ Yes ☐ No Have you ever served In the military? ☐ Yes ☐ No High school Diploma or equivalent (GED) ☐ Yes ☐ No				

WERE YOU PREVIOUSLY ENROLLED IN AN OJT HIGHWAY CONSTRUCTION PROGRAM

If YES: Name of Program? _____ Classification? _____

Level Attained: _____ Number of training hours completed? _____

CURRENT PROJECT'S OJT PROGRAM

Name of Program? _____ Classification? _____

Level Enrolled: _____ Number of training hours Expected? _____

APPLICANT STATEMENT

I CERTIFY THAT THE ANSWERS ON THIS APPLICATION ARE TRUE AND COMPLETE TO MY KNOWLEDGE.

_____ _____ _____

SIGNATURE **PRINTED NAME** **DATE**

☐ OJT Completion

☐ OJT Termination

Attachment B

OJT TRAINEE COMPLETION/TERMINATION FORM

1. Developer / Subcontractor's Name:

_____

2. Street Address: _____
City: _____ State: _____ ZIP: _____

3. Name of Trainee:	**4. Address:**
_____	_____ City: _____ State: _____ ZIP: _____

5. Date Hired:	**6. Date Training Program Started:**	**7. Date Completed / Terminated:**
____/_____/_____	____/_____/_____	_____/_____/_____

8. Job Classification: (Trade)

☐ Labor ☐ Carpenter ☐ Cement Mason ☐ Equipment Operator ☐ Mechanic/Equipment Service Technician

☐ Quality Control (QC) ☐ Engineer in Training (EIT) ☐ Other

9. Type of Training Program:

☐ Registered Union Apprenticeship ☐ Contractor On the Job Training Program

10. Completed/Terminated:

☐ Completed ☐ Terminated ☐ Reduction In Force ☐ Quit ☐ Lay Off Date: _____/_____/_____ Total # of Hours Completed _____

11. Reason for Termination:

_____

12. SUBMITTED BY: (Signature and Title of Contractor's DBE/OJT Outreach and Compliance Manager)

_____ Date: _____/_____/____

THIS AREA FOR ADOT BECO USE ONLY

ADOT BECO OFFICE APPROVAL: _____ **DATE:** _____**TITLE:**____

COMPLETION CERTIFICATE SENT TO CONTRACTOR ON DATE: _____

Attachment C

ARIZONA DEPARTMENT OF TRANSPORTATION

DESIGN BUILD

MONTHLY/ANNUAL OJT TRAINEE STATUS REPORT FORM

(Due by the 15th of each month and annually on anniversary of Agreement execution date)

Developer/Subcontractor:	
Project #:	
Reporting Period:	Month/Year _____ Annual_____
Contract Description:	

Trainee Name	Training Classification/ Craft	Gender	Ethnicity	Veteran or Disadvantaged	Start Date	End Date	Status (Completed, Continuing or Terminated)	Total Hours Completed

Total OJT Trainees Completed Training During Month/Year	
Total OJT Trainees Terminated During Month/Year	
Total OJT Trainees Continuing Training During Month/Year	

Developer DBE/OJT Outreach and Compliance Manager

Name_____

Signature_____ Date_____

Developer Project Manager

Name_____

Signature_____ Date_____

Attachment D

Arizona Department of Transportation

DESIGN BUILD

OJT Monthly/Annual Progress Report

(Due by the 15th of each month and annually on anniversary of DBM Agreement execution date)

Contract/Agreement:_____ Project_____

Developer/Contractor_____ Reporting Period_____

1. **PROGRESS TOWARDS MEETING OJT GOALS:**

		Current Month					
	Project Total To-Date	**Current Month Totals**	**Women**	**Minorities**	**Veterans**	**Disadvantaged**	**Other**
Total Number of OJT Trainees Enrolled:							
Total Number of OJT Trainee Hours:							
Total Number of OJT Trainees with 2,000 or More Hours:							
Total Number of OJT Trainees Achieved Journey-Level Status:							

2. **OUTREACH & RECRUITMENT**: Description of types of proactive OJT marketing, recruitment, outreach and community engagement efforts made by Developer during the month to secure women, minority, veteran and disadvantaged trainees for the Project.

3. **TRAINING PROGRAMS**: Contractor Training Programs submitted for approval during the month.

4. **DEVIATIONS/REVISIONS TO OJT UTILIZATION PLAN:** List any deviation from or revisions needed to Developer's approved OJT Utilization Plan.

5. **OTHER ISSUES**: Description of any other issues encountered and/or resolved pertaining to OJT Trainees working on the Project that could impact Developer's ability to meet the OJT Goals.

REQUIRED ATTACHMENTS

- **OJT Enrollment Forms** for each OJT Trainee hired during the month.
- **OJT Completion/Termination Forms** for each OJT Trainee that completed 2,000 or more hours, Journey-Level Status or terminated from the Project.
- **OJT Monthly OJT Trainee Status Report Form** summarizing the training status of all OJT Trainees working on the Project.
- **Updated OJT Schedule** from the upcoming quarter and projected through Substantial Completion of the Project.

- **Any Good Faith Efforts** documentation if not on target to meet the OJT Goals.

Attachment E

Arizona Department of Transportation

DESIGN BUILD

Final OJT Summary Report

(Due 60 days prior to Substantial Completion)

Contract/Agreement_____ Project_____

Developer/Contractor_____ Construction Start and End Dates_____

6. **FINAL PROGRESS TOWARDS MEETING OJT GOALS:**

	Final Project Totals	**Women**	**Minorities**	**Veterans**	**Disadvantaged**	**Other**
Total Number of OJT Trainees Enrolled:						
Total Number of OJT Trainee Hours*:						
Total Number of OJT Trainees with 2,000 or More Hours:						
Total Number of OJT Trainees Achieved Journey-Level Status:						

*Must match payroll hours uploaded into LCPtracker

7. **OUTREACH & RECRUITMENT**: Describe all types of proactive OJT marketing, recruitment, outreach and community engagement efforts made by Developer during the course of Construction Period to secure women, minority, veteran and disadvantaged trainees for the Project.

8. **DEVIATIONS/REVISIONS TO OJT UTILIZATION PLAN:** List any deviation or revisions Developer had to make to its approved OJT Utilization Plan throughout the course of the Construction Period.

9. **OTHER ISSUES**: Description of any other issues encountered and/or resolved pertaining to OJT Trainees working on the Project that impacted Developer's ability to meet the OJT Goals.

REQUIRED ATTACHMENTS

- **OJT Completion/Termination Forms** for each OJT Trainee that completed 2,000 or more hours or achieved Journey-Level Status for which Developer is requesting OJT credit.
- **Annual OJT Trainee Status Report Form** summarizing the training status of all OJT Trainees that worked on the Project.
- **Any Good Faith Efforts** explanation and documentation, if Developer did not meet OJT Goals.

EXHIBIT 9

KEY SUBCONTTRACTORS AND KEY PERSONNEL

Exhibit 9-1	Key Subcontractors
Exhibit 9-2	Key Personnel

EXHIBIT 9-1

KEY SUBCONTTRACTORS

[NTD – INSERT LIST OF SUBCONTRACTORS IDENTIFIED IN DEVELOPER'S PROPOSAL PRIOR TO AGREEMENT EXECUTION. KEY SUBCONTRACTORS SHOULD INCLUDE LEAD CONTRACTOR, LEADING ENGINEERING FIRM AND LEAD MAINTENANCE FIRM.]

EXHIBIT 9-2

KEY PERSONNEL

[*NTD – INSERT NAMES OF KEY PERSONNEL PRIOR TO AGREEMENT EXECUTION*.]

