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

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
ADDENDUM #3 ISSUED SEPTEMBER 15, 2015

TABLE OF CONTENTS

LIST OF EXHIBITS

DESIGN-BUILD-MAINTAIN AGREEMENT
LOOP 202 SOUTH MOUNTAIN FREEWAY PROJECT

This Design-Build-Maintain Agreement ("Agreement") is entered into and effective as of [ ] 201[_], by and between the Arizona Department of Transportation, a public agency of the State of Arizona ("ADOT"), and [***NTD – INSERT DEVELOPER'S LEGAL NAME], a [NTD – INSERT DEVELOPER'S LEGAL FORM***] ("Developer") ("ADOT" and "Developer," collectively "Parties").

R E C I T A L S

A. The State of Arizona desires to facilitate private sector investment and participation in the development of the State's transportation system via public-private partnerships ("P3s"). Accordingly, the Arizona Legislature has enacted Arizona Revised Statutes, Title 28, Chapter 22, Article 1 (the "Statute"), and ADOT has adopted the P3 Program Guidelines (the "Guidelines"), to accomplish that purpose.

B. ADOT wishes to enter into an agreement with a private sector developer to design, build and maintain the Loop 202 South Mountain Freeway, which extends approximately 22 miles from the Maricopa Freeway segment of Interstate 10 (I-10) to the Papago Freeway segment of I-10 in the southwestern quadrant of the Phoenix Metropolitan Area (the "Project").

C. Pursuant to the Statute and the Guidelines, ADOT issued a Request for Qualifications (as amended, the "RFQ") on October 15, 2014.

D. In response to the RFQ, ADOT received five statements of qualifications on December 10, 2014 and subsequently shortlisted three proposers.

E. On June 12, 2015, ADOT issued to the shortlisted proposers a Request for Proposals (as subsequently amended by addenda, the "RFP") to design, build and maintain the Project.

F. On [ ] [***NTD – INSERT PROPOSAL DUE DATE***], ADOT received [ ] [***NTD – INSERT NUMBER OF PROPOSAL RECEIVED***] responses to the RFP, including the response of Developer (the "Proposal").

G. ADOT's Senior Deputy State Engineer and an RFP evaluation committee determined that Developer was the proposer that best met the selection criteria contained in the RFP and that the Proposal was the one that provided the best value to the State of Arizona.

H. On [ ] [***NTD – INSERT DATE THAT STATE ENGINEER RATIFIES DEVELOPER'S SELECTION***], the State Engineer accepted the

recommendation of ADOT's Senior Deputy State Engineer and the RFP evaluation committee and authorized ADOT staff to negotiate this Agreement.

I. This Agreement and the other Contract Documents (defined in Section 1.2.1) collectively constitute a P3 agreement, as contemplated under the Statute and the Guidelines, and are entered into in accordance with the provisions of the RFP.

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

K. The Parties intend for this Agreement, as it relates to the D&C Work, to be a lump sum design-build agreement obligating Developer to perform all D&C Work by the Completion Deadlines specified herein and for payment of the D&C Price, subject to certain exceptions set forth herein. In order to allow ADOT to budget for and finance the D&C Work and to reduce the risk of cost overruns, this Agreement includes restrictions that affect Developer's ability to make claims for increases to the D&C Price or extensions of the Completion Deadlines. Developer hereby agrees to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the D&C Price.

L. If Developer fails to complete the D&C Work by the Completion Deadlines set forth in the Contract Documents, then ADOT and the members of the public represented by ADOT will suffer substantial losses and damages. The Contract Documents provide that Developer shall pay ADOT substantial Liquidated Damages if such completion is delayed.

M. The Parties intend for Developer to perform the Maintenance Services during the Maintenance Period and for the Maintenance Price, subject to certain exceptions set forth herein.

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

ARTICLE 1.
DEFINITIONS; CONTRACT DOCUMENTS; INTERPRETATION OF CONTRACT DOCUMENTS

1.1 Definitions

Definitions for the terms used in this Agreement and the other Contract Documents are contained in Exhibit 1.

1.2 Contract Documents; Order of Precedence

1.2.1 The term "Contract Documents" shall mean the documents listed in this Section 1.2. Each of the Contract Documents is an essential part of the agreement between the Parties, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete agreement. Subject to Sections 1.2.2 through 1.2.6, in the event of any conflict among the Contract Documents, the order of precedence, from highest to lowest, shall be as set forth below:

(a) Supplemental Agreements and Agreement amendments (excluding amendments to the Technical Provisions which are separately addressed in subparagraphs (d) and (e), below), and all exhibits and attachments thereto;

(b) This Agreement (including all exhibits and the executed originals of exhibits that are contracts, except Exhibit 2;

(c) Developer's Proposal Commitments and ATCs (as set forth in Exhibit 2);

(d) Technical Provisions amendments, and all exhibits and attachments to such amendments;

(e) Technical Provisions, and all exhibits and attachments to the Technical Provisions;

(f) Special provisions in publications and manuals to the extent incorporated by reference into the Technical Provisions;

(g) Publications and manuals to the extent incorporated by reference into the Technical Provisions; and

(h) RFC Documents to be developed in accordance with the Contract Documents, provided that: (a) specifications contained therein shall have precedence over plans; (b) no conflict shall be deemed to exist between the RFC Documents and the other Contract Documents with respect to requirements of the RFC Documents that ADOT determines are more beneficial than the requirements of the

other Contract Documents; and (c) any other Deviations contained in the RFC Documents shall have priority over conflicting requirements of other Contract Documents only to the extent that the conflicts are specifically identified to ADOT by Developer and ADOT approves such Deviations in writing in its sole discretion.

1.2.2 Notwithstanding the order of precedence among Contract Documents set forth in Section 1.2.1, in the event and to the extent that Exhibit 2-3 expressly specifies that it is intended to supersede specific provisions in the Contract Documents, including approved Deviations expressly listed in Exhibit 2-3, Exhibit 2-3 shall control over specific provisions of the Contract Documents. Moreover, if a Contract Document contains differing provisions on the same subject matter than another Contract Document, the provisions that establish the higher quality, manner or method of performing the Work or use more stringent standards shall prevail.

1.2.3 In the event of a conflict among any standards, criteria, requirements, conditions, procedures, specifications or other provisions applicable to the Project established by reference to a described manual or publication within a Contract Document or set of Contract Documents, the standard, criterion, requirement, condition, procedure, specification or other provision offering higher quality or better performance will apply, unless ADOT in its sole discretion, approves otherwise in writing. If either Party becomes aware of any such conflict, it shall promptly notify the other party of the conflict. ADOT will issue a written determination respecting which of the conflicting items shall apply promptly after it becomes aware of any such conflict.

1.2.4 Proposal

If the Proposal, including Developer's Schematic Design, includes statements, offers, terms, concepts or designs that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the other Contract Documents or to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains terms or designs which are more advantageous to ADOT than the requirements of the other Contract Documents, as reasonably determined by ADOT, then Developer's obligations hereunder shall include compliance with all such statements, offers, terms, concepts and designs, which shall have the priority of Developer's Proposal Commitments.

1.2.5 Project Management Plan and Maintenance Management Plan

In the event of any conflict, ambiguity or inconsistency between the Project Management Plan or Maintenance Management Plan and any of the Contract Documents, the latter shall prevail.

1.2.6 Reference Information Documents

Portions of the Reference Information Documents are specifically referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. Portions of the Reference Information Documents that are specifically referenced in the Contract Documents for the purpose of defining certain requirements

shall be deemed incorporated into the Contract Documents to the extent so referenced with the same order of priority as the applicable Contract Document.

1.3 Construction and Interpretation of Contract Documents

1.3.1 Interpretation

The language in all parts of the Contract Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties acknowledge and agree that the Contract Documents are the product of an extensive and thorough, arm's length exchange of ideas, questions, answers, information and drafts during the Proposal preparation process, that each Party has been given the opportunity to independently review the Contract Documents with legal counsel, and that each Party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of the Contract Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be interpreted or construed against the Party preparing it, and instead other rules of interpretation and construction shall be utilized. ADOT's final answers to the questions posed during the Proposal preparation process for this Agreement shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.3.2 Number and Gender

In this Agreement, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa, and words in one gender include all genders.

1.3.3 Headings

The division of this Agreement into parts, articles, sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this Agreement.

1.3.4 References to this Agreement

The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular portion of it. The words "Article", "Section", "paragraph", "sentence", "clause" and "Exhibit" mean and refer to the specified article, section, paragraph, sentence, clause or exhibit of, or to, this Agreement. A reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the Section in which the reference appears.

1.3.5 References to Agreements and Other Documents

Unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

1.3.6 References to Any Person

A reference in this Agreement to any Person at any time refers to such Person's permitted successors and assigns.

1.3.7 Meaning of Including

In this Agreement, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an exhaustive list.

1.3.8 Computation of Periods

If a specified date to perform any act or give any notice in the Contract Documents (including the last date "within" a specified time period) falls on a non-Business Day, such act or notice may be timely performed on the next succeeding Business Day; provided, however, that non-Business Day deadlines contained in the Contract Documents for actions to be taken in the event of an Emergency or other circumstances, where it is clear that performance is intended to occur on a non-Business Day, shall not be extended to the next succeeding Business Day.

1.3.9 Meaning of Promptly

In this Agreement, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

1.3.10 Trade Meanings

Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

1.3.11 Dimensions

On plans, working drawings, and standard plans, calculated dimensions shall prevail over scaled dimensions.

1.3.12 Laws

Unless specified otherwise, a reference to a Law is considered to be a reference to: (a) such Law as it may be amended, modified, supplemented or interpreted by the courts from time to time; (b) all regulations and rules pertaining to or promulgated pursuant to such Law; (c) the successor to the Law resulting from recodification or

similar reorganizing of Laws; and (d) all future Laws pertaining to the same or similar subject matter.

1.3.13 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

1.3.14 Time Zones

Unless specified otherwise, references in the Agreement to time or hours shall be to Mountain Standard Time. Arizona does not observe Daylight Saving Time.

1.4 Referenced Manuals, Publications, Standards, Policies and Specifications

1.4.1 References in the Technical Provisions to manuals or other publications governing the Work shall mean the most recent edition or revision thereof and amendments and supplements thereto in effect on the Setting Date.

1.4.2 In interpreting standards, policies and specifications referenced in the Technical Provisions, the following apply:

(a) References to the "project owner" shall mean ADOT; and

(b) References to "plan(s)" shall mean the RFC Documents.

1.5 Errors and Misdescriptions

1.5.1 Developer acknowledges that prior to the Effective Date Developer had the opportunity to identify any Errors and potentially unsafe provisions in the Technical Provisions and other Contract Documents, and the opportunity and duty to notify ADOT of such fact and of the changes to the provisions that Developer believed were the minimum necessary to render the provisions correct and safe. Developer shall not take advantage of or benefit from any Error in the Contract Documents that Developer knew of or, through the exercise of reasonable care, had reason to know of prior to the Effective Date.

1.5.2 If it is reasonable or necessary to adopt changes to the Technical Provisions after the Effective Date to make the provisions correct and safe, such changes shall not be grounds for any adjustment to the Price, Completion Deadlines or other Claim; provided, however, that adoption of such a change shall be treated as an ADOT-Directed Change if: (a) Developer neither knew nor had reason to know prior to the Effective Date that the provision was erroneous or created a potentially unsafe condition; or (b) Developer knew of and reported to ADOT the erroneous or potentially unsafe provision prior to the Effective Date, and ADOT did not adopt reasonable and necessary changes. If Developer commences or continues any Work affected by such a change after the need for the change was discovered or suspected, or should have

been discovered or suspected through the exercise of reasonable care, Developer shall bear any additional costs associated with redoing the Work already performed.

1.5.3 If Developer identifies any Errors in the Contract Documents (including those Reference Information Documents described in Section 1.2.6), Developer shall promptly notify ADOT of such Errors and obtain specific instructions from ADOT regarding any such Error before proceeding with the affected Work.

1.5.4 If Developer determines that the Contract Documents do not detail or describe sufficiently the Work or any matter relative thereto, Developer shall request further explanation from ADOT and shall comply with any explanation thereafter provided by ADOT. The fact that the Contract Documents omit or misdescribe any details of any Work that are necessary to carry out the intent of the Contract Documents shall not relieve Developer from performing such omitted Work (no matter how extensive) or misdescribed details of the Work. Instead, Developer shall be deemed to have known or have had reason to know of such omission or misdescription prior to the Effective Date, and shall perform such Work as if the details were fully and correctly set forth and described in the Contract Documents without entitlement to a Supplemental Agreement, except as specifically allowed under Section 14.

1.5.5 Errors in the Schematic Design that require a Necessary Schematic ROW Change are governed by Sections 6.4.3 and 14.4.1.

1.5.6 Inconsistent or conflicting provisions of the Contract Documents shall not be treated as erroneous provisions under this Section 1.5.6, but instead shall be governed by Section 1.2.

1.6 Reference Information Documents

1.6.1 ADOT has provided the Reference Information Documents to Developer.

1.6.2 Except as provided in Sections 1.2.6 and 1.6.3, Developer acknowledges and agrees that:

(a) The Reference Information Documents are not mandatory or binding on Developer;

(b) Developer is not entitled to rely on the Reference Information Documents as presenting any design, engineering or maintenance solutions or other direction, means or methods for complying with the requirements of the Contract Documents, Governmental Approvals or Law;

(c) ADOT will not be liable for any causes of action, claims or Losses suffered by any Developer-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the Reference Information Documents;

(d) ADOT has not verified the information in the Reference Information Documents, and does not represent or warrant that the information contained in the Reference Information Documents is free from Error or that such information is in conformity with the requirements of the Contract Documents, NEPA Approval, other Governmental Approvals or Laws;

(e) Without limiting clause (d) above, ADOT makes no representations or warranties as to any surveys, data, reports or other information provided by ADOT or other Persons concerning surface conditions and subsurface conditions, including information relating to Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological, cultural and historic resources, unexploded ordnance, seismic conditions, and Threatened or Endangered Species, affecting the Work, the Site or surrounding locations;

(f) Developer shall have no right to additional compensation or Completion Deadline adjustment based on any Error in the Reference Information Documents;

(g) Developer is capable of conducting and obligated hereunder to conduct Reasonable Investigation to verify or supplement the Reference Information Documents; and

(h) If and to the extent Developer or anyone on Developer's behalf in any way uses information in the Reference Information Documents, such use is made on the basis that such use is entirely at Developer's own risk and at its own discretion and that Developer, not ADOT, is responsible for such information.

1.6.3 Section 1.6.2 shall not adversely affect the specific relief available to Developer under Article 14 for Relief Events under clauses (h), (i), (k), (l), (m) and (q) of the definition of Relief Event.

1.7 Professional Services Licensing Requirements

ADOT does not intend to contract for, pay for, or receive any Professional Services that are in violation of any professional licensing or registration laws, and by execution of this Agreement, Developer acknowledges that ADOT has no such intent. It is the intent of the Parties that Developer is fully responsible for furnishing the Professional Services of the Project through itself or Subcontracts with licensed/registered Professional Service firm(s) as provided herein; and any reference to Developer's responsibilities or obligations to "perform" the Professional Services portions of the Work shall be deemed to mean that Developer shall "furnish" the Professional Services for the Project as described in this Section 1.7. The terms and provisions of this Section 1.7 shall control and supersede every other provision of all Contract Documents.

1.8 Federal Requirements

Developer shall comply and require its Subcontractors to comply with all Federal Requirements, including those requirements set forth in Exhibit 4. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

1.9 Incorporation of ATCs

1.9.1 If the Contract Documents incorporate any ATCs and either (a) Developer does not comply with one or more ADOT conditions of pre-approval for the ATC, or (b) Developer does not obtain the required third-party approval for the ATC, then Developer shall comply with the requirements in the Contract Documents that would have applied in the absence of such ATC, including acquiring Developer-Designated ROW necessary to comply with the Contract Documents. Such compliance shall be without any increase in the Price, extension of the Completion Deadlines (except to the extent provided otherwise in Section 14.6.3 regarding Completion Deadline adjustment) or any other Supplemental Agreement.

1.9.2 ADOT may, in its sole discretion, present to Developer as a Request for Change Proposal, in accordance with Section 15.1.2, ATCs contained in proposals submitted by unsuccessful proposers, provided that ADOT has paid to the applicable proposer the stipend as payment for work product provided in response to the RFP.

1.10 ADOT Monetary Obligations

The Project is included in the current ADOT Five-Year Transportation Facilities Construction Program. All ADOT monetary obligations under the Contract Documents are subject to appropriation by the Arizona Legislature; provided, however, that in the absence of such appropriation, such monetary obligations shall be payable solely from other unencumbered lawfully available funds of ADOT (whether available at such time or in the future) that are not funds appropriated by the Arizona Legislature. ADOT will submit a request in accordance with applicable Law to obtain an appropriation from the Arizona Legislature, or shall perform actions permitted by Law to obtain, designate, or use any other lawfully available funds that are not funds appropriated by the Arizona Legislature. This Section 1.10 applies to all monetary obligations of ADOT, set forth in the Contract Documents, notwithstanding any contrary provisions of the Contract Documents. The Contract Documents do not create a debt under the Arizona Constitution.

ARTICLE 2.
TERM; GENERAL OBLIGATIONS OF DEVELOPER; REPRESENTATIONS AND WARRANTIES

2.1 Term

This Agreement shall take effect on the Effective Date, and shall remain in effect until the earlier to occur of: (a) the end of the Maintenance Period; or (b) the date that this Agreement is terminated as provided herein (the "Term").

2.2 General Obligations of Developer

2.2.1 D&C Work

As more fully described in the Contract Documents, Developer shall perform the D&C Work. The D&C Work shall include the development, design and construction of the Project, conforming to the Basic Configuration and otherwise complying with the requirements of the Contract Documents, except as otherwise approved by ADOT in its sole discretion. All materials, services and efforts necessary to achieve Substantial Completion and Final Acceptance of the Project on or before the applicable Completion Deadline shall be solely Developer's responsibility, except as otherwise specifically provided in the Contract Documents. Developer shall plan, schedule, and execute all aspects of the D&C Work and shall coordinate its activities with all Persons who are directly impacted by the D&C Work. Subject to the terms of Article 14, the cost of all D&C Work, including such materials, services and efforts as are necessary for the D&C Work, are included in the D&C Price.

2.2.2 Maintenance Services

As more fully described in the Contract Documents, Developer shall perform the Maintenance Services. The Maintenance Services shall include Routine Maintenance and Capital Asset Replacement Work, each of which will be funded through separate funding sources. The Maintenance Services shall comply with corresponding requirements set forth in the Technical Provisions and other Contract Documents, except as otherwise approved by ADOT in its sole discretion. Developer shall furnish all Maintenance Services throughout the Maintenance Period, as more specifically set forth in the Technical Provisions. Subject to the terms of Article 14, the cost of all Maintenance Services, including all materials, services and efforts necessary to perform the Maintenance Services, are included in the Maintenance Price.

2.3 Representations, Warranties and Covenants of Developer

Developer makes the representations, warranties and covenants set forth in this Section 2.3.

2.3.1 During all periods necessary for the performance of the Work, Developer and its Subcontractors shall maintain all required authority, licenses, registrations, professional ability, skills and capacity to perform the Work in accordance with the requirements contained in the Contract Documents.

2.3.2 As of the Effective Date, based upon Developer's Reasonable Investigation, Developer has evaluated the constraints affecting design and construction of the Project, including the limits of the Schematic ROW as well as the conditions of the NEPA Approval, and has reasonable grounds for believing and does believe that the Project can be designed and built within such constraints.

2.3.3 Developer has evaluated the feasibility of performing the D&C Work within the Completion Deadlines and for the D&C Price, accounting for constraints affecting the Project, including the Maximum Allowable Cumulative Draw Schedule set forth in Exhibit 6 and the assumed NTP 3 Window, and has reasonable grounds for believing and does believe that such performance (including achievement of Substantial Completion and Final Acceptance by the applicable Completion Deadlines for the D&C Price) is feasible and practicable, subject to Developer's right to seek relief for Necessary Schematic ROW changes under Article 14.

2.3.4 Developer has evaluated the feasibility of performing the Maintenance Services throughout the Maintenance Period and for the Maintenance Price and has reasonable grounds for believing and does believe that such performance is feasible and practicable.

2.3.5 Prior to the Proposal Due Date and in accordance with Good Industry Practice, Developer conducted a Reasonable Investigation and as a result of such Reasonable Investigation is familiar with and accepts the physical requirements of the Work, subject to Developer's right to seek relief under Article 14.

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

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

2.3.8 As of the Effective Date, Developer is a [***NTD – INSERT DEVELOPER'S FORM OF LEGAL ENTITY***] duly organized and validly existing under the laws of the [***NTD – INSERT DEVELOPER'S STATE OF ORGANIZATION***] with all requisite power and all required licenses to carry on its present and proposed obligations under the Contract Documents and has full power, right and authority to execute and deliver the Contract Documents and the Key Subcontracts to which Developer is (or will be) a party and to perform each and all of the obligations of Developer provided for herein and therein.

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

2.3.10 At any time a Guaranty is required to be in place pursuant to the Contract Documents, the applicable Guarantor is duly organized, validly existing and in good standing under the laws of the state of its organization, is duly qualified to do business in, and is in good standing in, the State, and shall remain in good standing for as long as any obligations guaranteed by such Guarantor remain outstanding under the Contract Documents and each such Guarantor has all requisite power and all required licenses to carry on its present and proposed obligations under the Contract Documents.

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

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

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

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

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

2.3.16 As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on Developer which challenges Developer's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents or the Key Subcontracts to which Developer is a party, or which challenges the authority of any of Developer's officials that are executing the Contract Documents or the Key Subcontracts; and Developer has disclosed to ADOT prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Developer is aware.

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

2.3.18 To the extent the Lead Subcontractor, the Lead Engineering Firm or the Lead Maintenance Firm is not Developer, Developer represents and warrants, as of the effective date of the relevant Subcontract, as follows:

(a) Each of the Lead Subcontractor, the Lead Engineering Firm and the Lead Maintenance Firm is duly organized, validly existing and in good standing under the laws of the state of its organization and is duly qualified to do business, and is in good standing, in the State;

(b) The ownership interests of each of them that is a single purpose entity formed for the Project (including options, warrants and other rights to acquire

ownership interests), is owned by the Persons whom Developer has set forth in a written certification delivered to ADOT prior to the Effective Date;

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

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

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

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

2.4 Representations and Warranties of ADOT

ADOT makes the representations, warranties and covenants set forth in this Section 2.4.

(a) As of the Effective Date, ADOT has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of the Contract Documents to which it is a Party.

(b) Each Person executing on behalf of ADOT, the Contract Documents to which ADOT is a Party, has been or at the time of execution will be duly authorized to execute each such document on behalf of ADOT.

(c) As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on ADOT which challenges ADOT's authority to execute, deliver or perform, or the validity or enforceability of, the Contract Documents to which ADOT is a Party, or which challenges the authority of the officials executing the Contract Documents; provided, however, that no such representation is made regarding the existence or effect of litigation regarding compliance with NEPA or other laws identified in the Federal Highway Administration Record of Decision for the Project dated March 5, 2015.

(d) As of the Effective Date, each of the Contract Documents to which ADOT is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of ADOT, enforceable against ADOT in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(e) The execution and delivery by ADOT of this Agreement will not result, at the time of execution, in a default under any other agreement or instrument to which it is a party or by which it is bound.

(f) The execution and delivery by ADOT of the Contract Documents and performance by ADOT of its obligations thereunder will not conflict with any Laws applicable to ADOT that are valid and in effect on the Effective Date; provided, however, that no such representation is made regarding the existence or effect of litigation regarding compliance with NEPA or other laws identified in the Federal Highway Administration Record of Decision for the Project dated March 5, 2015.

2.5 Survival of Representations and Warranties

The representations and warranties of Developer and ADOT contained herein shall survive expiration or earlier termination of this Agreement.

ARTICLE 3.
MANAGEMENT SYSTEMS AND OVERSIGHT

3.1 Submittal, Review and Approval Terms and Procedures

3.1.1 General

This Section 3.1 sets forth uniform terms and procedures that shall govern all Submittals to ADOT pursuant to the Contract Documents or the Project Management Plan, Maintenance Management Plan and component plans thereunder. In the event of any irreconcilable conflict between the provisions of this Section 3.1 and any other provisions of the Contract Documents or the Project Management Plan, Maintenance Management Plan and component plans thereunder concerning submission, review and approval procedures, this Section 3.1 shall exclusively govern and control, except to the extent that the conflicting provision expressly states otherwise.

3.1.2 Time Periods

3.1.2.1 Except as otherwise provided in this Section 3.1.2 or in Section 7.5, whenever ADOT is entitled to review, comment on, review and comment on, or to affirmatively approve or accept, a Submittal, ADOT will have a period of ten Business Days to act after the date ADOT receives an accurate and complete Submittal in conformity with the Contract Documents, together with a completed transmittal form in a form to be mutually agreed by the Parties and all necessary or requested information and documentation concerning the subject matter. If ADOT determines that a Submittal is not complete, ADOT will notify Developer of such determination within ten Business Days of receipt of such Submittal. ADOT's review period for Developer's re-submission of a previously submitted, complete Submittal shall be ten Business Days. The Parties shall agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals.

3.1.2.2 If any other provision of the Contract Documents expressly provides a longer or shorter period for ADOT to act, such period shall control over the time periods set forth in Section 3.1.2.1. If the time period for ADOT to act should end on a day when ADOT is closed, the time period shall automatically be extended to the next day when ADOT is open.

3.1.2.3 If at any given time ADOT is in receipt of more than (a) 20 concurrent Submittals in the aggregate (or other number of aggregate concurrent Submittals mutually agreed in writing by ADOT and Developer), except Submittals of parts or components of the Project Management Plan prior to issuance of NTP 1, or (b) the maximum number of concurrent Submittals of any particular type set forth in any other provision of the Contract Documents (e.g., Section GP 110.10.2.6.3 of the Technical Provisions), ADOT may extend the applicable period for it to act to that

period in which ADOT can reasonably accommodate the Submittals under the circumstances, or such other period of extension set forth in any other provision of the Contract Documents, and no such extension shall constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for any Claim. However, if at any time ADOT is in receipt of some Submittals subject to clause (a) above and some Submittals subject to clause (b) above, then the higher number of Submittals shall be used to determine whether ADOT may extend the applicable period for it to act. Submittals are deemed to be concurrent to the extent the review time periods available to ADOT under this Section 3.1.2 regarding such Submittals entirely or partially overlap. Whenever ADOT is in receipt of excess concurrent Submittals, Developer may establish by written notice to ADOT an order of priority for processing such Submittals; and ADOT will attempt to comply with such order of priority.

3.1.2.4 All time periods for ADOT to act shall be extended by the period of any delay caused by any Relief Event (for this purpose modified, where applicable, to refer to Developer acts or omissions rather than ADOT's) or caused by delay, act, omission, breach, fault or negligence of any Developer-Related Entity.

3.1.2.5 During any time there exists a Persistent Developer Default, the applicable period for ADOT to act on any Submittals received during such time, and not related to curing the Persistent Developer Default shall automatically be extended by ten Business Days.

3.1.2.6 ADOT will endeavor to reasonably accommodate a written request from Developer for expedited action on a specific Submittal, within the practical limitations on availability of ADOT personnel appropriate for acting on the types of Submittal in question; provided Developer sets forth in its request specific, abnormal circumstances, not caused by a Developer-Related Entity, demonstrating the need for expedited action. This provision shall not apply, however, during any time described in Section 3.1.2.4 or 3.1.2.5.

3.1.3 ADOT Discretionary Approvals

3.1.3.1 If the Submittal is one where the Contract Documents indicate approval or consent or acceptance is required from ADOT in its sole discretion or absolute discretion, then ADOT's lack of approval, determination, decision or other action within the applicable time period described in Section 3.1.2 shall be deemed disapproval. If approval is subject to the sole discretion or absolute discretion of ADOT, then ADOT's decision shall be final, binding and not subject to the Dispute Resolution Procedures and such decision shall not constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for any Claim.

3.1.3.2 If the Submittal is one where the Contract Documents indicate approval or consent or acceptance is required from ADOT in its good faith discretion and ADOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 3.1.2, then Developer may deliver to ADOT a written notice stating the date within which ADOT was to have decided or

acted and that if ADOT does not decide or act within five Business Days after receipt of the notice, delay from and after lapse of the applicable time period under Section 3.1.2 may constitute ADOT-Caused Delay for which Developer will be entitled to issue a Relief Event Notice under Section 14.1.1. If the approval is subject to the good faith discretion of ADOT, then its decision shall be binding unless it is finally determined by clear and convincing evidence that such decision was arbitrary or capricious. If the decision is determined to be arbitrary and capricious and causes delay, it will constitute and be treated as an ADOT-Caused Delay.

3.1.4 Other ADOT Approvals

3.1.4.1 Whenever the Contract Documents indicate that a Submittal or other matter is subject to ADOT's approval or consent but the approval or consent is one not governed by Section 3.1.3 concerning discretionary approvals, then the standard shall be reasonableness.

3.1.4.2 Whenever the reasonableness standard applies and ADOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 3.1.2, then Developer may deliver to ADOT a written notice stating the date within which ADOT was to have decided or acted and that if ADOT does not decide or act within five Business Days after receipt of the notice, delay from and after lapse of the applicable time period under Section 3.1.2 may constitute ADOT-Caused Delay for which Developer will be entitled to issue a Relief Event Notice under Section 14.1.

3.1.5 ADOT Review and Comment

Whenever the Contract Documents indicate that a Submittal or other matter is subject to ADOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval and ADOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1.2, then Developer may proceed thereafter at its election and risk, without prejudice to ADOT's rights to later object or disapprove in accordance with Section 3.1.7.1. No such failure or delay by ADOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.1.2 shall constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for any Claim. When used in the Contract Documents, the phrase "completion of the review and comment process", "comments addressed", "respond to the comments", "comments (are) (have been) resolved" or similar terminology means either (a) ADOT has reviewed, provided comments, exceptions, objections, rejections or disapprovals, and all the same have been fully resolved, or (b) the applicable time period has passed without ADOT providing any comments, exceptions, objections, rejections or disapprovals.

3.1.6 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract Documents indicate that Developer is to deliver a Submittal to ADOT but express no requirement for ADOT review, comment, disapproval, prior approval or other ADOT action, then Developer is under no obligation to provide ADOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work, and ADOT will have the right, but is not obligated, to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal in accordance with Section 3.1.7.1. No failure or delay by ADOT in delivering comments, exceptions, objections, rejections or disapprovals with respect to the Submittal shall constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for any Claim.

3.1.7 Resolution of ADOT Comments and Objections

3.1.7.1 If the Submittal is not governed by Section 3.1.3, then ADOT's exception, objection, rejection or disapproval shall be deemed reasonable, valid and binding if based on any of the following grounds or other grounds set forth elsewhere in the Contract Documents:

(a) The Submittal or subject provision thereof fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard, term or provision of the Contract Documents or Project Management Plan, Maintenance Management Plan or component plans thereunder;

(b) The Submittal or subject provision thereof is not to a standard equal to or better than Good Industry Practice;

(c) Developer has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, in which case Developer shall have the subsequent opportunity to resubmit the Submittal with the required content or information;

(d) Adoption of the Submittal or subject provision thereof, or of any proposed course of action thereunder, would result in a conflict with or violation of any Law or Governmental Approval; or

(e) In the case of a Submittal that is to be delivered to a Governmental Entity as a proposed Governmental Approval, or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, it proposes commitments, requirements, actions, terms or conditions that are (i) inconsistent with the Contract Documents, the Project Management Plan (or component plans thereunder), Maintenance Management Plan (or component plans thereunder), applicable Law, the requirements of Good Industry Practice, or ADOT practices for public-private contracting, or (ii) not usual and customary arrangements that ADOT offers or accepts for addressing similar circumstances affecting its projects

(except if usual and customary for ADOT regarding its projects delivered via public-private contracting).

3.1.7.2 Developer shall respond in writing to all of ADOT's comments, exceptions, disapprovals and objections to a Submittal and, except as provided below, make modifications to the Submittal as necessary to fully reflect and resolve all such comments, exceptions, disapprovals and objections, in accordance with the review processes set forth in this Section 3.1 and Section GP 110.10.2.6 in the Technical Provisions. However, if the Submittal is not governed by Section 3.1.3, the foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve exceptions, disapprovals or objections that: (a) are not on any of the grounds set forth in Section 3.1.7.1 (and not on any other grounds set forth elsewhere in the Contract Documents); (b) are otherwise not reasonable with respect to subject matter or length; and (c) would result in a delay to the Critical Path on the Project Schedule, in Extra Work Costs or in Delay Costs, except pursuant to an ADOT-Directed Change. If Developer does not accommodate or otherwise resolve any comment, exception, disapproval or objection, Developer shall deliver to ADOT within a reasonable time period, not to exceed 30 days after receipt of ADOT's comments, exceptions, disapprovals or objections, a written explanation why modifications based on such comment, exception, disapproval or objection are not required. The explanation shall include the facts, analyses and reasons that support the conclusion.

3.1.7.3 The foregoing shall in no way be deemed to obligate Developer to incorporate any comments or resolve exceptions, disapprovals and objections that would render the Submittal erroneous, defective or less than Good Industry Practice, except pursuant to an ADOT-Directed Change.

3.1.7.4 If Developer fails to notify ADOT within the time period set forth in Section 3.1.7.2, ADOT may deliver to Developer a written notice stating the date by which Developer was to have addressed ADOT's comments and that if Developer does not address those comments within five Business Days after receipt of this notice, then that failure shall constitute Developer's agreement to make all changes necessary to accommodate and resolve the comment or objection and full acceptance of all responsibility for such changes without right to an ADOT-Caused Delay, Supplemental Agreement, Relief Event or other Claim, including any Claim that ADOT assumes design or other liability.

3.1.7.5 After ADOT receives Developer's explanation as to why the modifications are not required as provided in Sections 3.1.7.2, 3.1.7.3 and 3.1.7.4 and Section GP 110.10.2.10.6 of the Technical Provisions, if ADOT is not satisfied with Developer's explanation the Parties shall attempt in good faith to informally resolve the Dispute. If the Parties are unable to informally resolve the Dispute and the Submittal is not one governed by Section 3.1.3.1, the Dispute shall be resolved according to the Dispute Resolution Procedures; provided, however, that if ADOT elects to issue a Directive Letter pursuant to Section 14.1 with respect to the matter in Dispute, Developer shall proceed in accordance with ADOT's Directive Letter while retaining any Claim as to the matter in Dispute.

3.1.8 Limitations on Developer's Right to Rely

3.1.8.1 No review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including certificates of Substantial Completion and Final Acceptance), or Oversight by or on behalf of ADOT, including review and approval of the Project Management Plan, and no lack thereof by ADOT, shall constitute acceptance by ADOT of materials or Work or waiver of any legal or equitable right under the Contract Documents, at Law, or in equity. ADOT will be entitled to complete and accurate Submittals, to remedies for unapproved Deviations, Nonconforming Work and Developer Defaults, and to identify and require additional Work which must be done to bring the Work and Project into compliance with requirements of the Contract Documents, regardless of whether previous review, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification or Oversight were conducted or given by ADOT. Regardless of any such activity or failure to conduct any such activity by ADOT, Developer at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents. Developer agrees and acknowledges that any such activity or failure to conduct any such activity by ADOT:

(a) Is solely for the benefit and protection of ADOT;

(b) Does not relieve Developer of its responsibility for the selection and the competent performance of all Developer-Related Entities;

(c) Does not create or impose upon ADOT any duty, standard of care or obligation toward Developer to cause it to fulfill the requirements of the Contract Documents or toward any other Person, all of which are hereby expressly disclaimed;

(d) Shall not be deemed or construed as any kind of warranty, express or implied, by ADOT;

(e) May not be relied upon by Developer or used as evidence in determining whether Developer has fulfilled the requirements of the Contract Documents;

(f) Shall not be deemed or construed as any assumption of risk by the ADOT as to design, construction, operations, maintenance, performance or quality of Work or materials; and

(g) May not be asserted by Developer against ADOT as a defense, legal or equitable, to, or as a waiver of or relief from, Developer's obligation to fulfill the requirements of the Contract Documents.

3.1.8.2 Developer shall not be relieved or entitled to reduction of its obligations to perform the Work in accordance with the Contract Documents, or any of its other liabilities and obligations, including its indemnity obligations, as the result of

any activity identified in Section 3.1.8.1 or failure to conduct any such activity by ADOT. Such activity by ADOT will not relieve Developer from liability for, and responsibility to cure and correct any unapproved Deviations, Nonconforming Work or Developer Defaults.

3.1.8.3 To the maximum extent permitted by Law, Developer hereby releases and discharges ADOT from any and all duty and obligation to cause Developer's Work, Submittals or the Project to satisfy the standards and requirements of the Contract Documents.

3.1.8.4 Notwithstanding the provisions of Sections 3.1.8.1, 3.1.8.2 and 3.1.8.3:

(a) Developer shall be entitled to rely on written approvals and acceptances from ADOT (i) for the limited purpose of establishing that the approval or acceptance occurred, or (ii) that are within its sole discretion or absolute discretion, but only to the extent that Developer is prejudiced by a subsequent decision of ADOT to rescind such approval or acceptance;

(b) Developer shall be entitled to rely on specific written Deviations ADOT approves under Section 6.2.4;

(c) Developer shall be entitled to rely on the certificates of Substantial Completion and Final Acceptance from ADOT for the limited purpose of establishing that Substantial Completion and Final Acceptance, as applicable, have occurred, and the respective dates thereof, nevertheless without prejudice to any rights and remedies available to ADOT respecting unapproved Deviations, Nonconforming Work and Developer Defaults;

(d) ADOT is not relieved from any liability arising out of a knowing and intentional material misrepresentation under any written statement ADOT delivers to Developer; and

(e) ADOT is not relieved from performance of its express responsibilities under the Contract Documents in accordance with all standards applicable thereto.

3.2 Role of General Engineering Consultant and ADOT Consultants

The General Engineering Consultant will assist ADOT in the management and oversight of the Project and the Contract Documents. Further, ADOT may retain other consultants to provide services to ADOT relating to the Project. Developer shall cooperate with the General Engineering Consultant and other ADOT consultants in the exercise of their respective duties and responsibilities in connection with the Project.