Key Personnel Position	Individual's Name
Project Manager	[_____]
Construction Manager	[_____]
Design Manager	[_____]
Quality Manager	[_____]
Safety Manager	[_____]
Public Relations Officer	[_____]
ROW Acquisition Manager	[_____]
Utility Adjustment Coordinator	[_____]
Environmental Compliance Manger	[_____]
Maintenance Manager	[_____]
DBE/OJT Outreach and Compliance Manager	[_____]

EXHIBIT 10

FORMS OF MAINTENANCE PERFORMANCE AND PAYMENT BONDS

Exhibit 10-1	Form of Maintenance Performance Bond[1]
Exhibit 10-2	Form of Maintenance Payment Bond[1]
Exhibit 10-3	Form of Multiple Obligee Rider for Maintenance Performance Bond
Exhibit 10-4	Form of Multiple Obligee Rider for Maintenance Payment Bond

[1] If the bond is to secure the performance or payment obligations of Lead Maintenance Firm rather than Developer, then:

(a) the form of bond shall be revised to reflect Lead Maintenance Firm as the "Principal" or "Contractor", Developer in place of ADOT as the bond obligee, and the Subcontract between Developer and the Lead Maintenance Firm in respect of the Project as the "Agreement" and the "Contract Documents";

(b) the form of payment bond set forth as Exhibit 10-2 shall be revised to reflect that it inures to the benefit of all persons supplying labor or materials to the Lead Maintenance Firm or the Lead Maintenance Firm's Subcontractors; and

(c) the multiple obligee riders in the forms set forth as Exhibit 10-3 and Exhibit 10-4, as applicable, must be provided that identify ADOT as the "Ultimate Obligee."

Further, if there is more than one Lead Maintenance Firm, or if Developer has a direct Subcontract for any portion of the Maintenance Services with a Subcontractor in addition to the Lead Maintenance Firm, and Developer is not the Principal under the bonds, then Developer shall provide bonds from each such Lead Maintenance Firm and each such Subcontractor, as provided in Section 10.2.6 of the Agreement.

EXHIBIT 10-1

FORM OF MAINTENANCE PERFORMANCE BOND

Loop 202 South Mountain Freeway Project

Bond No. _____

Effective Date of Bond: _____

WHEREAS, the Arizona Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project, duly executed and delivered as of _____, 2016 (the "Agreement"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations related to the Maintenance Services under the Contract Documents.

NOW, THEREFORE, Principal and _____, ("Surety"), holder of a certificate of authority to transact surety business in the State of Arizona, are held and firmly bound unto Obligee in the amount of $[_____] ***[amount calculated as set forth in Section 10.2.1 of the Agreement]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform and fulfill all of its undertakings, covenants, terms, conditions, agreements and obligations under the Contract Documents, including any and all alterations, modifications, amendments and supplements thereto, relating to the Maintenance Services and arising during the term of this Bond set forth in Paragraph 8 of this Bond, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

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

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

2. This Bond specifically guarantees the performance of each and every undertaking, covenant, term, condition, agreement and obligation of Principal under the Contract Documents, including any and all alterations, modifications, amendments and supplements thereto, relating to the Maintenance Services and arising during the term of this Bond set forth in Paragraph 8 of this Bond, including but not limited to its liability for payment in full of all Liquidated Damages, Noncompliance

Charges and Lane Rental Charges as specified in the Contract Documents that accrue during such term (collectively the "Bonded Obligations"), but not to exceed the Bonded Sum.

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

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

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

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

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

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

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

6. If Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then The responsibilities of Surety to the Obligee shall not be greater than those of the

Principal under the Contract Documents with respect to the Bonded Obligations, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the Contract Documents with respect to the Bonded Obligations. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Maintenance Price for the term of this Bond set forth in paragraph 8 below to mitigation costs and damages on the Agreement, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective Maintenance Services and completion of the Maintenance Services required during such term in accordance with the terms and conditions of the Contract Documents;

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

c. all Liquidated Damages, Noncompliance Charges and Lane Rental Charges as specified in the Contract Documents that accrue during such term.

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

8. The term of this Bond commences on the Effective Date set forth above. In no event shall the term of this Bond be beyond the [__] ***[term of the bond may not be less than 5 years, except where a shorter time period is sufficient to bond until the end of the Term.]*** anniversary of the Effective Date without the express written consent of the Surety; provided that the end of the term of this Bond shall not exonerate Surety from its obligations with respect to any failure of the Principal to perform in accordance with the Contract Documents during the term of this Bond, and this Bond shall be released only upon the satisfaction of the conditions to release set forth in Section 10.2.1.7 of the Agreement. Surety will have no obligation to extend or replace this Bond for additional periods of time. Failure of the Surety to extend this Bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

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

_____
_____
_____

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20[__]

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 10-2

FORM OF MAINTENANCE PAYMENT BOND

Loop 202 South Mountain Freeway Project

Bond No. _____

Effective Date of Bond: _____WHEREAS, the Arizona Department of Transportation ("Obligee"), has awarded to _____, a _____ ("Principal"), a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project, duly executed and delivered as of _____, 2016 (the "Agreement"), on the terms and conditions set forth therein; and

WHEREAS, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims in relation to the Maintenance Services.

NOW, THEREFORE, Principal and _____, ("Surety"), holder of a certificate of authority to transact surety business in the State of Arizona, are held and firmly bound unto Obligee in the amount of $[_____] ***[amount calculated as set forth in Section 10.2.2 of the Agreement]*** (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any monies due to any person supplying labor or materials to Principal, the Lead Maintenance Firm or the Lead Maintenance Firm's subcontractors during the term of this Bond set forth in Paragraph 5 of this Bond, then Surety shall pay for the same in an amount in the aggregate not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 10.2.3 of the Agreement.

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

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

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

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

_____
_____
_____

4. This Bond shall inure to the benefit of all persons supplying labor or materials to Principal, the Lead Maintenance Firm or the Lead Maintenance Firm's subcontractors during the term of this Bond set forth in Paragraph 5 of this Bond so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

5. The term of this Bond commences on the Effective Date set forth above. In no event shall the term of this Bond be beyond the [___] ***[term of the Bond may not be less than 5 years, except where a shorter time period is sufficient to bond until the end of the Term.]*** anniversary of the Effective Date without the express written consent of the Surety; provided that the end of the term of this Bond shall not exonerate Surety from its payment obligations with respect to any failure of the Principal to pay sums accruing or owing to persons supplying labor or materials during the term of this Bond, and this Bond shall be released only upon satisfaction of the conditions to release set forth in Section 10.2.2.2 of the Agreement. Surety will have no obligation to extend or replace this Bond for additional periods of time. Failure of the Surety to extend this Bond or failure of the Principal to file a replacement bond shall not constitute a default under this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20[__].

Principal:

_____
By: _____
Its: _____
(Seal)

Surety:

_____
By: _____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

By:_____
Name
Title:
Address:

EXHIBIT 10-3

FORM OF MULTIPLE OBLIGE RIDER FOR MAINTENANCE PERFORMANCE BOND

Loop 202 South Mountain Freeway Project

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

WHEREAS, the Arizona Department of Transportation ("ADOT") awarded to _____, a _____ ("Primary Obligee"), a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project (the "Project"), duly executed and delivered as of _____, 2016, on the terms and conditions set forth therein; and

WHEREAS, on or about the ___ day of _____, 20__, Principal entered into a written agreement bearing the date of _____, 20__ (the "Agreement") with Primary Obligee for Principal's performance of the Maintenance Services for the Project; and

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

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

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

Surety shall not be liable under the Maintenance Performance Bond to Primary Obligee, Ultimate Obligee, or either of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the Maintenance Services, to Surety) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by Primary Obligee shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under the Maintenance Performance Bond to Primary Obligee and Ultimate Obligee is limited to the penal sum of the Maintenance Performance Bond. Ultimate Obligee's rights hereunder are subject to the same defenses, except defenses available under bankruptcy law, that Principal and/or Surety

have against Primary Obligee, provided that Ultimate Obligee has received notice and 60 days prior opportunity to cure breach or default by Primary Obligee under the Agreement. The total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Obligee under the Agreement.

The rights of Primary Obligee under the Maintenance Performance Bond are subordinate in all respects to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive any payments under the Maintenance Performance Bond and the Surety shall make any and all payments under the Maintenance Performance Bond to Ultimate Obligee.