3.3 Role of and Cooperation with FHWA

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

3.4 Project Management Plan

3.4.1 Developer is responsible for all quality assurance and quality control activities necessary to manage the Work, including the Utility Adjustment Work. Developer shall undertake all aspects of quality assurance and quality control for the Project and Work in accordance with the ADOT-approved Project Management Plan, Good Industry Practice and applicable Law.

3.4.2 Developer shall develop the Project Management Plan and its component parts, plans and other documentation in accordance with the requirements set forth in Section GP 110.04 of the Technical Provisions and Good Industry Practice. The Project Management Plan shall include all the parts, component plans and other documentation identified in Table 110-6 of Section GP 110.04 of the Technical Provisions. In accordance with the RFP, Developer was authorized to commence work on the Project Management Plan prior to the Effective Date, and is authorized to continue such work, as necessary, after the Effective Date.

3.4.3 Developer shall ensure that the Project Management Plan meets all requirements of Good Industry Practice, including those for quality assurance and quality control, and all FHWA oversight requirements.

3.4.4 Developer shall submit to ADOT, in accordance with the procedures described in Section 3.1 and the time line set forth in Table 110-7 of Section GP 110.04 the Technical Provisions, each component part, plan and other documentation of the Project Management Plan and any proposed changes or additions to or revisions of any such component part, plan or other documentation. The same shall be subject to ADOT's approval, review and comment, or other disposition as set forth in Table 110-7 of Section GP 110.04 of the Technical Provisions. For components of the Project Management Plan subject to ADOT's reasonable approval (if any), it is deemed reasonable for ADOT to disapprove or require changes to comply or be consistent with Good Industry Practice, applicable provisions of the Contract Documents, FHWA oversight requirements, Governmental Approvals or applicable Law.

3.4.5 Developer shall not commence or permit the commencement of any aspect of the Project's construction or maintenance before the relevant component parts, plans and other documentation of the Project Management Plan applicable to such Work have been submitted to and approved by ADOT in accordance with the procedures described in Section 3.1 and the applicable time lines set forth in Table 110-7 of Section GP 110.04.4 of the Technical Provisions. The applicable schedule for

submitting each component part, plan and other documentation of the Project Management Plan is set forth in the corresponding section of the Technical Provisions describing the requirements for each such component part, plan and other documentation.

3.4.6 If any part, plan or other documentation of the Project Management Plan refers to, relies on or incorporates any manual, plan, procedure or like document, then all such referenced or incorporated materials shall be submitted to ADOT for approval at the time that the relevant part, plan or other documentation of the Project Management Plan or change, addition or revision to the Project Management Plan is submitted to ADOT.

3.4.7 Developer shall carry out internal audits of Developer's compliance with the Project Management Plan in accordance with the Project Management Plan.

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

3.4.9 The Quality Manager shall, irrespective of his other responsibilities, have authority from Developer to (a) establish and maintain the Project Management Plan, and (b) report to ADOT on the performance of the Project Management Plan. The Quality Manager shall have authority independent of the Project Manager and at least equivalent in level of authority to that of the Project Manager. The Quality Manager shall have direct reporting obligations to superiors that are above the level of the Project Manager. The Project Management Plan, including the Professional Services Quality Management Plan and Construction Quality Management Plan, shall be consistent with this Section 3.4.9. Refer to Sections GP 110.07 and GP 110.08 of the Technical Provisions for additional terms and conditions applicable to the Quality Manager and Developer's other quality management personnel.

3.5 Traffic Management

3.5.1 Transportation Management Plan

Developer shall be responsible for the management of traffic on the Project or impacted by the Work in accordance with applicable Technical Provisions, Laws, Governmental Approvals and the Transportation Management Plan. Developer shall prepare the Transportation Management Plan in accordance with Section DR 462.2.3 of the Technical Provisions. Throughout the Term, Developer shall carry out all Construction Work and Maintenance Services (including Routine Maintenance and Capital Asset Replacement Work) in accordance with the Transportation Management Plan or, if required pursuant to Section 8.4.1, updates thereto. In accordance with Section 7.4, preparation of the initial Transportation Management Plan and resolution of all ADOT comments thereon shall be a condition precedent to issuance of NTP 2.

3.5.2 ADOT's Rights

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

3.6 Oversight, Inspection and Testing

3.6.1 ADOT will have the right at all times to conduct Oversight to: (a) comply with FHWA or other applicable federal agency requirements; and (b) to verify Developer's compliance with the Contract Documents and Project Management Plan. ADOT may designate any Person or Persons, including its consultants and independent auditors, to carry out any Oversight on ADOT's behalf. ADOT will conduct Oversight in accordance with Developer's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal Project construction activity or normal Project operation and maintenance activity.

3.6.2 ADOT's Oversight rights shall include the following:

(a) Monitoring and auditing Developer, Developer-Related Entities and their Books and Records as more particularly set forth in Section 23.5;

(b) Conducting periodic reviews of Project documentation and files;

(c) Conducting material tests, according to ADOT's test methods, to verify Developer's compliance with all testing frequencies and requirements, including performance and acceptance testing, set forth in the Contract Documents and the approved Project Management Plan, the accuracy of the tests, inspections and audits performed by or on behalf of Developer pursuant to the approved Professional Services Quality Management Plan and approved Construction Quality Management Plan, and compliance of materials incorporated into the Project with the applicable requirements, conditions and standards of the Contract Documents, Governmental Approvals, the Project Management Plan and Law;

(d) Reviewing and commenting on Submittals;

(e) Reviewing, commenting on and giving recommendations, objections or exceptions regarding the Capital Asset Replacement Work Plan and revisions thereto, as provided in Section 8.3.2;

(f) Participating in meetings described in Section 3.10 to discuss design progress, construction progress, Developer's quality control processes, audit activities, and other Project Management Plan issues;

(g) Accompanying Developer on Inspections, conducting its own inspections in addition to the Inspections, assessing and scoring Developer's records of

Inspections, Maintenance Services and Project conditions, and assessing the condition of Elements and performing Asset Condition Scoring;

(h) Attending and witnessing Developer's other tests and inspections, including system start-up and acceptance tests and inspections;

(i) Reviewing Developer's certification of Record Drawings and surveys and As-Built Schedule; and

(j) Investigating and confirming Developer's compliance with the Safety Management Plan.

3.6.3 ADOT will have the right, but does not intend, to conduct formal reviews of every Design Document and Construction Document. ADOT will have the right to conduct "over-the-shoulder" reviews of Design Documents and other Submittals in accordance with Section GP 110.10.2.6.1 of the Technical Provisions. However, no over the shoulder review by or on behalf of ADOT shall constitute acceptance by ADOT of materials or Work or waiver of any legal or equitable right under the Contract Documents, at Law, or in equity. Whether or not over-the-shoulder reviews are conducted, Developer at all times shall have an independent duty and obligation to fulfill the requirements of the Contract Documents.

3.6.4 Nothing in the Contract Documents shall preclude, and Developer shall not interfere with, any review, inspection or oversight of Submittals or of Work that the FHWA, ADOT or any regulatory agency with jurisdiction may desire to conduct pursuant to their agreements with ADOT and applicable Law.

3.7 Rights of Cooperation and Access

3.7.1 Developer at all times shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with ADOT, its Authorized Representative and its designees to facilitate ADOT Oversight activities. Developer shall cause its representatives to be available at all reasonable times for consultation with ADOT and its designees.

3.7.2 Without limiting the foregoing, ADOT, its Authorized Representative and its designees shall have the right to, and Developer shall afford them: (a) safe and unrestricted access to the Project at all times, (b) safe access during normal business hours to Developer's Project offices and operations buildings and those of its Subcontractors, (c) safe access during normal business hours to the Project-Specific Locations, and (d) unrestricted access to data respecting the Project design, Project ROW acquisition, construction, operations and maintenance, and the Utility Adjustment Work.

3.8 Testing and Test Results

ADOT, its Authorized Representative and its designees shall have the right to attend and witness any tests and verifications to be conducted pursuant to the Technical

Provisions and applicable, component plans of the Project Management Plan. Developer shall provide to ADOT all test results and reports (which may be provided in electronic format in accordance with the Technical Provisions) within ten days after Developer or its Subcontractor receives them.

3.9 Interpretive Engineering Decisions

3.9.1 Developer may apply in writing to ADOT for approvals of an interpretive engineering decision concerning the meaning, scope, interpretation and application of the Technical Provisions (an "Interpretive Engineering Decision"). If, however, meaning, scope, interpretation or application of the Technical Provisions is uncertain because of irreconcilable conflict, ambiguity or inconsistency among the Contract Documents or provisions within other Contract Documents, then this Section 3.9 shall not apply and, instead, the provisions of Section 1.2 shall apply. ADOT may issue a written approval of Developer's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision or may disapprove any Interpretive Engineering Decision Developer proposes. No document, including any field directive, shall be valid, effective or enforceable as an Interpretive Engineering Decision unless expressly identified as an "Interpretive Engineering Decision" and signed by ADOT's design manager, construction manager or project manager for the Project.

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

3.9.3 Accepted Interpretive Engineering Decisions shall constitute provisions of the Technical Provisions and shall not constitute an ADOT-Directed Change or entitle Developer to any additional compensation, time or deadline extension or other Claim or relief. Subsequent ADOT written orders and directives that are signed by ADOT's design manager, construction manager or project manager for the Project, and contrary to the Interpretive Engineering Decision shall constitute an ADOT-Directed Change.

3.10 Meetings

3.10.1 Developer shall conduct or participate in various Project meetings with ADOT during the D&C Period and Maintenance Period, in accordance with Section GP 110.02 of the Technical Provisions. In addition, each Party shall conduct or participate in any other meeting set forth in other sections of the Technical Provisions or other Contract Document. At ADOT's request, Developer shall require the Lead Subcontractor or Lead Maintenance Firm, as applicable, other Subcontractors and engineers of record to attend any such meetings.

3.10.2 Developer shall conduct regular DBE/OJT meetings with ADOT's Compliance Oversight Committee at least once a month during the design and construction, as more particularly set forth in Section 13.02 of the DBE Special Provisions (Exhibit 7) and Section 8.0 of the OJT Special Provisions (Exhibit 8).

3.10.3 Further, ADOT and Developer, through their respective Authorized Representatives, shall meet from time to time at the other Party's request to discuss and resolve matters relating to the Design Work, Construction Work, Maintenance Services or the Project in general.

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

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

3.11 Software Compatibility

3.11.1 Unless otherwise specifically stated in the Contract Documents, Developer is responsible for assuring that all software it uses for any aspect of the Project is compatible with software used by ADOT. Prior to using any software or version of software not then in use by ADOT, Developer must obtain approval from ADOT. In addition, Developer shall provide to ADOT staff, at Developer's cost, working electronic copies of the software, any necessary licenses for ADOT's use of the software required under Section 23.7.3.1, and any training reasonably necessary to assure that ADOT is able to implement compatible usage of all software utilized by Developer.

3.11.2 Developer shall submit all documents, correspondence and Submittals to ADOT through a Developer-maintained document storage or FTP internet site for the Project.

ARTICLE 4.
PROJECT PLANNING, GOVERNMENTAL APPROVALS; ENVIRONMENTAL COMPLIANCE; PUBLIC INFORMATION

4.1 Planning and Engineering Activities

4.1.1 Developer, through the appropriately qualified and licensed design professionals identified in the Project Management Plan, shall perform or cause to be performed all Professional Services necessary to develop the Project and the Utility Adjustments included in the Design Work and the Construction Work in accordance with the Contract Documents and Good Industry Practice.

4.1.2 Before commencing any Work on a particular portion or aspect of the Project, Developer shall verify all governing dimensions of the Site and shall examine all Related Transportation Facilities and adjoining work (including Adjacent Work) that may have an impact on such Work. Developer shall ensure that any Design Documents and Construction Documents furnished as part of the Work accurately depict all governing and adjoining dimensions.

4.2 Site Conditions

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

4.2.2 Developer shall bear the risk of changes in surface topography, variations in subsurface moisture content, and variations in groundwater levels.

4.2.3 The provisions of this Section 4.2 do not apply to, and shall not adversely affect, the specific relief available to Developer under Article 14 for Relief Events under clauses (h), (i), (k), (l), (m) and (q) of the definition of Relief Event.

4.3 Governmental Approvals

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

4.3.2 Developer hereby assumes responsibility for, and shall obtain:

(a) All Environmental Approvals, other than the NEPA Approval, required in connection with Developer's Schematic Design or Final Design, the Project, the Project ROW, the Work or any Relief Event;

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

(c) All other Governmental Approvals required in connection with Developer's Schematic Design or Final Design, the Project, the Project ROW or the Work.

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

4.3.4 Prior to submitting to a Governmental Entity any application for a Governmental Approval (or any proposed reevaluation, amendment, supplement, modification, renewal, extension or waiver of a Governmental Approval or provision thereof), Developer shall submit the same, together with any supporting environmental studies, analyses and data, to ADOT for appropriate action, if any, in accordance with Section DR 420.2.6 of the Technical Provisions. ADOT assumes no duty, obligation or liability regarding completeness or correctness of any such application, regardless of ADOT's approval, review and comment, or lack thereof.

4.3.5 As between ADOT and Developer, Developer shall be fully responsible for all necessary actions, and Developer shall bear all risk of delay and all risk of increased cost, required due to, resulting from or arising out of: (1) any differences between Developer's Final Design for any portion of the Project and the Schematic Design or Developer's Schematic Design, including differences due to any alternative technical concepts approved by ADOT and included in Developer's Schematic Design, but excluding any differences due to an ADOT-Directed Change; or (2) differences between the construction means and methods (including temporary works) Developer chooses for any portion of the Project and those set forth, referred to or contemplated in the NEPA Approval, excluding any differences due to an ADOT-Directed Change. Such Developer actions and risks shall include:

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

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

(c) Obtaining and complying with all necessary new Governmental Approvals;

(d) Obtaining and complying with all necessary modifications, renewals and extensions of the NEPA Approval or other existing Governmental Approvals; and

(e) All risk and cost of litigation.

4.3.6 If Developer is unable to obtain any of the items described in Sections 4.3.5(c) or 4.3.5(d), then Developer shall be obligated to design and construct the Project based on the Schematic Design (with changes as necessary to comply with the Technical Provisions) and the construction means and methods (including temporary works) set forth, referred to or contemplated in the NEPA Approval, or such other design, means and methods for which Developer is able to obtain necessary Governmental Approvals and that comply with the Contract Documents. None of the foregoing circumstances described in this Section 4.3.6 shall: (a) constitute an ADOT-Caused Delay or ADOT-Directed Change, Relief Event or other basis for any Claim; or (b) result in any representation or warranty by ADOT as to the feasibility, accuracy or completeness of, or absence of errors in, the Schematic Design.

4.3.7 If Developer pursues Developer-Designated ROW, Temporary Construction Easements outside the Project ROW, Developer's Temporary Work Areas, Replacement Utility Property Interests, or any other modification of or Deviation from any Governmental Approvals, including the NEPA Approval, Developer shall first comply with, and obtain any consent or waiver required pursuant to, then-existing agreements between ADOT and other Governmental Entities.

4.3.8 At Developer's request and subject to Section 4.3.9, ADOT will reasonably assist and cooperate with Developer in obtaining the Governmental Approvals (including any modifications, renewals and extensions of existing Governmental Approvals) that Developer is required to obtain under the Contract Documents. Such assistance and cooperation shall include:

(a) Joining in conferences and meetings with applicable Governmental Entities;

(b) Sharing data, information and documents available to ADOT that are relevant to the application for the Governmental Approvals and are not deemed confidential;

(c) Coordinating and working with elected and other public officials, as necessary and appropriate;

(d) Assisting with evaluation and definition of solutions;

(e) If necessary, acting as the lead agency and directly coordinating with applicable Governmental Entities; and

(f) Otherwise partnering to facilitate issuance of such Governmental Approvals.

4.3.9 ADOT's obligation to assist and cooperate under Section 4.3.8 shall not require ADOT to:

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

(b) Take a position that is not usual and customary for ADOT to take in addressing similar circumstances affecting its own projects (except if usual and customary for ADOT regarding its projects delivered via public-private partnership contracting); or

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

4.3.10 Litigation involving Environmental Approvals is subject to the provisions in Sections 4.3.10.1, 4.3.10.2 and 4.3.10.3.

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

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

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

4.3.11 Certain Governmental Entities may require that Governmental Approvals issued by such Governmental Entities be applied for or issued in ADOT's name, or that ADOT directly coordinate with such Governmental Entities in connection

with obtaining the Governmental Approvals. In such event, Sections 4.3.8 and 4.3.9 shall apply, and Developer at its expense shall provide all necessary support and efforts to apply for and obtain the Governmental Approvals. Such support shall include conducting necessary field investigations, preparing mitigation analyses and studies and plans, preparing surveys, and preparing any required reports, applications and other documents in form approved by ADOT. Such support also may include joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity. Refer to Section DR 420.2.6.2 of the Technical Provisions for more specific provisions on applications for Environmental Approvals filed in ADOT's name.

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

4.4 Environmental Compliance

4.4.1 Except as provided otherwise in Section 4.4.2, ADOT delegates to Developer, and Developer accepts, all ADOT obligations, commitments and responsibilities under all Environmental Approvals. Except as provided otherwise in Section 4.4.2, throughout the Term and the course of the Work, Developer shall at its sole cost and expense:

(a) Comply with all Environmental Laws;

(b) Comply with all conditions and requirements imposed by all Environmental Approvals;

(c) Perform all commitments and mitigation measures set forth in all Environmental Approvals; and

(d) Undertake all actions required by, or necessary to maintain in full force and effect, all Environmental Approvals.

4.4.2 ADOT retains sole responsibility for payment and performance of the environmental obligations, commitments and responsibilities expressly identified as not delegated to Developer in the Developer's Environmental Commitment Requirements set forth in TP Attachment 420-1 of the Technical Provisions.

4.4.3 Developer shall perform or cause to be performed all environmental mitigation measures required under the Contract Documents.

4.4.4 Developer shall comply with the provisions, requirements and obligations regarding environmental compliance set forth in Section DR 420 and CR 420 of the Technical Provisions.

4.4.5 Developer expressly acknowledges that the Project Environmental Commitment Requirements set forth in TP Attachment 420-1 of the Technical Provisions may not contain an exhaustive or accurate list of all environmental obligations, commitments and responsibilities that apply to the Project. ADOT does not warrant or represent the completeness or accuracy of the Project Environmental Commitment Requirements set forth in TP Attachment 420-1 of the Technical Provisions, which is made available to Developer as a convenience to assist Developer in preparing the Environmental Management Plan. Developer is solely responsible for the completeness and accuracy of the Environmental Management Plan, including the correction of any errors or omissions in TP Attachment 420-1 of the Technical Provisions. Neither incompleteness nor inaccuracy of the Project Environmental Commitment Requirements set forth in Attachment TP 420-1 of the Technical Provisions shall alter or limit the scope of Developer's environmental compliance obligations as set forth in the Contract Documents or shall entitle Developer to any Claim or relief.

4.5 Community Outreach and Public Information

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

ARTICLE 5.
RIGHT OF WAY ACQUISITION; ACCESS TO PROJECT RIGHT OF WAY; UTILITY ADJUSTMENTS; RAILROAD; RELATED TRANSPORTATION FACILITIES

5.1 Developer's ROW Services

5.1.1 Developer shall provide all acquisition, relocation and demolition services and activities (collectively the "ROW Services"), as more particularly set forth in Section DR 470 of the Technical Provisions, with respect to:

(a) All Project ROW, including Developer-Designated ROW, ADOT Additional Properties and Temporary Construction Easements, excluding, however, the Retained Parcels;

(b) All Replacement Utility Property Interests (unless performed by the Utility Company); and

(c) All Developer's Temporary Work Areas.

5.1.2 ADOT will have no obligation to directly participate in the ROW Services except as otherwise set forth in this Section 5 and Section DR 470 of the Technical Provisions, but shall have full rights of review, approval, and audit.

5.1.3 Developer's ROW Services shall include:

(a) Documentation and document control, as set forth in greater detail in Section DR 470.2.3 of the Technical Provisions ("Documentation and Reporting");

(b) Conducting and documenting meetings regarding Project ROW activities, as set forth in greater detail in Sections GP Section 110.02 and DR 470.2.2 of the Technical Provisions ("ROW Coordination Meetings");

(c) Development of Project ROW Plans, ROW Exhibits, and Legal Descriptions, including land surveys and archeological surveys, as set forth in greater detail in Section DR 470.3.1 of the Technical Provisions ("ROW Exhibits and Legal Descriptions");

(d) Title services as set forth in greater detail in Section DR 470.3.2 of the Technical Provisions ("Title Services");

(e) Introduction to property owners as set forth in greater detail in Section DR 470.3.3 of the Technical Provisions ("Introduction to Property Owners");

(f) Preparing Environmental Site Assessments, phases I and II, as set forth in greater detail in Section DR 470.3.4 of the Technical Provisions ("Environmental Site Assessments");

(g) Appraisal services as set forth in greater detail in Section DR 470.3.5 of the Technical Provisions ("Appraisals");

(h) Appraisal review services as set forth in greater detail in Section DR 470.3.5.2 of the Technical Provisions ("Appraisal Review");

(i) Development and submittal to ADOT of Acquisition Packages as set forth in greater detail in Section DR 470.3.6 of the Technical Provisions ("Project ROW Acquisition Package Approval");

(j) Negotiation services as set forth in greater detail in Section DR 470.4.1 of the Technical Provisions ("Project ROW Negotiations");

(k) Relocation assistance as set forth in greater detail in Section DR 470.4.2 of the Technical Provisions ("Relocation Assistance");

(l) Closing services as set forth in greater detail in Section DR 470.4.3 of the Technical Provisions ("Closing Services");

(m) Processing payment Submittals as set forth in greater detail in Section DR 470.4.4 of the Technical Provisions ("Payment of Property Owners and Displacees");

(n) Condemnation support services as set forth in greater detail in Section DR 470.4.5 of the Technical Provisions ("Condemnation Support");

(o) Property management;

(p) Clearance and demolition of improvements as set forth in greater detail in Section DR 470.4.7 of the Technical Provisions ("Clearance and Demolition of Project ROW");

(q) Acquisition of Replacement Utility Property Interests (even though not part of the Project ROW), subject to ADOT's potential assistance as provided in Section 5.4.3;

(r) Quality management regarding ROW Services as described in Section GP 110.07.2.1.2.1 of the Technical Provisions and the approved ROW Activity Plan; and

(s) Obtaining temporary entry as necessary to make examinations, surveys and maps, as set forth in ARS 12-1115, in accordance with the ADOT Right of Way Procedures Manual.

5.2 ADOT's Role Respecting ROW Acquisition

5.2.1 General

In connection with acquisition of Project ROW, ADOT will:

(a) Provide final approval as set forth in Section DR 470 of the Technical Provisions of all ROW Plans, Exhibits and Legal Descriptions, appraisals, Acquisition Packages, Condemnation Packages and other Submittals under Section DR 470 of the Technical Provisions requiring ADOT approval (including submittals for payments to property owners and displacees, relocation eligibility determinations, relocation appeals, administrative settlement submittals, closing submittals, and court settlement requests from the Attorney General's Office), subject to submission requirements and timelines in Section DR 470 of the Technical Provisions, including Table 470-2 (Nonexclusive Submittals List) therein;

(b) Coordinate with the Office of the Attorney General to provide legal counsel to prepare and files complaints in, and pursue, condemnation and eviction proceedings, except as provided otherwise in this Section 5. The Office of the Attorney General is general counsel for ADOT. Developer shall not be responsible for providing or paying for legal counsel for pursuing such proceedings;

(c) Pay the bond or deposit required by any order for immediate possession and notify Developer and the Office of the Attorney General of the payment;

(d) Deliver to Developer a copy of each order for immediate possession obtained after the Effective Date within five Business Days after receiving the signed and certified order for immediate possession from the court;

(e) Provide all coordination services between Developer and the Office of the Attorney General as set forth in greater detail in Section DR 470.4.5 of the Technical Provisions; and

(f) Provide Developer a status report on condemnation parcel activities up to the time of possession at each scheduled ROW coordination meeting with Developer.

5.2.2 Retained Parcels

ADOT will provide all ROW Services with respect to the Retained Parcels, including providing relocation assistance, performing demolition and managing Hazardous Materials remediation, except Utility Adjustments.

5.3 ROW Activity Plan

5.3.1 Upon issuance of NTP 1, Developer shall prepare and submit to ADOT for approval in ADOT's good faith discretion a ROW Activity Plan. The ROW Activity

Plan shall be based upon the Preliminary ROW Activity Plan that Developer submitted with the Proposal, subject to any changes ADOT may require.

5.3.2 ADOT's approval of the final ROW Activity Plan, and expiration of the five-Business Day waiting period after delivery to the property owner of a Letter of Introduction pursuant to Section DR 470.3.3 of the Technical Provisions, shall be conditions precedent to Developer's commencing any contact with property owners, displacees or any other Person having a compensable interest.

5.3.3 The ROW Activity Plan shall meet the requirements set forth in Section DR 470.2.4 of the Technical Provisions. After ADOT approves the ROW Activity Plan, Developer shall update it, and deliver the update to ADOT in accordance with the applicable timelines set forth in Section DR 470.2.4 of the Technical Provisions.

5.4 Acquisition of Property

5.4.1 Project ROW

5.4.1.1 All Project ROW shall be acquired in the name of the State. Developer shall undertake and complete the ROW Services in accordance with Section DR 470 of the Technical Provisions, the ADOT-approved ROW Activity Plan and all applicable Laws relating to such services, including the Uniform Act. ADOT will: (a) review and approve (or disapprove) appraisals, Acquisition Packages, Condemnation Packages and other Submittals for Project ROW, as provided herein and in Section DR 470 of the Technical Provisions; and (b) except as provided below, undertake eminent domain proceedings, if necessary, for Project ROW in accordance with the procedures established in Section DR 470 of the Technical Provisions and the approved ROW Activity Plan.

5.4.1.2 Acquisition of Developer-Designated ROW shall be subject to ADOT's prior written approval, provided that acquisition of Developer-Designated ROW identified in an ADOT-approved ATC is deemed approved. Grounds for ADOT to disapprove shall consist of the following:

(a) The acquisition would require major changes to the environmental documents, including the NEPA Approvals, such as the need for a supplemental environmental impact statement;

(b) The acquisition would require a public hearing regarding environmental impacts; or

(c) The subject property is located within the boundaries of the GRIC reservation.

5.4.2 Developer's Temporary Work Areas

Developer shall acquire, or cause to be acquired, all Developer's Temporary Work Areas in its own name. Developer shall comply with all applicable Governmental Approvals and Laws in acquiring, maintaining or disposing of any Developer's Temporary Work Areas. ADOT will not exercise its power of eminent domain in connection with Developer's acquisition of any such property right or interest for Developer's Temporary Work Areas. ADOT will have no obligations or liabilities with respect to the acquisition, maintenance or disposition of Developer's Temporary Work Areas. Developer shall have no obligation to submit Acquisition Packages to ADOT for, or obtain ADOT's approval of Developer's acquisition of, any property right or interest for Developer's Temporary Work Areas. Developer shall cause the lease, license or other agreement by which Developer acquires a property right or interest in a Developer's Temporary Work Area to contain the granting party's express acknowledgment that ADOT will have no liability with respect thereto. Developer shall promptly deliver a copy of such documentation to ADOT.

5.4.3 Replacement Utility Property Interests

ADOT's involvement in acquisition of Replacement Utility Property Interests is subject to the following terms and conditions:

5.4.3.1 ADOT will assist in the acquisition of Replacement Utility Property Interests only if both Developer and the Utility Company provide evidence reasonably satisfactory to ADOT that: (a) acquisition of the subject Replacement Utility Property Interest is necessary because it is not physically possible, including through commercially reasonable design modifications as described in Section 14.4.1.1(a), to perform the subject Utility Adjustment within the Schematic ROW or to use Protection in Place; and (b) the Utility Company either lacks the power to acquire the Replacement Utility Property Interest or has been unsuccessful in negotiating the acquisition.

5.4.3.2 Except as provided otherwise in Section 14.4.5.2, Developer shall compensate ADOT for costs ADOT incurs in connection with the acquisition of Replacement Utility Property Interests, to the same extent ADOT would be owed compensation for acquisition of Developer-Designated ROW under Section 5.6.4. If the Utility Company is responsible under Law for the acquisition costs, such as in the case of a Replacement Utility Property Interest that is a Betterment, then: (a) Developer shall use best efforts to cause the Utility Company to agree in writing with ADOT to joint and several liability with Developer for such compensation due ADOT; and (b) such written agreement from the Utility Company shall be a condition precedent to ADOT's commencement of assistance.

5.4.3.3 Any assistance ADOT provides shall not relieve Developer of its sole responsibility for satisfactory compliance with its obligations respecting Utility Adjustment work and timely completion thereof.

5.4.3.4 ADOT will not be obligated to take title to the Replacement Utility Property Interest unless otherwise required by Law in connection with ADOT's exercise of its power to acquire. If ADOT is obligated by Law to take title, then it will do so on the condition that the Utility Company concurrently accepts conveyance of title from ADOT to the Utility Company, without warranty or representation and with the Utility Company's written indemnification against any third party liability that may arise out of ADOT's status as title holder.

5.4.3.5 Except as provided otherwise in Section 14.4.5.2, ADOT will have no risk or liability whatsoever due to delay in its completing acquisition of any Replacement Utility Property Interest, and no such delay shall constitute an ADOT-Caused Delay or other Relief Event.

5.5 Acquisition and Relocation Standards and Procedures

5.5.1 Developer shall perform all its ROW Services in accordance with the Laws, standards and procedures set forth in Section DR 470 of the Technical Provisions.

5.5.2 For each of the first 20 parcels, Developer shall not make an offer to the property owner until Developer obtains ADOT's written approval of the Acquisition Package. Thereafter, Developer may make offers to property owners based on ADOT's written approval of the appraisal and use of an Acquisition Package consistent with those previously approved. ADOT reserves the right to require ADOT's review and approval of Acquisition Packages on any parcels. Acquisition Packages shall meet the requirements set forth in Section 470.3.6 of the Technical Provisions.

5.5.3 Developer shall notify ADOT in writing, for ADOT's concurrence, of the failure of negotiations with respect to the acquisition of any parcel included in the Project ROW and shall submit to ADOT for approval a Condemnation Package for the parcel as described in Section DR 470.4.5 of the Technical Provisions. ADOT will have the time period set forth in Section GP 110.10 of the Technical Provisions either to: (i) approve the Condemnation Package; or (ii) provide its comments or request for additional information to Developer if ADOT determines that the Condemnation Package is incomplete, otherwise deficient or contains or identify facts or issues of an unusual nature or which do not clearly fit within ADOT standards. Developer shall incorporate any suggested changes and provide any additional information requested by ADOT and shall resubmit the Condemnation Package to ADOT for review and approval within the time period set forth in Section GP 110.10 of the Technical Provisions.

5.5.4 At no additional cost to ADOT, Developer shall cooperate in all respects with ADOT and shall cause all acquisition personnel to be available to and assist ADOT and the Office of the Attorney General in connection with the eminent domain proceedings, including testifying as an expert witness and providing expert witness services, as set forth in Sections DR 470.3.5.1 and DR 470.4.5 of the Technical

Provisions, through the end of the order to show cause hearing for immediate possession. After such hearing, Developer shall continue to provide such cooperation and assistance of acquisition personnel as and when requested by ADOT or the Office of the Attorney General, and ADOT will reimburse Developer for its reasonable fees and expenses at the same rate established under the applicable Subcontract for such services during the period up to the order to show cause hearings. For purposes hereof, "acquisition personnel" means expert witnesses, appraisers, surveyors, land planners and other consultants utilized by Developer under a Subcontract, including those initially utilized by ADOT and then retained under a Subcontract, in connection with the acquisition of the Project ROW subject to condemnation.

5.5.5 Developer shall provide advance notice to ADOT of Developer's acquisition of real property located outside the Project ROW.

5.6 Costs of Acquisitions, Relocations and Demolitions

5.6.1 Subject to Section 13.3.2.2, ADOT will pay the purchase price, severance damages (including cost-to-cure damages), relocation assistance payments (if any) and title insurance premiums for real property needed for the Project within the Schematic ROW and any uneconomic remnants that result from ADOT's acquisition of such real properties. For clarity, such real property includes Temporary Construction Easements located within the Schematic ROW where permanent acquisition of the area for the Temporary Construction Easement is not required for the Project's physical improvements. With respect only to Retained Parcels, ADOT also shall pay the costs of demolition and clearance, except for Utility Adjustments.

5.6.2 ADOT will pay the costs for the legal counsel from the Office of the Attorney General or for private legal counsel retained as directed by the Office of the Attorney General in connection with any condemnation actions, except (a) for such legal fees and costs that arise out of the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of a Developer-Related Entity in the performance of its obligations under the Contract Documents, and (b) as provided otherwise in Section 5.6.4.1 regarding Developer-Designated ROW.

5.6.3 ADOT will pay the purchase price, severance damages (including cost-to-cure damages), relocation assistance payments (if any), demolition costs and title insurance premiums for any real property that is an ADOT Additional Property, including any uneconomic remnants that result from ADOT's acquisition of such real property. Solely with respect to ADOT Additional Properties required due to an ADOT-Directed Change or a Force Majeure Event, ADOT will also pay any other reasonable costs and expenses incurred by Developer to perform ROW Services for such real property, subject to the limitations in Article 14. Developer shall perform all ROW Services respecting ADOT Additional Properties, including any services related to re-evaluation or modification of any NEPA Approval, if necessary.

5.6.4 Developer shall be responsible for and shall pay directly all costs and expenses in connection with acquiring all Developer-Designated ROW.

5.6.4.1 Such costs and expenses include:

(a) The cost of all ROW Services;

(b) The cost of condemnation proceedings incurred by the Office of the Attorney General, including expert witness fees, and all fees and expenses for exhibits, transcripts, photos and other documents and materials production, other than the Attorney General's or private attorneys' direct fees;

(c) The purchase prices, severance damages (including cost-to-cure damages), court awards or judgments for all Developer-Designated ROW (to be paid by Developer at the time of closing or final condemnation award, as applicable);

(d) The cost of permitting;

(e) Closing costs associated with parcel purchases, in accordance with the Uniform Act and ADOT policies, including title insurance premiums;

(f) Relocation assistance payments and costs, in accordance with the Uniform Act;

(g) Demolition and clearance costs; and

(h) Any uneconomic remnants resulting from the acquisition of Developer-Designated ROW.

5.6.4.2 Developer shall not be entitled to any adjustment in the D&C Price or Maintenance Price on account of such costs and expenses.

5.6.4.3 Except as required as a direct result of an ADOT-Directed Change or a Necessary Schematic ROW Change, property outside of the Schematic ROW that is acquired for drainage easements hereunder shall be treated as Developer-Designated ROW.

5.6.4.4 If ADOT incurs any such costs and expenses on Developer's behalf, ADOT may submit any invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices within 30 days after delivery to Developer. Alternatively, ADOT may deduct the amount of such costs and expenses from any sums owed by ADOT to Developer pursuant to this Agreement.

5.6.5 Developer shall be responsible for and shall pay directly all costs and expenses of ROW Services, and all other costs and expenses, in connection with

acquiring, renting, using, maintaining, insuring and disposing of Developer's Temporary Work Areas that Developer determines necessary or desirable for its convenience in constructing the Project. Developer shall not be entitled to any adjustment in the D&C Price or Maintenance Price on account of such costs and expenses.

5.6.6 Developer shall not be entitled to any increase in the Price or any Completion Deadline adjustment (except to the extent provided otherwise in Section 14.6.3 regarding Completion Deadline adjustment) as a result of: (a) Site conditions associated with any Developer-Designated ROW or Developer's Temporary Work Areas (including those relating to Hazardous Materials, Differing Site Conditions or Utilities); and (b) any delay, inability or cost associated with the acquisition of any Developer-Designated ROW, including Developer-Designated ROW required to implement any ATCs, or Developer's Temporary Work Areas.

5.6.7 If at any time, Developer or any Developer-Related Entity directly or indirectly (a) acquires or has previously acquired any interest in real property likely to be parcels of the Project ROW or the remainders of any such parcels, (b) loans or has previously loaned money to any interest holder in any real property likely to be a Project ROW parcel and accepts as security for such loan the parcel, or the remainder of any such parcel that is not a whole acquisition, or (c) purchases or has previously purchased from an existing mortgagee the mortgage instrument that secures an existing loan against real property likely to be a Project ROW parcel, or the remainder of any such parcel, Developer shall promptly disclose the same to ADOT. If Developer, or any subsidiary or parent company of Developer, acquires a real property interest, whether title or mortgage, in parcels of the Project ROW, the real property interest acquired or a release of mortgage as the case may be, shall be conveyed to the State of Arizona without the necessity of eminent domain and without payment to Developer or the subsidiary or parent company of Developer. Developer shall not acquire or permit the acquisition by Developer or any Developer-Related Entity of any real property interest in a Project ROW parcel, whether in fee title or mortgage, for the purpose of avoiding compliance with the Laws, practices, guidelines, procedures and methods described in Section DR 470.2.1.

5.6.8 Subject to Section 5.6.3, the D&C Price is inclusive of all of Developer's costs of performing ROW Services. If ADOT incurs any such costs and expenses on Developer's behalf, ADOT may submit invoices for such costs and expenses to Developer, in which case Developer shall pay the invoices within 30 days after delivery to Developer. Alternatively, ADOT may deduct the amount of such costs and expenses from any sums owed by ADOT to Developer pursuant to this Agreement.

5.6.9 If a parcel acquired by ADOT includes both (a) property for which ADOT is responsible for paying the price of acquisition (e.g., ADOT Additional Properties), and (b) property for which Developer is responsible for paying the price of acquisition (e.g., Developer-Designated ROW), then Developer shall reimburse ADOT a *pro rata* share of the parcel's total purchase price, severance damages (including cost-to-cure damages), relocation costs, Hazardous Materials management costs, and

related fees and costs based on the ratio of the physical area of the property referenced in clause (b) above to the physical area of the entire acquired parcel.