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

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

Principal:

_____
By: _____
Its: _____
(Seal)

Surety:

_____
By: _____
Its: _____
(Seal)

EXHIBIT 10-4

FORM OF MULTIPLE OBLIGE RIDER FOR MAINTENANCE PAYMENT BOND

Loop 202 South Mountain Freeway Project

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

WHEREAS, the Arizona Department of Transportation ("ADOT") awarded to _____, a _____ ("Primary Obligee"), a Design-Build-Maintain Agreement for the Loop 202 South Mountain Freeway Project (the "Project"), duly executed and delivered as of _____, 2016, on the terms and conditions set forth therein; and

WHEREAS, on or about the ___ day of _____, 20__, Principal entered into a written agreement bearing the date of _____, 20__ (the "Agreement") with Primary Obligee for Principal's performance of the Maintenance Services for the Project; and

WHEREAS, Primary Obligee requires that Principal provide the Maintenance Payment Bond and that ADOT be named as an additional obligee under the Maintenance Payment Bond; and

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

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

Surety shall not be liable under the Maintenance Payment Bond to Primary Obligee, Ultimate Obligee, or either of them, unless Primary Obligee, Ultimate Obligee, or either of them, shall make payments to Principal (or in the case Surety arranges for performance of the Maintenance Services, to Surety) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by Primary Obligee shall have occurred and be continuing under the Agreement.

The aggregate liability of Surety under this Maintenance Payment Bond to Primary Obligee and Ultimate Obligee is limited to the penal sum of the Maintenance Payment Bond. Ultimate Obligee's rights hereunder are subject to the same defenses, except defenses available under bankruptcy law, that Principal and/or Surety have against Primary Obligee, provided that Ultimate Obligee has received notice and 60 days prior opportunity to cure breach or default by Primary Obligee under the Agreement. The

total liability of Surety shall in no event exceed the amount recoverable from Principal by Primary Obligee under the Agreement.

The rights of Primary Obligee under the Maintenance Payment Bond are subordinate to Ultimate Obligee's rights hereunder. Primary Obligee shall have no right to receive any payments under the Maintenance Payment Bond and Surety shall make any and all payments under the Maintenance Payment Bond to Ultimate Obligee.

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

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

Principal: _____
By: _____
Its: _____
(Seal)

Surety: _____
By: _____
Its: _____
(Seal)

EXHIBIT 11

GUARANTY FORMS

Exhibit 11-1	Form of D&C Guaranty
Exhibit 11-2	Form of Maintenance Guaranty

EXHIBIT 11-1

FORM OF D&C GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

R E C I T A L S

A. _____, as developer ("Developer"), and ADOT are parties to that certain Design-Build-Maintain Agreement (the "Agreement") pursuant to which Developer has agreed to design, construct and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce ADOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a _____. The Guarantor is a _____. The execution of the Agreement by ADOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would not have entered into the Agreement with Developer. Therefore, in consideration of ADOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

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

1. Guaranty. Guarantor guarantees to ADOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to (a) the D&C Work under the Contract Documents and (b) the Maintenance Services under the Contract Documents solely until the Maintenance Security and, as applicable, the Maintenance Guaranty have been provided by Developer as required in accordance with Sections 10.2.2 and 10.4 of the Agreement. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from

time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

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

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

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

held by ADOT as security for the performance by Developer of the Guaranteed Obligations.

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

d. If Developer's obligations are changed by any modification, agreement or stipulation between Developer and ADOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. Liability of Guarantor.

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

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

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

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of

the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in ADOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by ADOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT against Developer, or any other security or collateral that ADOT now has or hereafter

acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for ADOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. ADOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If ADOT forecloses on any real property collateral pledged by Developer:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) ADOT may collect from Guarantor even if ADOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. Cumulative Rights. All rights, powers and remedies of ADOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business and is in good standing under the laws of the State of Arizona;

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

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

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

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

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

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

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

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

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

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

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

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

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to ADOT:
Arizona Department of Transportation
206 S. 17th Avenue
Phoenix, AZ 85007
Attn: Robert Samour, P.E.
Telephone: (___) ___-____
Facsimile: (___) ___-____

With copies to:
Office of the Arizona Attorney General
Transportation Section
1275 W. Washington Street
Phoenix, Arizona 85007
Telephone: (___) ___-____
Facsimile: (___) ___-____

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or ADOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by ADOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. ADOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a

bankruptcy, reorganization, or similar proceeding, and the failure of ADOT so to file will not affect Guarantor's obligations under this Guaranty.

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

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

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

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

[SIGNATURES ON NEXT PAGE]

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

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 11-2

FORM OF MAINTENANCE GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

R E C I T A L S

A. _____, as developer ("Developer"), and ADOT are parties to that certain Design-Build-Maintain Agreement (the "Agreement") pursuant to which Developer has agreed to design, construct and maintain the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce ADOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a _____. The Guarantor is a _____. The execution of the Agreement by ADOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would not have entered into the Agreement with Developer. Therefore, in consideration of ADOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

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

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

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be

and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

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

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

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

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

d. If Developer's obligations are changed by any modification, agreement or stipulation between Developer and ADOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. Liability of Guarantor.

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

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

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

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto;

(ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in ADOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by ADOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT against Developer, or any other security or collateral that ADOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, joint venturers of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, joint venturers of

Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for ADOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. ADOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If ADOT forecloses on any real property collateral pledged by Developer:

(3) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(4) ADOT may collect from Guarantor even if ADOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. Cumulative Rights. All rights, powers and remedies of ADOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and qualified to do business and is in good standing under the laws of the State of Arizona;

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

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

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

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

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

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

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

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

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

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

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

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

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to ADOT: Arizona Department of Transportation
206 S. 17th Avenue
Phoenix, AZ 85007
Attn: Robert Samour, P.E.
Telephone: (___) ___-____
Facsimile: (___) ___-____

With copies to: Office of the Arizona Attorney General
Transportation Section
1275 W. Washington Street
Phoenix, Arizona 85007
Telephone: (___) ___-____
Facsimile: (___) ___-____

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or ADOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by ADOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. ADOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of ADOT so to file will not affect Guarantor's obligations under this Guaranty.

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

allow the claim of ADOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

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

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

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

[SIGNATURES ON NEXT PAGE]

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

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 12

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until Substantial Completion, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, subsidence, and terrorism; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment to be incorporated into the Project that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) unless covered by commercial general liability insurance pursuant to Section 3 of this Exhibit 12, all existing property and improvements that are within the construction work zone and are or will be affected by the Construction Work, provided however that the policy may include a sublimit of not less than $5,000,000 per occurrence for the property of others; (iii) the collocated office and ADOT's field offices as described in Sections 110.05.2 and 110.05.3 of the Technical Provisions, all areas appurtenant thereto, and all personal property (including office equipment), trade fixtures and Developer- or ADOT-owned alterations and utility installations therein; and (iv) valuable papers and restoration of data, plans and drawings.

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

(d) Developer and ADOT shall be the named insureds on the policy. Developer also may, but is not obligated to, include other Subcontractors as named insured as their respective interests appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other additional insureds. ADOT shall be named as loss payee under the policy. If ADOT, as loss payee, receives proceeds of such insurance for insured loss or damage, ADOT shall hold and apply such proceeds as provided in Section 11.3 of the Agreement.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans, blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, using form LEG 3 or equivalent, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, (ix) building ordinance compliance, with the building ordinance exclusion deleted, and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

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

2. Builder's Risk Insurance During the Maintenance Period

Prior to commencing Capital Asset Replacement Work and continuing until completion thereof, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, subsidence, and terrorism; shall contain extensions of coverage that are typical for the nature of the construction work; and shall contain only those exclusions that are typical for the nature of the construction work (including the sublimits noted below).

(b) The policy shall cover all (i) property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings that are in the course of construction, and (ii) machinery and equipment that are part of or in the course of the construction.

(c) The policy shall provide coverage per occurrence sufficient to reinstate the insured property for a limit not less than the probable maximum loss,

without risk of co-insurance; provided, however, that the policy may also include the sublimits set forth in clause (e) below. Developer and its insurance consultant, or the insurer, shall perform the maximum probable loss analysis using industry standard underwriting practices. The probable maximum loss analysis and recommended policy limit based thereon shall be subject to the review and comment by ADOT to verify reasonableness under industry standard underwriting practices, prior to issuance of the policy or renewal of any policy.

(d) Developer and ADOT shall be the named insureds on the policy. Developer also may, but is not obligated to, include Subcontractors and other interested parties as additional insureds as their respective interests appear. The policy shall be written so that no acts or omissions of a named insured shall vitiate coverage of the other named insureds or additional insureds (as applicable). ADOT shall be named as loss payee under the policy. If ADOT, as loss payee, receives proceeds of such insurance for insured loss or damage, ADOT shall hold and apply such proceeds as provided in Section 11.3 of the Agreement.

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

(f) The policy shall provide a deductible not exceeding $1,000,000 per occurrence.

3. Commercial General Liability Insurance During the Construction Period

At all times during the Construction Period and for the D&C Warranty Term, Developer shall procure and keep in force, or cause to be procured and kept in force, in its own name, commercial general liability insurance as specified below.

(a) The policy shall be in form reasonably acceptable to ADOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are

typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

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

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations coverage with an extended reporting period until expiration of the statute of repose set forth at Arizona Revised Statutes, Section 12-552 (with acknowledgement that the Project constitutes the premises and not a product);

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

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

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

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

(xi) Broad named insured endorsement; and

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

(c) The policy shall have limits of not less than $10,000,000 per occurrence/$20,000,000 aggregate with the aggregate applicable either specifically for this Project or on a per project basis. Developer may satisfy the project specific or per project aggregate requirement via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy. Such limits shall be shared by all insureds and additional insured parties.

(d) ADOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 04 13 and ISO form CG 20 37 04 13 or equivalent.

The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

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

(f) The coverage shall include the collocated office and ADOT's field offices as described in Sections 110.05.2 and 110.05.3 of the Technical Provisions, all areas appurtenant thereto, and all personal property (including office equipment), trade fixtures and Developer- or ADOT-owned alterations and utility installations therein.

4. <u>Commercial General Liability Insurance During the Maintenance Period</u>

At all times during the Maintenance Period and for the Maintenance Warranty Period, Developer shall procure and keep in force, or cause to be procured and kept in force, commercial general liability insurance as specified below.

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

(b) The policy shall insure against the legal liability of the insureds named in <u>Section 5(d)</u>, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations coverage for claims made within an extended reporting period of eight years after substantial completion of any work of installation, construction, reconstruction, replacement or other capital improvement, including any Capital Asset Replacement Work, performed during the policy period (with acknowledgement that the Project constitutes the premises and not a product);

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

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

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

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

(xi) Broad named insured endorsement; and

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

(c) The policy shall have limits of not less than $5,000,000 per occurrence/$10,000,000 aggregate applicable either specifically for this project or on a per project basis. Developer may satisfy the project specific or per project aggregate requirement via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy.

(d) ADOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 04 13, and ISO form CG 20 37 04 13 or equivalent. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

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

5. Automobile Liability Insurance

At all times during the performance of the Work and during the Term, Developer shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below.

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

(b) Developer shall be the named insured under its automobile liability policy. ADOT shall be named as an additional insured with respects to the automobile liability policy. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the additional insureds.

(c) Developer's policy shall have a limit per policy period of not less than $1,000,000 combined single limit.

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

6. Pollution Liability Insurance

Developer shall procure and maintain, or cause to be procured and maintained, at all times throughout the Term contractor's pollution liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Developer, its agents, representatives, employees or subcontractors.

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

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

(ii) Medical monitoring;

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

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

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

(vi) loss, clean-up costs and related legal expense because of a pollution condition arising from the named insured's goods, products, or waste during the course of transportation by a carrier to or from: (1) a job site where contracting services are being performed; or (2) a covered location, including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay.

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

(c) The policy shall be written on an occurrence basis.

(d) Developer shall maintain limits no less than $10,000,000 per occurrence/$10,000,000 aggregate during the D&C Period and no less than $5,000,000 per occurrence/$5,000,000 aggregate during the Maintenance Period.

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

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

(g) ADOT shall be named as an additional insured on the policy.

7. <u>Umbrella Liability Insurance</u>

Developer shall procure, or cause to be procured and maintained, umbrella/excess liability insurance on a following form basis, including coverage for all named and additional insureds, as follows:

(a) During the D&C Period, limits of $100,000,000 per occurrence/aggregate with limits reinstating annually, except for the aggregate limit for completed operations, which shall be a single aggregate, and applying over the commercial general liability, automobile liability (if any), and employer's liability insurance policies required above.

(b) During the Maintenance Period, limits of $75,000,000 per occurrence/aggregate with limits reinstating annually and applying over the commercial general liability, automobile liability (if any), and employer's liability insurance policies required above.

(c) Developer may satisfy the coverage requirement via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy.

8. <u>Professional Liability Insurance</u>

(a) D&C Work: Lead Engineering Firm and Its Professional Services Subcontractors (First Alternative)

Commencing on the date of issuance of NTP2 with a retroactive date to the date that Professional Services are first rendered respecting the Project and until the conclusion of all Professional Services in connection with the D&C Work, Developer shall procure and keep in force, or shall cause the Lead Engineering Firm to procure and keep in force, professional liability insurance as specified in subparagraphs (i) through (vi) below.

(i) The insurance policy shall provide coverage of liability of the Lead Engineering Firm and all Subcontractors at all tiers under the Lead Engineering Firm performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services for the Project, including for bodily injury or property damage.

(ii) The insurance policy shall have a limit of not less than $30,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

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

(iv) The insurance policy shall be project-specific.

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

(b) D&C Work: Developer/Lead Subcontractor; Lead Engineering Firm and Its Professional Services Subcontractors (Second Alternative)

As an alternative to subsection (a) above, Developer may elect to procure and keep in force, and cause the Lead Engineering Firm to procure and keep in force, two policies of professional liability insurance as specified in subparagraphs (i) through (vi) below.

(i) One insurance policy shall provide coverage of liability of the Lead Engineering Firm and all Subcontractors at all tiers under the Lead Engineering Firm performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services for the Project, including for bodily injury or property damage. The other insurance policy shall be a contractor's protective professional indemnity policy that provides coverage of Developer and the Lead Subcontractor with protective indemnity limits excess of the limits of the Lead Engineering Firm's professional liability policies.

(ii) The insurance policy for the Lead Engineering Firm and Subcontractors shall have a limit of not less than $10,000,000 per claim and in the aggregate. The contractor's protective professional indemnity policy for Developer and the Lead Subcontractor shall have protective indemnity limits excess of the limits of the Lead Engineering Firm's policy such that the sum of the policy limits under the two policies is not less than $30,000,000 per claim and aggregate. For both policies, the aggregate limit need not reinstate annually.

(iii) The insurance policy for the Lead Engineering Firm and Subcontractors shall provide a deductible or self-insured retention not exceeding $1,000,000 per claim. The contractor's protective professional indemnity policy for Developer and the Lead Subcontractor shall be written to provide coverage without first

requiring exhaustion of any deductibles or self-insured retentions under underlying policies other than the foregoing deductible or self-insured retention.

(iv) Both insurance policies shall be project-specific.

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

(c) Other Professional Services

In addition, Developer shall cause each other Subcontractor that provides Professional Services for the Project or the Maintenance Period, as applicable, and not insured pursuant to Section 8(a) or 8(b) above, including the Independent Quality Firm, to procure and keep in force professional liability insurance, covering its Professional Services practice, of not less than $2,000,000 per claim and in the aggregate per annual policy period.

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

(ii) The aggregate limit shall reinstate annually.