5.7 Developer Incentives for Avoiding Schematic ROW Parcels

5.7.1 After the Effective Date, Developer will have the opportunity to benefit, in the form of an additional payment from ADOT, from avoidance of parcels that comprise the Schematic ROW, except for such parcels that Developer received credit against the D&C Price as part of the Proposal. References below to "parcel" or "partial parcel" mean those parcels and partial parcels within the boundaries of the Schematic ROW. References to "avoidance," "avoid" or "avoided" means that the parcel or partial parcel will not be needed or used for the Project or for Temporary Construction Easements.

5.7.2 To obtain this benefit, Developer must submit to ADOT:

(a) A map depicting each parcel or partial parcel to be avoided in whole or in part;

(b) A calculation, for each such parcel or partial parcel, of the approximate avoided square footage;

(c) A calculation of the net cost savings respecting such parcel or partial parcel (taking into account severance damages (including cost-to-cure damages), if any), together with supporting documentation justifying the calculation. For the acquisition price savings, the market value shown in the Acquisition/Relocation Status Report, as updated on the Effective Date, shall be used, without regard to subsequent appraisals or changes in market conditions.

(d) Design Documents showing the design features that will enable avoidance in whole or in part of the parcel or partial parcel.

5.7.3 Within ten Business Days after it receives such a Submittal, ADOT will inform Developer in writing, for each parcel or partial parcel, whether the Submittal is approved. ADOT may reject the Submittal and make no such payment if ADOT determines, in its good faith discretion, that:

(a) The design does not represent a credible means to actually avoid the parcel or partial parcel; or

(b) The proposal is to avoid only a portion, rather than the entirety, of a single family residential parcel.

5.7.4 ADOT will calculate the cost savings, if any, using ADOT's standard procedures and estimation techniques.

5.7.4.1 If ADOT has not already acquired the parcel or partial parcel, if ADOT has not already received acceptance of an offer to acquire the parcel or

partial parcel, and if no displacee in connection with the parcel or partial parcel has incurred material relocation costs for which ADOT is responsible as a result of ADOT's relocation notice, and has not otherwise materially changed its position in reliance on or in response to ADOT's relocation notice, then the credit amount will be the sum of:

(a) The savings in ADOT's acquisition costs for the avoided parcel or partial parcel, which shall equal ADOT's estimated value per square foot set forth in the Acquisition/Relocation Status Report in Attachment 470-3 to the Technical Provisions, as of the Effective Date, without regard to subsequent appraisals or changes in market conditions; plus

(b) ADOT's estimate of avoided severance damages (including cost-to-cure damages), if any; minus

(c) ADOT's estimate of the increased severance damages (including cost-to-cure damages), if any, caused by the proposed ROW avoidance; plus

(d) ADOT's estimate of avoided relocation costs (if any); plus

(e) Only for Retained Parcels, ADOT's estimate of avoided demolition costs.

5.7.4.2 If ADOT has already acquired the parcel or partial parcel, if ADOT has already received acceptance of an offer to acquire the parcel or partial parcel, or if any displacee regarding the parcel or partial parcel has incurred material relocation costs for which ADOT is responsible as a result of ADOT's relocation notice, or has otherwise materially changed its position in reliance on or in response to ADOT's relocation notice, then the credit amount will be ADOT's determination, in its good faith discretion, of the net proceeds, if any, it is likely to obtain from re-sale of the parcel or partial parcel as a remnant piece of vacant land.

5.7.4.3 All amounts will be estimated without including contingency.

5.7.5 ADOT will review and assess the calculation of the Developer's cost savings, which will be subject to ADOT's reasonable approval. ADOT may require further information and documentation in support of Developer's calculation of the cost savings, and may respond with its own calculation of the cost savings. If ADOT disagrees with Developer's calculation, the Parties shall thereafter negotiate promptly and in good faith to mutually determine the cost savings. At the conclusion of such negotiations, ADOT will finally determine the cost savings, which determination shall control.

5.7.6 If such a Submittal is approved by ADOT, Developer will be entitled to a payment from ADOT equal to:

(a) For avoided Retained Parcels, (i) 70% of the ADOT-approved savings in acquisition costs; plus (ii) 50% of the ADOT-approved avoided severance damages (including cost-to-cure damages), relocation costs and, if applicable,

demolition costs; minus (iii) 50% of the ADOT-approved increase in severance damages (including cost-to-cure damages), if any, caused by the proposed ROW avoidance, and

(b) For other avoided property; (i) 70% of the ADOT-approved savings in acquisition costs; plus (ii) 50% of the ADOT-approved avoided severance damages (including cost-to-cure damages) and relocations costs; minus (iii) 50% of Developer's savings in demolition costs; minus (iv) 50% of the ADOT-approved increase in severance damages (including cost-to-cure damages), if any.

5.7.7 The payment will be due from ADOT to Developer not later than 30 days after Final Acceptance.

5.7.8 If and when ADOT approves such a Submittal, the Parties shall suspend or, as appropriate, modify their ROW acquisition activities for the portion of the parcel or partial parcel to which the Submittal relates. Thereafter, and notwithstanding any contrary provisions of the Contract Documents, ADOT will have no obligation to Developer to acquire such property or any Temporary Construction Easement thereon (unless it becomes ADOT Additional Property), and Developer at its sole cost and risk shall be responsible for obtaining third party approvals (including Governmental Approvals) and completing the Final Design such that the avoided parcels or partial parcels need not be acquired.

5.7.9 If a parcel or partial parcel is avoided but ADOT must subsequently acquire it as ADOT Additional Property as a result of an ADOT-Directed Change or Necessary Schematic ROW Change, then ADOT will be entitled to reduce the payment under Section 5.7.7 by the portion thereof attributable to such parcel or partial parcel.

5.8 Water Wells and Postal Service Parcel

5.8.1 General – Water Wells

Water wells held for public use are deemed Utilities under the Contract Documents and are subject to the provisions therefor. Water wells held for private use are deemed real property subject to the Uniform Act and real property acquisition provisions of the Contract Documents, and, except as provided in Section 5.8.2, ADOT has the power to condemn such water wells that may need closure or abandonment in order to build the Project.

5.8.2 GRIC Well Properties

5.8.2.1 This Section 5.8.2 provides special terms that supersede any contrary provisions in this Article 5 or in Section DR 470 of the Technical Provisions.

5.8.2.2 Developer recognizes and acknowledges ADOT has no power to condemn property rights and interests owned by or on behalf of the GRIC for or in connection with water wells, including fee title and air rights respecting land

parcels on which such wells are located, and easements for pipes and ditches serving such water wells or for access (collectively the "GRIC well properties"). Accordingly, but subject to Section 5.8.2.3, Developer's design shall avoid and preserve the GRIC well properties, GRIC's legal access to GRIC well properties, and the water wells, pipes and ditches located therein.

5.8.2.3 Notwithstanding Section 5.8.2.2, Developer's design may incorporate GRIC well properties only if Developer acquires such property interests and the water wells, pipes and ditches located therein directly from the GRIC, and provided that:

(a) Any price Developer negotiates to acquire the GRIC well properties and water wells, pipes and ditches shall be subject to ADOT's approval that the price represents market value; and

(b) Developer shall bear all risk that the GRIC or Bureau of Indian Affairs will refuse or delay selling the GRIC well properties, water wells, pipes and ditches. If such refusal or delay occurs, Developer shall be obligated to re-design the affected portion or portions of the Project in order to avoid and preserve the GRIC well properties, GRIC's legal access to the GRIC well properties, and the water wells, pipes and ditches located therein. Developer shall not be entitled to any Supplemental Agreement for additional compensation or Completion Deadline adjustment as a result of such refusal, delay or need to re-design.

5.8.2.4 Section 5.7 shall not apply to GRIC well properties.

5.8.3 Postal Service Parcel

5.8.3.1 This Section 5.8.3 provides special terms that supersede any contrary provisions in this Article 5 or in Section DR 470 of the Technical Provisions.

5.8.3.2 Developer recognizes and acknowledges ADOT has no power to condemn the parcel within the Schematic ROW owned by or on behalf of the United Stated Postal Service, ADOT Parcel # 7-11718, APN # 300-96-657, at 16825 S. Desert Foothills Pkwy, Phoenix (the "Postal Service Parcel"). Accordingly, but subject to Section 5.8.3.3, Developer's design shall avoid and preserve the Postal Service Parcel and access thereto.

5.8.3.3 Notwithstanding Section 5.8.3.2, Developer's design may incorporate the Postal Service Parcel only if Developer acquires it directly from the United State Postal Service, and provided that:

(a) Any price Developer negotiates to acquire the Postal Service Parcel and relocate the United States Postal Service shall be subject to ADOT's approval that the purchase price represents market value and the relocation costs are reasonable; and

(b) Developer shall bear all risk that the United State Postal Service will refuse or delay selling the Postal Service Parcel. If such refusal or delay occurs, Developer shall be obligated to re-design the affected portion or portions of the Project in order to avoid and preserve the Postal Service Parcel and access thereto. Developer shall not be entitled to any Supplemental Agreement for additional compensation or Completion Deadline adjustment as a result of such refusal, delay or need to re-design.

5.8.3.4 Section 5.7 shall not apply to the Postal Service Parcel.

5.9 Access to Project ROW; Delays

5.9.1 Physical Possession of Project ROW; Transfer of Title to Improvements

5.9.1.1 ADOT will notify Developer of the availability of Project ROW within five Business Days after ADOT obtains possession of such Project ROW. For clarity, ADOT obtains possession of a ROW parcel only after ADOT pays the immediate possession bond and satisfies the conditions, if any, required under the order for immediate possession; ADOT does not obtain possession when the court issues the corresponding order for immediate possession. Developer shall be responsible for being informed of and complying with any access restrictions that may be set forth in any documents granting possession of any Project ROW.

5.9.1.2 Upon obtaining knowledge of any anticipated delay in the dates for acquisition of any Project ROW, the Party obtaining knowledge shall promptly notify the other Party in writing. In such event, Developer shall immediately determine whether the delay impacts the Critical Path and, if so, to what extent it might be possible to avoid such delay through re-sequencing, reallocation or other alternative construction methods or otherwise (which, in the case of a Relief Event, shall be subject to Section 14.8.3). Developer shall promptly meet with ADOT to determine the best course of action and prepare a written report setting forth its recommendations, which recommendations shall be subject to ADOT's written approval.

5.9.1.3 Developer is entitled to retain any salvage value from its demolition of improvements.

5.9.2 Access to Project ROW

5.9.2.1 To the extent that Developer has not been provided with access to portions of the Project ROW on or prior to the date set forth on the Project Schedule, Developer shall work around such Project ROW with the goals of minimizing delay to the completion of the Project. Except for delays caused by the types of events described in clauses (d) and (e) of the definition of "ADOT-Caused Delay" Developer shall not be entitled to any increase in the Price or Completion Deadline adjustment for delays caused by the failure or inability of ADOT to provide Project ROW.

5.9.2.2 Where Developer makes a written request for access or temporary entry agreement for any Project ROW for which access has not yet been acquired, Developer may, with ADOT's prior written consent, which may be withheld or withdrawn at any time, in ADOT's good faith discretion, and subject to the provisions of Section 5.9.1 and Section DR 470.2.6 of the Technical Provisions, negotiate with property owners or occupants for early access or temporary use of land, provided that any such negotiations shall comply in all respects with applicable Law, including the Uniform Act. Developer's negotiations with property owners or occupants for temporary entry agreements shall occur only under such terms and conditions as are stipulated by ADOT, in its good faith discretion. ADOT will not be bound by the terms and conditions agreed upon by Developer and any property owner or occupant until such time as ADOT has expressly so indicated in writing (and, then, only to the extent expressly set forth therein). All temporary entry agreements must be approved by FHWA.

5.10 Utility Adjustments

5.10.1 ADOT's and Developer's Responsibility

5.10.1.1 ADOT shall be responsible for the ADOT Utility Adjustments, and Developer shall have no obligation to carry out such Utility Adjustment Work. Developer agrees to cooperate with ADOT, at its own cost, as reasonably requested by ADOT, in effecting the ADOT Utility Adjustments, including accommodating the schedule for the ADOT Utility Adjustments. Wherever in this Section 5.10 or elsewhere in the Contract Documents Developer obligations are set forth respecting Utility Adjustments, Utility Adjustment Work or Utility Agreements, they shall be deemed to exclude the ADOT Utility Adjustments, notwithstanding any language that could be construed to the contrary.

5.10.1.2 Developer shall coordinate and cause to be completed all Utility Adjustments necessary for the timely construction and maintenance of the Project, in accordance with the Contract Documents. Developer shall cause to be completed, in accordance with the Project Schedule, all Utility Adjustments necessary to accommodate construction, operation, maintenance and use of the Project, as located under the Final Design. All Utility Adjustment Work performed by Developer or a Utility Company shall comply with the Contract Documents. Developer shall coordinate, monitor and otherwise undertake the necessary efforts to cause Utility Companies performing Utility Adjustment Work to perform such work timely, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with the Utility Companies and except as otherwise provided in Article 14, Developer shall continue to be the responsible party to ADOT for timely performance of all Utility Adjustment Work so that upon completion of the Construction Work, all Utilities that might impact the Project are compatible with the Project.

5.10.2 Utility Memoranda of Understanding; Utility Agreements

5.10.2.1 Prior to the Effective Date, ADOT conducted coordination meetings with Utility Companies. Based on these coordination meetings, ADOT documented discussion items to serve as the basis for separate Utility Memoranda of Understanding between ADOT and the Utility Companies. The corresponding documented discussion items and Utility Memoranda of Understanding, if any, are included in the Reference Information Documents. Developer is hereby delegated, and hereby accepts and assumes, the responsibilities and obligations of ADOT set forth in documented discussion items and Utility Memoranda of Understanding, if any. Developer shall comply with, be bound by and timely perform all such responsibilities and obligations except to the extent specifically changed by a Utility Agreement between Developer and the applicable Utility Company.

5.10.2.2 For all Utility Adjustments, Developer is responsible for preparing, negotiating and entering into instruction-specific, construction-detailed Utility Agreements with all Utility Companies, regardless of whether the Utility Companies are identified in the Technical Provisions or Reference Information Documents. Developer shall use the information in the documented discussion items and terms in the Utility Memorandum of Understanding, described in Section 5.10.2.1, as a basis for negotiating a Utility Agreement with each Utility Company affected by the Project. The general procedures and framework for preparing the Utility Agreements and processing utility issues within the Project area shall follow the standard practices of the respective Utility Companies for such Utility Agreements. Developer shall prepare and provide all written or plan information concerning the Project necessary to negotiate Utility Agreements. Developer shall cause each Utility Agreement it negotiates and executes to name ADOT as an intended third party beneficiary of Developer's rights and interests thereunder.

5.10.2.3 Each Utility Agreement shall set forth all required terms and conditions for the subject Utility Adjustment Work, including:

(a) A clear description and specification of the scope of Utility Adjustment Work Developer is to perform, and the scope the Utility Company is to perform;

(b) The applicable Utility conflict map;

(c) A schedule for the Utility Adjustment Work, or procedures for preparing and implementing such schedule;

(d) The applicable Adjustment Standards and any terms and conditions regarding any Change in Adjustment Standards;

(e) If necessary, requirements and location for any Replacement Utility Property Interest;

(f) Provisions for payments, payment terms, controlling specifications, and work description;

(g) Any Utility permits that may then exist with respect to the construction and relocation of the subject Utility;

(h) Specific procedures for resolving scheduling, design, construction and payment issues arising due to errors or omissions in information the Utility Company provides to Developer;

(i) Terms and provisions regarding Betterments, if any;

(j) Requirements for the Utility Company to provide cost records as set forth in Section 5.10.4.7; and

(k) The terms described in Sections 5.10.2.4, 5.10.5.1 and 5.10.6.

5.10.2.4 ADOT agrees to cooperate, at its own cost, as reasonably requested by Developer in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. Developer shall keep ADOT informed of the status of any such negotiations and shall deliver to ADOT, within ten days after execution, a true and complete copy of each Utility Agreement entered into by Developer. Except as provided in Sections 5.10.2.5 or 5.10.2.6 ADOT will not be a party to such Utility Agreements, and Developer shall cause each Utility Agreement to expressly provide that ADOT will have no liability under the Utility Agreement unless and until ADOT receives a written assignment of the Developer's interests in the Utility Agreement and assumes in writing Developer's obligations thereunder; provided, however, that Developer shall cause the Utility Agreements to designate the Department as an intended third-party beneficiary thereof and to permit assignment of Developer's right, title and interest thereunder to ADOT without necessity for Utility Company consent. Developer shall not enter into any agreement with a Utility Company that purports to bind ADOT in any way, unless ADOT has executed such agreement as a party thereto (ADOT's signature indicating approval or review of an agreement between Developer and a Utility Company, or its status as a third-party beneficiary, shall not satisfy this requirement).

5.10.2.5 If a Utility Company has proper Prior Rights Documentation in connection with a Utility Adjustment, then ADOT, together with Developer and the Utility Company, will be a party to the corresponding Utility Agreement. In such a case, ADOT will be a signatory to the Utility Agreement for the sole purpose of indicating its consent thereto and agreeing to the terms and conditions in the Utility Agreement respecting the Utility Company's prior rights. If a Utility Company does not have proper Prior Rights Documentation in connection with a Utility Adjustment, then ADOT will choose whether to be a party to the corresponding Utility Agreement, provided that it will be a party, together with Developer and the Utility Company, if the Utility Company refuses to execute a Utility Agreement only with Developer. In such case, ADOT will be

a signatory to the Utility Agreement for the sole purpose of indicating its consent thereto and agreeing to the terms and conditions in the Utility Agreement respecting any encroachment permit the Utility Company will need from ADOT.

5.10.2.6 If Developer has prepared and negotiated an instruction-specific, construction-detailed Utility Agreement with a Utility Company and such Utility Company refuses to enter into the Utility Agreement with Developer but is willing to enter into the Utility Agreement with ADOT, ADOT will enter into the Utility Agreement directly with the Utility Company and delegate its obligations to Developer, in which case Developer shall accept such delegation and assume such obligations.

5.10.2.7 Developer shall be solely responsible for the terms and conditions of all Utility Agreements into which it enters or for which it assumes obligations. Developer shall comply with and timely perform all obligations imposed on Developer by any Utility Agreement to which it is a party or which it assumes.

5.10.2.8 Developer shall ensure that the Utility Adjustment Work is completed in accordance with the Contract Documents, regardless of the nature or provisions of the Utility Agreements and regardless of whether Developer or its Subcontractors, or the Utility Company or its contractors, performs the Utility Adjustment Work.

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

5.10.3 Requirements

Each Utility Adjustment (whether performed by Developer or by the Utility Company) shall comply with the Adjustment Standards, including applicable Changes in Adjustment Standards. If any Utility Memorandum of Understanding does not provide any terms or conditions to limit a Utility Company's Changes in Adjustment Standards, then Developer shall be solely responsible for negotiating any such terms and conditions in the corresponding Utility Agreement. In addition, all Utility Adjustment Work shall comply with all applicable Laws, the applicable Utility Agreement(s), and all other requirements specified in Sections DR 430.2, DR 430.3 and CR 430.3 of the Technical Provisions.

5.10.4 Utility Adjustment Risk

5.10.4.1 Except with respect to Developer's rights to claim a Relief Event for Utility Company Delays pursuant to Section 14.4.4, for Inaccurate Utility Information pursuant to Section 14.4.5, or for ADOT-Caused Delay respecting ADOT Utility Adjustments, Developer shall not be entitled to submit a Claim for Extra Work

Costs, Delay Costs, Completion Deadline adjustment or other relief related to the Utility Adjustment Work, inaccuracy of the Utility Information or Utilities located within or outside the Project ROW or otherwise impacted by, or having an impact on, the Project or the Work.

5.10.4.2 Developer shall: (a) perform at its own cost (subject to payments out of the D&C Price) the Utility Adjustment Work itself, if permitted by the Utility Company (except that any assistance provided by any Developer-Related Entity to the Utility Company in acquiring Replacement Utility Property Interests shall be provided outside of the Work); or (b) reimburse (out of the D&C Price or otherwise) the Utility Company for its Utility Adjustment Work within the time and in the manner required by the applicable Utility Agreement. However, Developer has no obligation to reimburse a Utility Company for Utility Adjustment costs for any Service Line Adjustment for which the affected property owner has been compensated in connection with Project ROW acquisition. Developer is solely responsible for collecting directly from the Utility Company any reimbursement due to Developer for Betterment costs or other costs incurred by Developer for which the Utility Company is responsible under applicable Law.

5.10.4.3 For each Utility Adjustment, the eligibility of Utility Company costs (both indirect and direct) for reimbursement by Developer, as well as the determination of any Betterment or other costs due to Developer, shall be established in accordance with applicable Law and the applicable Utility Agreement(s).

5.10.4.4 For each Utility Adjustment, Developer shall compensate the Utility Company for each Existing Utility Property Interest relinquished, to the extent ADOT would be required to do so by applicable Law or to the extent required by the applicable Utility Agreement and provided that ADOT has approved the Utility Company's claim. Developer is advised that in some cases reimbursement of the Utility Company's acquisition costs for a Replacement Utility Property Interest will satisfy this requirement.

5.10.4.5 ADOT may declare a Developer Default under clause (h) of Section 19.1.1 if Developer breaches any covenant in this Section 5.10.4 respecting reimbursement of Utility Company costs.

5.10.4.6 If for any reason Developer is unable to collect any amounts due to Developer from any Utility Company, then: (a) ADOT will have no liability for such amounts; (b) Developer shall have no right to collect such amounts from ADOT or to offset such amounts against amounts otherwise owing from Developer to ADOT; and (c) Developer shall have no right to stop Work or to exercise any other remedies against ADOT on account of such failure to pay.

5.10.4.7 If any local Governmental Entity is participating in any portion of Utility Adjustment costs, Developer shall coordinate with ADOT and such local Governmental Entity regarding accounting for and approval of those costs.

5.10.4.8 Developer shall maintain a complete set of records for the costs of each Utility Adjustment (whether incurred by Developer or by the Utility Company), in a format compatible with the estimate attached to the applicable Utility Agreement and in sufficient detail for analysis. Developer shall obtain from the Utility Company a complete set of records of the Utility Company's costs incurred for such Utility Adjustment Work. For both Utility Company costs and Developer costs, the totals for each cost category shall be shown in such manner as to permit comparison with the categories stated on the estimate. Developer also shall indicate in these records the source of funds used for each Utility Adjustment. All records with respect to Utility Adjustment Work shall comply with the record keeping and audit requirements of the Contract Documents and applicable Law, including 23 CFR Part 645, Subpart A.

5.10.5 FHWA Utility Requirements

5.10.5.1 Unless ADOT advises Developer otherwise:

(a) The Project will be subject to 23 CFR Part 645 Subpart A (including its requirements as to plans, specifications, estimates, charges, tracking of costs, credits, billings, records retention, and audit) and FHWA's associated policies;

(b) Utility Agreements for Utilities shall incorporate by reference 23 CFR Part 645 Subparts A and B and assign the obligations arising thereunder;

(c) Developer shall comply (and shall require the Utility Companies to comply) with 23 CFR Part 645 Subparts A and B as necessary for any Utility Adjustment costs to be eligible for reimbursement from any federal financing or funding;

(d) Each Utility Agreement shall include the requirement for the Utility Company to meet the Buy America requirements (as specified in 23 USC 313, 23 CFR § 635.410 and Attachment 7 to Exhibit 4 (Federal Requirements), except to the extent such requirements establish an exemption for the particular Utility Adjustment. Each such Utility Agreement shall require a definitive statement to be provided by Developer, the Utility Company or contractor performing any relocation work, about the origin of all products permanently incorporated into the Project, covered under the Buy America requirements.

5.10.5.2 Developer acknowledges, however, that:

(a) It is not anticipated that Developer will be eligible for FHWA reimbursement of any Utility Adjustment outlays; and

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

5.10.6 Utility Enhancements

5.10.6.1 Developer shall address any requests by Utility Companies that Developer design or construct Betterments or Utility Company Projects (collectively, "Utility Enhancements"). Any Betterment performed as part of a Utility Adjustment, whether by Developer or by the Utility Company, shall be subject to the same standards and requirements as if it were a necessary Utility Adjustment, and shall be addressed in the appropriate Utility Agreement. Developer shall perform any work on a Utility Company Project only by separate contract outside of the Work, and such work shall be subject to Section 5.10.9. Under no circumstances shall Developer proceed with any Utility Enhancement that is incompatible with the Project in its final configuration or is not in compliance with applicable Law, the Governmental Approvals or the Contract Documents, including the Completion Deadlines. Under no circumstances will Developer be entitled to any additional compensation or Completion Deadline adjustment hereunder as the result of any Utility Enhancement, whether performed by Developer or by the Utility Company. Developer may, but is not obligated to, design and construct Utility Enhancements. Developer shall be responsible for and liable to ADOT for any deficiencies relating to any Utility Enhancements.

5.10.7 Failure of Utility Companies to Cooperate

5.10.7.1 Developer shall use diligent efforts to obtain the cooperation of each Utility Company as necessary for Utility Adjustments. Developer shall notify ADOT immediately if:

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

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

(c) Developer becomes aware that any Utility Company is not cooperating in a timely manner to provide agreed-upon or necessary work or approvals; or

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

This notice may include a request that ADOT assist in resolving the dispute or in otherwise obtaining the Utility Company's timely cooperation. Developer shall provide ADOT with such information as ADOT requests regarding the Utility Company's failure to cooperate and the effect of any resulting delay on the Project Schedule. After

delivering to ADOT any notice or request for assistance, Developer shall continue to use diligent efforts to pursue the Utility Company's cooperation.

5.10.7.2 If Developer requests ADOT's assistance pursuant to Section 5.10.7.1, then, subject to Section 5.10.7.3, the following provisions shall apply:

(a) Developer shall provide evidence reasonably satisfactory to ADOT that: (i) the subject Utility Adjustment is necessary; (ii) the time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work; (iii) Developer has made diligent efforts to obtain the Utility Company's cooperation; and (iv) the Utility Company is not cooperating (the foregoing clauses (a)(i) through (iv) are referred to herein as the "conditions to assistance").

(b) Following ADOT's receipt of satisfactory evidence, ADOT will take such reasonable steps as Developer may request to assist Developer in obtaining the cooperation of the Utility Company or resolving the dispute; provided, however, that ADOT will have no obligation to prosecute eminent domain or other legal proceedings, or to exercise any other remedy available to it under applicable Law or existing contract, unless ADOT elects to do so in its sole discretion.

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

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

5.10.7.3 If ADOT objects in writing to a request for assistance made pursuant to Section 5.10.7.1 based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 5.10.7.2(a)(i) and (ii), then Developer shall take such action as is appropriate to satisfy the condition(s) and shall then have the right to submit another request for assistance on the same subject matter. If ADOT objects in writing to a request for assistance made pursuant to Section 5.10.7.1 based on Developer's failure to satisfy one or both of the conditions to assistance described in Sections 5.10.7.2(a)(iii) and (iv), then Developer shall take such action as Developer deems advisable during the next ten days to obtain the Utility Company's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Notwithstanding the foregoing, no resubmittal will be accepted unless all ADOT's objections have been addressed in accordance with the preceding two sentences. This process shall be followed until Developer succeeds in obtaining the Utility Company's cooperation or in otherwise resolving the dispute or until ADOT

determines, based on evidence Developer presents, that the conditions to assistance have been satisfied. Developer shall have the right to submit the question of the reasonableness of ADOT's determination for resolution according to the Dispute Resolution Procedures.

5.10.7.4 In certain cases where a Utility Company is not cooperating with Developer or ADOT, ADOT may, in its sole discretion and where applicable Law authorizes ADOT to take unilateral action, issue a Directive Letter directing Developer to proceed with a Utility Adjustment without a Utility Agreement or other written consent by the Utility Company. If ADOT directs Developer to perform work pursuant to this Section 5.10.7.4, then Developer, without cost to ADOT, shall proceed with such work as if Developer has entered into a Utility Agreement providing for Developer to perform such work, and shall perform such work in accordance with applicable Adjustment Standards and the requirements of the Contract Documents otherwise applicable to Developer's performance of Utility Adjustment Work.

5.10.8 Security for Utility Adjustment Costs; Insurance

5.10.8.1 Developer shall satisfy all requirements in the Utility Memoranda of Understanding and Utility Agreements to provide security for reimbursement of Utility Adjustment costs to which the Utility Company is entitled, in form, type and amount and on terms provided by the Utility Memoranda of Understanding and Utility Agreements.

5.10.8.2 Developer shall satisfy all requirements in Utility Memoranda of Understanding and Utility Agreements to provide liability insurance for the protection of the Utility Company.

5.10.9 Applications for Utility Permits

5.10.9.1 It is anticipated that, during the D&C Period, Utility Companies will apply to ADOT for utility permits and other agreements and approvals to install new Utilities that would cross or longitudinally occupy the Project ROW, or to modify, upgrade, relocate or expand existing Utilities within the Project ROW for reasons other than to accommodate the Project. The provisions of Sections 5.10.9.2 through 5.10.9.5 shall apply to all such Utility Company applications. No work or services required of Developer, and no accommodation of new Utilities or of modifications, upgrades, relocations or expansions of existing Utilities, pursuant hereto, shall entitle Developer to additional compensation, Completion Deadline adjustment or other Claim or relief.

5.10.9.2 For all Utility Company applications described in Section 5.10.9.1 and pending as of or submitted after the Effective Date, Developer shall: (a) furnish to the applicants the most recent pertinent Project design information or Record Drawings, as applicable; (b) assist the applicants with information regarding the location of other proposed and existing Utilities; and (c) use commercially reasonable efforts to coordinate work schedules with the applicants so that the applicants' activities do not

interfere with the Project Schedule. Developer shall keep records of its costs related to new Utilities separate from other costs.

5.10.9.3 Developer shall assist ADOT in deciding whether to approve a permit or other agreement or approval applied for by a Utility Company. Within ten Business Days after receiving an application for a utility permit or other agreement or approval, Developer shall analyze the application and provide to ADOT a recommendation (together with supporting analysis) as to whether it should be approved, denied, or approved subject to conditions. Developer shall limit the grounds for its recommendation of denial or conditions to approval to the grounds (as ADOT communicates to Developer from time to time) on which ADOT is legally entitled to deny or condition approval of the application.

5.10.9.4 To the extent permitted by Law, ADOT will impose conditions in any approved permit or other agreement or approval: (a) prohibiting the Utility Company from interfering with Developer's schedule for D&C Work or Developer's performance of the D&C Work; (b) requiring the Utility Company to compensate Developer for the adverse impact to Developer of any prohibited interference; (c) requiring the Utility Company and its contractors to cooperate and coordinate with Developer and its Subcontractors; and (d) requiring the Utility Company to adhere to Developer's on-site safety standards and procedures whenever the Utility Company or its subcontractors are in any active work zone of Developer or its Subcontractors.

5.10.9.5 If Developer and ADOT disagree on the response to a utility application, such disagreement shall be resolved according to the Dispute Resolution Procedures; provided, however, that if Developer recommends against issuance of the permit or other agreement or approval and ADOT determines issuance is appropriate or required, then:

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

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

(c) If ADOT elects to delay issuance of a utility permit or other agreement or approval pending final resolution of the Dispute, Developer's indemnity under Section 21.1.1(j) shall be deemed to apply with respect to any applicant claim of wrongful delay or denial.

5.10.10 Assignment of Rights against Utility Companies

In the event of bona fide claims on behalf of Developer for wrongful actions or inactions of a Utility Company within the Project ROW, ADOT agrees that, upon receipt

of a written request from Developer, ADOT will reasonably consider assigning to Developer ADOT's rights of recovery, as such may exist, under any existing agreement between ADOT and a Utility Company, including any utility permits, utility relocation agreements, or other agreements.

5.10.11 Utility Services

5.10.11.1 Developer shall provide all Utility service facilities (both on-Site and off-Site) required to carry out the D&C Work and Capital Asset Replacement Work. The Utility service facilities include those needed for power, gas, communications, water, sewage and drainage. Except for incremental additional costs directly attributable to a Relief Event, Developer is responsible for all costs of such Utility service facilities, including costs of design and construction (both on-Site and off-Site), Governmental Approvals, connection fees, testing, inspection, and certification, and Utility service/usage fees and charges required to perform the D&C Work and Capital Asset Replacement Work.

5.10.11.2 Developer shall pay for:

(a) The costs of electricity and water consumed at the maintenance yard(s) described in Section MR 400.2.2.2 of the Technical Provisions;

(b) The costs of Utility service facilities and Utility service/usage fees and charges at any of Developer's Temporary Work Areas or Developer's Project offices;

(c) Fuel costs for pump stations other than the existing pump station on the Intestate 10; and

(d) Irrigation water for Character Area 2 during the plant establishment period.

5.10.11.3 Developer shall not be required to pay for Utility consumption required to perform Routine Maintenance, except as provided in Section 5.10.11.2. For clarity, Developer shall not be required to pay (a) electricity costs for the normal operation of roadway lighting, ITS, irrigation and traffic signals, or (b) the cost of water for irrigation except as provided in Section 5.10.11.2(d).

5.11 Railroad

5.11.1 General Requirements; Scope of Work

5.11.1.1 UPRR is the permitting authority for all Work performed within UPRR's ROW. Accordingly, Developer shall perform all Work required on structures over and under, adjacent to, and within UPRR's ROW in accordance with UPRR's design and construction standards, manuals and guidelines, which are listed in Sections DR 436.2.1 and CR 436.2.1 of the Technical Provisions, and the UPRR

Construction and Maintenance Agreement(s) to be executed by and between ADOT and UPRR.

5.11.1.2 Developer's scope of railroad-related Work is described in Sections DR 436.2.2 and CR 436.2.2 of the Technical Provisions.

5.11.2 Railroad Agreements

5.11.2.1 Developer shall be responsible for negotiating, at its own expense, the UPRR Construction and Maintenance Agreements and any other agreements required by UPRR for Developer to perform Work on structures over and under, adjacent to, and within UPRR's ROW. For guidance, a standard form UPRR Construction and Maintenance Agreement is provided in the Reference Information Documents.

5.11.2.2 Developer shall keep ADOT currently informed of the status of negotiations with UPRR, of outstanding issues, of schedules and the like, and shall provide ADOT true and complete copies of draft documents, as and when issued or received.

5.11.2.3 ADOT agrees to cooperate, at its own expense, as Developer reasonably requests, in finalizing UPRR Construction and Maintenance Agreements, and any amendments thereto, including attendance at negotiation sessions and review of draft agreements and any corresponding Railroad Submittal Packages.

5.11.2.4 The UPRR Construction and Maintenance Agreements, and amendments thereto, will be subject to ADOT's review and approval.

5.11.2.5 ADOT and UPRR will be signatories to the UPRR Construction and Maintenance Agreements, and ADOT shall have the right to delegate any or all of its obligations under such agreements to Developer, in which case Developer shall accept such delegation and assume such obligations.

5.11.2.6 ADOT shall have and retain the exclusive right to all contributions from UPRR toward the cost of eliminating the at-grade crossing.

5.12 Integration with Related Transportation Facilities

5.12.1 Developer shall locate, configure, design and maintain the termini, interchanges, ramps, intersections, crossings, entrances and exits of the Project so that the Project will be compatible and integrated with the location, configuration, design, operation and maintenance of, and provide a smooth, safe and orderly transition of traffic to and from, Related Transportation Facilities. The design for the Project shall include and provide for such compatibility, integration and transition. The design, construction and maintenance of the Project shall comply with all provisions of the Contract Documents and Project Management Plan relating to compatibility, integration

and transition with or at Related Transportation Facilities, including those concerning signage, signaling and communications with users.

5.12.2 Without limiting the foregoing, Developer shall cooperate and coordinate with ADOT and any third party that owns, manages, operates or maintains Related Transportation Facilities with regard to the construction, maintenance and repair programs and schedules for the Project and the Related Transportation Facilities, in order to minimize disruption to the operation of the Project and the Related Transportation Facilities.

5.12.3 To assist Developer, ADOT will provide to Developer during normal working hours, reasonable access to plans, surveys, drawings, record drawings, specifications, reports and other documents and information in the possession of ADOT or its contractors and consultants pertaining to Related Transportation Facilities. Developer, at its expense, shall have the right to make copies of the same. Developer shall conduct such other inspections, investigations, document searches, surveys and other work as may be necessary to identify the Related Transportation Facilities and achieve such compatibility, integration and transition.

5.12.4 At Developer's request from time to time, ADOT will provide reasonable assistance to Developer in obtaining cooperation and coordination from third parties that own, manage, operate or maintain Related Transportation Facilities and in enforcing rights, remedies and warranties that Developer may have against any such third parties. Such assistance may include ADOT's participation in meetings and discussions. In no event shall ADOT be required to bring any legal action or proceeding against any such third party. At Developer's request, ADOT and Developer shall work jointly to establish a scope of work and budget for ADOT's Recoverable Costs in connection with providing such cooperation to Developer. Subject to any agreed scope of work and budget, Developer shall reimburse ADOT for all costs, including ADOT's Recoverable Costs, it incurs in connection with rendering such assistance within ten days after written request therefor.

5.12.5 ADOT and other Governmental Entities shall have at all times, without obligation or liability to Developer, the right to conduct traffic management activities on their respective Related Transportation Facilities and all other facilities of the State, regional or local transportation network in the area of the Project in accordance with their respective standard traffic management practices and procedures in effect from time to time.

ARTICLE 6.
DESIGN AND CONSTRUCTION

6.1 General Obligations of Developer

Developer, in addition to performing all other requirements of the Contract Documents, shall:

(a) Furnish all design and other services, provide all materials, equipment and labor and undertake all efforts necessary or appropriate (excluding only those materials, services and efforts that the Contract Documents expressly specify will be undertaken by ADOT or other Persons) to design and construct the Project, and maintain the Project during construction, in accordance with the requirements of the Contract Documents so as to achieve Substantial Completion and Final Acceptance by the applicable Completion Deadlines.

(b) At all times during the D&C Period provide an ADOT-approved Project Manager who: (a) will have full responsibility for the prosecution of the Work; (b) will act as agent and be a single point of contact in all matters on behalf of Developer; (c) will be present (or its approved designee will be present) at the Site at all times that D&C Work is performed, and (d) will be available to respond to ADOT or ADOT's Authorized Representatives.

(c) Comply with, and require that all Subcontractors comply with, all requirements of all Laws applicable to the D&C Work, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended.

(d) Cooperate with ADOT, the General Engineering Consultant, and Governmental Entities with jurisdiction in all matters relating to the Work, including their review, inspection and oversight of the design and construction of the Project and the design and construction of the Utility Adjustments.

(e) Use commercially reasonable efforts to mitigate delay to design and construction of the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating, or redeploying Developer's and its Subcontractors' forces to other work, as appropriate.

(f) Obtain and pay the cost of obtaining all Governmental Approvals that are required in connection with the Project and not previously obtained by ADOT.

6.2 Performance, Design and Construction Standards; Deviations

6.2.1 Developer shall furnish all aspects of the Design Work and all Design Documents, including design required in connection with the maintenance of the Project and Capital Asset Replacement Work, and shall construct the Project and Utility

Adjustments included in the Construction Work as designed, free from Defects, and in accordance with: (a) Good Industry Practice; (b) the requirements, terms and conditions set forth in the Contract Documents; (c) the Project Schedule; (d) all Laws; (e) the requirements, terms and conditions set forth in all Governmental Approvals; (f) the ADOT-approved Project Management Plan and all component plans prepared or to be prepared thereunder; (g) the Safety Management Plan; and (h) all other applicable safety, environmental and other requirements, taking into account the Project ROW limits and other constraints affecting the Project.

6.2.2 Developer also shall construct the Project and Utility Adjustments in accordance with (a) the RFC Documents, and (b) the Construction Documents, in each case taking into account the Project ROW limits and other constraints affecting the Project.

6.2.3 The Project design and construction shall be subject to certification pursuant to the procedure contained in the ADOT-approved Quality Management Plan.

6.2.4 Developer may apply for ADOT approval of Deviations from applicable Technical Provisions regarding the design or construction of the Project. The Deviation approval process shall be as follows:

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

(b) ADOT will consider, in its sole discretion, but have no obligation to approve, any such application. Developer shall bear the burden of persuading ADOT that the Deviation sought constitutes sound and safe engineering consistent with Good Industry Practice and achieves ADOT's applicable safety standards and criteria.

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

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

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

6.2.5 Except as set forth in Section 1.5 or 6.2.4, any changes to the Technical Provisions that materially affect the Design Work or Construction Work prior

to the Substantial Completion Date shall be subject to the Supplemental Agreement process in accordance with Article 15.

6.3 Changes in Basic Configuration

6.3.1 Developer shall not make any change in the Basic Configuration of the Project, except as approved by ADOT in its sole discretion and authorized by a Supplemental Agreement in accordance with Article 15. A Supplemental Agreement is required regardless of the reason underlying the change and regardless of whether the change increases, decreases or has no effect on Developer's costs.

6.3.2 No Supplemental Agreement shall be required for any non-material changes in the Basic Configuration that ADOT approves in writing as part of the design review process, unless Developer claims that it is entitled to Extra Work Costs in connection with a proposed change in accordance with Section 14.4.1, or unless the proposed change constitutes a Change Request under Section 15.2.5. Developer acknowledges and agrees that constraints set forth in the NEPA Approval, Technical Provisions and other Contract Documents, as well as site conditions and the Schematic Design, will impact Developer's ability to make non-material changes in the Basic Configuration.

6.3.3 If a Change Request results in a material change in the Basic Configuration, any cost savings that result from such Change Request shall be shared in accordance with Section 15.2.5.

6.4 Design Requirements; Responsibility for Design

6.4.1 Design Implementation and Submittals

6.4.1.1 Developer, through the appropriately qualified and licensed design professionals identified in Exhibit 2 and Developer's Project Management Plan, shall prepare designs, plans and specifications in accordance with the Contract Documents. Developer shall cause the engineers of record, as applicable, for the Project to sign and seal all RFC Documents.

6.4.1.2 Developer shall deliver to ADOT accurate and complete duplicates of all interim, revised and final Design Documents (including the RFC Documents), Plans and Construction Documents within seven days after Developer completes preparation thereof. Developer shall construct the Project in accordance with the RFC Documents and the Construction Documents. The RFC Documents may be changed only with prior approval of ADOT. Developer may modify the Construction Documents without prior approval of ADOT, but must deliver the modifications to ADOT in advance of performance of the applicable D&C Work.

6.4.2 Developer Responsibility for Design

Developer agrees that it has full responsibility for the design of the Project and that Developer will furnish the design of the Project, regardless of the fact that aspects

of the Schematic Design have been provided to Developer as a preliminary basis for Developer's design. Developer specifically acknowledges and agrees that:

(a) Developer is not entitled to rely on: (i) the Schematic Design except as specified otherwise in Section 6.4.3; (ii) the other Reference Information Documents; or (iii) any other documents or information provided by ADOT, except to the extent specifically permitted in the Contract Documents;

(b) Developer is responsible for correcting any Errors in the Schematic Design through the design or construction process;

(c) Developer shall not be entitled to any increase in the Price or extension of a Completion Deadline for Errors in the Schematic Design, except only for the right to a Supplemental Agreement with respect to Necessary Schematic ROW Changes as set forth in Section 14.4.1, and subject to the requirements and limitations of Section 14;

(d) Developer's warranties and indemnities hereunder cover Errors in the Project even though they may arise from or be related to Errors in the Schematic Design; and

(e) Developer is responsible for verifying all calculations and quantity takeoffs contained in the RFP Documents or otherwise provided by ADOT.

6.4.3 Changes to Schematic Design and Schematic ROW

6.4.3.1 Developer acknowledges and agrees that the requirements and constraints set forth in the Contract Documents and in the Governmental Approvals, as well as Site conditions, will impact Developer's ability to revise the concepts contained in the Schematic Design. Developer, however, may modify the Schematic Design without ADOT's prior written approval if the proposed modification:

(a) Meets the requirements of the Technical Provisions;

(b) Requires no revision, modification or amendment to the NEPA Approval, as determined in accordance with Section DR 420.2.6.1 of the Technical Provisions;

(c) Does not constitute a Design Exception or Design Variance; and

(d) Does not deviate from the design concepts included in the Proposal.

6.4.3.2 Developer may rely on the Schematic ROW limits, as shown on the Schematic Design, and that it is feasible to design and develop the Project within said Schematic ROW limits. Accordingly, Developer shall have the right to certain relief due to Necessary Schematic ROW Changes, to the extent provided in Section 14.4.1;

provided, however that Developer acknowledges that "feasible to design and develop the Project" is not intended to mean or be limited to Developer's design approach set forth in its Proposal or Developer's preferred design approach.

6.4.3.3 Developer acknowledges that the Schematic Design is preliminary and subject to refinement through the Final Design process, and that Developer is not entitled to additional compensation or Completion Deadline adjustment in connection with changes in the Schematic Design, except as provided for Necessary Schematic ROW Changes to the extent allowed under Section 14.4.1.

6.5 Cooperation with Other Contractors

6.5.1 Developer Duty of Cooperation

6.5.1.1 Developer acknowledges that ADOT and other Persons have awarded or plan to award contracts for construction and other work at or near the Site, and that other projects at or near the Site may be in various stages of design and construction. For a list of such future contracts and projects, see Table 110-1 in Section GP 110.01.3.2.1 of the Technical Provisions.

6.5.1.2 Developer shall, and shall cause the Developer-Related Entities to, cooperate and coordinate the Work with other contractors, whether the contractors work for ADOT or other Persons, whose projects or work may affect the Project or the Work. Developer shall schedule and sequence the Work as reasonably necessary to accommodate the projects and work of such contractors. Further, Developer shall conduct its Work and perform its obligations under the Contract Documents without interfering with or hindering the progress or completion of the projects or work being performed by other contractors.

6.5.1.3 ADOT agrees to include in its contracts with other contractors provisions similar to this Section 6.5.1, imposing a similar duty of cooperation among contractors.

6.5.2 Lane Closures and Interference by Other Contractors

6.5.2.1 After Developer completes training as provided in Section DR 462.3.3 of the Technical Provisions, ADOT will make its Highway Condition Reporting System available to Developer electronically, with read only access, so that Developer can track Lane Closure reservations by ADOT's other contractors. Developer understands and acknowledges that the reservation of Lane Closures via the Highway Condition Reporting System is on a first-come, first-served basis, that ADOT will protect the priority of Lane Closure reservations based on the time reservations are entered into the Highway Condition Reporting System, absent Emergency or other unusual circumstance, and that Lane Closures by other contractors elsewhere on the Phoenix region highway system may constrain availability of Lane Closures by Developer on the Project or on Interstate 10. Accordingly:

(a) ADOT will protect from interference by ADOT's other contractors, and prioritize over conflicting Lane Closures requested by such other contractors, planned Lane Closures that Developer timely reserves on the Highway Condition Reporting System; and

(b) Developer shall have no right to approval of Lane Closures that cannot be accommodated because of conflict with prior Lane Closure reservations by other contractors on the Highway Condition Reporting System.

6.5.2.2 So long as Developer adheres to its Project Schedule as disclosed to ADOT, ADOT will manage ADOT's other contractors to avoid their working simultaneously in Developer's work zones.

6.5.3 Coordination with Utility Companies and Adjacent Property Owners

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

6.6 Substantial Completion; Punch List; Final Acceptance

6.6.1 Substantial Completion

6.6.1.1 Developer shall not open the entire Project to full traffic operation until ADOT issues to Developer a written Certificate of Substantial Completion. ADOT will issue a written Certificate of Substantial Completion on the date that all the following conditions precedent to Substantial Completion have been met:

(a) All major safety features are installed and functional, such major safety features to include shoulders, guard rails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(b) All required illumination is installed and functional;

(c) All required signs and signals are installed and functional;

(d) The need for temporary traffic controls or for Lane Closures at any time has ceased (except for any then-required for Maintenance Services, so long as Developer has complied with the notice requirements set forth in Section 6.6.1.2) and such need for controls or Closures is not due to any act or failure to act by any Developer-Related Entity, and except for temporary Lane Closures during hours of low traffic volume in accordance with and as permitted by the Traffic Management Plan solely in order to complete Punch List items);

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

(f) Each Element meets the target for the applicable measurement record as set forth in the columns headed "Target" and "Measurement Record" in TP Attachment 500-1 of the Technical Provisions;

(g) All required ITS systems are installed and functional, and all required ITS testing has been successfully completed in accordance with Section CR 466 of the Technical Provisions;

(h) Developer has otherwise completed the D&C Work in accordance with the Contract Documents and Design Documents, such that the Project is in a condition that it can be used for safe vehicular travel in all lanes at the normal, posted speed and at all points of entry and exit, subject only to Punch List items and other items of work that do not affect the ability to safely open for such normal use by the traveling public;

(i) Developer has satisfied all Maintenance Services Conditions Precedent as provided in Section 6.6.3; and

(j) All aesthetic and landscaping features for the Project have been completed in accordance with Sections DR 450 and CR 450 of the Technical Provisions, and the plans and designs prepared in accordance therewith.

6.6.1.2 The procedures for notification of Substantial Completion are as follows:

(a) Developer shall provide ADOT with not less than 60 days' prior notification of the date Developer determines it will satisfy all conditions to Substantial Completion (other than issuance by ADOT of a Certificate of Substantial Completion). During such 60-day period, Developer and ADOT will meet and confer and exchange information on a regular cooperative basis with the goal being ADOT's orderly, timely inspection and review of the Project and the RFC Documents and Construction Documents, and ADOT's issuance of a Certificate of Substantial Completion.

(b) During such 60-day period, ADOT will conduct an inspection of the Project and its components, a review of the applicable RFC Documents and Construction Documents and such other investigation as may be necessary to evaluate whether Substantial Completion is achieved.

(c) Developer shall provide ADOT a second notification when Developer determines it has met all conditions to Substantial Completion, other than issuance by ADOT of a Certificate of Substantial Completion. Within five days

after expiration of the 60-day period and ADOT's receipt of the second notification, ADOT will either: (A) issue the Certificate of Substantial Completion; or (B) notify Developer, setting forth, as applicable, why the Project has not reached Substantial Completion. If ADOT and Developer cannot agree as to the date of Substantial Completion, such Dispute shall be resolved according to the Dispute Resolution Procedures.

6.6.2 Punch List

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

(a) The schedule for preparation of the Punch List either shall be consistent and coordinated with the inspections regarding Substantial Completion, or shall follow such inspections.

(b) Developer shall prepare and maintain the Punch List. Developer shall deliver to ADOT not less than five days' prior notice stating the date when Developer will commence Punch List field inspections and Punch List preparation. ADOT may, but is not obligated to, participate in the development of the Punch List. Each Party shall have the right to add items to the Punch List, but neither shall remove any item added by the other Party without such other Party's express permission. If Developer objects to the addition of an item by ADOT, the item shall be noted as included under protest, and if the Parties thereafter are unable to reconcile the protest, the Dispute shall be resolved according to the Dispute Resolution Procedures. Developer shall deliver to ADOT a true and complete copy of the Punch List, and each modification thereto, as soon as it is prepared.

(c) Developer shall immediately commence work on the Punch List items and diligently prosecute such work to completion, consistent with the Contract Documents, within the time period to be set forth in the Project Management Plan and in any case by the Final Acceptance Deadline.

6.6.3 Conditions to Issuance by ADOT of Certificate Evidencing Satisfaction of Maintenance Services Conditions Precedent

6.6.3.1 ADOT will issue a written certificate evidencing satisfaction of Maintenance Services Conditions Precedent upon satisfaction of all the following:

(a) Developer demonstrates to ADOT's reasonable satisfaction that Developer has completed training of maintenance personnel, which demonstration shall consist of:

(i) Delivery to ADOT of a written certificate, in form acceptable to ADOT, executed by Developer that it and its Subcontractors are fully staffed with such trained personnel and are ready, willing and able to perform the

Maintenance Services in accordance with the terms and conditions of the Contract Documents and Project Management Plan pertaining to the Maintenance Period;

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

(iii) ADOT's verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and Section DR 420.2.5 of the Technical Provisions;

(b) ADOT has approved the Maintenance Management Plan and Maintenance Quality Management Plan in accordance with Section 8.9 and Table 110-5 of Section GP 110.03 of the Technical Provisions;

(c) ADOT has approved a schedule of all major work activities or milestones for the Maintenance Period to a work breakdown structure (WBS) level sufficient to demonstrate activities with a duration no longer than 20 Business Days;

(d) Developer has received, and paid all associated fees for, all applicable Governmental Approvals and other third-party approvals required for use and operation of the Project, such Governmental Approvals and other third-party approvals are in full force and effect and there exists no uncured material violation of the terms and conditions of any such Governmental Approval or other third-party approvals;

(e) All insurance policies required under this Agreement during the Maintenance Period for the Project have been obtained and are in full force and effect and Developer has delivered to ADOT verification thereof as required under Section 11;

(f) Any security for Developer's performance and payment obligations in connection with the Maintenance Services under this Agreement, including the Maintenance Bonds required under Section 10.2 and any Maintenance Guaranty required under Section 10.4.4, have been obtained, are in full force and effect and Developer has delivered the same to ADOT;

(g) ADOT has received and approved an update to the Transportation Management Plan to address the Maintenance Period and Maintenance Services, which shall be prepared in accordance with and contain the information required under Section MR 400.2.9 of the Technical Provisions; and

(h) Developer has satisfied any other requirements or conditions for commencement of the Maintenance Services after Substantial Completion set forth in the Technical Provisions.

6.6.3.2 Developer shall provide ADOT with notice of the date Developer determines that it will satisfy all of the Maintenance Services Conditions

Precedent as set forth in Section 6.6.3.1, and the Parties shall undertake such actions, as follows:

(a) Developer shall provide ADOT with not less than 30 days' notice of the date Developer expects to satisfy all of the Maintenance Services Conditions Precedent.

(b) During the 30-day period following receipt of such notice, Developer and ADOT will meet, confer and exchange information on a regular cooperative basis, and ADOT will conduct such investigation and review of reports, data and documentation as may be necessary to evaluate whether all of the Maintenance Services Conditions Precedent have been satisfied.

(c) Developer shall provide ADOT a final notice, in a form reasonably acceptable to ADOT, when Developer determines it has satisfied the Maintenance Services Conditions Precedent. Developer shall certify in the notice that Developer has satisfied all the criteria set forth in Section 6.6.3.1. Within five Business Days after receipt of such final notice, ADOT will either: (i) issue a certificate of satisfaction of Maintenance Services Conditions Precedent; or (ii) provide notice to Developer setting forth, as applicable, why the Maintenance Services Conditions Precedent have not been satisfied. If ADOT provides notice under subsection (ii) of this clause (c), and Developer does not Dispute ADOT's assessment, then the processes set forth in clauses (a) and (b) above shall be repeated until (A) ADOT issues a certificate that the Maintenance Services Conditions Precedent have been satisfied, or (B) the Parties' disagreement as to whether one or more Maintenance Services Conditions Precedent have been met or the date of satisfaction of Maintenance Services Conditions Precedent is referred to, and resolved according to, the Dispute Resolution Procedures.

6.6.4 Final Acceptance

6.6.4.1 Promptly after achieving Substantial Completion, Developer shall perform all Punch List items.

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

(a) ADOT has issued a Certificate of Substantial Completion for the Project;

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

(c) ADOT has received the As-Built Schedule required by Section GP 110.06.2.12 of the Technical Provisions;

(d) ADOT has received a complete set of the Record Drawings in form and content required by Section GP 110.10.2.8.4 of the Technical

Provisions, and a complete, indexed set of all Proprietary Intellectual Property pursuant to Section 23.7.1.2;

(e) All Utility Adjustment Work and other work that Developer is obligated to perform for or on behalf of third parties with respect to the Project has been accepted by such third parties, and Developer has paid for all work by third parties that Developer is obligated to pay for, other than disputed amounts and amounts owed to Utility Companies that have not yet been invoiced to Developer, despite Developer's diligent efforts to obtain invoices therefor;

(f) All component parts, plans and documentation of the Project Management Plan required to be prepared, submitted and approved prior to Final Acceptance have been so prepared, submitted and approved;

(g) All Submittals required by the Project Management Plan or Contract Documents to be submitted to and approved by ADOT prior to Final Acceptance have been submitted to and approved by ADOT, in the form and content required by the Project Management Plan or Contract Documents;

(h) All personnel, supplies, equipment, waste materials, rubbish and temporary facilities of each Developer-Related Entity shall have been removed from the Project ROW, Developer has restored and repaired all damage or injury arising from such removal to the satisfaction of ADOT, and the Site is in good working order and condition;

(i) Developer has delivered to ADOT a certification representing that there are no outstanding claims (for purposes of this certification, the term "claim" shall include all facts which may give rise to a claim) of Developer or claims or stop notices of any Subcontractor, Supplier, laborer, Utility Company or other Persons with respect to the D&C Work, other than:

(A) Any previously submitted unresolved claims of Developer and any claims or stop notices of a Subcontractor, Supplier, laborer, Utility Company or other Persons being contested by Developer (in which event the certification shall include a list of all such matters with such detail as is requested by ADOT and, with respect to all claims or stop notices of a Subcontractor, Supplier, laborer, Utility Company and other Person, shall include a representation by Developer that it is diligently and in good faith contesting such matters by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same); and

(B) Amounts owed to Utility Companies that have not yet been invoiced to Developer, despite Developer's diligent efforts to obtain invoices therefor;

(j) Developer has paid in full all Liquidated Damages and Noncompliance Charges that are owing to ADOT pursuant to this Agreement and are not in Dispute, and has provided to ADOT reasonable security for the full amount of

Liquidated Damages and Noncompliance Charges that may then be the subject of an unresolved Dispute;

(k) There exists no uncured Developer Defaults other than those that would be cured by the achievement of Final Acceptance;

(l) ADOT has received from Developer and accepted the Final DBE Utilization Summary Report and the Summary Certification of Final DBE Payments for Professional Services and Construction DBE utilization, as required by Sections 18.02 and 20.0 of the DBE Special Provisions (Exhibit 7);

(m) ADOT has received from Developer and accepted the Final OJT Summary Report, and, if applicable, Good Faith Effort documentation, as required by Section 7.0 of the OJT Special Provisions (Exhibit 8); and

(n) All of Developer's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived by ADOT.

6.6.4.3 Developer shall provide ADOT with 30 days' notice of the date when Developer expects to achieve all conditions to Final Acceptance other than issuance by ADOT of a Certificate of Final Acceptance. During the 30-day period following receipt of such notification, Developer and ADOT will meet and confer and exchange information on a regular cooperative basis with the goal being the orderly, timely inspection and review of the Project and the Record Drawings, and ADOT's issuance of a Certificate of Final Acceptance.

6.6.4.4 During such 30-day period, ADOT will conduct an inspection of the Punch List items, a review of the Record Drawings and such other investigation as may be necessary to evaluate whether the conditions to Final Acceptance are satisfied.

6.6.4.5 Within five days after expiration of such 30-day period, ADOT will either: (i) issue a Certificate of Final Acceptance for the Project; or (ii) notify Developer setting forth, as applicable, why Final Acceptance has not been achieved. If ADOT and Developer cannot agree as to the date of Final Acceptance, such Dispute shall be resolved according to the Dispute Resolution Procedures.

6.7 Nonconforming and Defective Work

6.7.1 If Nonconforming Work is discovered, ADOT will have the right, exercisable in its sole discretion, to direct Developer, at Developer's sole cost and without Claim of any kind against ADOT, to rectify the Nonconforming Work so that it complies with the Contract Documents. For the avoidance of doubt, ADOT's sole discretion applies to its decision whether to require rectification of Nonconforming Work; whether Nonconforming Work has occurred is not a matter within ADOT's sole discretion.

6.7.2 If, at Developer's request, ADOT elects to accept Nonconforming Work, ADOT may recover from Developer 100% of the cost savings, if any, of Developer or the Lead Subcontractor associated with its failure to perform the Work in accordance with requirements of the Contract Documents (in addition to any other adjustment of the Price or Monthly Disbursement), plus the net present value of 100% of any increase in costs ADOT will incur during the term of this Agreement to operate the Project that is attributable to the Nonconforming Work. In determining Developer's cost savings, the Parties shall take into account: (a) all avoided costs of Developer, including avoided design, material, equipment, labor, construction, testing, commissioning, acceptance and overhead costs and avoided costs due to time savings; and (b) the net present value of increases, if any, in maintenance and Capital Asset Replacement Work costs that Developer will incur as a result of the Nonconforming Work. Developer shall bear the burden of proving such increased costs. Net present value shall be determined by using as the discount rate the then-applicable yield on U.S. Treasury bonds having a tenor closest in length to the then-remaining length of the Term plus 100 basis points. ADOT will have the right to deduct such cost savings from any sums owed by ADOT to Developer pursuant to this Agreement.

6.7.3 Subject to Sections 20.9 and 20.10, nothing contained in the Contract Documents shall in any way limit the right of ADOT to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by applicable Law, and the foregoing shall be in addition to any other rights or remedies ADOT may have hereunder or under Law.

6.8 Hazardous Materials Management

6.8.1 Without limiting ADOT's role or responsibilities set forth in Sections 6.8.6, 6.8.7 and 14.4.8, and except as provided otherwise below, Developer shall undertake Hazardous Materials Management of all Hazardous Materials and Recognized Environmental Conditions, including contaminated groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents.

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

6.8.2.1 Without cost to ADOT, Developer shall adopt, using Good Industry Practice, design and construction techniques for the Project that to the maximum extent possible avoid the need for Hazardous Materials Management.

6.8.2.2 If, having met its obligation under Section 6.8.2.1, Developer is unable to avoid Hazardous Materials or Recognized Environmental Conditions, Developer shall use Good Industry Practice, including design modifications and construction techniques, to minimize costs of Hazardous Materials Management,

including minimization of ADOT's long-term costs for Hazardous Materials Management.

6.8.2.3 Where Hazardous Materials Management is unavoidable or is required by applicable Law, Developer shall utilize appropriately trained Subcontractors or personnel to conduct the Hazardous Materials Management activities.

6.8.3 If during the course of the Work, Developer encounters Hazardous Materials or Recognized Environmental Conditions in connection with the Project, the Site or Work, in an amount, type, quality or location that would require reporting or notification to any Governmental Entity or other Person or taking any preventive or remedial action, in each case under applicable Law, Governmental Approvals, the Hazardous Materials Management Plan or any applicable provision of the Contract Documents, Developer shall promptly notify ADOT in writing and advise ADOT of any obligation to notify State or federal agencies under applicable Law. If during the Term ADOT discovers Hazardous Materials or Recognized Environmental Conditions in connection with the Project, the Site or the Work, ADOT will promptly notify Developer in writing of such fact.

6.8.4 The right of ADOT to step in to carry out the Hazardous Materials Management obligations of Developer are as set forth in Sections 6.8.4.1 and 6.8.4.2, below.

6.8.4.1 If, within a reasonable time after discovery of Hazardous Materials or Recognized Environmental Conditions, taking into consideration the nature and extent of the contamination, the type and extent of action required and the potential impact upon Developer's schedule to perform the Work, Developer has not undertaken the Hazardous Materials Management required of it under Section 6.8.1, ADOT may provide Developer with written notice that ADOT will undertake the Hazardous Materials Management itself. ADOT thereafter may undertake the Hazardous Materials Management actions in compliance with a remediation plan prepared by ADOT and approved by applicable Governmental Entities and in compliance with applicable Laws. Without limiting ADOT's role or responsibilities set forth in Section 6.8.6, Developer shall reimburse to ADOT on a current basis within ten days of request therefor, the reasonable costs, including ADOT's Recoverable Costs, that ADOT incurs in carrying out such Hazardous Materials Management actions. ADOT will have no liability or responsibility to Developer arising out of ADOT's Hazardous Materials Management actions and such actions shall in no event constitute the basis of a Relief Event or other Claim.

6.8.4.2 Notwithstanding the foregoing, if Developer notifies ADOT that Developer desires to preserve claims against other potentially responsible parties, then ADOT will undertake all commercially reasonable efforts to preserve such claims consistent with either the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR § 300, or comparable State regulations and standards; and a reasonable period of time for Developer to perform the Hazardous Materials

Management actions shall include a sufficient period for Developer to comply with the National Oil and Hazardous Substances Pollution Contingency Plan or such comparable State regulations and standards.

6.8.5 Refer to Section 14.4.6 regarding Developer's rights to compensation and Completion Deadline adjustment with respect to Hazardous Materials.

6.8.6 Off-site disposal of Hazardous Materials is subject to the provisions of Sections 6.8.6.1 through 6.8.6.3, below.

6.8.6.1 As between Developer and ADOT, ADOT will be considered the sole generator and arranger under 40 CFR Part 262 and will sign manifests for the off-site disposal of Hazardous Materials other than for: (a) Developer Release of Hazardous Materials; (b) Hazardous Materials that migrate from points of origin located outside the boundaries of the Project ROW where the source of such Hazardous Materials is a Developer-Related Entity in the course of performing Work; (c) Hazardous Materials that Developer handles and disposes of in violation of any applicable provision of the Contract Documents, of Governmental Approvals or of Law; and (d) Hazardous Materials present in or on Developer's Temporary Work Areas. Notwithstanding the foregoing, ADOT may elect, by written notice to Developer, to have another responsible party (instead of ADOT, and other than a Developer-Related Entity) assume generator and arranger status and liability, or sign manifests, for which ADOT is otherwise responsible under this Section 6.8.6.1.

6.8.6.2 Notwithstanding any contrary provision of the Contract Documents, Developer shall not be entitled to any compensation from ADOT for any ADOT-Caused Delay arising out of or relating to any Dispute over whether Hazardous Materials are Known or Suspected Hazardous Materials.

6.8.6.3 To the extent permitted by applicable Law, as between ADOT and Developer, ADOT will take and assume sole responsibility and liability for third party claims, causes of action and Losses arising out of or resulting from the off-site disposal of Hazardous Materials for which ADOT is the generator pursuant to this Section 6.8.6, specifically excluding liability for off-site disposal that ADOT elects to have a responsible party assume as provided in Section 6.8.6.1. It is the intent of the Parties that Developer have no exposure to any such third party claims, causes of action and Losses.

6.8.7 Developer shall not be required to engage in Hazardous Materials Management with respect to Release of Hazardous Materials onto the Project or Project ROW at any time during the Term where such Release of Hazardous Materials is from a vehicle operating or located within the Project ROW or from such vehicle's cargo, unless it is from a vehicle of or operated by a Developer-Related Entity in the course of performing Work or from such vehicle's cargo. Without limiting the foregoing, if it is necessary to dispose of Project material because it becomes contaminated by such a Release of Hazardous Materials, Developer shall not be responsible for such

disposal. For purposes hereof, "vehicle" has the meaning set forth in Arizona Revised Statutes Section 28-101, and also means railroad train and aircraft.

6.8.8 ADOT has exclusive decision-making authority regarding selection of the destination facility to which Hazardous Materials will be transported whenever it acts as generator or arranger. The foregoing shall not preclude or limit any rights or remedies that ADOT may have against Developer-Related Entities (other than Developer), Governmental Entities or other third parties, including prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project ROW.

6.8.9 As between Developer and ADOT, Developer shall be considered the sole generator and arranger and shall sign manifests for: (a) each Developer Release of Hazardous Materials; (b) Hazardous Materials that migrate from points of origin located outside the boundaries of the Project ROW where the source of such Hazardous Materials is a Developer-Related Entity in the course of performing Work; (c) Hazardous Materials that Developer handles and disposes of in violation of any applicable provision of the Contract Documents, of Governmental Approvals or of Law; and (d) Hazardous Materials present in or on Developer's Temporary Work Areas. The foregoing shall not preclude or limit any rights or remedies that Developer may have against any Governmental Entity or any other third parties, including existing or prior owners, lessees, licensees and occupants of any parcel of land that is or becomes part of the Project ROW, excluding, however, the State, ADOT and their respective agents. To the extent permitted by applicable Law, Developer shall indemnify, save, protect and defend ADOT from claims, demands, causes of action and Losses arising out of or resulting from the off-site disposal of such Hazardous Materials for which Developer is considered the generator or arranger pursuant to this Section 6.8. The foregoing indemnity shall survive the expiration or termination of this Agreement.

6.8.10 In the event of good-faith and bona fide claims on behalf of Developer related to Releases of Hazardous Materials by a third party who is not a Developer-Related Entity, ADOT agrees that, upon receipt of a written request from Developer, ADOT will reasonably consider assigning and subrogating its rights of recovery to Developer, as such may exist.

6.9 Title

Developer warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for ADOT for the operation, maintenance or repair thereof, free and clear of all Liens. Title to all of such materials, equipment, tools and supplies which are delivered to the Site shall pass to ADOT, free and clear of all Liens, upon the sooner of: (a) incorporation into the Project, or (b) payment by ADOT to Developer of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Developer shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Substantial Completion or, with respect to such materials,

equipment, tools and supplies which are necessary for Developer to satisfy its obligations under the Agreement, until such obligations are satisfied or until Developer is terminated pursuant to Articles 19 or 24.

6.10 Site Security

Commencing upon issuance of NTP 2, Developer shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to the D&C Work and materials and equipment to be incorporated therein, as well as all other property at or on the Site, whether owned by Developer, ADOT, or any other Person. Developer shall comply with ADOT's security requirements and protocols.

6.11 Maintenance During Construction

6.11.1 Commencing upon issuance of NTP 2 and continuing thereafter during the ~~Construction~~D&C Period, Developer shall be responsible for (a) maintenance of the ~~D&C Work and the Site~~existing facilities throughout the Project ROW to the extent set forth in Section GP 110.12 of the Technical Provisions, and (b) maintenance of all improvements Developer constructs for the Project; provided, however, that Developer's maintenance responsibility for portions ~~the D&C Work~~of such improvements owned by third parties shall extend until the control of and maintenance responsibility for such portions are officially transferred to the respective third parties.

6.11.2 ADOT may determine that Maintenance During Construction in addition to that described in Section ~~MR 202~~GP 110.12 of the Technical Provisions is required during the D&C Period for the portions of the Project ROW being used by the traveling public during the D&C Period, in order to ensure the safety of the traveling public. If ADOT orders any such additional Maintenance During Construction, Developer will be paid therefor through an ADOT-Directed Change and Supplemental Agreement. Such additional Maintenance During Construction may include, but is not limited to, additional ~~"PM 10"~~ sweeping, roadway and subgrade repair, safety feature repair, debris removal, repair of pedestrian features and other maintenance necessary to provide a smooth and safe traveled way. However, Developer shall repair any damage caused by its operations and activities at no additional cost to ADOT.

6.12 Aesthetics and Landscaping; Landscape Establishment Period

6.12.1 Developer shall perform, or cause to be performed, all aesthetics and landscaping Work for the Project, including landscape establishment, in accordance with Sections DR 450 and CR 450 of the Technical Provisions, as applicable.

6.12.2 Developer shall be solely responsible for all costs relating to the aesthetics and landscaping Work for the Project, including landscape establishment, except for the costs of materials, services and efforts (if any) the Contract Documents expressly state ADOT or other Persons will perform.

6.12.3 Landscape Establishment; Cost of Watering Plants

6.12.3.1 Developer shall meet, or cause to be met, the landscape establishment requirements, including plant watering, set forth in Sections DR 450 and CR 450 of the Technical Provisions.

6.12.3.2 Developer shall pay for and supply, at its sole cost and expense, water used to meet the landscape establishment requirements set forth in Sections DR 450 and CR 450 of the Technical Provisions until the Substantial Completion Date. After Substantial Completion, ADOT will arrange for the City of Phoenix to provide such water at no cost or expense to Developer; provided, however, that Developer's use of such water provided by the City of Phoenix shall be subject to the availability limits established by the City of Phoenix.

6.12.3.3 On or about 365 days after Substantial Completion, ADOT will inspect plant materials installed as part of the landscaping Work outside the Maintenance Service Limits. No later than 60 Days after completing this inspection, ADOT will prepare a written report describing what (if any) of such installed plant materials (a) died, (b) failed to establish a root system reasonably expected for plant materials of a similar type, nature and maturity, and (c) failed to show a growth habit reasonably expected for plant materials of a similar type, nature and maturity.

6.12.3.4 If the report described in Section 6.12.3.3 identifies any of the conditions described in clause (a), (b) or (c) therein, then no later than 30 Days after receiving the report Developer shall submit a written landscape restoration plan to ADOT setting forth the actions Developer will take to replace dead and underperforming plant materials, and to ensure the conditions described in said report do not reoccur. The landscape restoration plan will be subject to ADOT's reasonable approval.

6.12.3.5 Developer shall complete all necessary replacement plantings no later than 180 Days after ADOT approves the landscape restoration plan described in Section 6.12.3.4.

6.13 Clayton Act Assignment

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

ARTICLE 7.
TIME; NOTICES TO PROCEED; PROJECT SCHEDULE AND PROGRESS

7.1 Time of Essence

As a material consideration for entering into this Agreement, Developer hereby commits, and ADOT is relying upon Developer's commitment, to develop the Project in accordance with the time periods set forth in this Agreement. Except where this Agreement expressly provides for an extension of time, the time limitations set forth in the Contract Documents for Developer's performance of its covenants, conditions and obligations are of the essence, and Developer waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require ADOT to accept such performance.

7.2 Notices to Proceed

7.2.1 Authorization allowing Developer to proceed with D&C Work shall be provided through ADOT's issuance of NTPs. Developer acknowledges and agrees that ADOT has no obligation to issue an NTP for D&C Work under this Agreement, and further agrees that unless and until ADOT issues NTP 1 ADOT will have no liability to Developer under this Agreement except as provided otherwise in Section 24.5.1. Developer further acknowledges and agrees that ADOT's liability under this Agreement shall be limited to payment owing for D&C Work authorized under NTPs actually issued. Refer to Sections 14.4.12, 14.4.13 and 14.4.14 regarding Price adjustments to be made for certain delays in issuance of NTP 1, NTP 2 and NTP 3, respectively, and to Section 24.5 regarding Developer's right to terminate and termination compensation for certain delays in issuance of NTP 1 or NTP 2.

7.2.2 Authorization allowing Developer to proceed with Maintenance Services will be provided through ADOT's issuance or deemed issuance of the Maintenance NTP, as provided in Section 7.8.

7.3 Issuance of NTP 1

ADOT anticipates issuing NTP 1 concurrently with execution and delivery of this Agreement. Issuance of NTP 1 authorizes Developer to do only the following:

(a) Mobilize, including establishing the collocated office;

(b) Prepare or continue preparing any or all component parts, plans and documentation of the Project Management Plan relevant to the D&C Work, including: (i) a Quality Management Plan (e.g., for general requirements, Professional Services and Construction Work components); and (ii) a Public Involvement Plan;

(c) Prepare the ROW Activity Plan, Environmental Management Plan, Safety Management Plan and Transportation Management Plan;

(d) Prepare the detailed, resource and cost loaded Project Baseline Schedule;

(e) Prepare the Segments Limit Map;

(f) Prepare the Submittal Schedule;

(g) Prepare a Schedule of Values for pre-NTP 2 Design Work;

(h) Prepare the final DBE Utilization Plan;

(i) Prepare the final OJT Utilization Plan;

(j) Enter the Project ROW owned or in the possession of ADOT in order to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations, provided that Developer (i) shall not conduct any ground-disturbing activities in the Center Segment, and (ii) shall not conduct any ground-disturbing activities within or outside other areas of the Schematic ROW until ADOT has completed its cultural resource investigations and has received and approved, as provided in the Technical Provisions, the Environmental Management Plan, Public Involvement Plan, Safety Management Plan, Site Documentation, Storm Water Pollution Prevention Plan, and Noxious Species Control Plan;

(k) Commence ROW Services (but only after ADOT approves the ROW Activity Plan);

(l) Commence negotiating with the Union Pacific Railroad;

(m) Commence negotiating Utility Agreements with Utility Companies;

(n) At Developer's option, commence Design Work, provided that (i) ADOT will not pay for or commence review of Design Documents until Developer satisfies all conditions precedent set forth in Section 7.5, and (ii) ADOT's payment for Design Work prior to NTP 2 is subject to a cap of $15,000,000; and

(o) Prepare the ITS Inventory described in Section DR 466.2.3 of the Technical Provisions.