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

(iv) Each such professional liability policy shall be kept in force until the earlier of (A) eight years after the insured's Professional Services in connection with the installation, construction, reconstruction, replacement or other capital improvement, including any Capital Asset Replacement Work, have concluded, or (B) ten years after issuance of NTP 2.

(v) The date of inception of coverage in all cases must precede the effective date of the applicable Subcontract.

9. <u>Workers' Compensation Insurance</u>

At all times when Work is being performed by any employee of Developer or any Subcontractor, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer and/or the Subcontractors, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

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

(b) A voluntary compensation endorsement;

(c) An alternative employer endorsement;

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

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

10. Employer's Liability Insurance

At all times during the Term, Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

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

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

(c) The policy shall have a limit of not less than $1,000,000 (during the D&C Period) and $1,000,000 (during the Maintenance Period) per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 12 stipulates may be similarly included.

11. Railroad Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, prior to performing any Work across, under or adjacent to the railroad's tracks or railroad right-of-way, a railroad protective liability insurance policy as may be required by the operating railroad.

All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as the named insured. Copies of all insurance policies shall be submitted to ADOT prior to any entry by Developer upon operating railroad property. In the event any agreement between ADOT and a railroad, or between Developer and a railroad, includes insurance requirements applicable to the Work, Developer shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

12. Subcontractors' Insurance

(a) At all times during the Term, Developer shall cause each Subcontractor that performs work on the Site to provide commercial general liability insurance that complies with Article 11 of the Agreement, with limits of at least $1,000,000 per occurrence/$2,000,000 aggregate. For any Subcontractor undertaking work with an estimated contract value of $5,000,000 or more, the commercial general liability limits shall be supplemented with an umbrella/excess liability insurance policy with a minimum limit of $5,000,000, on a following-form basis, unless the Subcontractor is specifically covered by Developer-provided liability insurance. Developer shall cause each such Subcontractor that provides such insurance to include ADOT and each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such commercial general liability insurance shall be Project-specific. Developer may satisfy the project specific requirement via ISO form CG 25 03 and CG 20 37 endorsements to a corporate commercial general liability policy.

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

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

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

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

(iv) Each policy shall include ADOT and each of the Indemnified Parties as additional insureds.

(c) At all times when Work is being performed by any employee of a Subcontractor, Developer shall cause Subcontractor to procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

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

(ii) A voluntary compensation endorsement;

(iii) An alternative employer endorsement;

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

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

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

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

(ii) The Subcontractor shall be the named insured.

(iii) The policy shall have a limit of not less than $1,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 12 stipulates may be similarly included.

(e) ADOT shall have the right to contact the Subcontractors directly in order to verify the above coverages, if Developer does not provide verification of such Subcontractor coverage as and when required under Section 11.1.5 of the Agreement.

13. Increases in Coverage Amounts

For clarity, the increases under Section 11.1.18 of the Agreement to the minimum limits or sublimits stated in this Exhibit 12 of policies carried during the Maintenance Period shall be determined as of the inception of the applicable policy period.

EXHIBIT 13

CONTRACT MODIFICATION REQUEST FORM

[See attached]

ALTERNATIVE DELIVERY

CONTRACT MODIFICATION REQUEST

Request #

CM @ R ☐

Design-Build ☐

Page ____ of ____

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

Requested Change (What):

Rough order of magnitude FA $ ____ NFA $ ____

Reason/Justification (Why):

General Supplemental Agreement Types	List Technical Managers:
If Other, please explain:	

ADOT Recommendation:

Concept Recommended Yes ☐ No ☐ **Attachment** Yes ☐ No ☐ _____ *Senior/Resident Engineer* **Date:** _____

Concept Recommended Yes ☐ No ☐ **Attachment** Yes ☐ No ☐ _____ *Asst. District Engineer/District Engineer* **Date:** _____

Concept Recommended Yes ☐ No ☐ **Attachment** Yes ☐ No ☐ _____ *Asst. State Engineer, Construction-Materials* **Date:** _____

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

_____ FHWA **Date:** _____

Any decision to approve the change to contract terms will be within the sole discretion of ADOT and is dependent on the documentation that is submitted and entered into the Supplemental Agreement Tracking System (SATS).

EXHIBIT 14

EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

This Exhibit 14 sets forth the methods for calculating Extra Work Costs and Delay Costs owing from ADOT to Developer under the Agreement.

1. EXTRA WORK COSTS

At the sole discretion of ADOT, Extra Work Costs shall be determined on either a negotiated lump sum or force account basis, as described in this Section 1.

1.1 Negotiated Lump Sum

1.1.1 When Extra Work Costs are determined on a lump sum basis, such Extra Work Costs shall be negotiated based on:

(a) Estimated costs of labor;

(b) Estimated costs of material;

(c) Estimated costs of equipment;

(d) Actual fees and charges (e.g., permit fees, plan check fees, review fees and charges) of Governmental Entities in connection with Governmental Approvals required to perform the Extra Work;

(e) Extra insurance costs and extra costs of bonds and letters of credit;

(f) Other estimated direct costs; and

(g) Estimated risk associated with the lump sum pricing.

1.1.2 Negotiated lump sum Extra Work Costs shall also include a reasonable, negotiated markup for Subcontractor indirect costs, field office overhead and profit and Developer indirect costs and field office overhead. The negotiated lump sum shall not include any home office overhead of Developer or Subcontractors or any markup on Subcontractor or Developer direct or indirect costs for Developer profit.

1.1.3 The price of a negotiated lump sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, materials and equipment, as indicated in Exhibit 2-4 (Pricing Tables) and other sources of Developer's Proposal pricing information (such as the Detailed Pricing Documents or DPDs), whenever possible. If requested by ADOT, price negotiations for lump sum Extra Work

Costs shall be on an Open Book Basis.

1.1.4 In pricing any negotiated lump sum for Extra Work Costs, Developer shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption under applicable Law.

1.2 Force Account

When Extra Work Costs are determined on a force account basis, ADOT will pay Developer for the direct costs of labor, materials and equipment used, and fees and charges of Governmental Entities in connection with Governmental Approvals required, to perform the Extra Work, plus markup for labor burden costs, indirect costs, overhead and profit, as set forth in and as limited by this Section 1.2.

1.2.1 Labor

1.2.1.1 Extra Work Costs for force account Extra Work shall include the cost of labor for workers used in the actual and direct performance of the force account Extra Work and labor costs directly attributable to pursuing and obtaining Governmental Approvals, if any, required to perform the force account Extra Work. Workers include foremen actually engaged in the performance of the Extra Work or in direct charge of specific operations included in the force account Extra Work. Workers do not include Project superintendence personnel or any on-site clerical staff, except as provided in Section 1.2.5 below. In no case shall an officer or director of Developer, an Affiliate or any Subcontractor, nor those persons who own more than one percent of Developer, an Affiliate or any Subcontractor, be considered Project superintendence personnel, workers or foremen under this Section 1.2.1.

1.2.1.2 For workers who are not Project superintendence personnel, the force account Extra Work Cost of labor, whether the employer is Developer, an Affiliate, or a Subcontractor, will be the sum of the following.

(a) Regular Pay

Regular pay (RP), which will be determined as follows:

RP = (WR + FR) x 1.5

Where:

WR = hourly wage as determined by payroll records;

FR = fringe benefit rate as determined by payroll records; and

1.5 = the labor multiplier providing for a 35 percent labor burden rate and 15 percent markup for indirect costs, overhead and profit. ADOT views the burden for labor as the total of all indirect labor costs necessary for a worker to perform the work that the worker is hired to perform. Therefore, such burden includes

Social Security and Medicare Tax, Worker's Compensation (that is, insurance the employer must purchase), State and federal unemployment insurance, training, paid holidays, use of vehicles, PPE (personal protective equipment), office, office furniture, equipment, supplies, etc.