7.4 Issuance of NTP 2

7.4.1 ADOT anticipates issuing NTP 2 when all of the following conditions have been satisfied:

(a) If applicable under this Agreement, the Guarantees in favor of ADOT required under Section 10.4 have been executed, obtained and delivered to ADOT and are in full force and effect;

(b) All insurance policies required under Article 11 have been obtained and are in full force and effect, and Developer has delivered to ADOT written binding verifications of coverage from the relevant issuers of such insurance policies;

(c) Developer has developed and delivered to ADOT and ADOT has approved, in accordance with Section 3.4, the component parts, plans and documentation of the Project Management Plan designated "Required Prior to NTP 2" in Table 110-5 of Section GP 110.03 of the Technical Provisions;

(d) Developer has developed and delivered to ADOT and ADOT has approved the ROW Activity Plan;

(e) Developer has delivered to ADOT the Collocated Office Layout Plan and all ADOT comments thereon have been resolved;

(f) Developer has delivered to ADOT the Network Administration Plan and all ADOT comments thereon have been resolved;

(g) Developer has developed and delivered to ADOT and ADOT has approved the detailed, resource and cost loaded Project Baseline Schedule;

(h) Developer has developed and delivered to ADOT and ADOT has approved the Segments Limit Map;

(i) Developer has developed and delivered to ADOT and ADOT has approved the Submittal Schedule;

(j) Developer has developed and delivered to ADOT and ADOT has approved the Basis of Design Report;

(k) Developer has developed and delivered to ADOT and ADOT has approved the draft SWPPP;

(l) Developer has delivered to ADOT the Transportation Management Plan and all ADOT comments thereon have been resolved;

(m) Developer has developed and delivered to ADOT and ADOT has approved the Vehicle Project Logo;

(n) Developer has delivered to ADOT the Utility Coordination Plan and all ADOT comments thereon have been resolved;

(o) Developer has delivered to ADOT the Plant Inventory and all ADOT comments thereon have been resolved;

(p) Developer has delivered to ADOT the Sign Inventory;

(q) Developer has delivered to ADOT the ITS Inventory

(r) Developer has developed and delivered to ADOT and ADOT has approved the final DBE Utilization Plan;

(s) All representations and warranties of Developer set forth in Section 2.3 shall be and remain true and correct in all material respects;

(t) There exists no uncured Developer Default for which Developer has received written notice from ADOT; and

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

7.4.2 Issuance of NTP 2 authorizes Developer to perform D&C Work not authorized under Section 7.3 (i.e., issuance of NTP 1), and related activities pertaining to the Project, except for the following:

(a) If NTP 2 is issued prior to June 15, 2016, the authority to perform Construction Work prior to such date is deemed limited to, and Developer shall only perform prior to such date, the construction-related activities authorized by NTP 1 and Utility Adjustment Work and drainage work that in each case is within or adjacent to existing public roadways not located in the Center Segment; and

(b) NTP 2 does not authorize, and Developer shall not perform, Construction Work and other ground disturbing activities in the Center Segment.

7.5 Conditions to Design Work Review and Payment

7.5.1 Notwithstanding any contrary provision of Sections 3.1.2, ADOT will have no obligation to commence its review of, or pay Developer for, any Design Work until all of the following conditions precedent have been satisfied:

(a) ADOT has issued NTP 1; and

(b) ADOT has received and approved, as provided in the Technical Provisions, the Quality Management Plan (general requirements and Professional Services), final DBE Utilization Plan, the Submittal Schedule, a Schedule of Values for the pre-NTP 2 Design Work, and the Basis of Design Report.

7.5.2 ADOT may reject, without review, any Design Document submitted to ADOT before the date such conditions precedent are satisfied. All time periods available to ADOT for review or approval of any Design Document submitted to ADOT before such date shall begin to run on such date and shall be subject to Section 3.1.2.3.

7.6 Conditions to Commencement of Construction

7.6.1 Construction Work Generally

Except to the extent expressly permitted in writing by ADOT, in ADOT's sole discretion, Developer shall not commence or permit or suffer commencement of construction of the Project or applicable portion thereof until ADOT issues NTP 2 and all of the following conditions have been satisfied:

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

(b) ADOT has (i) obtained an order for immediate possession, (ii) closed the acquisition of the parcel, or (iii) otherwise obtained permanent right of entry through settlement, negotiation, the condemnation process or otherwise for Project ROW necessary to commence construction of the applicable portion of the Project;

(c) Developer has satisfied for the applicable portion of the Project all applicable pre-construction requirements contained in the Environmental Approvals and other Governmental Approvals;

(d) Developer has caused to be developed and delivered to ADOT and ADOT has approved, in accordance with Section 3.4, the component parts, plans and documentation of the Project Management Plan designated as "Required Prior to NTP 2" in Table 110-5 of Section GP 110.03 of the Technical Provisions;

(e) ADOT has approved the final OJT Utilization Plan;

(f) Developer has submitted to ADOT an OJT Schedule containing all the information specified in Section 7.0 of the OJT Special Provisions (Exhibit 8);

(g) Developer has delivered to ADOT all Submittals relating to the applicable Construction Work required by the Project Management Plan or Contract Documents, in the form and content required by the Project Management Plan or Contract Documents;

(h) Developer has adopted written policies establishing ethical standards of conduct for all Developer-Related Entities, including Developer's supervisory and management personnel in dealing with (i) ADOT and the General Engineering Consultant and (ii) employment relations, in accordance with Section 9.9; and

(i) Developer has provided to ADOT at least ten days advance written notification of the date Developer determines that it will satisfy all of the conditions set forth in this Section 7.6.1.

7.6.2 ITS Improvements

ADOT anticipates it will require Developer to construct certain ITS improvements identified in the ITS Inventory as one or more ADOT-Directed Changes. Accordingly, Developer shall not commence or permit or suffer commencement of construction of ITS improvements identified by Developer in the ITS Inventory, until ADOT issues a corresponding Supplemental Agreement or Directive Letter therefor, pursuant to Article 15. Developer's entitlement to additional compensation and Completion Deadline adjustment, if any, for such Work shall be as set forth in Section 14.4.10.

7.6.3 Utility Adjustments

Developer shall not commence or permit or suffer commencement of construction of a Utility Adjustment included in the Construction Work until ADOT issues NTP 2, all of the conditions set forth in Section 7.6.1 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

(a) Except as otherwise provided in Section 5.10.7.4, the Utility Adjustment is covered by an executed Utility Agreement;

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

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

7.6.4 Center Segment

Developer shall not commence or permit or suffer commencement of any ground-disturbing activity or Construction Work within the Center Segment until ADOT issues NTP 3, as set forth in Section 7.7.

7.7 Issuance of NTP 3

ADOT anticipates issuing NTP 3 during the NTP 3 Window. Issuance of NTP 3 authorizes Developer to perform all Construction Work and other ground-disturbing activities in the Center Segment.

7.8 Issuance of Maintenance NTP

~~ADOT anticipates issuing Maintenance NTP upon Developer's satisfaction of the conditions precedent to Substantial Completion set forth in Section 6.6.1 and~~The Maintenance NTP shall be deemed automatically issued by ADOT concurrently with ADOT's issuance of the written certificate of Substantial Completion ~~also~~ described in

Section 6.6.1. Certification of Substantial Completion requires, among other things, written certification evidencing satisfaction of the Maintenance Services Conditions Precedent. If ADOT does not deliver a written Maintenance NTP concurrently with the certificate of Substantial Completion, it will issue the written Maintenance NTP promptly thereafter; but no delay in issuing the written Maintenance NTP will have any effect on Developer's right and obligation to commence the Maintenance Services upon commencement of the Maintenance Period.

7.9 Completion Deadlines

7.9.1 Substantial Completion Deadline

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

7.9.2 Final Acceptance Deadline

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

7.9.3 No Completion Deadline Adjustment

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

7.10 Scheduling of Design, Construction and Payment

7.10.1 Project Schedule

The Work shall be undertaken and completed in accordance with the Project Schedule prepared in conformance with Section GP 110.06 of the Technical Provisions. The Project Schedule shall be used by the Parties for planning and monitoring the progress of the Work and as the basis for determining the amount of monthly progress payments to be made to Developer.

7.10.2 Float

All Float contained in the Project Schedule, as shown in the Preliminary Project Baseline Schedule or as generated thereafter, shall be a shared, jointly owned Project resource available to either Party or both Parties as needed to absorb delay caused by Relief Events or any other event, achieve schedule milestones, interim completion dates and Completion Deadlines. All Float and corresponding Controlling Work Items shall be shown as such in the Project Schedule on each affected schedule path. ADOT will have the right to examine the identification of (or failure to identify) Float and Controlling Work Items on the Project Schedule in determining whether to approve the

Project Schedule. Once identified, Developer shall monitor, account for and maintain Float in accordance with critical path methodology and Section 110.06.2.2.F of the Technical Provisions.

7.10.3 Progress Payment Scheduling

The Project Schedule shall provide for payment of the D&C Price to be made solely on the basis of progress by Developer, subject to the cap on cumulative payments of the D&C Price equal to the then applicable Maximum Allowable Cumulative Draw.

7.11 Recovery Schedule

7.11.1 If at any time, the Work on any Critical Path item is delayed for a period that exceeds the time set forth in Section GP 110.06.2.10 of the Technical Provisions (including delays for which Developer may be entitled to a Completion Deadline adjustment under Article 14), then Developer shall prepare and submit to ADOT for review and approval a Recovery Schedule meeting the requirements set forth in Section GP 110.06.2.10 of the Technical Provisions. In addition, if Developer fails to meet any Completion Deadline, as the same may be extended pursuant to this Agreement, then Developer shall prepare and submit to ADOT for review and approval a Recovery Schedule meeting the requirements set forth in Section GP 110.06.2.10 of the Technical Provisions and demonstrating Developer's proposed plan to achieve Substantial Completion and Final Acceptance with as little additional delay as possible.

7.11.2 Except as otherwise provided in Article 14, all costs incurred by Developer in preparing, implementing and achieving the Recovery Schedule shall be borne by Developer and shall not result in a change to the Price.

7.11.3 If Developer fails to provide an acceptable Recovery Schedule as required herein and in Section GP 110.06.2.10 of the Technical Provisions, then, in addition to any other rights and remedies in favor of ADOT arising out of such failure, ADOT will have the right to withhold 5% of progress payments until such time as Developer has prepared and ADOT has approved such Recovery Schedule. Payment of any such amounts withheld by ADOT shall be due from ADOT to Developer not later than the Contractor Cycle Key Date first occurring after the date ADOT approves the corresponding Recovery Schedule. Any failure or delay in the submittal or approval of a Recovery Schedule shall not result in any Completion Deadline adjustment under the Contract Documents.

ARTICLE 8.
MAINTENANCE SERVICES

8.1 General

8.1.1 General Obligations

8.1.1.1 Throughout the Maintenance Period, Developer shall be responsible for performing Maintenance Services, including Capital Asset Replacement Work, within the Maintenance Services Limits. In addition, Developer shall be responsible for complying with the Handback Requirements for the Project. All costs associated with providing the Maintenance Services are included in the Maintenance Price set forth in Exhibits 2-4.3, 2-4.4, and 2-4.5, as such may be adjusted in accordance with Section 13.5.4.

8.1.1.2 At all times during the Maintenance Period, Developer shall carry out the Maintenance Services in accordance with:

(a) Good Industry Practice, as it evolves from time to time;

(b) The requirements, terms and conditions set forth in the Contract Documents, as the same may change from time to time;

(c) All Laws;

(d) The requirements, terms and conditions set forth in all Governmental Approvals;

(e) The approved Project Management Plan and all component parts, plans and documentation prepared or to be prepared thereunder, and all approved updates and amendments thereof;

(f) The approved Maintenance Management Plan, and all approved updates and amendments thereof;

(g) The approved Maintenance Quality Management Plan;

(h) Best Management Practices;

(i) The Safety Management Plan; and

(j) All other applicable safety, environmental and other requirements, taking into account the Project ROW limits and other constraints affecting the Project.

8.1.1.3 If Developer encounters a contradiction between subsections (a) through (j) above, Developer shall advise ADOT of the contradiction and ADOT will instruct Developer as to which subsection shall control in that instance. No such instruction shall be construed as an ADOT-Directed Change. Developer is responsible for keeping itself informed of and applying current Good Industry Practice.

8.1.1.4 At all times during the Maintenance Period, Developer shall provide a Maintenance Manager approved by ADOT who: (a) will have full responsibility for the prosecution of the Work; (b) will act as agent and be a single point of contact in all matters on behalf of Developer; and (c) will be available to respond to ADOT or ADOT's Authorized Representatives.

8.1.1.5 At its sole cost and expense, unless expressly provided otherwise in this Agreement, Developer shall comply with all of Section D of the Technical Provisions ("Maintenance Requirements") during the Maintenance Period ~~(except Section MR 202 of the Technical Provisions, which applies only to Maintenance During Construction)~~.

8.1.1.6 TP Attachment 500-1 of the Technical Provisions sets forth minimum Performance Requirements related to the Maintenance Services. Developer's failure to comply with the Performance Requirements within the applicable time periods set forth in TP Attachment 500-1 of the Technical Provisions shall entitle ADOT to the rights and remedies set forth in the Contract Documents, including the assessment of Noncompliance Charges, deductions from payments otherwise owed to Developer, and termination for uncured Developer Default.

8.1.1.7 Section MR 400.7.1.2 of the Technical Provisions sets forth the method to establish Target Asset Condition Scores during the Maintenance Period. Developer shall achieve Project Asset Condition Scores that meet or exceed the applicable Target Asset Condition Score, and, if necessary, shall diligently prepare and implement remedial plans to bring the Project Asset Condition Score up to the applicable Target Asset Condition Score. Developer's failure to achieve a Target Asset Condition Score shall entitle ADOT to the rights and remedies set forth in the Contract Documents, including requiring preparation and implementation of such remedial plans, damages, and termination for uncured Developer Default.

8.1.1.8 ~~**8.1.1.7**~~ In addition to performing all other requirements of the Contract Documents, Developer shall cooperate with ADOT and Governmental Entities with jurisdiction in all matters relating to the Maintenance Services, including their review, inspection and oversight of the maintenance of the Project.

8.1.2 Changes in Performance and Maintenance Standards; Discriminatory and Non-Discriminatory Maintenance Changes

8.1.2.1 ADOT will have the right to adopt at any time, and Developer acknowledges it must comply with, all Discriminatory Maintenance Changes and

Non-Discriminatory Maintenance Changes. Refer to Article 14 for Developer's rights to compensation regarding Discriminatory Maintenance Changes and Non-Discriminatory Maintenance Changes. ADOT will provide Developer with prompt notice of Discriminatory Maintenance Changes and Non-Discriminatory Maintenance Changes. Without limiting the foregoing, the Parties anticipate that from time to time after the Proposal Due Date, ADOT will adopt Non-Discriminatory Maintenance Changes. ADOT will have the right in its sole discretion to add Discriminatory Maintenance Changes and Non-Discriminatory Maintenance Changes to the Technical Provisions by notice to Developer, whereupon they shall constitute amendments, and become part, of the Technical Provisions and replace and supersede inconsistent provisions of the Technical Provisions. ADOT will identify the superseded provisions in its notice to Developer.

8.1.2.2 If compliance with a Non-Discriminatory Maintenance Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element, the following requirements shall apply with respect to such Work:

(a) If ADOT adopts the Non-Discriminatory Maintenance Change on or after the Substantial Completion Date, Developer shall commence such Work not later than the first to occur of:

(i) The date when Developer next performs Capital Asset Replacement Work on such Element;

(ii) The date when Developer is first obligated to perform Capital Asset Replacement Work on such Element; or

(iii) Provided ADOT gives no less than 30 days' prior notice to Developer, the date on which ADOT commences actions to implement the Non-Discriminatory Maintenance Change on any Comparable Facility that ADOT manages or operates, or such other date as may be determined under Section 8.1.2.7.

(b) If ADOT adopts the Non-Discriminatory Maintenance Change before the Substantial Completion Date, ADOT will issue a notice informing Developer when to commence and complete such Work.

(c) Following commencement of such Work, Developer shall diligently prosecute the Work to comply with the Non-Discriminatory Maintenance Change until completion, and in any event by any deadline for completion reasonably required by ADOT for such Work, so long as such deadline is based on the period of time necessary to complete work of a similar scale, complexity and size.

(d) Should Developer dispute the timing for commencement or completion of such Work, Developer may submit the Dispute for resolution according to the Dispute Resolution Procedures; provided, however, that pending such resolution Developer shall prosecute the Work in accordance with ADOT's direction.

8.1.2.3 If compliance with a Non-Discriminatory Maintenance Change requires construction or installation of new improvements at, for, or, on the Project (and not major repair reconstruction, etc. of existing improvements, governed by Section 8.1.2.2), Developer shall complete construction and installation of the new improvements according to the implementation period reasonably required by ADOT for such Non-Discriminatory Maintenance Change. Should Developer dispute the timing for commencement or completion of such new improvements, Developer may submit the issue for resolution according to the Dispute Resolution Procedures; pending such resolution Developer shall diligently prosecute the Work in accordance with ADOT's direction.

8.1.2.4 Developer shall implement a Discriminatory Maintenance Change only after ADOT issues a Supplemental Agreement or Directive Letter therefor pursuant to Article 15. If a Discriminatory Maintenance Change requires major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any Element during the Maintenance Period, or requires construction or installation of new improvements, Developer shall perform the major repair, reconstruction, rehabilitation, restoration, renewal or replacement or the new improvement work according to the schedule therefor adopted in the Supplemental Agreement for such work. If a Discriminatory Maintenance Change requires implementation not entailing such work, Developer shall implement it from and after the date ADOT issues the Supplemental Agreement.

8.1.2.5 In the case of any other Discriminatory Maintenance Change or Non-Discriminatory Maintenance Change, Developer shall comply from and after the date it becomes effective and Developer is notified by ADOT. For ~~the avoidance of doubt~~clarity, if Developer has notice or knows of the Discriminatory Maintenance Change or Non-Discriminatory Maintenance Change on or prior to the date Developer commences maintenance, routine repair or routine replacement of damaged, worn or obsolete components or materials of the Project, then Developer shall comply with such changes, additions or replacements in carrying out such maintenance, routine repair or replacement.

8.1.2.6 Developer may apply for ADOT approval of Deviations from applicable Technical Provisions regarding Maintenance Services. All applications shall be in writing. Where Developer requests a Deviation as part of the submittal of a component plan of the Project Management Plan, Developer shall specifically identify and label the Deviation. ADOT will consider in its sole discretion, but have no obligation to approve, any such application, and Developer shall bear the burden of persuading ADOT that the Deviation sought constitutes sound and safe practices consistent with Good Industry Practice and achieves or substantially achieves ADOT's applicable safety requirements. No Deviation shall be deemed approved or be effective unless and until stated in a writing signed by ADOT's Authorized Representative. ADOT's affirmative written approval of a component plan of the Maintenance Management Plan shall constitute: (a) approval of the Deviations expressly identified and labeled as Deviations therein, unless ADOT takes exception to any such Deviation; and (b) disapproval of any Deviations not expressly identified and labeled as Deviations therein.

ADOT's lack of issuance of a written Deviation within ten Business Days after Developer applies therefor in writing shall be deemed a disapproval of such application. ADOT's denial or disapproval of a requested Deviation shall be final and not subject to the Dispute Resolution Procedures. ADOT may elect to process the application as a Change Request under Article 15 rather than as an application for a Deviation.

8.1.2.7 For purposes of Section 8.1.2.2(a)(iii), Developer shall not be entitled to delay commencement or completion of its work on grounds that ADOT is delayed in commencing or completing implementing actions on Comparable Facilities where:

(a) ADOT is delayed due to the extensive system of Comparable Facilities for which ADOT is responsible; or

(b) The corresponding change, addition or replacement to the Technical Provisions applies only upon the occurrence of a condition or circumstance that has not yet occurred in respect of a Comparable Facility that ADOT manages or operates.

8.1.3 Safety and Security

8.1.3.1 Safety

Developer shall perform the Maintenance Services in a manner that gives prime importance to the safety of the public, convenience of the traveling public, and a safe work environment for all maintenance workers. Developer shall perform its traffic control and operations in accordance with the Contract Documents, including this Section 8.1.

8.1.3.2 Policing

(a) Developer acknowledges that the Arizona Department of Public Safety, the City of Phoenix Police Department and Maricopa County Sheriff's Department are empowered to enforce all applicable Laws and to enter the Project and Project ROW at any and all times to carry out their law enforcement duties. No provision of this Agreement is intended to surrender, waive or limit any police powers of the Arizona Department of Public Safety, the City of Phoenix Police Department and Maricopa County Sheriff's Department or any other Governmental Entity, and all such police powers are hereby expressly reserved.

(b) ADOT will not have any liability or obligation to Developer resulting from, arising out of or relating to the failure of the Arizona Department of Public Safety, the City of Phoenix Police Department and Maricopa County Sheriff's Department or any other public law enforcement agency to provide services, or its negligence or misconduct in providing services.

(c) ADOT and third parties with responsibility for traffic regulation and enforcement shall have the right to install, operate, maintain and replace

cameras or other equipment on the Project that relate to traffic regulation or enforcement. Developer shall coordinate and cooperate, and require its Subcontractors to coordinate and cooperate, with any such installation, maintenance and replacement activities.

8.1.3.3 Security and Incident and Emergency Response

(a) Developer is responsible for the safety and security of the Project, the personnel of Developer-Related Entities, and the general public during all maintenance activities under the control of any Developer-Related Entity.

(b) Developer shall comply with all applicable Laws and all rules, directives and guidance of the U.S. Department of Homeland Security and comparable State agency. Developer shall coordinate and cooperate with all Governmental Entities providing security, first responder and other public emergency response services.

(c) Developer shall perform and comply with the provisions of Section D of the Technical Provisions ("Maintenance Requirements") concerning Incident and Emergency response, safety and security.

8.1.4 Duration of Hazardous Materials Management

The provisions of Section 6.8 regarding Hazardous Materials Management that are not specific to the original construction of the Project shall apply throughout the Maintenance Period.

8.1.5 Utility Accommodation

8.1.5.1 It is anticipated that from time to time during the course of the Maintenance Period, Utility Companies will apply for additional utility permits to install new Utilities that would cross or longitudinally occupy the Project ROW, or to modify, repair, upgrade, relocate or expand existing Utilities within the Project ROW. In such circumstances, the provisions of Section ~~5.10.7~~5.10.9 shall apply.

8.1.5.2 Throughout the Maintenance Period, Developer shall monitor Utilities and Utility Companies within the Maintenance Services Limits, for compliance with applicable utility permits, Utility Agreements and applicable Laws, and shall use diligent efforts to obtain the cooperation of each Utility Company having Utilities within the Maintenance Services Limits. If (a) Developer reasonably believes that any Utility Company is not complying with the terms of a utility permit, Utility Agreement or applicable Law affecting a Utility within the Maintenance Services Limits, or (b) any other dispute arises between Developer and a Utility Company with respect to a Utility within the Maintenance Services Limits, despite Developer having exercised its diligent efforts to obtain the Utility Company's cooperation, Developer shall promptly provide notice to ADOT, and ADOT and Developer shall work together in the manner described in Section 5.10.7; provided, however, that the "conditions to assistance" (as that term is used in Section 5.10.7) are that Developer shall provide evidence

reasonably satisfactory to ADOT that (i) Developer's position in the dispute is reasonable, (ii) Developer has made diligent efforts to obtain the Utility Company's cooperation, and (iii) the Utility Company is not cooperating.

8.1.6 Accommodation of Third-Party Signage and Lighting

8.1.6.1 In addition to the warning, regulatory, and guide signs within the Maintenance Services Limits, Developer shall accommodate within the Maintenance Services Limits third-party signs, including logo type signs and "Adopt a Highway" signs. Developer shall coordinate and cooperate with any third party performing such work. Developer shall review with ADOT all third-party requests for new signs in the Maintenance Services Limits. Such requests are subject to ADOT's approval. ADOT may solicit input from Developer in reviewing applications for new third-party signs, but will retain sole authority for approving installation of these signs. All costs associated with fabricating and installing third-party signs shall be borne by the sign applicant. ADOT may require Developer to fabricate or install any of these signs as an ADOT-Directed Change. Developer shall not be responsible for maintenance of third-party signs.

8.1.6.2 All third-party requests for lighting within the Project ROW shall be subject to ADOT approval, and ADOT retains sole authority for approving installation of such lighting. Developer shall not be responsible for maintenance of such lighting.

8.1.7 Updates of Record Drawings

Within 30 days after undertaking any Maintenance Services that result in a significant change to the design or construction of the Project, Developer shall update the Record Drawings to reflect such change.

8.2 Frontage Roads and Crossroads

8.2.1 ADOT will be solely responsible, at its expense, for handling requests and permitting for adjacent property access to frontage roads and crossroads within the Maintenance Services Limits. Nothing in the Contract Documents shall restrict ADOT from granting access permits or determining the terms and conditions of such permits. ADOT will keep Developer regularly informed of access permit applications and will deliver to Developer a copy of each issued access permit within five days after it is issued.

8.2.2 Developer shall have no claim for any increase in the Price or other compensation by reason of ADOT's grant of access permits, the terms and conditions thereof, the improvements made by, or other actions of permit holders or their employees, agents, representatives and invitees. For clarity, this provision does not: (a) require Developer to pay for the permit holder's improvements; or (b) preclude Developer from pursuing claims against the permit holder for damage to the Project caused by the permit holder.

8.2.3 Developer at its expense shall cooperate and coordinate with permit holders to enable the permit holders to safely construct and utilize improvements allowed under their access permits.

8.3 Capital Asset Replacement Work

8.3.1 General Requirements

8.3.1.1 Developer shall diligently perform and complete Capital Asset Replacement Work when required by the Capital Asset Replacement Work Plan (including the Capital Asset Replacement Work Schedule) and updates thereto approved by ADOT, or by the Handback Plan and updates thereto approved by ADOT, including adjustments and changes thereto resulting from Inspections and Specialty Inspections. Developer shall perform and complete any Capital Asset Replacement Work required at any earlier time in order to comply with the standards triggering Capital Asset Replacement Work set forth in Section MR ~~400.3.6~~400.4 of the Technical Provisions.

8.3.1.2 Developer shall deliver to ADOT a written report of the Capital Asset Replacement Work performed in the immediately preceding year as part of the annual report of Maintenance Services required under Section MR ~~400.3.4~~400.3.3 of the Technical Provisions. The report shall describe: (a) by location, the Element, as listed in the Capital Asset Replacement Work Plan or Handback Plan, for which Capital Asset Replacement Work was performed; (b) the type of Capital Asset Replacement Work performed; (c) each specific item replaced; (d) any warranty information associated with any replacement item; (e) the dates of commencement and completion of such Capital Asset Replacement Work; and (f) such other information as is reasonably requested by ADOT.

8.3.2 Capital Asset Replacement Work Plan

8.3.2.1 As part of the Maintenance Management Plan, Developer shall prepare and submit, for ADOT's review and approval in its good faith discretion, a Capital Asset Replacement Work Plan for all Capital Asset Replacement Work other than that to be addressed in the Handback Plan~~, which shall be prepared in accordance with Section MR 400.2.1.2 of the Technical Provisions~~.

8.3.2.2 As part of the Capital Asset Replacement Work Plan, Developer shall prepare and submit, for ADOT's review and approval in its good faith discretion, a resource and cost loaded Capital Asset Replacement Work Schedule, which shall be prepared in accordance with and contain the same information as required under Section GP 110.06.2 of the Technical Provisions pertaining to the Project ~~Baseline~~ Schedule.

8.3.2.3 Developer shall estimate the Remaining Useful Life of each Element within the Capital Asset Replacement Work Plan based on:

(a) Surveillance and Inspections required under Section D, Maintenance Requirements, of the Technical Provisions;

(b) The applicable standard for triggering Capital Asset Replacement Work set forth in Section MR ~~400.3.6~~400.4 of the Technical Provisions;

(c) The age of the Element since its initial construction or its last Capital Asset Replacement Work;

(d) Developer's analysis of the condition of the Element and how the Element has performed in service over time;

(e) Developer's reasonable expectations respecting the manner of use, levels and mix of traffic, environmental conditions, and wear and tear; and

(f) Developer's reasonable expectations regarding future condition and performance of the Element given the foregoing factors.

8.3.2.4 Once every two years during the Maintenance Period, as part of the annual revision to the Maintenance Management Plan pursuant to Section ~~MR 400.2.1.2 of the Technical Provisions~~8.9.3 and until Developer prepares the Handback Plan, Developer shall prepare and submit, for ADOT's review and approval in its good faith discretion, either: (a) a revised Capital Asset Replacement Work Plan for the upcoming two years, including a revised Capital Asset Replacement Work Schedule; or (b) the then-existing Capital Asset Replacement Work Plan, accompanied by a written statement that Developer intends to continue in effect the then-existing Capital Asset Replacement Work Plan without revision for the upcoming two years (in either case, referred to as the "updated Capital Asset Replacement Work Plan"). Developer shall make revisions as reasonably indicated by experience and then-existing conditions respecting the subject Elements, ~~the most recent Asset Condition Score Table for each Auditable Section,~~ changes in technology, changes in Developer's planned means and methods of performing Capital Asset Replacement Work, the applicable deadline for Capital Asset Replacement Work set forth in Section MR 400.4 of the Technical Provisions, and other relevant factors.

8.3.2.5 If an update contemplates performance of Capital Asset Replacement Work before the next update, it shall include:

(a) Elements and locations to be replaced as a part of the planned Capital Asset Replacement Work;

(b) A construction schedule and construction execution plan for the planned Capital Asset Replacement Work;

(c) A comparison of the planned timing, scope and cost of the Capital Asset Replacement Work to the timing, scope and cost assumed in the Capital Asset Replacement Work Breakdown (Exhibit 2-4.5); and

(d) A summary of the Maintenance Services performed and service history (such as repairs or refurbishment that has occurred over the life of the Element) for each identified Element.

8.3.2.6 At the annual maintenance meeting following ADOT's receipt of the updated Capital Asset Replacement Work Plan, ADOT and Developer shall discuss ADOT's comments, questions, revisions and clarifications. Within 15 days after such meeting, Developer shall resubmit the updated Capital Asset Replacement Work Plan to ADOT. ADOT will either approve or disapprove, in its good faith discretion, the updated Capital Asset Replacement Work Plan within 15 days, with comments, objections, recommendations or disapprovals noted in writing. If ADOT disapproves the updated Capital Asset Replacement Work Plan, within ten days after receiving written notice of comments, objections, recommendations or disapprovals from ADOT, Developer shall submit to ADOT a revised updated Capital Asset Replacement Work Plan rectifying such matters and, for matters with which Developer disagrees, a written notice setting forth those comments, objections, recommendations and disapprovals that Developer disputes, which notice shall give details of Developer's grounds for dispute. If Developer fails to give such notice within such time period, it shall be deemed to have accepted the comments, objections and recommendations and the updated Capital Asset Replacement Work Plan shall thereupon be deemed revised to incorporate the comments and recommendations and to rectify the objections or disapprovals. After timely delivery of any dispute notice by Developer, Developer and ADOT will endeavor in good faith to reach agreement as to the matters listed in the notice. If no agreement is reached as to any such matter within 30 days after Developer delivers its notice, either Party may refer the Dispute for resolution according to the Disputes Resolution Procedures.

8.3.2.7 All portions of the updated Capital Asset Replacement Work Plan that have been agreed to by the Parties shall govern. Until resolution of any portion of the updated Capital Asset Replacement Work Plan that is in Dispute, the treatment of that portion in the immediately preceding approved Capital Asset Replacement Work Plan shall remain in effect and govern, subject to ADOT's right to issue a Directive Letter.

8.4 Traffic Management

8.4.1 Updated Transportation Management Plan

Not later than 90 days before the start of any planned Capital Asset Replacement Work, Developer shall prepare and submit to ADOT, for ADOT's approval in its good faith discretion, an updated Transportation Management Plan meeting the requirements of Section 3.5.1. If, however, Developer believes an updated plan is not

necessary to perform the planned Capital Asset Replacement Work, then, subject to ADOT's approval in its good faith discretion, Developer may perform such Work in accordance with the previously approved Transportation Management Plan.

8.4.2 Traffic Control

8.4.2.1 Developer shall prepare generic traffic control plans for use during the Maintenance Period, in accordance with the requirements set forth in Section DR 462.3 of the Technical Provisions and the applicable requirements of the Transportation Management Plan. Developer shall prepare generic traffic control plans for shoulder, mainline single lane, mainline double lane, mainline full, ramp full, crossroad and frontage road Closures. Prior to implementing traffic control during the Maintenance Period, Developer shall submit the generic traffic control plans to ADOT for review and comment, and shall modify the submitted generic traffic control plans as necessary to resolve ADOT's comments.

8.4.2.2 If no generic traffic control plan is suitable or sufficient to safely implement a particular Closure, then Developer shall prepare and submit to ADOT an individual traffic control plan for such Closure prior to commencing the Closure. Developer shall prepare the individual traffic control plan in accordance with the requirements set forth in Section DR 462.3 of the Technical Provisions and the applicable requirements of the Transportation Management Plan. The individual traffic control plan may be a modified generic traffic control plan in order to address the particular circumstances of the Closure.

8.4.2.3 Developer shall implement the generic and individual traffic control plans in connection with all full and partial Closures during the Maintenance Period, to promote safe and efficient operation of the Project.

8.4.2.4 ~~Not later than 30 days before the start of any Maintenance Services (including Routine Maintenance and Capital Asset Replacement Work) requiring full or partial Lane Closures, Developer shall prepare and submit to ADOT, for its review and comment, individual traffic control plans for such Work. Developer shall prepare the individual traffic control plans in accordance with the requirements set forth in Section DR 462.2 of the Technical Provisions and the applicable requirements of the Transportation Management Plan. Resolution of ADOT's comments on an individual traffic control plan and~~ ADOT's approval of the timing of ~~the corresponding~~ full or partial Lane Closures ~~are conditions~~is a condition precedent to commencement of the corresponding Maintenance Services~~. Developer shall implement the control plans to promote safe and efficient operation of the Project~~.

8.4.3 Traffic Operation Restrictions

8.4.3.1 Section 6.5.2.1, concerning reservation of Lane Closures on ADOT's Highway Condition Reporting System, shall apply during the Maintenance Period.

8.4.3.2 ~~**8.4.3.1**~~ When performing Maintenance Services, Developer shall keep the number of Lane Closures to a minimum and shall keep each Lane Closure to the shortest time necessary for safe and efficient operations. The requirements for and restrictions on Lane Closures are set forth in Section DR 462 of the Technical Provisions. If Developer violates such requirements and restrictions, Developer shall be subject to Liquidated Damages in accordance with Section ~~20.2.~~20.3.

8.4.3.3 ~~**8.4.3.2**~~ Should Emergencies occur during Developer's performance of Maintenance Services, including vehicle accidents and structural failures, Developer shall take all actions necessary to open the roadway as soon as possible and shall repair any damage to the affected Elements. For purposes hereof, "vehicle" has the meaning set forth in Arizona Revised Statutes Section 28-101, and also means railroad train and aircraft.

8.4.3.4 ~~**8.4.3.3**~~ ADOT has the authority to deny a Lane Closure in the case of an Emergency, evacuation, a special event or any other public activities.

8.4.3.5 ~~**8.4.3.4**~~ ADOT will have at all times, without obligation or liability to Developer, the right to: (a) issue Directive Letters to Developer regarding traffic management and control (with which Developer shall comply), or directly assume traffic management and control of the Project during any period that the ~~Project Director~~ADOT project director determines such action will be in the public interest as a result of an Emergency or natural disaster; and (b) provide on the Project, via message signs or other means consistent with Good Industry Practice, traveler and driver information, and other public information (e.g., Amber alerts).

8.5 Lead Maintenance Firm Qualifications

Each Lead Maintenance Firm (if any) shall have the expertise, qualifications, experience, competence, skills and know-how to perform the Maintenance Services and related obligations of Developer in accordance with this Agreement.

8.6 Coordination of Maintenance with Other Parties

8.6.1 Developer recognizes and acknowledges that ADOT will control operations of the traffic signals, ITS and emergency response for the Project upon Substantial Completion.

8.6.2 Developer is responsible for coordinating its Maintenance Services on or for the Project with ADOT's operation of the Project. Developer and ADOT will cooperate and coordinate ~~with respect to~~regarding their respective responsibilities in order to minimize disruptions of traffic on the Project and ensure that such responsibilities are carried out in accordance with then-current maintenance standards and then-current traffic management standards, practices and procedures.

8.6.3 No interference with or disruption of traffic because of activities on, or the management or condition of, any portion of the Project that is not included in the Maintenance Services Limits, and no failure by ADOT to meet ADOT's standards, practices and procedures, shall entitle Developer to any Claim, Supplemental Agreement or relief from deductions to any Monthly Disbursement of the Maintenance Price; provided, however, that if Developer is prevented from implementing a Lane Closure to perform Maintenance Services that was previously approved by ADOT due solely to ADOT's traffic management activities on any portion of the Project that is not included in the Maintenance Services Limits, the applicable cure period for any resulting Noncompliance Event shall be extended if such Noncompliance Event is not reasonably capable of being cured within the applicable cure period. The extension shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of ADOT's traffic management activities on Developer's ability to cure, availability of temporary remedial measures, and need for rapid action due to impact of the Noncompliance Event on safety or traffic movement.

8.7 Developer Inspection, Testing and Reporting

8.7.1 Developer shall carry out Inspections and Specialty Inspections in accordance with ~~the Technical Provisions, including Section GP 110.07 of the Technical Provisions and~~ Section MR ~~400.3.2~~400.3.1 of the Technical Provisions, and the Project Management Plan. Developer shall use the results of Inspections and Specialty Inspections to develop and update its schedule for Maintenance Services~~, to maintain asset condition and service levels, and to develop programs of maintenance and Capital Asset Replacement Work to minimize~~ in a manner that minimizes the effect of Maintenance Services on members of the public, to identify and report Noncompliance Events and Noncompliance Charges, to determine Asset Condition Scores, and to determine Remaining Useful Lives as and when required by Section D of the Technical Provisions. Developer shall deliver to ADOT not less than seven days' prior notice of any Inspection or Specialty Inspection. ADOT may attend and observe any Inspection or Specialty Inspection.