Developer shall provide to ADOT the hourly wage rates and fringe benefit rates before the start of the force account Extra Work as part of Developer' Relief Request or response to Request for Change Proposal, as applicable, required under Sections 14.1.3 and 15.1.3 of the Agreement, respectively. ADOT may verify the hourly wage rates and fringe benefit rates by comparing such rates to actual payroll records or signed timesheets of Developer, Affiliates or Subcontractors, as applicable. The terms of this paragraph shall apply not only with respect to this Section 1.2.1.2(a), but also Section 1.2.1.2(b) below.

(b) Overtime Pay

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

OT = [(WR x 1.5) + FR] x 1.5

Where:

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

(c) Subsistence and Travel Allowance

The actual subsistence and travel allowances paid to the workers as required by collective bargaining agreements or as approved by ADOT. Rates for subsistence and travel allowances, including rates for lodging, meals and mileage, shall not exceed the rates in effect in ADOT's Policies and Procedures "FIN-6.02 Travel Authorization Policy" at the time the force account Extra Work is performed. Developer shall not markup, and ADOT will not pay any markup on, travel of subsistence allowances.

1.2.2 Materials

1.2.2.1 ADOT-Furnished Materials

ADOT reserves the right to furnish any materials it deems appropriate for use in force account Extra Work, and Developer shall have no claims for any costs, overhead or profit on the materials provided by ADOT.

1.2.2.2 Developer-Furnished Materials

Developer may include in Extra Work Costs materials furnished by Developer only if the materials meet the requirements of the Contract Documents, are necessary to perform, and are actually used to perform, the force account Extra Work. The cost of those materials will be the actual invoice cost to the purchaser of such

materials — whether the purchaser is Developer, an Affiliate, or a Subcontractor — from the Supplier thereof, including actual freight and express charges, except as the following are applicable:

(a) Discounts and Rebates

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

(b) Non-direct Purchases

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

(c) Purchaser-supplied Materials

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

(d) Excessive Costs

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

(e) Evidence of Cost

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

1.2.3 Equipment Rental

1.2.3.1 General Equipment Rental Provisions

Force account Extra Work Costs for the use of equipment owned by Developer, an Affiliate or a Subcontractor shall be determined at the rental rates listed for that equipment in the current edition and appropriate volume of the Rental Rate Blue Book (RRBB) as published by EquipmentWatch®, which is in effect on the date upon which the force account Extra Work is performed, regardless of ownership

and any rental or other agreement, if they may exist, for the use of that equipment entered into by Developer or any Subcontractor, modified, however, in accordance with the formula below. The hourly equipment rental rate (HERR) in such circumstances will be determined in accordance with the following formula (which does not include operators):

HERR = (F x {[1.15 x R] / 176}) + HOC

Where:

F = ADOT adjustment factor to R as follows: 0.933;

R = the then current monthly rate as published in the then current RRBB; and

HOC = hourly operation cost; provided, however, that the following provisions (a) through (k) shall apply:

(a) Developer shall not charge for those pieces of equipment with a rental rate of $5.00 per hour or less as listed in the RRBB. The $5 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(b) An overhead and profit adjustment of 15 percent of the rates provided in the RRBB is included in the above formula.

(c) If ADOT concurs that it is necessary to use equipment owned by Developer, an Affiliate or a Subcontractor that is not listed in the RRBB, ADOT will establish a suitable rental rate for that equipment. Developer may furnish any cost data which might assist ADOT in the establishment of the rental rate. If the rental rate established by ADOT is $5.00 per hour or less, the provisions of Section 1.2.3.1(a) above shall apply.

(d) The hourly operating cost as provided above shall include the major costs of equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable parts, up to one necessary attachment per piece of equipment, maintenance, depreciation, storage and insurance.

(e) When multiple attachments are necessary or included for a piece of equipment, only the attachment having the highest rate will be included for the purpose of calculating force account Extra Work Costs, provided that the attachment has been approved by ADOT as being necessary to the force account Extra Work.

(f) The cost of labor for operators of rented equipment shall be determined as provided in Section 1.2.1 above ("Labor").

(g) For costs of equipment to be eligible for inclusion

in force account Extra Work Costs, the equipment must be in good working condition and suitable for the purpose for which the equipment is to be used. Developer shall handle and use the equipment to provide normal output or normal production. All equipment is subject to approval by ADOT. Equipment that is not in good working order or that is not of proper size for efficient performance of the force account Extra Work may be rejected by ADOT. Rental time shall apply to eligible equipment used for force account Extra Work to establish or calculate the Extra Work Costs related thereto or resulting therefrom until such time as ADOT directs that the use of such equipment be discontinued or until completion of the relevant work.

(h) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit must be powered by a unit of at least the minimum rating recommended by the manufacturer.

(i) Extra Work Costs shall not include the costs of small tools. Individual pieces of equipment or tools not listed in the RRBB and having a replacement value of $400 or less, regardless of whether consumed by use, shall be considered to be small tools, ineligible to be included in force account Extra Work Costs. The $400 figure shall be adjusted annually on July 1 of each year of the Term by the percentage increase, if any, in the CPI since the previous July 1.

(j) Rental time will not be allowed while equipment is inoperative due to breakdowns.

(k) For each piece of equipment to be used to perform force account Extra Work, whether owned by Developer, an Affiliate or a Subcontractor (and, therefore, covered by this Section 1.2.3.1) or rented (and covered by Section 1.2.3.3 below), equipment use hours shall be recorded and charged to the nearest one-half hour and Developer shall provide ADOT with the following additional information: the manufacturer's name; equipment type; year of manufacture; model number; type of fuel used; horsepower rating; attachments required, together with their size or capacity; and any other information necessary to determine the Extra Work Costs.

1.2.3.2 Stand-By Time

Force account Extra Work Costs for equipment owned by Developer, an Affiliate or a Subcontractor that is in operational condition and is standing by with ADOT's approval for participation in the force account Extra Work shall be determined in accordance with the following stand-by rate (SBR) formula:

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

Stand-by hours will be limited to not more than eight hours in a 24-hour day or 40 hours in a week. No hours will be allowed or included and force account Extra Work Costs shall not be paid for equipment that in inoperable. No hours shall be allowed or included and Extra Work Costs shall not be paid for equipment that is not

operating because the force account Extra Work has been suspended by Developer.

1.2.3.3 Outside Rented Equipment

In cases where a piece of equipment to be used for force account Extra Work is rented or leased by Developer from a third party (not an Affiliate or Subcontractor) exclusively for such force account Extra Work, the Extra Work Costs shall be determined in accordance with the following formula:

(Rental Invoice x 1.10) + HOC

The above formula includes a 10 percent mark-up of the rental invoice for all overhead and incidental costs of furnishing the equipment.

1.2.3.4 Moving of Equipment

(a) The rental time to be included in calculating Extra Work Costs for needed equipment shall be the time the equipment is in operation on the force account Extra Work being performed, and, in addition, shall include the time required to move the equipment to the location of the force account Extra Work and return the equipment to the original location or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work. Loading and transporting costs will be included in force account Extra Work Costs, in lieu of moving time, when the equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of force account Extra Work costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work.

(b) For use of equipment moved from one location on the Site to another location on the Site exclusively for the force account Extra Work, the cost of transferring the equipment to the site of the force account Extra Work and returning it the original location may be included in the Extra Work Costs as specified in this Section 1.2.3.4.

(c) For use of equipment moved from a location not on the Site to a location on the Site, the original location of the equipment to be hauled to the Site shall be subject to ADOT's prior approval.

(d) Where the move of the equipment is made by common carrier, the force account Extra Work Costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit and overhead. If Developer hauls the equipment with its own forces, rental will be included in the force account Extra Work Costs for hauling the unit plus the driver's wages and the cost of loading and unloading the equipment.

(e) For the purposes of determining Extra Work costs,

maximum rental period for the day that the equipment is moved to the location on the Site where the force account Extra Work is performed and the day that the use of the equipment is discontinued for force account Extra Work shall be the actual time that the equipment is in operation on the force account Extra Work.