8.7.2 Developer shall submit all reports relating to the Maintenance Services, including the monthly and annual Maintenance Services ~~Annual Reports~~reports, in the form, with the content and within the time required under the Contract Documents.

8.8 Routine Maintenance Activities

The Maintenance Management Plan shall include Developer's plan for performing Routine Maintenance throughout the Maintenance Period, including of all the assets shown in TP Attachment 500-1 of the Technical Provisions. The Maintenance Management Plan shall include the timing, frequencies, scope and nature of the Routine Maintenance activities to meet the Performance Requirements.

8.9 Maintenance Management Plan

8.9.1 Developer shall submit to ADOT for review and comment a draft Maintenance Management Plan, including all supplementary and component plans, attachments and appendices thereto, described in Section MR ~~400.2.1~~400.2.1.1 of the Technical Provisions, not less than 90 days prior to the date set forth in the Project Schedule for Substantial Completion. ADOT will review and provide comments to Developer within 30 days after receiving the draft Maintenance Management Plan.

8.9.2 Not later than 40 days after ADOT's receipt of the draft Maintenance Management Plan, Developer and ADOT will mutually schedule a meeting to address comments. Developer shall resolve all comments to the satisfaction of ADOT and submit the final Maintenance Management Plan for ADOT's approval in its good faith discretion not less than 30 days prior to the date set forth in the Project Schedule for Substantial Completion. ADOT's approval of the final Maintenance Management Plan shall be one of the Maintenance Services Conditions Precedent, as set forth in Section 6.6.3.

8.9.3 Developer shall submit revisions to the Maintenance Management Plan, as required and not less than annually, prior to the annual ~~maintenance~~Maintenance Services meeting as described in Section MR ~~400.3.4.~~400.3.3.C of the Technical Provisions.

8.10 Safety Compliance; Emergency Repair Work

8.10.1 Safety Compliance

8.10.1.1 ADOT is entitled from time to time to issue Safety Compliance Orders to Developer with respect to the Project to correct a specific safety condition or risk involving the Project that ADOT has reasonably determined exists through investigation or analysis.

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

8.10.1.3 Subject to conducting such prior consultation (unless excused in the case of Emergency), ADOT may issue Safety Compliance Orders to Developer at any time from and after the Effective Date.

8.10.1.4 Developer shall implement each Safety Compliance Order as expeditiously as reasonably possible following its issuance. Developer shall diligently prosecute the work necessary to achieve such Safety Compliance until completion. In no event shall Developer be entitled to claim that any Force Majeure Event relieves Developer from compliance with any Safety Compliance Order except

where Developer's compliance with such Safety Compliance Order is delayed due to an ongoing Force Majeure Event and only so long as such Force Majeure Event is continuing.

8.10.1.5 Issuance by ADOT of a Safety Compliance Order shall be deemed either a Discriminatory Maintenance Change or a Non-Discriminatory Maintenance Change, as applicable, and Developer shall be entitled to the corresponding additional compensation or Completion Deadline adjustment in accordance with the terms of Article 14; provided, however, that for any Safety Compliance Order that is caused by or arises out of any act or omission of a Developer-Related Entity, including Nonconforming Work, Noncompliance Events and Developer Defaults, such Safety Compliance Order shall be completed by Developer at its sole cost and Developer shall not be entitled to any additional compensation or Completion Deadline adjustment .

8.10.2 Emergency Repair Work

8.10.2.1 From and after issuance of NTP 2, Developer shall be responsible for procuring and overseeing temporary and permanent repair work for the Project in response to an Emergency ~~for the Project from and after issuance of NTP 2.~~. Developer shall solicit competitive bids for such work if FHWA or FEMA regulations, policies or procedures require competitive bidding in order to obtain reimbursement for eligible costs. ADOT will provide oversight relating to such Emergency-related repair work in accordance with the Contract Documents.

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

8.11 Handback Requirements

8.11.1 Handback Condition

Developer shall diligently perform and complete all Capital Asset Replacement Work and other Maintenance Services necessary to deliver the Project to ADOT at the end of the Maintenance Period in a condition that complies with the Handback Requirements. Developer shall perform all such Work at no charge to ADOT in addition to the Maintenance Price.

8.11.2 Handback Surveillance and Inspections

The Parties shall conduct Surveillance and Inspections of the Project at the times and according to the terms and procedures specified in Sections MR ~~400.6.8.7 and~~400.3.2, 501.2.1 and 501.2.5 of the Technical Provisions, for the purposes of:

(a) Determining and verifying the condition of all Elements, ~~comparing the~~determining Asset Condition Scores, determining the Project Asset Condition Score and comparing it to the then ~~Baseline~~Target Asset Condition Score, and determining Remaining Useful Lives of all Elements set forth in Table 501-1 at Section MR 501.3.1 of the Technical Provisions;

(b) Adjusting, to the extent necessary based on Inspection, Specialist Inspection and analysis, Element Remaining Useful Lives, estimated costs of Capital Asset Replacement Work and timing of Capital Asset Replacement Work;

(c) Determining the Capital Asset Replacement Work necessary to be performed and completed prior to the end of the Term to satisfy the Handback Requirements;

(d) Revising and updating the Capital Asset Replacement Work Schedule to incorporate such adjustments; and

(e) Verifying that such Capital Asset Replacement Work and other Maintenance Services have been properly performed and completed in accordance with the Handback Requirements.

8.11.3 Handback Plan

Developer shall prepare a Handback Plan that contains the methodologies and activities to be undertaken or employed to meet the Handback Requirements at the end of the Term. Developer shall submit the Handback Plan to ADOT for review and approval ~~at least 60 months before the end of the Term~~not later than the end of the sixth year before the end of the Maintenance Period and after ADOT delivers to Developer the Project Asset Condition Score for Handback described in Section MR 501.2.1 of the Technical Provisions and the Parties receive the Remaining Useful Life Report described in Section 8.11.5. The Handback Plan must meet the requirements set forth in Section MR 501.2.2 of the Technical Provisions and shall be subject to ADOT approval in its good faith discretion.

8.11.4 In-Lieu Fees

8.11.4.1 Section MR ~~501.4.1~~501.3.2 of the Technical Provisions sets forth specific categories of the Project that are eligible for Developer to pay an in-lieu fee to ADOT as an exception to the obligation to undertake Capital Asset Replacement Work necessary to deliver the category with the required Remaining Useful Life at the end of the Maintenance Period. For each excepted category, ADOT will estimate the

Remaining Useful Life expected to exist at the end of the Maintenance Period, as part of its Asset Condition Scoring during the sixth year ~~25~~before the end of the Maintenance Period described in Section MR 501.2.1 of the Technical Provisions. If Developer chooses to pay an in-lieu fee for any excepted categories, ADOT will reassess the Remaining Useful Life for these categories annually for the remaining Maintenance Period.

8.11.4.2 Within 30 days after ADOT estimates the Remaining Useful Life at the end of the Maintenance Period for each excepted category, Developer shall deliver to ADOT written notice indicating interest, if any, in paying in-lieu fees. If ADOT does not receive such written notice of interest within such 30-day period, then it shall be conclusively presumed that Developer has elected not to pay in-lieu fees. If Developer delivers such written notice of interest within such time period, then Developer shall include in the notice a preliminary analysis of the amount of in-lieu fees, by excepted category identified in the notice. For each such excepted category, the analysis shall:

(a) State the required Remaining Useful Life at the end of the Maintenance Period as set forth in Table 501-1 at Section MR ~~501.3~~501.3.1 of the Technical Provisions (factor "A");

(b) State ADOT's estimate of what the actual Remaining Useful Life will be at the end of the Maintenance Period absent Capital Asset Replacement Work (factor "B");

(c) Set forth a detailed estimate of the total price, including hard and soft costs, that a qualified contractor would charge ADOT to perform Capital Asset Replacement Work at the end of the Remaining Useful Life as estimated by ADOT in order to bring the excepted category into the condition that it will have a new useful life equal to the required Remaining Useful Life at the end of the Maintenance Period as set forth in Table 501-1 at Section MR ~~501.3~~501.3.1 of the Technical Provisions ("estimated total price"); and

(d) Set forth Developer's calculation of the in-lieu fee, which shall equal:

$$estimated\ total\ price \times [(A - B)/A].$$

8.11.4.3 Such analysis shall be subject to ADOT's review and approval in its good faith discretion. ADOT may conduct its own analysis to verify Developer's analysis. As necessary, the Parties shall meet and confer to discuss the analysis and reconcile any differences. At the conclusion of such process, ADOT shall promptly issue its determination of the in-lieu fee for each excepted category included in Developer's notice of interest.

8.11.4.4 Developer shall exercise its option to pay an in-lieu fee, in the amount determined by ADOT, by delivering to ADOT, not later than 30 days after ADOT delivers to Developer ADOT's determination of the in-lieu fees, written notice unconditionally accepting the in-lieu fee amount determined by ADOT and electing to pay such in-lieu fee. Developer may exercise its option as to any one or more of the excepted categories that were included in Developer's notice of interest. If ADOT does not receive such written notice within such 30-day period, then it shall be conclusively presumed that Developer has elected not to pay in-lieu fees.

8.11.4.5 The provisions of this Section shall apply if the amount of Annual Capital Asset Replacement Work Payments that will be owing to Developer after such election is less than 110% of the amount of in-lieu fees as determined by ADOT for the excepted categories for which Developer gives written notice exercising its option.

(a) If this Section applies, then Developer shall deliver to ADOT, concurrently with such written notice, one of the following, as selected by Developer:

(i) Payment, in good funds, of in-lieu fees in an amount that results in such Annual Capital Asset Replacement Work Payments equaling the remaining balance of in-lieu fees plus 10% of the total in-lieu fees; (e.g., if no such Annual Capital Asset Replacement Work Payments are owing, then Developer shall pay 110% of the total in-lieu fees); or

(ii) An unconditional standby letter of credit, in form acceptable to ADOT, in the same amount as described in clause (a)(i) above. The letter of credit shall provide an expiry date no earlier than 60 days before the end of the Term. The letter of credit shall be issued by a bank or financial institution acceptable to ADOT and with an office in Phoenix that will accept presentation of the letter of credit for draw. ADOT shall have the right to draw on the letter of credit for the purpose of collecting unpaid in-lieu fees if for any reason Developer does not pay the in-lieu fees in full on or before 90 days before the end of the Term.

(b) If this Section applies and Developer fails to deliver such funds or letter of credit concurrently with such written notice, then Developer's attempt to exercise its option to pay in-lieu fees shall be ineffective and it shall be conclusively presumed that Developer has elected not to pay in-lieu fees.

8.11.4.6 For each excepted category for which Developer has exercised its option to pay an in-lieu fee, ADOT will annually conduct Surveillance and, at ADOT's election, inspections to update the condition of the excepted category and re-analyze the estimated Remaining Useful Life that will exist at the end of the Maintenance Period. ADOT also may re-analyze construction costs and other cost components of the estimated total price. ADOT will adjust the in-lieu fees annually as necessary to take into account any change in the estimated Remaining Useful Life at

the end of the Maintenance Period and any change in the estimated total price. ADOT will deliver written notice to Developer of each such adjustment promptly after it is determined. Not later than six months before the end of the Maintenance ~~Term~~Period, ADOT shall conclude its final update and notify Developer of the final, adjusted in-lieu fees.

8.11.4.7 Any Dispute regarding any such adjustments shall be resolved according to the Dispute Resolution Procedures; provided, however, that until the Dispute is resolved ADOT's determination shall control. Any portion of the adjustment determined to be refundable to Developer pursuant to the Dispute Resolution Procedures will be paid within 20 days following resolution of the Dispute, together with interest thereon in accordance with this Agreement.

8.11.4.8 All the in-lieu fees shall be due and payable in full not later than 90 days before the end of the Term. Prior thereto, ADOT shall have the right to deduct in-lieu fees owing to ADOT from payments owing to Developer, as more particularly set forth in Section ~~13.6.7.~~13.6.6. If Developer has paid in-lieu fees or delivered a letter of credit to ADOT pursuant to Section 8.11.4.5 and any adjustment or cumulative adjustments under Section 8.11.4.6 result in an increase in the in-lieu fees of more than 10%, then Developer shall, within 30 days after receiving ADOT's written notice of such adjustment, make up the shortfall by paying the additional in-lieu fee or increasing the letter of credit amount. If the amount of the in-lieu fees as finally determined results in an excess payment by Developer pursuant to Section 8.11.4.5(a)(i), then ADOT shall refund the excess payment to Developer, without interest, with the final Monthly Disbursement.

8.11.5 Remaining Useful Life Report

8.11.5.1 ADOT and Developer shall jointly retain one or more Professional Engineers to determine Remaining Useful Life and prepare a Remaining Useful Life Report. Each Party shall submit to the other a list of four Professional Engineers for each engineering specialty. No Party shall list anyone who is affiliated with such Party or was affiliated within the prior three years. If the two lists for a speciality contain any names that are the same, the Parties shall select from among such Professional Engineers. If the two lists for a specialty have no names in common, then each Party shall select one name from the other Party's list. The Parties shall then flip a coin to determine which of the two names shall be selected as the Professional Engineer for such specialty.

8.11.5.2 The Parties shall retain each Professional Engineer in time to enable each Professional Engineer to deliver the Remaining Useful Life Report to ADOT and Developer at least 60 days before the deadline for Developer to submit the draft Handback Plan to ADOT.

8.11.5.3 Developer, in consultation with ADOT, shall negotiate the contract with each Professional Engineer selected to determine Remaining Useful Life. The terms of such contract shall be subject to each Party's approval. ADOT and

Developer shall each be a party to the contract and each shall pay half the fees and costs of each selected Professional Engineer.

8.11.5.4 The duty of each selected Professional Engineer shall be to independently evaluate the Elements listed in Table 501.1 at Section 501.3.1 of the Technical Provisions assigned to the Professional Engineer and make independent recommendations of their Remaining Useful Lives. Each selected Professional Engineer shall set forth the evaluation, findings and recommendations of the Remaining Useful Lives in an engineering report duly stamped and sealed by such Professional Engineer. Such engineering reports taken together shall be the Remaining Useful Life Report.

8.11.5.5 The Parties shall use each selected Professional Engineer to prepare annual updates of the Remaining Useful Life Report and deliver the updates to the Parties not later than 30 days after the Parties complete the Asset Condition Scoring for each subsequent year.

8.11.5.6 Each report and update must address:

(a) Cover sheet;

(b) Table of contents;

(c) Scope;

(d) Methods of measurements, tests, and Inspections;

(e) The Remaining Useful Life requirements in Table 501-1 at Section MR 501.3.1 of the Technical Provisions;

(f) Results of measurements, tests and Inspections;

(g) Calculations of Remaining Useful Life for Elements within each reporting category;

(h) Results showing the Remaining Useful Life for each Element; and

(i) Noted deficiencies and areas where future Inspections or investigations may be warranted.

8.11.5.7 The Remaining Useful Life Report and updates are subject to ADOT approval in ADOT's good faith discretion.

8.11.5.8 Any Dispute regarding Remaining Useful Life, or the Work necessary to deliver the Elements at the end of the Term with the required Remaining Useful Life, shall be resolved according to the Dispute Resolution Procedures. The Remaining Useful Life Report and updates shall be admissible in evidence in such

Dispute Resolution Procedures. Pending such resolution, ADOT will have the right to issue Directive Letters regarding such Work.

8.12 Requirements Applicable to Design and Construction Work

To the extent that Developer performs any design or construction work as part of the Maintenance Services, Developer shall comply with the requirements and specifications for design and construction set forth in the Technical Provisions and in the applicable sections of this Agreement, except as otherwise set forth herein or approved in advance by ADOT.

8.13 Future Improvements

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

8.14 Maintenance and Rehabilitation of Future Improvements

Notwithstanding Section 8.13, ADOT may issue a Supplemental Agreement to Developer requiring Developer to take over the maintenance and rehabilitation of any Project reconfiguration, expansion or extension and upon the issuance thereof all such work shall be Maintenance Services for all purposes of this Agreement and shall be performed by Developer in accordance with the terms and conditions of the Contract Documents and Supplemental Agreement, which shall provide for any necessary and appropriate negotiated change to the Maintenance Price.

8.15 Use of ADOT Property

[Placeholder for terms and conditions under which Developer may use designated ADOT properties outside Project ROW for maintenance yards and offices.]

ARTICLE 9.
SUBCONTRACTING AND LABOR PRACTICES

9.1 Non-Discrimination; Equal Employment Opportunity

9.1.1 Developer shall not, and shall cause the Subcontractors to not, discriminate on the basis of race, color, national origin or sex in the performance of the Work under the Contract Documents.

9.1.2 Developer shall include Section 9.1.1 in every Subcontract with a Subcontractor that may further subcontract any portion of its Work, so that such provisions will be binding upon each Subcontractor.

9.2 DBE Requirements and Small Business Opportunity

9.2.1 ADOT has established goals for DBE utilization ("DBE Goals") for different parts of the Work on the Project. DBE Goals for the Project, which Developer commits to achieve or use Good Faith Efforts to achieve, are calculated and shall be credited in relation to the portion of the total D&C Price or price of the Capital Replacement Work, as applicable, allocated to the components of the Work as listed below, in this Section 9.2.1.

9.2.1.1 Professional Services DBE Goal – 16.63% of the total D&C Price allocated to Professional Services

9.2.1.2 Construction DBE Goal – 10.93% of the total D&C Price allocated to Construction Work.

9.2.1.3 Capital Asset Replacement Work DBE Goal – 6.08% of the total price for each Capital Asset Replacement Work interval.

9.2.2 For purposes of Sections 9.2.1.1 and 9.2.1.2, the D&C Price shall be allocated between Professional Services and Construction Work according to the allocations in the ADOT-approved Project Baseline Schedule; and the sum of such allocations shall equal the total D&C Price.

9.2.3 ADOT strongly encourages Developer to use additional DBEs above the DBE Goals in an effort to help ADOT meet its overall DBE goals and help ADOT meet the maximum feasible portion of its DBE goals through race neutral means as outlined in 49 CFR Part 26.

9.2.4 ADOT's DBE Special Provisions, applicable to the Project, are set forth in Exhibit 7. The purpose of ADOT's DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Developer shall comply with all

applicable requirements set forth in ADOT's DBE Special Provisions and the provisions in Developer's approved DBE Utilization Plan.

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

9.2.5.1 The final DBE Utilization Plan shall affirmatively respond to ADOT's comments on and revisions to the draft final DBE Utilization Plan.

9.2.5.2 The final DBE Utilization Plan shall include the following components:

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

(b) Professional Services DBE Intended Participation Affidavits, in the form attached to the DBE Special Provisions (Exhibit 7), from each DBE identified to work on the Project's Design Work.

(c) DBE Subcontractor Intended Participation Affidavits, in the form attached to the DBE Special Provisions (Exhibit 7), for each DBE identified to work on the Project's Construction Work.

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

(e) Expanded description of types of proactive DBE and small business bid-specific marketing, recruitment, outreach and community engagement efforts that will be implemented during the Project design, construction and Capital Asset Replacement Work in order to include DBEs and small businesses on the Project. Include process for timely communications, outreach methods that will be used, and a process for keeping track of potential DBEs, small businesses and other Subcontractors on the Project. Include proposed innovative methods for (i) involving new and emerging DBEs, and (ii) identifying firms that might potentially be certified as DBEs and assisting them to become DBE-certified and be involved in the Project. Discuss how these efforts will flow through tiers of Subcontractors on the Project.

(f) Description of efforts Developer has made and will make 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 the DBE Goals.

(g) Description of proposed DBE capacity-building efforts to be implemented throughout the D&C Work, including methods to assist DBEs with

record-keeping and compliance, bonding, financing, access to supplies and other capabilities.

(h) Description of the estimated DBE participation schedule for each phase/segment of the D&C Work that Developer identifies pursuant to the Preliminary Project Baseline Schedule, including anticipated Subcontracts and estimated dollar amounts to be awarded to DBEs in each phase/segment. Include a table/diagram of a high-level estimated schedule that illustrates projected work sequencing of DBE utilization in each phase/segment. Every effort should be made to uniformly distribute DBE utilization for Professional Services and for Construction Work throughout the D&C Work.

(i) Description of processes and procedures that Developer will use to monitor, track, document and report DBE progress and DBE utilization, and to maintain and adjust the DBE participation schedule to help ensure achievement of the DBE Goals. Include time intervals at which these processes and procedures will be employed.

(j) Description of specific measures that Developer will undertake throughout the term of this Agreement to help achieve the DBE Goals, including training workshops, technical and financial assistance, support services, mentor/protégé relationships, recruiting and encouraging potential DBEs to get certified, etc. Include proposed schedule of events/activities.

(k) Description of Developer's data collection and monitoring systems. Include how DBE recruitment and awards will be tracked during each phase/segment of the Project, and how DBE payments and utilization will be reported to ADOT. Include brief information about the expected frequency and comprehensiveness of the efforts.

(l) Description of how Developer will manage DBEs and small business Subcontractors on the Project, including processes for project management, technical performance reviews, feedback and dispute resolution to quickly resolve issues that may arise.

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

(n) Description of any other innovative or additional Good Faith Efforts activities already undertaken or ones Developer plans to undertake that are not listed above or listed in 49 CFR Part 26.

(o) Description of Developer's approach in addressing the Capital Asset Replacement Work DBE Goal.

9.2.5.3 Authorization for Developer to commence the D&C Work is conditioned on first obtaining ADOT's approval of the final DBE Utilization Plan. The approved DBE Utilization Plan shall be considered a specification of the Contract Documents.

9.2.6 Developer shall provide information and documentation that demonstrates its continued Good Faith Efforts throughout the D&C Work and Capital Asset Replacement Work, as applicable, to meet the DBE Goals in accordance with 49 CFR Part 26, Appendix A and the ADOT-approved DBE Utilization Plan. The efforts employed must at a minimum include those that one could reasonably expect a contractor to take if the contractor were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Goals. (See 49 CFR Part 26, Appendix A.)

9.2.7 Developer shall not cancel or terminate any Subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of Subcontracts with DBE firms set forth in ADOT's DBE Special Provisions in Exhibit 7.

9.2.8 For purposes of measuring achievement of or Good Faith Efforts to achieve the DBE Goals, Supplemental Agreements that adjust the D&C Price or the Capital Asset Replacement Work Payments shall:

(a) Increase the total D&C Price or total Capital Asset Replacement Work Payments, as applicable, to the extent that scopes of Work in DBE Subcontracts or intended for performance by DBE Subcontractors are increased;

(b) Reduce the total D&C Price or total Capital Asset Replacement Work Payments, as applicable, to the extent that scopes of Work in DBE Subcontracts or intended for performance by DBE Subcontractors are reduced; and;

(c) Not otherwise be added to or subtracted from the total D&C Price or total Capital Asset Replacement Work Payments.

9.2.9 Developer shall carry out, and shall cause the Subcontractors to carry out, applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts. Failure by Developer to carry out these requirements is a material breach of this Agreement, which may result in such remedies as ADOT deems appropriate (subject to Developer's rights to notice and opportunity to cure set forth in this Agreement). Remedies ADOT deems appropriate are more particularly provided in this Agreement, which may include:

(a) Withholding certain monthly progress payments;

(b) Assessing sanctions;

(c) Liquidated damages;

(d) Termination of this Agreement; and

(e) Disqualifying Developer and its Affiliates from future bidding as non-responsible.

9.2.10 Pursuant to 49 Code of Federal Regulations Part 26.39 ADOT's DBE program includes an element to incorporate contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally funded contracts. SBCs are for-profit businesses registered to do business in Arizona and that meet the Small Business Administration size standards for average annual revenue criteria for its primary North American Industry Classification System code. While the SBC component of ADOT's DBE program does not require utilization goals on projects, ADOT strongly encourages Developer to utilize small businesses that are registered in AZ UTRACS, in addition to DBEs meeting the certification requirement. Visit AZ UTRACS at //adot.dbesystem.com/ to search for registered SBCs that can be used on the Project. SBC utilization on the Project must also be tracked and reported to ADOT on a monthly basis along with required DBE outreach efforts and utilization.

9.3 On-the-Job Training

9.3.1 ADOT has established goals for OJT participation in the Construction Work ("OJT Goals"). The OJT Goals for the Project, which Developer commits to achieve or use Good Faith Efforts to achieve, are:

(a) Minimum of 142,800 OJT Trainee hours on the Project;

(b) Minimum of 51 OJT Trainees must each complete at least 2,000 hours on the Project in the same trade or work classification; and

(c) Minimum of ten OJT Trainees must complete hours solely on the Project necessary to achieve journey-level status (a minimum of 2,000 must be completed by these OJT Trainees solely on the Project).

9.3.2 ADOT's OJT Special Provisions, applicable to the Project, are set forth in Exhibit 8. The purpose of ADOT's OJT Special Provisions is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Construction Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in the OJT Special Provisions and the provisions in Developer's approved OJT Utilization Plan.

9.3.3 Within 30 days after issuance of NTP 1, Developer shall: (a) revise and convert its Preliminary OJT Utilization Plan, included in the Proposal, into a more detailed, final OJT Utilization Plan; and (b) submit this plan to ADOT for approval in ADOT's good faith discretion.

9.3.3.1 The OJT Utilization Plan shall affirmatively respond to ADOT's comments on and revisions to the draft final OJT Utilization Plan.

9.3.3.2 The OJT Utilization Plan shall include the following components:

(a) Overview of Developer's understanding of the Project's OJT requirements and Developer's commitment to meeting or using Good Faith Efforts to meet the OJT Goals and all other OJT requirements. Also include Developer's overall OJT implementation strategy.

(b) Updated description of Developer's OJT team/staff that will be working on the Project. Include names, experience and responsibilities of Developer's OJT compliance team members (including the DBE/OJT Outreach and Compliance Manager included in the Proposal) responsible for implementing and complying with the OJT Utilization Plan and all OJT requirements. Include an updated description of how the DBE/OJT Outreach and Compliance Manager and his/her staff plans to work with ADOT's Compliance Oversight Committee.

(c) Description of the types of proactive OJT marketing, recruitment, outreach and community engagement efforts Developer made prior to the Effective Date and will make throughout the period up to Substantial Completion to secure the participation of women, minority, veteran and disadvantaged trainees for the Project. Include information about Developer's OJT Trainee screening, hiring and processes to retain OJT Trainees.

(d) Description of specific Good Faith Efforts measures that Developer will undertake throughout the period up to Substantial Completion to achieve the OJT Goals.

(e) Description and itemization of Developer's OJT program, which Developer will use to train and educate women, minority, veteran and disadvantaged individuals in various construction related crafts during each phase/segment of the Construction Work, as such phase/segment is identified in the Preliminary Project Baseline Schedule. Developer's OJT program shall include training goals and details for on-site and off-site/classroom training, estimated training schedule timeframes specific to each job classification, number of trainees per classification and the estimated start dates for each classification. Include efforts to recruit Native American workers, as this Project is near an Indian reservation.

(f) An estimated OJT participation schedule for each phase/segment of the Construction Work, and a description of processes and procedures Developer will use to document changes/adjustments to the OJT participation schedule to achieve the OJT Goals. Include time intervals at which these processes and procedures will be employed.

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

9.3.3.3 Authorization to commence Construction Work is conditioned on first obtaining such ADOT approval. The approved OJT Utilization Plan shall be considered a specification of the Contract Documents

9.3.4 No earlier than ADOT's approval of the final OJT Utilization Plan, and no later than 30 days prior to the start of construction, Developer shall complete and submit to ADOT for review and approval OJT Trainee Enrollment Forms in the form attached as Attachment A to Exhibit 8 (OJT Special Provisions) for all OJT Trainees then identified to work on the Project. Thereafter, Developer shall submit to ADOT for review and approval completed OJT Trainee Enrollment Forms in the form attached as Attachment A to Exhibit 8 (OJT Special Provisions) for each subsequent OJT Trainee hired during the course of the Construction Work, by no later than the 15th day of every month together with the OJT Monthly Progress Report. Developer shall submit such form no later than seven days before the trainee begins work on the Project. In addition, Developer shall submit to ADOT an OJT Trainee Completion/Termination Form, in the form attached as Attachment B to Exhibit 8 after an OJT trainee completes 2,000 or more hours of training on the same craft, graduates to journey level status, or ceases employment on the Project, by the 15th of every month together with the OJT Monthly Progress Report. Failure to submit the required documentation within the specified deadline shall be cause to deny credit for any work performed by the OJT trainee prior to approval and delay approval of Developer's monthly progress payment.

9.3.5 Some of the same individual OJT Trainees can be used to satisfy each of the OJT Goals. Developer shall distribute the number of OJT Trainees among work classifications on the basis of Developer's need and the availability of journey persons in the various classifications. Developer will be credited for each Trainee employed on the Project in an ADOT or State approved apprenticeship program.

9.4 Subcontracts

9.4.1 Developer shall retain or cause to be retained only Subcontractors who are qualified, experienced and capable in the performance of the portion of the Work assigned. Developer shall assure that each Subcontractor has at the time of execution of the corresponding Subcontract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws. Developer shall retain, employ and utilize the firms and organizations specifically listed in the Project Management Plan to fill the corresponding Key Subcontractor positions listed therein. For Key Subcontractors not known as of the Effective Date, Developer's selection thereof shall be subject to ADOT's prior approval.

9.4.2 Developer shall comply with the following Subcontractor reporting requirements:

9.4.2.1 For each Subcontract (regardless of tier), Developer shall submit to ADOT a completed Professional Services Subcontractor Request Form or Construction & Maintenance Subcontractor Request Form, as applicable, not later than seven days before the Subcontractor commences work. The Professional Services Subcontractor Request Form and Construction & Maintenance Subcontractor Request Form are provided in Exhibits 5-1 and 5-2, respectively.

9.4.2.2 For each Subcontractor (regardless of tier) that performs Construction Work, Developer shall submit to ADOT written notice of the Subcontractor's start date not later than 48 hours before the Subcontractor commences work or, for those Subcontractors identified in the Proposal and starting on or within 48 hours of the Effective Date, not later than 48 hours after the start date.

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

9.4.2.4 For each Subcontractor (DBE and non-DBE), Developer shall comply with the prompt payment requirements and payment and payroll reporting requirements set forth in Sections 13.7 and 13.8.

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

9.4.4 The following requirements shall apply to Subcontracts:

(a) Developer shall, prior to soliciting any bids for performance of work or labor or rendering of services relating to the design or construction of the Project or for special fabrication and installation of a portion of the Work, submit to ADOT for its review and approval a procedure for the conduct of the bidding and approval process applicable to Subcontracts. Developer may use procedures set forth in the ADOT Standard Specifications or may submit alternative procedures to ADOT for approval. Developer shall not enter into any Subcontract except in accordance with the foregoing procedure; provided, however, that this Section 9.4.4(a) shall not apply to

Subcontracts entered between Developer and a Subcontractor identified in Developer's Proposal and listed in Exhibit 9-1.

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

9.4.5 The following additional requirements shall apply to Key Subcontractors:

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

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

(ii) Voluntarily removes itself from Developer's team;

(iii) Fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the Proposal stage;

(iv) Fails to timely cure a material default under the applicable Key Subcontract; or

(v) Solely for any Key Subcontractor for which a teaming agreement instead of a Subcontract was provided as of the Effective Date, such Key Subcontractor fails to negotiate in good faith in a timely manner in accordance with provisions established in such teaming agreement.

(b) If Developer makes changes to a Key Subcontractor in violation of Section 9.4.5(a), Developer shall pay to ADOT 100% of any cost savings resulting from the change.

9.4.6 Each Subcontract shall:

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

(b) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals and applicable Law, including the applicable requirements of the DBE Utilization Plan.

(c) Include Form FHWA-1273.

(d) Incorporate the general wage decisions applicable to the Project and set forth in Attachment 3 to Exhibit 4 (Federal Prevailing Wage Rates).

(e) Without cost to Developer or ADOT, expressly permit assignment to ADOT or its successor, assign or designee of all Developer's rights under the Subcontract, contingent only upon delivery of request from ADOT following termination of this Agreement, allowing ADOT or its successor, assign or designee to assume the benefit of Developer's rights with liability only for those remaining obligations of Developer accruing after the date of assumption, such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees and professional responsibility.

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

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

(h) Not be assignable by the Subcontractor to any Person other than ADOT (or its assignee) without Developer's prior consent.

(i) Expressly include requirements that the Subcontractor will: (i) maintain usual and customary Books and Records for the type and scope of business operations in which it is engaged (e.g., constructor, equipment Supplier, designer, service provider); (ii) permit audit thereof with respect to the Project or Work by each of Developer and ADOT pursuant to Section 23.5 and; (iii) provide progress reports to Developer appropriate for the type of work it is performing sufficient to enable Developer to provide the reports it is required to furnish ADOT under this Agreement.

(j) Include the right of Developer to terminate the Subcontract in whole or in part upon any Termination for Convenience of this Agreement without liability of Developer or ADOT for the Subcontractor's lost profits or business opportunity, except, if applicable, the lost profit under Section 24.2.1(c).

(k) Expressly require the Subcontractor to participate in meetings between Developer and ADOT, upon ADOT's request, concerning matters pertaining to such Subcontract or its work, provided that all direction to such Subcontractor shall be

provided by Developer, and provided further that nothing in this clause (k) shall limit the authority of ADOT to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.

(l) Include an agreement by the Subcontractor to give evidence in any dispute resolution proceeding pursuant to Article 22, if such participation is requested by either ADOT or Developer.

(m) Expressly include a provision prohibiting cross-contract offset between the parties thereto, meaning that if a Subcontractor is performing work on multiple contracts for the other party to the Subcontract or the other party's affiliates, the other party or its affiliate shall not withhold payment from the Subcontractor on its Subcontract because of disputes or claims on another contract.

(n) Expressly include Section 9.1.1;

(o) Expressly include in every Subcontract (including purchase orders and in every Subcontract of any Developer-Related Entity for the Work), provisions to effectuate the DBE requirements and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each Subcontractor. All Subcontracts of any tier, including those with Suppliers and DBE firms, shall include the DBE Special Provisions (Exhibit 7) and require compliance with 49 CFR Part 26. The foregoing shall not apply to Subcontracts at any tier with ADOT or Governmental Entities.

(p) Expressly include in every Subcontract for Construction Work (including purchase orders and in every Subcontract of any Developer-Related Entity for Construction Work), provisions to effectuate the OJT requirements, and shall require that they be included in all Subcontracts at lower tiers, so that such provisions will be binding upon each such Subcontractor. All Subcontracts for Construction Work of any tier, including those with Suppliers and DBE firms, shall include the OJT Special Provisions (Exhibit 8) and require compliance with the provisions of Form FHWA-1273, 23 USC § 140(a) and 23 CFR §230.111. The foregoing shall not apply to Subcontracts at any tier with ADOT or Governmental Entities.

(q) Expressly require the Subcontractor to make payments to sub-Subcontractors, and be liable for interest payments to sub-Subcontractors, in the same manner as set forth in Sections 13.7.1 and 13.7.2, respectively.

(r) Contain no waiver of the prompt payment protections for the Subcontractor provided under Section 13.7 and Arizona Revised Statutes Sections 28-411(C), (D) and (E), except Developer, at its option, may require a waiver from the Lead Subcontractor under the Lead Subcontract.

(s) Expressly provide that all claims and charges of the Subcontractor and its subcontractors at any time shall not attach to any interest of ADOT in the Project or the Project ROW.

(t) With respect to Key Subcontracts, expressly include a covenant, expressly stated to survive termination of the Key Subcontract, to promptly execute and deliver to ADOT a new contract between the Key Subcontractor and ADOT on the same terms and conditions as the Key Subcontract, in the event: (i) the Key Subcontract is rejected by Developer in bankruptcy or otherwise wrongfully terminated by Developer; and (i) ADOT delivers request for such new contract following termination or expiration of this Agreement.

(u) Be consistent in all other respects with the terms and conditions of the Contract Documents to the extent such terms and conditions are applicable to the scope of work of such Subcontractors, and include all provisions required by this Agreement.

9.4.7 Developer shall not amend any Subcontract with respect to any of the foregoing matters without the prior consent of ADOT.

9.4.8 Developer shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State.

9.4.9 Additional Requirements for Lead and Maintenance Services Subcontracts

9.4.9.1 Before entering into the Lead Subcontract or Maintenance Services Subcontract or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Design-Build Subcontract or Maintenance Services Subcontract to ADOT for review and comment. ADOT may disapprove only if the Lead Subcontract or Maintenance Services Subcontract, as applicable, (i) does not comply, or is inconsistent, in any material respect with the applicable requirements of the Contract Documents, including that it does not comply or is inconsistent with this Section 9 or with the applicable requirements of Section 24 regarding maintenance of Books and Records, does not incorporate the applicable Federal Requirements set forth in Exhibit 4, or is inconsistent with the requirements of the relevant scope of Work, (ii) increases ADOT's liability or (iii) adversely affects ADOT's step-in rights.

9.4.9.2 The Lead Subcontract and Maintenance Services Subcontract also shall expressly require the personal services of and not be assignable by the Lead Subcontractor or Lead Maintenance Firm without Developer's and ADOT's prior consent, each in its sole discretion, provided that this provision shall not prohibit the subcontracting of portions of the Work.

9.4.10 Additional Requirements for Independent Quality Firm Subcontract(s)

9.4.10.1 Developer shall directly subcontract all Independent Quality Firm ("IQF") services, described in Sections GP 110.07.2.1 and 110.08.3 of the Technical Provisions, to one or more IQF Subcontractors.

9.4.10.2 At no time during the Term shall any IQF Subcontractor be an Affiliate of Developer.

9.4.10.3 Unless Developer first clearly demonstrates to ADOT that an IQF Subcontractor has committed a material default that has not been cured after a reasonable cure period, Developer shall not terminate any Subcontract with an IQF Subcontractor, or permit or suffer any substitution or replacement of any IQF Subcontractor, unless so authorized in writing by ADOT in its sole discretion.

9.5 Responsibility for Developer-Related Entities

Developer shall supervise and be responsible for the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any Developer-Related Entity, as though Developer directly employed all such Persons.

9.6 Key Personnel

9.6.1 Availability of Key Personnel

9.6.1.1 Developer acknowledges and agrees that ADOT's award of this Agreement to Developer was based, in large part, on the qualifications and experience of the Key Personnel and Developer's commitment that such Key Personnel are available to undertake and perform the Work.

9.6.1.2 Except as provided in Section 9.6.3.1, (a) Developer represents, warrants and covenants that all Key Personnel are available for and will perform the roles identified for them in the Proposal, and (b) Developer shall not replace or permit replacement of any individual filling a Key Personnel position without ADOT's prior written approval.

9.6.1.3 Developer shall cause the individuals filling Key Personnel positions to maintain active involvement in the prosecution and performance of the Work sufficient for satisfactory performance of the tasks to be performed by such Key Personnel. In addition to the foregoing, ADOT has the right to require a greater time commitment, up to full time commitment, from any individual filling a Key Personnel position during the Construction Period or Maintenance Period, as applicable, if ADOT, in its good faith discretion, determines such additional commitment of time is necessary for satisfactory prosecution and performance of the Work.

9.6.1.4 Developer shall provide phone, e-mail addresses and mobile telephone numbers for all Key Personnel. ADOT requires the ability to contact all Key Personnel 24 hours per day, seven days per week.

9.6.2 Liquidated Damages for Unavailability of Key Personnel

9.6.2.1 If individuals filling certain Key Personnel positions are not available to perform the roles identified for those individuals in the Proposal, or do not maintain active involvement in the prosecution and performance of the Work, Developer acknowledges ADOT, the Work and the Project will suffer significant and substantial Losses due to the unavailability of that individual.

9.6.2.2 Developer also acknowledges it is impracticable and extremely difficult to determine the actual Losses that would accrue to ADOT in the event of such unavailability of Key Personnel. Accordingly, and subject to Section 9.6.3, if at any time during the D&C Period or Maintenance Period, as applicable, an individual filling a Key Personnel position shown in the table in this Section 9.6.2.2 is not available to perform the role identified for that individual in the Proposal, or not actively involved in the prosecution and performance of the Work (regardless of whether the individual is replaced by another individual approved by ADOT), Developer shall pay ADOT Liquidated Damages in the amount set forth in this Section 9.6.2.2 based on the individual's Key Personnel position.

Key Personnel Position	Liquidated Damages
D&C Period	
Project Manager	$370,000.00
Construction Manager	$300,000.00
Design Manager	$280,000.00
ROW Acquisition Manager	$150,000.00
Environmental Compliance Manager	$240,000.00
Maintenance Period	
Maintenance Manager	$170,000.00

9.6.2.3 Developer understands and agrees that any Liquidated Damages payable under Section 9.6.2.2 are not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date.

9.6.2.4 ADOT will have the right to deduct Liquidated Damages owing from Developer to ADOT under Section 9.6.2.2 from amounts owing from ADOT

to Developer under the Agreement, or to collect such Liquidated Damages from any letter of credit, bond or Guaranty furnished under this Agreement.

9.6.3 Limitations on Liquidated Damages for Unavailability of Key Personnel

9.6.3.1 Developer shall not be liable for Liquidated Damages under Section 9.6.2.2 under the following conditions:

(a) Developer removes or replaces an individual filling a Key Personnel position at ADOT's direction; or

(b) An individual filling a Key Personnel position is unavailable because of death, retirement, injury or termination of employment with the applicable Developer-Related Entity (except where the individual moves to an affiliated entity);

provided, however, that in each such case, Developer shall promptly propose to ADOT a replacement individual for the Key Personnel position, which individual shall be subject to ADOT's approval.

9.6.3.2 Developer may replace the individual filling the position of Project Manager, Construction Manager, Design Manager, ROW Acquisition Manager and Environmental Compliance Manager with another individual approved by ADOT one time (in each case) during the D&C Period without incurring Liquidated Damages under Section 9.6.2.2, but only if: (a) Developer has completed not less than 70% of the D&C Work; (b) the D&C Work is progressing on schedule; and (c) there exist no uncured Developer Defaults. Subsequent replacements of individuals filling any such position shall be subject to Liquidated Damages under Section 9.6.2.2.

9.6.3.3 Developer may replace the Maintenance Manager not more frequently than every three years during the Maintenance Period without incurring Liquidated Damages under Section 9.6.2.2, but only if Developer replaces the outgoing Maintenance Manager with an ADOT-approved replacement before the outgoing Maintenance Manager vacates the position.

9.6.3.4 If an individual filling a Key Personnel position is unavailable because ADOT does not issue NTP 1 within 180 days after the Proposal Due Date, through no act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any Developer-Related Entity, then Developer shall have 30 days after issuance of NTP 1 to identify a replacement for such Key Personnel position without incurring Liquidated Damages under Section 9.6.2.2. Upon ADOT's approval of the replacement individual(s), such individual(s) shall be considered Key Personnel under this Agreement, including for purposes of Section 9.6.2.2 relative to Liquidated Damages.

9.6.4 Failure to Timely Replace Key Personnel

ADOT will have the right to withhold a percentage of progress payments or Monthly Disbursements (as applicable) owing to Developer if Developer does not fill vacated Key Personnel positions within certain deadlines after the positions are vacated, regardless of why vacated, as specified in Sections 9.6.4.1 and 9.6.4.2.

9.6.4.1 ADOT may withhold 5% of progress payments owing to Developer if at any time during the D&C Period the position of Project Manager, Construction Manager, Design Manager, Quality Manager or Environmental Compliance Manager is vacated and remains unfilled for:

(a) 60 days after the position is vacated because of the individual's death, retirement, injury or termination of employment by the applicable Developer-Related Entity (except where the individual moves to an affiliated company); or

(b) 30 days after the position is vacated for any other reason (including where the individual moves to an affiliated company).

9.6.4.2 ADOT may withhold 2% of progress payments or Monthly Disbursements owing to Developer if at any time during the D&C Period or Maintenance Period, as applicable, any Key Personnel position not listed in Section 9.6.4.1 is vacated and remains unfilled for:

(a) 60 days after the position is vacated because of the individual's death, retirement, injury or termination of employment by the applicable Developer-Related Entity (except where the individual moves to an affiliated company); or

(b) 30 days after the position is vacated for any other reason (including where the individual moves to an affiliated company).

9.6.4.3 ADOT's right to withhold progress payments or Monthly Disbursements under Sections 9.6.4.1 and 9.6.4.2 will end when the Key Personnel position is filled with an ADOT-approved replacement. Developer may include such withheld amounts in the next month's Draw Request after Developer fills the position with an ADOT-approved replacement.

9.7 Subcontracts with Affiliates

9.7.1 Developer shall have the right to have Work and services performed by Affiliates only under the following terms and conditions (in addition to all other general requirements for Subcontracts set forth in this Agreement):

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

(b) The Subcontract shall comply with all applicable provisions of this Article 9, be consistent with Good Industry Practice, and be in form and substance substantially similar to Subcontracts then being used by Developer or Affiliates for similar Work or services with unaffiliated Subcontractors;

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

(d) The pricing, scheduling and other terms and conditions of the Subcontract shall be no less favorable to Developer than those that Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Subcontractor. Developer shall bear the burden of proving that the same are no less favorable to Developer; and

(e) No Affiliate shall be engaged to perform any Work or services which any Contract Documents or the Project Management Plan or any component part, plan or other documentation thereunder indicates are to be performed by an independent or unaffiliated party (such as IQF services). No Affiliate shall be engaged to perform any Work or services which would be inconsistent with Good Industry Practice.

9.7.2 Before entering into a written Subcontract with an Affiliate or any supplement or amendment thereto, Developer shall submit a true and complete copy of the proposed Subcontract to ADOT for review and comment. ADOT will have 20 days after receipt to deliver its comments to Developer.

9.7.3 Developer shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive transactions of similar scope.

9.8 Labor Standards

9.8.1 In the performance of its obligations under the Contract Documents, Developer at all times shall comply, and require by Subcontract that all Subcontractors and Suppliers comply, with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.

9.8.2 All individuals performing Work shall have the skill and experience and any licenses required to perform the Work assigned to them.

9.8.3 If any individual employed by Developer or any Subcontractor is not performing the Work in a proper, safe and skillful manner, then Developer shall, or shall cause such Subcontractor to, remove such individual and such individual shall not be re-employed on the Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if Developer fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Work, then ADOT may

suspend the affected portion of the Work by delivery of notice of such suspension to Developer. Such suspension shall be considered a suspension for cause and shall in no way relieve Developer of any obligation contained in the Contract Documents or entitle Developer to any additional compensation or Completion Deadline adjustment hereunder.

9.9 Ethical Standards

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

(a) Restrictions on gifts and contributions to, and lobbying of, ADOT, the Arizona State Transportation Board, the General Engineering Consultant and any of their respective commissioners, directors, officers and employees;

(b) Protection of employees from unethical practices in selection, use, hiring, compensation or other terms and conditions of employment, or in firing, promotion and termination of employees;

(c) Protection of employees from retaliatory actions (including discharge, demotion, suspension, threat, harassment, pay reduction or other discrimination in the terms and conditions of employment) in response to reporting of illegal (including the making of a false claim), unethical or unsafe actions or failures to act by any Developer-Related Entity;

(d) Restrictions on directors, members, officers or supervisory or management personnel of any Developer-Related Entity engaging in any transaction or activity, including receiving or offering a financial incentive, benefit, loan or other financial interest, that is, or to a reasonable person appears to be, in conflict with or incompatible with the proper discharge of duties or independence of judgment or action in the performance of duties, or adverse to the interests of the Project or employees;

(e) Restrictions on use of office or job position for a purpose that is, or would to a reasonable person appear to be, primarily for the private benefit of a director, member, officer or supervisory or management person, rather than primarily for the benefit of Developer or the Project, or primarily to achieve a private gain or an exemption from duty or responsibility for a director, member, officer or supervisory or management person; and

(f) Restrictions on directors, members, officers or employees of any Developer-Related Entity performing any of the Work if the performance of such services would be prohibited under ADOT's published conflict of interest rules and policies applicable to the Project, or would be prohibited under applicable Laws.

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

9.10 Prevailing Wages

9.10.1 Developer shall pay or cause to be paid to all applicable workers employed by it or its Subcontractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including the Davis-Bacon Act, and as provided in Attachment 3 to Exhibit 4 ("prevailing wages"); provided, however, that the minimum prevailing wages that Lead Maintenance Firm shall be required to pay to all applicable workers for the Maintenance Services shall be the lesser of: (a) the prevailing wages in effect on the commencement date of the Maintenance ~~Term~~Period then in effect and (b) the prevailing wages set forth in Attachment 3 to Exhibit 4 adjusted multiplied by a fraction the numerator of which is the CPI most recently published prior to the commencement date of the Maintenance ~~Term~~Period and the denominator of which is the Base CPI. Developer shall comply and cause its Subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Subcontracts at any tier with ADOT or Governmental Entities.

9.10.2 It is Developer's sole responsibility to determine the wage rates required to be paid. In the event rates of wages and benefits change while this Agreement is in effect, Developer shall bear the cost of such changes and shall have no Claim against ADOT on account of such changes. Without limiting the foregoing, no Claim will be allowed which is based upon Developer's lack of knowledge or a misunderstanding of any such requirements or Developer's failure to include in the Price adequate increases in such wages over the duration of this Agreement.

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

9.11 Uniforms

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

ARTICLE 10.
PERFORMANCE AND PAYMENT BONDS; GUARANTEES

10.1 Provision of Bonds during Construction Period and Warranty Term

Developer has provided or shall provide to ADOT performance and payment bonds securing Developer's obligations during the Construction Period and Warranty Term, and Developer shall maintain such bonds in full force and effect as described in this Section 10.1.

10.1.1 D&C Performance Bond

10.1.1.1 On or before the Effective Date, Developer delivered or shall deliver to ADOT the D&C Performance Bond in the amount of $250,000,000.00.

10.1.1.2 ADOT will provide a release of the D&C Performance Bond provided that (and upon such date thereafter that) all of the following have occurred:

(a) Final Acceptance has occurred;

(b) There exists no Developer Default;

(c) No event has occurred that with the giving of notice or passage of time, or both, would constitute a Developer Default; and

(d) Developer has delivered to ADOT a Warranty Bond bonding performance of Developer's Warranty obligations. The Warranty Bond must be: (i) in form and substance acceptable to ADOT; (ii) in a face amount of $10,000,000.00; and (iii) issued by a Surety meeting the requirements set forth in Section 10.1.3. The Warranty Bond shall remain in effect for the duration of the Warranty Term and thereafter until payment of any amounts owing from Developer to ADOT under Section 12.1.3 and the end of the extended warranty period for re-done work, as set forth in Section 12.2; provided, however, that at the end of the Warranty Term Proposer may replace the Warranty Bond with a replacement bond or security in form and substance acceptable to ADOT and in an amount equal to 200% of the cost of any re-done Work performed during the Warranty Term.

10.1.1.3 If Developer elects not to provide a Warranty Bond, then ADOT will provide a release of the D&C Performance Bond on the date that is one year after Final Acceptance, provided that (and upon such date thereafter that) all of the following have occurred:

(a) There exists no Developer Default;

(b) No event has occurred that with the giving of notice or passage of time, or both, would constitute a Developer Default; and

(c) The Warranty Term has ended, Developer has satisfied any amount due ADOT as set forth in Section 12.1.3 and any warranty period for re-done work as set forth in Section 12.2 has ended.

10.1.2 D&C Payment Bond

10.1.2.1 On or before the Effective Date, Developer delivered or shall deliver to ADOT the D&C Payment Bond in the amount of $250,000,000.00.

10.1.2.2 ADOT will provide a release of the D&C Payment Bond upon:

(a) Receipt of (i) evidence satisfactory to ADOT that all Persons eligible to file a claim against the D&C Payment Bond have been fully paid, and (ii) unconditional releases of claims and stop notices from all Subcontractors who filed preliminary notices of a claims against the D&C Payment Bond (or evidence satisfactory to ADOT that any such claims and stop notices have been separately bonded around); and

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

10.1.3 Each D&C Performance Bond and D&C Payment Bond required hereunder, and any Warranty Bond, shall be issued by a Surety that is: (a) licensed and authorized to do business in the State; (b) listed on the "Department of the Treasury's Listing of Approved Sureties (Department Circular 570)" (found at www.fiscal.treasury.gov/fsreports/ref/suretybnd/c570.htm); and (c) rated "A" or higher by at least two nationally-recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A minus ("A-") or better and Class VIII or better according to A.M. Best and Company's Financial Strength Rating and Financial Size Category, or as otherwise approved by ADOT in its sole discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the foregoing requirements, Developer shall provide a replacement bond in the same form and, if applicable, with the same multiple obligee rider, issued by a Surety meeting the foregoing requirements, or other assurance satisfactory to ADOT in its sole discretion. If any bond is provided by co-Sureties and at least one of the co-Sureties meets the foregoing requirements and is liable for the full amount of the bond, then no replacement bond shall be required so long as such co-Surety continues to meet the foregoing requirements.

10.1.4 If the D&C Price is increased in connection with a Supplemental Agreement, ADOT may, in its sole discretion, require a corresponding and proportionate increase in the amount of each D&C Performance Bond and D&C Payment Bond, or alternative security.

10.2 Provision of Bonds during Maintenance Period

As a Maintenance Services Condition Precedent pursuant to Section 6.6.3, Developer shall provide to ADOT Maintenance Bonds securing Developer's performance and payment obligations during the Maintenance Period, and Developer shall maintain such Maintenance Bonds in full force and effect in accordance with this Section 10.2.

10.2.1 Maintenance Performance Bonds

10.2.1.1 Developer shall deliver by the time set forth in this Section 10.2 and shall maintain in place for the duration of the Term performance bonds in the form attached hereto as Exhibit 10-1 (the "Maintenance Performance Bond") and in compliance with the provisions set forth herein.

10.2.1.2 An initial Maintenance Performance Bond shall be required as of the Substantial Completion Date and shall have a covered period of five years, and a new Maintenance Performance Bond shall be required as of each five-year anniversary of the Substantial Completion Date and have a covered period of five years except if a shorter period is sufficient at the end of the Term.

10.2.1.3 The amount of each Maintenance Performance Bond shall be based on the higher of the following calculations:

(a) 100% of the escalated amounts of Monthly Disbursements scheduled for the applicable five-year period, as set forth in Exhibit 2-4.3; and

(b) 100% of the estimated costs of Capital Asset Replacement Work scheduled to be completed during the applicable five-year period, as determined before each five-year period in accordance with Sections 8.3 and 8.11.2 and the Handback Requirements; plus 100% of the escalated amounts of Annual Routine Maintenance Payments scheduled for such five-year period, as set forth in Exhibit 2-4.4.

10.2.1.4 As an alternative, Developer shall have the option, at its sole discretion, to:

(a) Deliver to ADOT by the time set forth in this Section 10.2 (i) a Maintenance Performance Bond bonding all Routine Maintenance during the applicable five-year period, in the initial amount equal to 100% of the escalated amounts of Annual Routine Maintenance Payments scheduled for such five-year period, as set forth in Exhibit 2-4.4, and (ii) a letter from a qualified Surety, in form and substance approved by ADOT, unconditionally committing to Developer and ADOT to timely issue to ADOT the Maintenance Performance Bond described in clause (b) below; and

(b) Deliver to ADOT, prior to commencing any Capital Asset Replacement Work scheduled to be performed during the applicable five-year period, a separate Maintenance Performance Bond bonding Developer's performance

of such Capital Asset Replacement Work. The bond amount shall equal the higher of (i) 100% of the escalated amounts of Capital Asset Replacement Work Payments scheduled for the applicable five-year period, as set forth in Exhibit 2-4.3, and (ii) 100% of the contract pricing Developer has obtained for all such Capital Asset Replacement Work.

10.2.1.5 For the purposes of determining the escalated amounts of the Monthly Disbursements and Annual Routine Maintenance Payments described in clauses (a) and (b) of Section 10.2.1.3 and clauses (a) and (b) of Section 10.2.1.4, the corresponding payments set forth in Exhibits 2-4.4 and 2-4.5 for the applicable five-year period shall be escalated to the date that is 60 days prior to the date the Maintenance Performance Bond is required, using CPI and CCI, as applicable, in the same manner as applied to the Maintenance Price in Section 13.5.6 (i.e. by multiplying by the factor $\times ({}^{CPI}/_{BCPI})$ or $\times ({}^{CCI}/_{BCCI})$), and then at an annual rate of 3% for each succeeding year.

10.2.1.6 If Developer exercises its option under Section 10.2.1.4, then the Parties shall:

(a) Modify the form of the Maintenance Performance Bond for the Routine Maintenance to the minimum extent necessary to conform to this option, and

(b) Modify the form of the Maintenance Performance Bond for the Capital Asset Replacement Work so that it follows the form of the D&C Performance Bond, with such further modifications only as necessary to conform to the applicable scope of the Capital Asset Replacement Work and other obligations and liabilities of Developer under the Contract Documents respecting such Capital Asset Replacement Work.

10.2.1.7 ADOT will provide a release of a Maintenance Performance Bond on the later of:

(a) The date that is three years after the end of the term of the Maintenance Performance Bond; or

(b) The date that all outstanding Developer Defaults, and Claims made against Developer within three years after the end of the term of the Maintenance Performance Bond, arising out of the failure to perform obligations guaranteed by the Maintenance Performance Bond, have been finally resolved.

For clarity, the foregoing provides a tail period for notifying the Surety of claims, but does not extend the Maintenance Performance Bond to Developer obligations to be performed beyond the end of the five-year bond term.

10.2.2 Maintenance Payment Bonds

10.2.2.1 Developer shall deliver to ADOT a payment bond in the same amount, at the same times, and for the same term as required for the corresponding Maintenance Performance Bond pursuant to Section 10.2.1 in the form attached hereto as Exhibit 10-2 (the "Maintenance Payment Bond").

10.2.2.2 ADOT will provide a release of a Maintenance Payment Bond upon the first to occur of:

(a) Receipt of (i) evidence satisfactory to ADOT that all Persons eligible to file a claim against the Maintenance Payment Bond have been fully paid, and (ii) unconditional releases of claims and stop notices from all Subcontractors who filed a preliminary notice of a claim against the Maintenance Payment Bond (or evidence satisfactory to ADOT that any such claims and stop notices have been separately bonded around); or

(b) Expiration of the statutory period for Subcontractors to file a claim against the Maintenance Payment Bond, if no claims have been filed; provided, however, that if no statute applies, then this clause (b) shall be disregarded.

For clarity, the foregoing provides a tail period for notifying the Surety of claims, but does not extend the Maintenance Payment Bond to Developer payment obligations first arising beyond the end of the five-year bond term.

10.2.3 Surety Qualifications

Each Maintenance Bond shall be issued by a Surety authorized to do business in the State with a rating of at least A minus (A-) or better and Class VIII or better by A.M. Best Company, or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by ADOT in its sole discretion. If any Maintenance Bond is provided by co-Sureties and at least one of the co-Sureties meets the foregoing requirements and is liable for the full amount of the bond, then no replacement bond shall be required so long as such co-Surety continues to meet the foregoing requirements.

10.2.4 Increase Due to Supplemental Agreements

If the Maintenance Price is increased in connection with a Supplemental Agreement, ADOT may, in its sole discretion, require a corresponding and proportionate increase in the amount of each Maintenance Bond, or alternative security.

10.2.5 Replacement Maintenance Bonds

10.2.5.1 Developer shall deliver to ADOT replacement Maintenance Bonds meeting the requirements set forth in this Section 10.2:

(a) No later than 20 days prior to the first to occur of (i) the expiration of the then current Maintenance Bond (for clarity, this means the expiration of the bonded period, not occurrence of the subsequent release date), or (ii) the date on which an adjustment to the amount of such Maintenance Bond is required pursuant to Section 10.2.1 or 10.2.4; and

(b) No later than ten days after (i) any Maintenance Bond previously provided becomes ineffective, or (ii) the Surety that provided such Maintenance Bond no longer meets the requirements set forth in Section 10.2.3.

10.2.5.2 If Developer fails to timely provide a replacement Maintenance Bond meeting the applicable requirements of this Section 10.2, or the Maintenance Guaranty meeting the requirements set forth in Section 10.4, Developer shall have an additional 120 days after the applicable date set forth in Section 10.2.5.1 to cure such failure, but only if Developer delivers to ADOT, by such applicable date, a letter of credit or cash collateral in lieu of the replacement Maintenance Bonds. The letter of credit collateral shall be in an amount equal to the total Maintenance Payments scheduled to be paid during the 120-day cure period, commencing on the date that (a) the then current Maintenance Performance Bond will expire, (b) the adjusted amount is required, (c) the Maintenance Bond previously provided becomes ineffective, or (d) the Surety no longer meets the requirements hereof, as applicable.

10.2.5.3 ADOT will have the same rights to draw upon any letter of credit or cash collateral provided in lieu of Maintenance Bonds to the same extent it could draw on the Maintenance Bonds. ADOT will return to Developer any cash collateral not so utilized by ADOT within the 120-day cure period described in Section 10.2.5.2 upon the earlier of: (a) delivery by Developer of replacement Maintenance Bonds meeting the applicable requirements of this Section 10.2 and the Maintenance Guaranty (if required) in accordance with Sections 10.4, and (b) the date on which the Maintenance Bonds would otherwise be released in accordance with this Section 10.2.

10.2.5.4 Failure of Developer to provide replacement Maintenance Bonds within the 120-day cure period described in Section 10.2.5.2 shall constitute an Event of Default.

10.2.6 Party Providing Maintenance Bonds; Multiple Obligees

10.2.6.1 Developer may elect to:

(a) Procure the Maintenance Bonds directly, so that they are security, as applicable, for Developer's (i) performance obligations under the Contract Documents respecting the Maintenance Services, and (ii) Developer's payment obligations to the designated Persons supplying labor or materials respecting the Maintenance Services; or

(b) Subject to this Section 10.2, deliver Maintenance Bonds from each Lead Maintenance Firm and other Subcontractors having a direct

Subcontract with Developer for performance of any portion of the Maintenance Services, so that each such Maintenance Bond, as applicable, is security for (i) performance of the Lead Maintenance Firm's or such other Subcontractor's obligations under its Subcontract for Maintenance Services, and (ii) payment to the designated Persons supplying labor or materials.

10.2.6.2 If Developer makes the election under clause (b) of Section 10.2.6.1, then:

(a) Developer shall provide multiple obligee riders, in the forms attached as Exhibits 10-3 and 10-4, respectively, in which ADOT is named as an additional obligee and all rights of Developer are subordinated to ADOT;

(b) The language of the bond form set forth in Exhibits 10-1 and 10-2 shall be adjusted to reflect this election, but only as necessary to (i) identify the Subcontract for Maintenance Services as the bonded contract, (ii) identify the Lead Maintenance Firm or other firm, as applicable, as the principal, and (iii) change the obligee to Developer; and

(c) Such bonds shall otherwise conform to the requirements set forth in this Section 10.2.

10.2.6.3 If Developer makes the election under clause (b) of Section 10.2.6.1 and there are two or more parties providing the Maintenance Bonds, then the aggregate sum of the Maintenance Bonds shall equal the required bond amount set forth in Section 10.2.1 and the size of each bond shall be in proportion to the scope and cost of the Maintenance Services to be provided under each bonded Subcontract.

10.3 No Relief of Liability

Notwithstanding any other provision set forth in the Contract Documents, performance by a Surety or Guarantor of any of the obligations of Developer that meets the requirements of the Agreement shall not relieve Developer of any of its other obligations hereunder, including the payment of Liquidated Damages.

10.4 Guaranty

10.4.1 [***DELETE THIS PROVISION UNLESS A D&C GUARANTY IS REQUIRED AS OF THE EFFECTIVE DATE***] [_____] are the D&C Guarantors guaranteeing Developer's obligations under the Contract Documents as set forth in Section 10.4.2 as of the Effective Date and have provided a guaranty in accordance with the form attached as Exhibit 11-1.

10.4.2 If Developer is required to provide a Guaranty guaranteeing its obligations under the Contract Documents respecting the D&C Work (the "D&C Guaranty"), the D&C Guaranty shall be in the form set forth in Exhibit 11-1 from a Guarantor approved by ADOT.

10.4.3 [***DELETE THIS PROVISION UNLESS A MAINTENANCE GUARANTY IS PROVIDED IN PROPOSAL***] [_____] are the Maintenance Guarantors guaranteeing Developer's obligations under the Contract Documents as set forth in Section 10.4.4 as of the Effective Date and have provided a guaranty in accordance with the form attached as Exhibit 11-2.

10.4.4 If Developer is required to provide a Guaranty guaranteeing Developer's obligations under the Contract Documents during the Maintenance Period (the "Maintenance Guaranty"), the Maintenance Guaranty shall be in the form set forth in Exhibit 11-2 from a Guarantor approved by ADOT as of and as a condition to Substantial Completion. If a Maintenance Guaranty was provided as of the Effective Date and such Maintenance Guaranty satisfies the requirements of this Section 10.4 and is in effect on the Substantial Completion Date, then Developer shall not be required to provide an additional Maintenance Guaranty at the Substantial Completion Date.

10.4.5 Developer shall report to ADOT, on a quarterly basis during the Term, the Tangible Net Worth of Developer and each Guarantor. The report shall state the Tangible Net Worth and be certified as true and complete by the chief financial officer of the entity reporting. The entity may mark the report "confidential."

10.4.6 If at any time during the course of this Agreement the total combined Tangible Net Worth of Developer and either the D&C Guarantors or the Maintenance Guarantors, as applicable, is less than $200,000,000.00, Developer shall provide one or more guarantees so that the combined Tangible Net Worth of Developer and the applicable Guarantors is at least $200,000,000.00. This minimum Tangible Net Worth amount of $200,000,000.00 shall be adjusted annually on the first anniversary of the Effective Date and continuing on each anniversary thereafter during the Term to equal $200,000,000.00 multiplied by a fraction the numerator of which is the CCI most recently published prior to the applicable anniversary and the denominator of which is the Base CCI, and then rounded to the nearest $100,000.00. However, provided there exists no Developer Default as of the anniversary of the Effective Date occurring immediately after the first five years of the Maintenance Period, the Tangible Net Worth requirement on such anniversary, and each anniversary of the Effective Date thereafter, shall equal 50% of what it would otherwise be under the foregoing escalation provisions.

10.4.7 If this Agreement is executed by a Developer that is a joint venture and each joint venture member has agreed to be held jointly and severally liable for any and all of the duties and obligations of Developer under the Contract Documents, then the Tangible Net Worth of each joint venture member will be counted toward the Tangible Net Worth requirement.

10.4.8 Each Guaranty shall be in the applicable form attached as Exhibit 11 together with appropriate evidence of authorization, execution, delivery and validity thereof, and shall guarantee the Guaranteed Obligations. ADOT may require opinions

from the Guarantor's legal counsel, in form and substance acceptable to ADOT, on due authorization, execution, delivery, validity and enforceability of the Guaranty.

10.4.9 Developer may replace an existing Guaranty with a new Guaranty upon prior approval by ADOT. Any new Guaranty shall be provided in the applicable form attached as Exhibit 11-1 or 11-2 together with appropriate evidence of authorization, execution, delivery and validity thereof, and with legal opinions as required by ADOT, and shall guarantee the Guaranteed Obligations. The Guaranty being replaced shall remain in effect until the approved replacement Guaranty becomes effective.

ARTICLE 11.
INSURANCE; RISK OF LOSS; CLAIMS AGAINST THIRD PARTIES

Developer shall procure and keep in effect, or cause to be procured and kept in effect, the insurance policies in accordance with the requirements in this Article 11 and Exhibit 12.

11.1 General Insurance Requirements

11.1.1 Qualified Insurers

Each of the insurance policies required hereunder shall be procured from an insurance carrier or company that, at the time coverage under the applicable policy commences is: (a) authorized to do business in the State and has a current policyholder's management and financial size category rating of not less that "A –, VII" according to A.M. Best's Insurance Reports Key Rating Guide; or (b) otherwise approved by ADOT.

11.1.2 Premiums, Deductibles and Self-Insured Retentions

Developer shall timely pay, or cause to be paid, the premiums for all insurance required under this Agreement. Subject to Section 11.3 and Articles 14 and 15, Developer shall be responsible for and ADOT will have no liability for any deductibles, self-insured retentions and amounts in excess of the coverage provided. In the event that any required coverage is provided under a self-insured retention, Developer shall ensure that the entity responsible for the self-insured retention has an authorized representative issue a letter to ADOT, at the same time the insurance policy is to be procured, stating that it shall protect and defend ADOT to the same extent as if a commercial insurer provided coverage for ADOT.

11.1.3 Primary Coverage

Each insurance policy shall provide that the coverage is primary and noncontributory coverage with respect to any other insurance available to ADOT and the other Indemnified Parties, except for coverage that by its nature cannot be written as primary. For each property policy, such policy shall provide that the coverage thereof is primary and noncontributory with respect to all insureds as their interest may appear. Any insurance or self-insurance beyond that specified in this Agreement that is maintained by an insured or any such additional insured shall be excess of such insurance and shall not contribute with it.

11.1.4 Project-Specific Insurance

Except as expressly provided otherwise in Exhibit 12, all insurance policies required hereunder shall be purchased specifically and exclusively for the Project and extend to all aspects of the Work, with coverage limits devoted solely to the Project.

Insurance coverages under corporate insurance programs with dedicated Project-specific limits and identified allocation of premiums to the Project are acceptable, provided that they otherwise meet all requirements described in this Section 11.1 and Exhibit 12.

11.1.5 Verification of Coverage

11.1.5.1 At each time Developer is required to initially obtain or cause to be obtained each insurance policy, and thereafter not later than ten days prior to the expiration date of each insurance policy, Developer shall deliver to ADOT a certificate of insurance. Each required certificate must meet the requirements of ADOT and, to the extent permitted under applicable Laws, state the identity of all carriers, named insureds and additional insureds required under the Contract Documents, state the type and limits of coverage, deductibles and cancellation provisions of the policy, include as attachments all additional insured and waiver of subrogation endorsements required under the Contract Documents, and be signed by an authorized representative of the insurance company shown on the certificate or its agent or broker. Each required certificate of insurance evidencing coverage must be signed by a representative or agent of the insurance company shown on the evidence with proof that the signer is an authorized representative or agent of such insurance company and is authorized to bind it to the coverage, limits and termination provisions shown on the evidence. Each such certificate of insurance shall be accompanied by a letter signed by Developer confirming that the insurances represented in the certificate of insurance fully comply with all provisions of this Article 11 and Exhibit 12.

11.1.5.2 In addition, within a reasonable time after availability (but not to exceed 30 days), Developer shall deliver to ADOT: (i) a complete certified copy of each such insurance policy or modification, or renewal or replacement insurance policy and all endorsements thereto and (ii) satisfactory evidence of payment of the premium therefor.

11.1.5.3 If Developer has not provided ADOT with the foregoing proof of coverage and payment within five days after ADOT delivers to Developer written request therefor or notice of a Developer Default under Section 19.1.1 and demand for the foregoing proof of coverage, ADOT may, in addition to any other available remedy, without obligation or liability and without further inquiry as to whether such insurance is actually in force: (a) obtain such an insurance policy; and Developer shall reimburse ADOT for the cost thereof upon demand, and (b) suspend all or any portion of Work for cause and close the Project until ADOT receives from Developer such proofs of coverage in compliance with this Section 11.1 (or until ADOT obtains an insurance policy, if it elects to do so).

11.1.6 Subcontractor Insurance Requirements

11.1.6.1 Developer's obligations regarding Subcontractor's insurance are set forth in Exhibit 12. Developer shall cause each Subcontractor to provide such

insurance in the manner and in the form consistent with the requirements contained in this Agreement.

11.1.6.2 If any Subcontractor fails to procure and keep in effect the insurance required of such Subcontractor under Exhibit 12, and ADOT asserts the same as a Developer Default hereunder, then Developer may, within the applicable cure period, cure such Developer Default by:

(a) Causing such Subcontractor to obtain the requisite insurance and providing to ADOT proof of insurance;

(b) Procuring the requisite insurance for such Subcontractor and providing to ADOT proof of insurance; or

(c) Terminating the Subcontractor and removing its personnel from the Site.

11.1.7 Policies with Insureds in Addition to Developer

All insurance policies that are required to insure Persons (whether as named or additional insureds) in addition to Developer shall be endorsed to comply with the following provisions:

(a) The insurance policy shall be written or endorsed so that no acts or omissions of an insured shall vitiate coverage of the other insureds. Without limiting the foregoing, any failure on the part of a named insured to comply with reporting provisions or other conditions of the insurance policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and, if applicable, ADOT Consultants).

(b) The insurance shall apply separately to each named insured and additional insured against which a claim is made or suit is brought, except with respect to the limits of the insurer's liability or joint defense of insureds.

(c) All endorsements adding ADOT and the other additional insureds as required by the Contract Documents to the required insurance policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the insurance policy generally, and shall state that the interests and protections of each such additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage.

11.1.8 Additional Terms and Conditions

11.1.8.1 Each insurance policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 days' prior notice (or ten days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to, at a minimum, ADOT, Developer and, as applicable, the Lead Subcontractor or Lead Maintenance Firm; provided, however, that (a) no such notice from the insurer shall be required for reduction in limits due to claims payments, and (b) Developer may obtain as comparable an endorsement as possible if it establishes unavailability of this endorsement as set forth in Section 11.1.12. Such endorsement shall not include any limitation of liability of the insurer for failure to provide such notice.

11.1.8.2 The commercial general liability insurance policy shall cover liability arising out of the acts or omissions of Developer's employees engaged in the Work as well as employees of Subcontractors if Subcontractors are covered by a Developer-controlled insurance program. If any Subcontractor is not covered by such Developer-controlled insurance program, then Subcontractor shall provide commercial general liability to cover liability arising out of the activities of Subcontractor's employees engaged in the Work.

11.1.8.3 If Developer's or any Subcontractor's activities involve transportation of Hazardous Materials, the automobile liability insurance policy for Developer or such Subcontractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement-Hazardous Materials Clean Up (MCS-90).

11.1.8.4 Each insurance policy shall provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of any professional liability policy).

11.1.9 Waivers of Subrogation

Subject to the self-insurance provision below, ADOT waives all rights against the Developer-Related Entities, and Developer waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Article 11, except such rights as the Parties may have to the proceeds of such insurance. For the avoidance of doubt, and subject to the self-insurance provision below, such mutual waivers shall not apply to claims denied by the insurer, or otherwise not covered by insurance obtained pursuant to this Section 11.1.9. If Developer is deemed to self-insure a claim or loss under Section 11.2.4, then Developer's waiver shall apply as if it carried the required insurance. Developer shall require all Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated above. Subject to Section 11.1.12, each policy, including workers' compensation if permitted under the applicable worker's compensation insurance laws,

shall include a waiver of any right of subrogation against the Indemnified Parties or the insurer's consent to the insured's waiver of recovery in advance of loss. However, no waiver of subrogation rights under any policy providing professional liability coverage to the insureds shall be required of any party.

11.1.10 No Recourse

There shall be no recourse against ADOT for payment of premiums or other amounts with respect to the insurance required to be provided by Developer hereunder, except to the extent of ADOT's obligation to pay the Price or to the extent such costs are recoverable under Section 11.1.3 or Articles 14 or 15.

11.1.11 Support of Indemnifications

The insurance coverage provided, or caused to be provided, hereunder by Developer is not intended to limit Developer's indemnification obligations under the Contract Documents.

11.1.12 Inadequacy or Unavailability of Required Coverages

11.1.12.1 ADOT makes no representation that the limits of liability specified for any insurance policy to be carried pursuant to this Agreement or approved variances therefrom are adequate to protect Developer against its undertakings under the Contract Documents, to ADOT, or any other Person. No such limits of liability or approved variances therefrom shall preclude ADOT from taking any actions as are available to it under the Contract Documents or otherwise at Law.