1.2.4 Fees and Charges of Governmental Entities

Extra Work Costs for force account Extra Work shall include fees and charges paid to Governmental Entities for Governmental Approvals required to perform the force account Extra Work. Developer shall not markup, and ADOT will not pay any markup on, such fees and charges.

1.2.5 Superintendence

Developer shall not include any part of the salary or expense of anyone connected with Developer's forces above the grade of foreman and having general supervision of the force account Extra Work in the Extra Work Costs covering labor items as specified above (see Section 1.2.1), except when Developer's organization, including its Equity Members, Lead Subcontractor and Lead Maintenance Firm, is entirely occupied with force account Extra Work, in which case the salaries of the superintendent and the timekeeper may be included in the Extra Work Costs for labor items specified above when the nature of the force account Extra Work is such that their services are required.

1.2.6 Compensation

Developer shall accept ADOT's payment of the Extra Work Costs as set forth above as payment in full for all Extra Work done on a force account basis. In addition, ADOT will pay Developer an amount equal to 65 percent of the force account Extra Work Costs compensation times the applicable sales tax rate to cover sales tax. ADOT shall not pay any other or additional amount for or on account of sales tax with respect to the force account Extra Work or the Extra Work Costs related thereto or resulting therefrom.

1.2.7 Statements

1.2.7.1 Receipted invoices for all materials used and transportation charges must accompany and support all Developer's statements covering force account Extra Work Costs. If materials used on the force account Extra Work are not specifically purchased for such force account Extra Work but are taken from Developer's stock, then, instead of invoices, the statements must contain or be accompanied by an affidavit of Developer certifying that such materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to Developer.

1.2.7.2 Developer shall submit, and shall ensure that Subcontractors submit, an equipment list for all equipment to be used during the performance of the force account Extra Work prior to the start of any force account

Extra Work.

1.2.7.3 Developer shall submit payrolls and other cost data documents for all force account Extra Work within 30 calendar days after completion of such force account Extra Work. ADOT will not make any payment prior to that time. All invoiced work must have documentation for payment. ADOT will not make any payment for Extra Work performed on a force account basis until Developer has furnished duplicate itemized statements of the Extra Work Costs of such force account Extra Work detailing the following:

(a) Name, classification, date, daily hours, total hours, rate, and amount for each foreman and laborer.

(b) Designation, dates, daily hours, total hours, rental rate, and amount for each unit of equipment.

(c) Quantities of materials, prices and amounts.

(d) Transportation charges on materials, FOB the jobsite.

1.2.8 Force Account Extra Work by Affiliates

1.2.8.1 The direct costs of an Affiliate's labor, materials, and equipment used in performing force account Extra Work shall be limited in accordance with Section 9.7 of the Agreement.

1.2.8.2 If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

1.2.9 Force Account Extra Work by Subcontractors

When force account Extra Work is performed by Subcontractors, Developer is permitted, and Extra Work Costs may include, a supplemental markup of five percent of the Subcontractor's costs. This markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the force account Extra Work. ADOT will apply such allowance to the Subcontractor's force account Extra Work Costs less its markups for overhead and profit.

1.2.10 Bonds

If, in connection with the Relief Event resulting in Extra Work, ADOT requires an increase in the amount of the D&C Performance Bond, D&C Payment Bond, Maintenance Performance Bond or Maintenance Payment Bond, as applicable, then ADOT will pay an additional amount equal to the lesser of (a) the incremental increase

in the cost of such Bond(s) attributable thereto, or (b) .0.5 percent of the total amount otherwise calculated as the force account Extra Work Costs.

1.2.11 Non-Allowable Charges

If Developer performs Extra Work on a force account basis, then ADOT will only compensate Developer for what is stated in the above provisions of this Section 1.2 ("Force Account"). However, in no case will Developer be reimbursed or paid for, and Extra Work Costs shall not include, the following items:

(a) Profit in excess of that provided in this Section 1.2;

(b) Loss of profit;

(c) Home office overhead;

(d) Consequential damages, including loss of bonding capacity, loss of bidding opportunities, or insolvency;

(e) Indirect costs or expenses of any nature;

(f) Attorneys' fees, claims preparation expenses, or costs of litigation; and

(g) Interest.

2. DELAY COSTS

Delay Costs shall be determined as follows:

2.1 Direct Cost of Idle Labor

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.2.1 above ("Labor"). For recovery of this type of cost, however, Developer's or Lead Subcontractor's daily reports must show that the workers were on Site, were unable to perform their work and could not have been shifted to other tasks or jobs.

2.2 Direct Cost of Idle Equipment

Compensation for the direct cost of the actual idle time of equipment used in the performance of Extra Work will be determined in the same manner as determinations are made for force account Extra Work Costs for stand-by equipment, as provided in Section 1.2.3.2 above ("Stand-By Time") and subject to the following:

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

(b) The Delay Costs will be determined for the calendar days, excluding Saturdays, Sundays and Holidays, during the existence of the delay, except that, when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.2.3.2 above, Delay Costs shall not include equipment rental costs for such equipment.

(c) If ADOT determines that idle equipment should not remain on the Site during a delay, then ADOT will pay the actual, reasonable costs, without markup, to: (i) demobilize the equipment during the delay period; and (ii) remobilize the equipment at the end of the delay period. Compensation for idle equipment will not be paid while the subject equipment is demobilized from the Site during a delay period.

2.3. Markup for Subcontractor Direct Costs of Idle Labor and Equipment

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

2.4 Where Delay is to Non-Controlling Work Item

If the delay is to an item that is not a Controlling Work Item, then no overhead and no profit of Developer or any Subcontractor are allowable as Delay Costs.

2.5 Home Office Idled Labor and Equipment

There shall be no home office costs of idled labor or idled equipment added for Developer or any Subcontractors.

EXHIBIT 15

NONCOMPLIANCE EVENT TABLES

Exhibit 15-1	D&C Period Noncompliance Event Table
Exhibit 15-2	Maintenance Period Noncompliance Event Table

EXHIBIT 15-1

D&C PERIOD NONCOMPLIANCE EVENT TABLE

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Point Per Breach or Failure	Cure Period	Assessment Categories
Reporting & Complying Activities						
15.1-01	**General**	Governmental Approval	Prior to beginning construction, deliver to ADOT any executed copy of a Governmental Approval that Developer obtains as required by Section 4.3 of the Agreement.	1	7 Days	B
15.1-02	**General**	ADOT Facilities	Comply with the requirements of the Section GP 110.05 of the Technical Provisions regarding office facilities and equipment.	2	7 Days	A
15.1-03	**General**	ADOT Notification of monthly payments	Provide ADOT with notification of monthly payments to Subcontractors as required by Section 13.7.7 of the Agreement.	1	30 Days	B
Contract Activities						
15.1-04	**Contracting and Labor Practices**	Disclosure of Subcontracts and Subcontractors	Provide ADOT and ADOT's Authorized Representative(s) with a list of all Subcontracts, Subcontractors, guarantees of Key Subcontracts and the guarantors with each monthly report required in accordance with Section 9.4 of the Agreement.	2	7 Days	B
Project Management Activities						
15.1-05	**Project Management Plan**	Audit	Carry out internal audits at the times prescribed in the Project Management Plan in accordance with Section 3.4.7 of the Agreement.	2	7 Days	B
15.1-06	**Project Management Plan**	Construction Quality Management	Document the Construction Quality Management work effort in accordance with Section GP 110.07 of the Technical Provisions.	2	30 Days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Point Per Breach or Failure	Cure Period	Assessment Categories
15.1-07	**Project Management Plan**	Subcontractors	Cause each of its Subcontractors at every level to comply with the applicable requirements of the approved Project Management Plan in accordance with Section 3.4.8 of the Agreement.	2	7 Days	B
15.1-08	**Project Management Plan**	Subcontractors	Comply with the requirements of Section 3.4 of the Agreement, except where provided elsewhere in this Exhibit 15-1.	1	7 Days	A
15.1-09	**Project Management Plan**	Materials Sampling	Comply with the requirements of Section GP 110.08.3.5 of the Technical Provisions with regard to construction materials sampling, except where provided elsewhere in this Exhibit 15-1.	2	2 Days	B
15.1-10	**Project Management Plan**	Quality Management	Establish, maintain updates to and comply with the requirements of a Quality Management Plan in accordance with Section GP 110.07.2.1 of the Technical Provisions.	2	7 Days	A
Environmental Activities						
15.1-11	**Environmental Compliance**	Environmental Management Plan	Maintain and update the complete Environmental Management Plan as required by Section DR 420 of the Technical Provisions.	3	7 Days	A
15.1-12	**Environmental Compliance**	Contravention of Environmental Approvals	Follow the Environmental Management Plan or any of its constituent parts for any work activity as required by Section DR 420.2.3 of the Technical Provisions.	3	1 Day	B
15.1-13	**Environmental Compliance**	Stormwater	Comply with the Section CR 420.3.2.2 of the Technical Provisions regarding SWPPP measures.	3	7 Days	B
15.1-14	**Environmental Compliance**	Notification	Notify ADOT of Hazardous Materials or a Recognized Environmental Condition as set forth in Section 6.8 of the Agreement.	3	1 Day	A
15.1-15	**Environmental Compliance**	Property Access	Comply with property access requirements as required by Section CR 420.3.1 of the Technical Provisions.	2	4 Hours	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Point Per Breach or Failure	Cure Period	Assessment Categories
15.1-16	**Environmental Compliance**	Public Meetings	Organize public meetings and/or hearings as required by Sections CR 425.2.2 and CR 425.2.3 of the Technical Provisions.	2	30 Days	A
Utilities Activities						
15.1-17	**Utility Adjustments**	Maintain service	Maintain a utility service, fully operational in accordance with Section DR 430.3.5 of the Technical Provisions.	2	3 Days	A
15.1-18	**Utility Adjustments**	Record keeping	Maintain accurate records of Utility Adjustment Work or provide copies to ADOT in accordance with Section DR 430.3.3 of the Technical Provisions.	2	7 Days	A
15.1-19	**Utility Adjustments**	Utility Information	Prepare and submit to ADOT any Progress Utility Report or Final Utility Report in accordance with of Section DR 430.3.3 of the Technical Provisions.	2	30 Days	B
Design and Construction Activities						
15.1-20	**Design and Construction**	Construction Warranties	Ensure extension of third parties warranties to ADOT or correct any defective Work that would void any such warranty all as required by Section 12 of the Agreement.	2	14 Days	A
15.1-21	**Design and Construction**	Land Surveys	Comply with the land survey requirements of Section CR 410 of the Technical Provisions.	2	7 Days	A
15.1-22	**Design and Construction**	Testing	Provide test results or reports as required by Section 3.8 of the Agreement.	2	7 Days	B
15.1-23	**Design and Construction**	Traffic Management Plan	Comply with Traffic Management Plan requirements as required by Section DR 462.2.3 of the Technical Provisions.	2	4 Hours	B

EXHIBIT 15-2

MAINTENANCE PERIOD NONCOMPLIANCE EVENT TABLE

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Non Compliance Points	Cure Period	Assessment Categories
PLANNING AND REPORTING						
15.2-01	**Reporting**	Respond to ADOT notification	Failure to respond to Notification from ADOT and other public entities regarding Project deficiencies as required by Section MR 400.1 of the Technical Provisions.	2	3 Business Days	A
15.2-02	**Reporting**	Prepare and update MMP	Failure to prepare and update the Maintenance Management Plan (MMP) as required by Section MR 400.2.1.1 of the Technical Provisions.	2	10 Business Days	A
15.2-03	**Reporting**	Update MIS with inspection reports	Failure to make entry into the Maintenance Information System (MIS) concerning Inspection or Noncompliance Events, including the results and required actions, as per Section 17.2.1.1 of the Agreement and Section MR 400.2.4 of the Technical Provisions.	1	5 Business Days	A
15.2-04	**Plan - Safety**	Submit reports to ADOT for review and acceptance	Failure to prepare and submit a Maintenance Safety Management Plan (MSMP) and updates in accordance with Section MR 400.2.7 of the Technical Provisions.	2	3 Business Days	A
15.2-05	**Plan – Quality Control**	Submit reports to ADOT for review and acceptance	Failure to prepare and submit a Maintenance Quality Management Plan (MQMP) and updates in accordance with Section MR 400.2.8 of the Technical Provisions.	2	10 Business Days	A
15.2-06	**Surveillance and Inspections**	Surveillance and Inspection activities	Failure to perform timely Surveillance and Inspection of the Project in accordance with Sections MR 400.3.2.1 and MR 400.3.2.2 of the Technical Provisions.	2	5 Business Days	A
15.2-07	**Reporting**	Submit report to ADOT for review and acceptance	Failure to prepare monthly Maintenance Services report(s) and submit to ADOT in accordance with Section MR 400.3.4 of the Technical Provisions and Section 17.2.1.3 of the Agreement.	1	10 Business Days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Non Compliance Points	Cure Period	Assessment Categories
15.2-08	**Reporting**	Submit reports to ADOT for review and acceptance	Failure to prepare annual Maintenance Services report and submit to ADOT in accordance with Section MR 400.3.4 of the Technical Provisions.	2	3 Business Days	A
15.2-09	**Reporting**	Handback Plan and Handback Transition Plan	Failure to prepare and submit a: • Draft Handback Plan, • Final Handback Plan, • Draft Handback Transition Plan, or • Final Handback Transition Plan as and when required by Section MR 501.2.2, MR 501.2.3 and MR 501.2.4 of the Technical Provisions and Sections 8.11.3 and 24.13 of the Agreement.	2	5 Business Days	A
MAINTENANCE TABLE – TP ATTACHMENT 500-1						
15.2-10	**Reference 1 – Public Appearance**	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a repair response requirement (temporary or permanent) as identified under the Public Appearance section (Reference 1) of the Maintenance Table – TP Attachment 500-1.	2	Identified in TP Attachment 500-1	A
15.2-11	**Reference 2 – Roadway Pavement**	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a repair response requirement (temporary or permanent) as identified under the Roadway Pavement section (Reference 2) of the Maintenance Table – TP Attachment 500-1.	2	Identified in TP Attachment 500-1	A
15.2-12	**Reference 3 – ADA Ramps, Sidewalks & Curbs**	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a repair response requirement (temporary or permanent) as identified under the ADA Ramps, Sidewalks, and Curbs section (Reference 3) of the Maintenance Table – TP Attachment 500-1.	2	Identified in TP Attachment 500-1	A
15.2-13	**Reference 4 – Safety and Security**	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a repair response requirement (temporary or permanent) as identified under the Safety and Security section (Reference 4) of the Maintenance Table – TP Attachment 500-1.	2	Identified in TP Attachment 500-1	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Non Compliance Points	Cure Period	Assessment Categories
15.2-14	**Reference 5 – Structures**	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a repair response requirement (temporary or permanent) as identified under the Structures section (Reference 5) of the Maintenance Table – TP Attachment 500-1.	3	Identified in TP Attachment 500-1	A
15.2-15	**Reference 6 – Ponding, Flooding, Drainage and Slopes**	Respond and complete temporary or permanent action (as applicable)	Each failure to meet a repair response requirement (temporary or permanent) as identified under the Ponding, Flooding, Drainage and Slopes section (Reference 6) of the Maintenance Table – TP Attachment 500-1.	3	Identified in TP Attachment 500-1	A

EXHIBIT 16

PORTIONS OF BASIC CONFIGURATION REQUIRING PROPERTY ACQUISITIONS OUTSIDE SCHEMATIC ROW

None.

EXHIBIT 17

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

ADOT Authorized Representative(s)

[*TO BE PROVIDED AT EXECUTION*]

Developer's Authorized Representative(s)

[*TO BE PROVIDED AT EXECUTION*]