11.1.12.2 If Developer demonstrates to ADOT's reasonable satisfaction that it has used diligent efforts in the global insurance and reinsurance markets to maintain the insurance coverages Developer is required to provide hereunder, and if, despite such diligent efforts and through no fault of Developer, any of such coverages (or any of the required terms of such coverages, including insurance policy limits) become unavailable during the Term at commercially reasonable rates, ADOT will consider in good faith granting Developer an interim written variance from such requirements under which Developer shall obtain and maintain or cause to be obtained and maintained alternative insurance packages and programs that provide risk coverage as comparable to that contemplated in this Article 11 as is commercially reasonable under then-existing insurance market conditions. For purposes of this Section 11.1.12, commercially reasonable rates are rates equal to or less than 200% of the benchmark for the insurance policy at issue as described in Section 11.1.13. If the required insurance coverage is available in the market, ADOT's decision to approve or disapprove a variance from the requirements of this Article 11 shall be final and not subject to the Dispute Resolution Procedures. For the avoidance of doubt, no increase in insurance premiums attributable to particular conditions of the Project, or to claims or loss experience of any Developer-Related Entity or Affiliate, whether under an insurance policy required by this Article 11 or Exhibit 12 or in connection with any

unrelated work or activity of Developer-Related Entities or Affiliate, shall be considered in determining whether required insurance is commercially unavailable.

11.1.12.3 Developer shall not be entitled to any extension of the Completion Deadlines resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. Developer shall be entitled to an increase in the Price resulting from the unavailability of coverage and the requirement to provide acceptable alternatives solely in the manner set forth in Section 11.1.13 for increased costs of the insurance policies required to be maintained at any time during the Maintenance Period pursuant to this Article 11 and Exhibit 12.

11.1.12.4 ADOT will be entitled to a reduction in the Price:

(a) If it agrees to accept alternative policies providing less than equivalent coverage and Developer is not obligated to self-insure for such risks, with the amount to be determined by extrapolation using the insurance quotes included in the DPDs (or based on other evidence of insurance premiums as of the Proposal Due Date if the DPDs do not provide adequate information); and

(b) Solely with respect to the insurance policies required to be maintained at any time during the Maintenance Period, in the manner set forth in Section 11.1.13.

11.1.13 Insurance Premium Benchmarking

11.1.13.1 Except as otherwise provided in Section 11.1.12 and this Section 11.1.13, Developer shall bear the full risk of any insurance premium increases from the Effective Date until the Substantial Completion Date, and shall not be entitled to any Claim for relief for such increases. Solely with respect to insurance policies required to be maintained at any time during the Maintenance Period under this Article 11 and Exhibit 12, ADOT will allocate the risk of significant increases in insurance premiums through an insurance benchmarking process as set forth in this Section 11.1.13. In no event shall ADOT participate in any insurance premium risk associated with either deductibles less than the maximum deductibles set forth in, or additional or extended coverages beyond those required under, this Article 11 or Exhibit 12, or changes in premiums that are not the result of market-based factors.

11.1.13.2 The benchmarking process will occur at each insurance renewal period, but no less than triennially, through the following:

(a) Not later than 60 days after the Substantial Completion Date and 45 days prior to each insurance renewal period (but no less than triennially), Developer shall submit a report ("Insurance Review Report") to ADOT that includes the following elements:

(i) Firm quotes from three established and recognized insurance providers for the Insurance Policies required, without any variation, in Exhibit 12 to be maintained during the Maintenance Period ("Required

Minimum Insurance Policies"). The quotes shall represent the current and fair market cost of providing the Required Minimum Insurance Policies;

(ii) The written binders of insurance in the form and content required under this Article 11 and Exhibit 12 with the premium invoices and, in the case of corporate policies, premium allocations for the actual insurance policies required hereunder and thereunder for the subject annual insurance period as obtained by Developer ("Actual Insurance Policies");

(iii) For any allocation to the Project of premiums for corporate policies, (A) a comprehensive explanation of the methodology applied to make the allocations, in compliance with Section 11.1.13.6, (B) detailed calculations that follow such methodology, and (C) written certification from an authorized officer of each of Developer and the corporate entity placing the policies certifying that the allocated amount has been fairly and accurately determined in compliance with Section 11.1.13.6; and

(iv) Except with respect to the initial Insurance Review Report, a comprehensive written explanation of any effect that Developer's loss experience has had on the premiums for the Required Minimum Insurance Policies and the Actual Insurance Policies. The explanation shall include: (A) an assessment by Developer's independent insurance broker addressing industry trends in premiums for the Required Minimum Insurance Policies and analysis (if applicable) of any Project-specific reasons for the increase in premiums; and (B) detailed analysis of any claims (paid or reserved) since the last review period, with claim date(s), description of incident(s), claims amount(s), and the level of deductibles provided.

(b) ADOT retains the right to independently assess the accuracy of the information in the Insurance Review Report, and retains the right to perform its own independent insurance review, which may include retaining advisors, obtaining independent quotes for the Required Minimum Insurance Policies, performing its own calculation of corporate policy premium allocations consistent with Section 11.1.13.6, or performing its own assessment as to the impact of claims history on renewal costs.

11.1.13.3 The Starting Maintenance Period Insurance Benchmarking Premiums shall be calculated based on the greater of:

(a) Premium information obtained from the initial Insurance Review Report;

(b) Premium information included in the Detailed Pricing Documents; or

(c) If ADOT reasonably deems appropriate, from information obtained pursuant to Section 11.1.13.2(b).

11.1.13.4 The Starting Maintenance Period Insurance Benchmarking Premiums shall be used in the benchmarking process for the remainder of the Term in accordance with the following procedures:

(a) 60 days prior to each renewal date (but no less than triennially), Developer shall provide an updated Insurance Review Report, with the information specified in Section 11.1.13.2(a). ADOT will determine the change in premium costs on a coverage-by-coverage basis for the Required Minimum Insurance Policies calculated based on the information obtained from the initial Insurance Review Report or, if ADOT reasonably deems appropriate, from information obtained pursuant to Section 11.1.13.2.(b).

(b) ADOT will use the Starting Maintenance Period Insurance Benchmarking Premiums to measure changes in premium costs at each renewal period (but no less than triennially) for each of the Required Minimum Insurance Policies. The Starting Maintenance Period Insurance Benchmarking Premiums shall be escalated by applying a fixed 5.0% annual increase ("Escalated Benchmark Maintenance Period Insurance Premiums"). Broker's fees and agent's commissions will not be considered as part of the benchmarking exercise described in this Section 11.1.13, and are the exclusive responsibility of Developer.

(c) The subsequent Insurance Review Reports shall be used to establish the renewal premiums for the Required Minimum Insurance Policies for purposes of the benchmarking process described in this Section 11.1.13. In no event shall premium increases that are caused by Project-specific losses, changes in deductibles, switches from a corporate policy to a project-specific policy or vice versa, or matters within the control of Developer or any Developer-Related Entity be subject to the benchmarking exercise or risk sharing described in this Section 11.1.13. Developer may voluntarily choose to procure an insurance package that varies from (but complies with) the Required Minimum Insurance Policies (with for example lower deductibles, higher coverage amounts, fewer exclusions, etc.), in which case both Parties recognize that: (i) the actual variations in Developer's insurance premiums may not necessarily reflect the variations in the minimum insurance requirements; and (ii) ADOT will disregard the actual insurance package and will rely upon the analysis from the Insurance Review Report and its own independent analysis of the effect on the minimum insurance requirements. Any insurance beyond the Required Minimum Insurance Policies shall not be subject to the insurance benchmarking process and Maintenance Payment adjustment described in Section 11.1.13.

(d) If ADOT elects to retain its own insurance advisor to analyze the extent of eligible premium increases, Developer shall cooperate in good faith with any reasonable requests for additional information from ADOT's insurance advisor. No later than 30 days after Developer's submission of the Insurance Review Report, ADOT will make its determination of the eligible premium increases subject to the risk-allocation described in Section 11.1.13.5. In the event of a dispute, ADOT's determination shall be subject to the Dispute Resolution Procedures.

11.1.13.5 If the annual insurance premiums for the Actual Insurance Policies, as such premiums may be adjusted pursuant to Section 11.1.13.4(c), are in excess of 130% of the applicable Escalated Benchmark Maintenance Period Insurance Premiums, ADOT will increase the Maintenance Price for the applicable year an amount equal to 85% of such premiums that are in excess of 130% of the applicable Escalated Benchmark Maintenance Period Insurance Premiums until the next benchmarking period. If the annual insurance premiums for the Actual Insurance Policy, as such premiums may be adjusted pursuant Section 11.1.13.4(c), are below 70% of the applicable Escalated Benchmark Maintenance Period Insurance Premiums, ADOT will reduce the Maintenance Price for the applicable year in an amount equal to 85% of the difference between such premiums and 70% of the applicable Escalated Benchmark Insurance Premiums until the next benchmarking period.

11.1.13.6 If any insurance coverage is provided via dedicated Project-specific limits under corporate insurance programs, Developer shall account to ADOT for the portion of premiums allocated to the Project for the purpose of applying these insurance benchmarking provisions. Developer shall consistently apply the corporate methodology used for premium allocation to all calculations necessary to determine whether any increase or decrease in the Maintenance Price is to be made under this Section 11.1.13; and all corporate conditions, facts and circumstances that are the basis for Developer's original determination of premium allocations to the Project as disclosed in its Proposal shall be assumed to hold constant at all times, without regard to changes over time in such conditions, facts and circumstances.

11.1.14 Defense Costs

No defense costs shall be included within or erode the limits of coverage of any of the insurance policies, except that (a) litigation and mediation defense costs may be included within the limits of coverage of professional and pollution liability policies, (b) investigation and expert defense costs may also be included within the limits of coverage of professional liability policies, and (c) other defense costs may be included within the limits of coverage of professional and pollution liability policies with ADOT's prior written approval.

11.1.15 Contesting Denial of Coverage

If any insurance carrier under an insurance policy denies coverage with respect to any claims reported to such carrier, upon Developer's request, ADOT and, to the extent necessary, the other Indemnified Parties shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage; provided, however, that if the reported claim is a matter covered by an indemnity in favor of an Indemnified Party, then Developer shall bear all costs of contesting the denial of coverage.

11.1.16 Umbrella and Excess Policies

Developer shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall follow form of underlying policies and shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

11.1.17 Additional Insurance Policies

If Developer carries insurance coverage in addition to that required under this Agreement, then Developer shall include ADOT and its members, directors, officers, employees, agents and ADOT Consultants as additional insureds thereunder, if and to the extent they have an insurable interest, unless ADOT grants an exception in writing. The additional insured endorsements shall be as described in Section 11.1.7(c); and Developer shall provide to ADOT the proofs of coverage and copy of the policy described in Section 11.1.5. The provisions of Sections 11.1.5, 11.1.7, 11.1.9, 11.1.10, 11.1.15 and 11.2 shall apply to all such policies of insurance coverage.

11.1.18 Adjustments in Coverage Amounts

11.1.18.1 At least once every three years during the Maintenance Period (commencing initially on the Substantial Completion Date), ADOT and Developer shall review and increase, as appropriate, the per occurrence and aggregate limits or combined single limits for the insurance policies required under this Agreement that have stated dollar amounts set forth in Exhibit 12. At the same frequency ADOT and Developer shall review and adjust, as appropriate, the deductibles for such policies.

11.1.18.2 Developer shall retain a qualified and reputable insurance broker or independent, unaffiliated advisor not involved in the Project, experienced in insurance brokerage and underwriting practices for major bridge, highway or other relevant transportation facility projects, to analyze and recommend adjustments, if any, to such limits and adjustments to deductibles. Developer shall deliver to ADOT, not later than 90 days before each three-year adjustment date, a written report including such analysis and recommendations for ADOT's approval. ADOT will have 45 days after receiving such report to approve or disapprove the proposed adjustments to limits and adjustments to deductibles or self-insured retentions.

11.1.18.3 In determining adjustments to limits and adjustments to deductibles, Developer and ADOT will take into account: (a) claims and loss experience for the Project, provided that premium increases due to adverse claims experience shall not be a basis for justifying increased deductibles; (b) the condition of the Project, including records of Asset Condition Scores, (c) the Capital Asset Replacement Work record for the Project, (d) the Noncompliance Points record for the Project; and (v) then-prevailing Good Industry Practice for insuring comparable transportation projects.

11.1.18.4 Any Dispute regarding adjustments to limits or adjustments to deductibles or self-insured retentions shall be resolved according to the Dispute Resolution Procedures.

11.1.19 Contractor-Controlled Insurance Program

Nothing in this Agreement, including in Exhibit 12, is intended or shall be construed to preclude use of a contractor-controlled insurance program to fulfill the insurance requirements under this Agreement.

11.2 Prosecution of Claims

11.2.1 Unless otherwise directed by ADOT in writing with respect to ADOT's insurance claims, Developer shall be responsible for reporting and processing all potential claims by ADOT or Developer against the insurance policies required hereunder. Developer agrees to report timely to the insurer(s) under such insurance policies any and all matters that may give rise to an insurance claim by Developer or ADOT or another Indemnified Party, and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such insurance policies, whether for defense or indemnity or both. Developer shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Laws in order to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Developer shall be deemed to have satisfied this obligation if a judgment is not collectible through the exercise of lawful and diligent means.

11.2.2 Developer shall immediately notify ADOT, and thereafter keep ADOT fully informed, of any incident, potential claim, claim or other matter of which Developer becomes aware that involves or could conceivably involve an Indemnified Party.

11.2.3 ADOT agrees to promptly notify Developer of ADOT's incidents, potential claims against ADOT, and matters that may give rise to an insurance claim against ADOT, to tender to the insurer ADOT's defense of the claim under such insurance policies, and to cooperate with Developer as necessary for Developer to fulfill its duties hereunder.

11.2.4 If in any instance Developer has not performed its obligations respecting insurance coverage set forth in this Agreement or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining Developer's liability and the limits thereon or determining reductions in compensation due from ADOT to Developer on account of available insurance, Developer shall be treated as if it has elected to self-insure up to the full amount of insurance coverage that would have been available had Developer performed such obligations and not committed such failure. Nothing in the Contract Documents shall be construed to treat Developer as electing to self-insure where Developer is unable to collect due to the bankruptcy or insolvency of any insurer that at the time the insurance policy is written meets the rating qualifications set forth in this Article 11.

11.2.5 If in any instance Developer has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by ADOT or another Indemnified Party, then ADOT or the other Indemnified Party may, but is not obligated to: (a) notify Developer of ADOT's intent to report or tender the claim directly with the insurer and thereafter process the claim; and (b) proceed with reporting and processing the claim if ADOT or the other Indemnified Party does not receive from Developer, within ten days after so notifying Developer, written proof that Developer has reported the claim directly to the insurer. ADOT or the other Indemnified Party may dispense with such notice to Developer if ADOT or the other Indemnified Party has a good faith belief that more rapid reporting is needed to preserve the claim.

11.2.6 Developer shall deliver to ADOT a report, on a policy-by-policy basis, within 30 days after cumulative payments made by the insurer under any coverage with an aggregate limit exceed (a) 25% of the aggregate limit or (b) each additional 10% increment of the aggregate limit. The report shall identify the affected policy and limit of coverage, state the amount and nature of each claim paid, and state the balance of the coverage limit remaining available.

11.3 Risk of Loss or Damage to Project; Use of Insurance Proceeds

11.3.1 Throughout the Term, Developer shall rebuild, repair, restore or replace all loss, damage or destruction to the Project, or to materials, equipment, supplies and maintenance equipment purchased for permanent installation in, or for use during construction or maintenance of, the Project, whether within or outside the Project ROW, regardless of who has title thereto under the Contract Documents and regardless of the cause of the loss, damage or destruction; provided, however, that, upon acceptance by a third party, Developer shall not be responsible for rebuilding, repairing, restoring or replacing Project-related property that will be maintained by such third party, unless such property is damaged due to negligent or willful acts of a Developer-Related Entity.

11.3.2 Developer shall ensure that ADOT (a) is named as loss payee under all builder's risk insurance policies as required by this Agreement and (b) will have the exclusive right to receive claims payments from the insurers under such policies. ADOT will hold all insurance proceeds it receives as loss payee or otherwise for any insured loss under such policies in a separate insurance proceeds account for the purposes of, and to be applied in accordance with, this Section 11.3. If loss, damage or destruction to the Project is deemed to be self-insured by Developer under Section 11.2.4, then, within 30 days after ADOT's written request, Developer shall pay to ADOT, as loss payee, the amount of insurance proceeds deemed owing. ADOT will hold and dispense such payment from Developer in the same manner it would hold proceeds from a third party insurer.

11.3.3 If the loss, damage or destruction to the Project is from a risk or event covered by a builder's risk policy required by this Agreement or by deemed

self-insurance under Section 11.2.4 and the loss, damage or destruction is not attributable to a Relief Event, then:

(a) ADOT will remit all claims payments paid to ADOT, as loss payee, from the insurer under the builder's risk policy within ten Business Days after ADOT receives each such payment; provided, however, that remittance of such insurance proceeds to Developer shall not be a condition precedent to Developer's obligation to perform the repair or replacement Work or indicate that the repair or replacement Work has been approved and accepted by ADOT; and

(b) Developer shall bear all costs, including delay and disruption costs, of repair or replacement Work not covered by available insurance proceeds, including the amount of deductibles or self-insured retentions and any costs in excess of insurance coverage limits.

11.3.4 If the loss, damage or destruction to the Project is from a risk or event covered by a builder's risk policy required by this Agreement or by deemed self-insurance under Section 11.2.4 and the loss, damage or destruction is caused by a Relief Event, then:

(a) ADOT will reimburse Developer for Extra Work Costs and Delay Costs of the repair or replacement Work to the Project performed by Developer and owing pursuant to the terms and conditions of this Agreement and the applicable Supplemental Agreement, regardless of the amount of insurance proceeds or the timing of claims payments by the insurers, subject, however, to (i) any Claim Deductibles and (ii) ADOT's right to set off such reimbursements by any deemed self-insurance that Developer fails to pay to ADOT;

(b) If there are any insurance proceeds available after paying or reimbursing ADOT for such Extra Work Costs and Delay Costs (excluding any Claim Deductible), ADOT will next apply such available insurance proceeds to reimburse Developer for its costs to repair or replace the items of property described in Section 11.3.7, subject, however, to ADOT's right to set off such reimbursements by any deemed self-insurance that Developer fails to pay to ADOT;

(c) ADOT will bear the Extra Work Costs and Delay Costs of the repair or replacement work to the Project not covered by available insurance proceeds or deemed self-insurance under Section 11.2.4, including the amount of deductibles or self-insured retentions and any costs in excess of insurance coverage limits; and

(d) Developer shall bear all the costs described in Section 11.3.7 not covered under clause (b) above.

11.3.5 If the loss, damage or destruction to the Project is from a risk or event that this Agreement does not require to be covered by a builder's risk policy and the loss, damage or destruction is not attributable to a Relief Event, then Developer shall bear all schedule risk and all costs, including delay and disruption costs, for the repair

or replacement Work to the Project, subject, however, to Developer's rights under Section 11.4.

11.3.6 If the loss, damage or destruction to the Project is from a risk or event that this Agreement does not require to be covered by a builder's risk policy and the loss, damage or destruction is attributable to a Relief Event, then:

(a) Developer shall bear the Extra Work Costs and Delay Costs for the repair or replacement Work to the Project up to any applicable Claim Deductible;

(b) Subject to the terms and conditions of Article 14, ADOT will bear all further Extra Work Costs and Delay Costs for the repair or replacement Work to the Project; and

(c) Developer shall bear all the costs described in Section 11.3.7.

11.3.7 Except to the extent there are available insurance proceeds as provided in Section 11.3.3 or 11.3.4(b), Developer shall bear all costs, including Extra Work Costs and Delay Costs, to repair or replace, and shall not be entitled to any compensation for delay due to, any loss, damage or destruction caused by a Relief Event or other event (except ADOT's gross negligence, recklessness or willful misconduct) to:

(a) Any tools, machinery, equipment facilities, protective fencing, job trailers, scaffolding or other items of any Developer-Related Entity used in the performance of the Work but not intended for permanent installation into the Project;

(b) Any machinery, equipment, facilities, materials, inventory, supplies and other property of any Developer-Related Entity outside the Project ROW; or

(c) Any machinery, equipment, facilities, materials, inventory, supplies and other property of any Developer-Related Entity while in transit to the Site.

11.3.8 Developer's rights, if any, to Completion Deadline adjustment in the event of loss, damage or destruction to the Project shall be limited to situations where the loss, damage or destruction is caused by a Relief Event and shall be subject to the applicable provisions of Article 14.

11.4 Claims Against Third Parties

11.4.1 In connection with Developer's performance of its obligations under the Contract Documents, including repair of damage to the Project caused by a vehicle collision (e.g., "vehicle" as defined in Arizona Revised Statutes Section 28-101, railroad train or aircraft), vandalism or other acts of destruction or damage by third parties, Developer shall have the right to lawfully pursue claims against such third parties for damage caused to the Project, except as provided otherwise in Section 11.4.3.

11.4.2 Except as provided otherwise in Section 11.4.3, if ADOT receives payment pursuant to a third-party claim regarding damage to the Project caused by the third party, ADOT will hold and use such funds in the same manner as provided for holding and using insurance proceeds under Section 11.3.

11.4.3 Sections 11.4.1 and 11.4.2 shall not apply to the extent Developer is entitled under this Agreement to compensation from ADOT for the cost to repair or replace the destruction or damage to the Project (e.g., Developer's damages in excess of the Claim Deductible due to a collision described in clause (h) of the definition of Force Majeure Event).

11.5 ADOT's Right to Remedy Developer Breach Regarding Insurance

If Developer or any Subcontractor fails to provide insurance as required herein, ADOT will have the right, but not the obligations, to purchase such insurance or to suspend Developer's right to proceed with the Work until proper evidence of insurance is provided. ADOT's costs in respect thereof, at ADOT's option, shall be deducted from amounts payable to Developer or reimbursed by Developer upon demand from ADOT. Nothing herein shall preclude ADOT from exercising its rights and remedies under Article 19 as a result of the failure of Developer or any Subcontractor to satisfy its insurance obligations herein.

11.6 Disclaimer

Developer and each Subcontractor have the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage that they deem advisable, whether or not specified herein.

ARTICLE 12.
WARRANTIES

12.1 Warranties

12.1.1 Warranty

12.1.1.1 With respect to all elements of the Project that Developer is not obligated to maintain during the Maintenance Period ("Non-Maintained Elements"), Developer warrants that:

(a) All Non-Maintained Elements shall be free of Defects;

(b) All materials and equipment furnished under the Contract Documents for the Non-Maintained Elements shall be of good quality and new; and

(c) All Non-Maintained Elements shall meet all of the requirements of the Contract Documents (collectively, the "Warranty" or "Warranties").

12.1.1.2 This Warranty sets forth the sole warranties of Developer to and in favor of ADOT with respect to the Work for the Non-Maintained Elements, to the exclusion of any and all implied warranties of Developer.

12.1.2 Warranty Term

Subject to extension under Section 12.2, the Warranties for Non-Maintained Elements will commence upon Final Acceptance and shall remain in effect until one year after Final Acceptance ("Warranty Term"); provided, however, that the Warranty Term for Non-Maintained Elements that will be owned by third parties shall commence upon Final Acceptance and shall end on the earlier of (i) one year after the owner's acceptance; or (ii) 15 months after Final Acceptance. If ADOT determines that any of the D&C Work for the Non-Maintained Elements has not met the standards set forth in this Section 12.1 at any time within the applicable Warranty Term, then Developer shall correct such D&C Work as specified in this Article 12, even if the performance of such corrective D&C Work extends beyond the applicable Warranty Term. ADOT and Developer shall conduct a walkthrough of the Project prior to expiration of the Warranty Term and shall produce a punch list of those items requiring corrective work.

12.1.3 Warranty Work

Within seven days after Developer receives notice from ADOT specifying a failure of any of the Work to satisfy the Warranties, or of the failure of any Subcontractor representation, warranty, guarantee or obligation pertaining to Non-Maintained Elements which Developer is responsible to enforce, Developer and ADOT will mutually agree when and how Developer shall remedy such failure; provided,

however, that in case of an emergency requiring immediate curative action or a situation which poses a significant safety risk, Developer shall implement such action as it deems necessary and shall notify ADOT of the urgency of a decision. Developer and ADOT will promptly meet in order to agree on a remedy. If Developer does not use its best efforts to proceed to effectuate such remedy within the agreed time, or should Developer and ADOT fail to reach such an agreement within such seven-day period (or immediately in the case of emergency conditions), ADOT will have the right, but not the obligation, to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Developer. Reimbursement therefor shall be payable to ADOT within ten days after Developer's receipt of an invoice therefor. Alternatively, ADOT may deduct the amount of such costs and expenses from any sums owed by ADOT to Developer pursuant to this Agreement. ADOT may agree to accept Nonconforming Work in accordance with Section 6.7.2.

12.1.4 Permits and Costs

Developer shall be responsible for obtaining any required encroachment permits and required consents from any other Persons in connection with the performance of Work addressed under this Section 12.1. Developer shall bear all costs of such Work, including additional testing and inspections, and shall reimburse ADOT or pay ADOT's expenses made necessary thereby, including any costs incurred by ADOT for independent quality assurance or quality control with respect to such Work. Developer shall pay such amounts to ADOT within ten days after Developer's receipt of invoices therefor (including, subject to the limitations in Sections 20.9 and 20.10, any Liquidated Damages arising from or relating to such Work). Alternatively, ADOT may deduct the amount of such costs and expenses from any sums owed by ADOT to Developer pursuant to this Agreement.

12.2 Applicability of Warranties to Re-Done Work

The Warranties shall apply to all Work on Non-Maintained Elements re-done, repaired, corrected or replaced pursuant to the terms of this Agreement. Following acceptance by ADOT of re-done, repaired, corrected or replaced Work, the Warranties as to each re-done, repaired, corrected or replaced portion of the Non-Maintained Elements shall extend beyond the original Warranty Term in order that each portion of the Non-Maintained Elements shall have at least a one-year term (but not to exceed two years after the commencement of the applicable Warranty Term).

12.3 Subcontractor Warranties

12.3.1 Warranty Requirements

12.3.1.1 Without in any way derogating the Warranties and Developer's own representations and warranties and other obligations with respect to all of the Work, Developer shall obtain from all Subcontractors for the D&C Work, for periods at least coterminous with the Warranties, appropriate representations, warranties, guarantees and obligations with respect to design, materials, workmanship,

equipment, tools and supplies furnished by such Subcontractors to effectuate the provisions in this Article 12.

12.3.1.2 Developer shall cause Subcontractor warranties to be extended to ADOT and any third parties for whom Work is being performed or equipment, tools, supplies or software is being supplied by such Subcontractor; provided, however, that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to ADOT using commercially reasonable efforts. ADOT agrees to forebear from exercising remedies under any such warranty so long as Developer is diligently pursuing remedies thereunder.

12.3.1.3 All representations, warranties, guarantees and obligations of Subcontractors shall be written so as to survive all ADOT inspections, tests and approvals. Developer hereby assigns to ADOT all of Developer's rights and interests in all extended warranties for periods exceeding the applicable Warranty Term which are received by Developer from any of its Subcontractors. To the extent that any Subcontractor warranty would be voided by reason of Developer's negligence or failure to comply with the Contract Documents in incorporating material or equipment into the Work, Developer shall be responsible for correcting such defect.

12.3.2 Enforcement

Upon receipt from ADOT of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, guarantee or obligation, Developer shall enforce or perform any such representation, warranty, guarantee or obligation, in addition to Developer's other obligations hereunder. ADOT's rights under this Section 12.3.2 shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until the expiration of the Warranty Term (including extensions thereof under Section 12.2). Until such expiration, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Developer if such cost is covered by such a representation, warranty, guarantee or obligation, and Developer shall be required to replace or repair defective equipment, material or workmanship furnished by Subcontractors.

12.4 Effect of ADOT or Third Party Activities on Warranties

Developer acknowledges and agrees that ADOT and third parties may perform certain operations or maintenance work on or adjacent to the Project during the period in which the Warranties are in effect and agrees that the Warranties shall apply notwithstanding such activities; provided, however, that Developer does not hereby waive any rights, claims or remedies to which it may be entitled as a result of such activities.

12.5 No Limitation of Liability or Remedies

Subject to Sections 20.9 and 20.10, the Warranties and Subcontractor warranties:

(a) Are in addition to all rights and remedies available under the Contract Documents or applicable Law or in equity;

(b) Shall not limit Developer's liability or responsibility imposed by the Contract Documents or applicable Law or in equity with respect to the Work, including liability for design defects, latent construction defects, strict liability, breach, negligence, intentional misconduct or fraud; and

(c) Do not constitute a contractual or other limitation or repose period on any claims, rights or remedies available to ADOT for patent or latent errors, defects or deficiencies in design, construction or other Work of Developer, which claims, rights and remedies are subject only to applicable statutes of limitation and statutes of repose.

12.6 Damages for Breach of Warranty

Subject to Sections 20.9 and 20.10 and in addition to ADOT's other rights and remedies hereunder, at law or in equity, Developer shall be liable for actual damages resulting from any breach of Warranty or any defect in the Work on the Non-Maintained Elements, including the cost of performance of such obligations by others.

ARTICLE 13.
PAYMENT FOR SERVICES

13.1 D&C Price

13.1.1 Amount

As full compensation for the D&C Work and all related obligations to be performed by Developer under the Contract Documents, ADOT will pay to Developer the lump sum "D&C Price." The D&C Price as used herein shall mean the lump sum amount of $[***INSERT D&C PRICE FROM PROPOSAL***], subject to adjustment from time to time to account for adjustments in Supplemental Agreements. The D&C Price shall be increased or decreased only by a Supplemental Agreement issued in accordance with Article 14 or 15. The D&C Price shall be paid in accordance with Sections 13.2 and 13.4.

13.1.2 Items Included in D&C Price

13.1.2.1 Developer acknowledges and agrees that, subject only to Developer's rights under Article 14, the D&C Price includes:

(a) All designs, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to Developer's performance of its obligations under the Contract Documents (including all D&C Work, equipment, materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the D&C Work);

(b) Performance of each and every portion of the D&C Work;

(c) The cost of obtaining all Governmental Approvals (except as specified in Section 6.1) related to the D&C Work and incurred prior to the Substantial Completion Date;

(d) All costs of compliance with and maintenance of the Governmental Approvals and compliance with Laws related to the D&C Work, except to the extent compliance with or maintenance of Governmental Approvals is the responsibility of Utility Companies;

(e) Payment of any taxes, duties, permit and other fees or royalties imposed with respect to the D&C Work and any equipment, materials, labor or services included therein; and

(f) Compensation for all risks and contingencies assigned to Developer under the Contract Documents;

provided, however, that all of the costs set forth in clauses (a) through (f) above are included in the D&C Price solely to the extent such costs relate to the D&C Work and are incurred by Developer prior to Final Acceptance.

13.2 Invoicing and Payment for the D&C Price

The following process shall apply to invoicing and payment of (a) the D&C Price, and, as applicable, (b) Extra Work Costs and Delays Costs reimbursable to Developer for repair or replacement Work under Section 11.3.3(a):

13.2.1 NTP 1 Work

13.2.1.1 Developer acknowledges and agrees that the amount of funds available to pay for Work prior to issuance of NTP 2 is limited to the total amount set forth under "NTP 1 Work Effort" in Exhibit 2-4.1 . Accordingly, ADOT has no obligation to make any payments to Developer in excess of such amount until such time (if any) as NTP 2 is issued.

13.2.1.2 Any Design Work that Developer performs prior to satisfaction of the conditions precedent set forth in Section 7.5 shall be at Developer's risk, as ADOT will have no obligation to pay for or review any Design Work prior to satisfaction of such conditions precedent.

13.2.1.3 Subject to Sections 13.2.1.1 and 13.2.1.2, ADOT will pay Developer for work authorized by NTP 1 up to but not exceeding each of the respective amounts set forth under "NTP 1 Work Effort" in Exhibit 2-4.1. ADOT will pay such amounts not more often than monthly, based on approved Draw Requests, as follows:

(a) For NTP 1 mobilization, in two equal installments with the first two Draw Requests after NTP 1, as set forth in Sections 13.3.4.1(a) and (b);

(b) For each item that is a Submittal under "NTP 1 Work Effort" in Exhibit 2-4.1, other than Design Documents, (i) 50% of the amount shown for that Submittal in Exhibit 2-4.1 with the next Draw Request after ADOT receives a complete draft of the Submittal, unless ADOT determines the draft is significantly inadequate, and (ii) the remaining payment with the next Draw Request after ADOT approves the final Submittal;

(c) For Design Work, monthly according to a Draw Request for progress made and the approved Schedule of Values for pre-NTP 2 Design Work;

(d) For the premiums for bonds and insurance associated with NTP 1 Work, in accordance with Section 13.3.4.2; and

(e) For all other items, monthly according to actual documented costs incurred and included in a Draw Request, with any balance of the bid item total remaining at issuance of NTP 2 payable in the next Draw Request thereafter.

13.2.1.4 Invoices for work authorized by NTP 1 shall comply with the provisions of this Section 13.2. Invoices for premiums for bonds and insurance for NTP 1 Work shall comply with the provisions of Section 13.3.4.

13.2.2 Draft Draw Request Package for D&C Work and Monthly Progress Meeting

13.2.2.1 On or about the 15th day of each month following the issuance of NTP 1 and continuing through the Draw Request for the Final D&C Payment, Developer shall deliver to ADOT a draft Draw Request for the prior monthly period, in the form required by ADOT, together with drafts of all materials, reports, schedules, certifications and other submittals for that month listed in Section 13.2.3.2.

13.2.2.2 At each monthly progress meeting, Developer's and ADOT's Authorized Representatives shall ascertain the progress of the Work and verify the quantities for any unit priced Work. Each monthly progress meeting shall be attended by Developer and ADOT and its consultants. Developer's and ADOT's Authorized Representatives shall review the draft Draw Request reflecting the value of Work completed as of the date of the progress meeting. They shall determine and calculate the value of Work completed:

(a) As provided in Section 13.2.1.3 for NTP 1 Work;

(b) Based on quantities and unit prices for unit priced Work;

(c) Based on time and materials for Force Account Work; and

(d) For all other Work, based on the percentage completion of Project Schedule activities and the values distributed to such activities in the Progress Schedule.

13.2.2.3 Developer's and ADOT's Authorized Representatives shall sign the draft Draw Request, indicating the portions of it that have been approved and setting forth the proposed total payment amount, which shall be the approved value of the Work then completed less progress payments previously made.

13.2.3 Delivery of Draw Request for Payment of D&C Price

13.2.3.1 Within seven days after each monthly progress meeting, Developer shall submit to ADOT five copies of a Draw Request for the Work performed under the Contract Documents during the immediately preceding month, in a form acceptable to ADOT and meeting all the requirements specified herein, except as otherwise approved by ADOT. Each Draw Request shall be based upon and use the

amounts set forth in the approved draft Draw Request and may not include any amounts not approved by ADOT in the monthly progress meeting reviewing such draft Draw Request.

13.2.3.2 Contents of Draw Request

(a) Each Draw Request must contain the following items:

(i) Draw Request cover sheet;

(ii) An updated Schedule Narrative as described in Section GP 110.06.2.4 of the Technical Provisions;

(iii) An approved Monthly Progress Schedule as described in Section GP 110.06.2.7 of the Technical Provisions;

(iv) Certification by Developer that all D&C Work that is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;

(v) Monthly report of personnel hours;

(vi) Draw Request data sheet(s) and supporting documents, as required by ADOT to support and substantiate the amount requested (based on invoices, receipts and other evidence establishing the number of units delivered for unit priced Work; based on Section 1.2 of Exhibit 14 for force account Work; based on actual costs as evidenced by invoices for items to be paid from any allowance; and based on the Project Schedule for all other D&C Work) and showing the maximum amount payable based on the then applicable Maximum Allowable Cumulative Draw;

(vii) DBE Monthly Utilization Progress Report in a format reasonably satisfactory to ADOT as required in Section 18.02.2 of the DBE Special Provisions (Exhibit 7);

(viii) OJT Monthly Progress Report, OJT Trainee Status Report and supplemental or revised OJT Schedule, each in the form and content specified in the OJT Special Provisions (Exhibit 8).

(ix) Cash flow curves and comparison to the Maximum Allowable Cumulative Draw; and

(x) If the Draw Request includes Utility Work, a summary narrative of the Utility Work performed during the applicable month; and

(xi) Such other items as ADOT reasonably requests.

(b) In addition to the requirements set forth in Section 13.2.3.2(a), no Draw Request shall be considered complete unless it:

(i) Describes in detail the status of completion as it relates to the Project Schedule;

(ii) Sets forth separately and in detail the related payments that are then due in accordance with the Project Schedule and the payments that are then due in accordance with the Maximum Allowable Cumulative Draw, as of the end of the prior month;

(iii) Sets forth in detail the amounts paid to Subcontractors (including Suppliers and Subcontractors at lower tiers) from the payments made by ADOT to Developer with respect to the Draw Request submitted two months prior;

(iv) Includes affidavits of payment and unconditional waivers of claims in form satisfactory to ADOT executed by Developer and each Subcontractor with respect to all amounts paid in connection with the Draw Request submitted two months prior; and

(v) Sets forth separately and in detail the total amount due from Utility Companies for: (A) Utility Betterments; and (B) any other Work for which the Utility Company has cost responsibility.

13.2.3.3 Developer acknowledges that ADOT will obtain funding for portions of the Work from various sources, and agrees to segregate billings for all such Work in a format reasonably requested by ADOT and with detail and information as reasonably requested by ADOT.

13.2.4 Draw Request Cover Sheet Contents

The Draw Request cover sheet shall include the following: (a) Project number and title; (b) Request number (numbered consecutively starting with "1"); (c) Total amount earned to date for the Project; and (d) Authorized signature, title of signer, and date of signature.

13.2.5 Certification by Professional Services Quality Control Manager and Construction Quality Acceptance Firm

Each Draw Request shall include a certificate signed and sealed by the Professional Services Quality Manager and the Construction Independent Quality Manager, as appropriate, in a form acceptable to ADOT, certifying that:

(a) Except as specifically noted in the certification, all Work that is the subject of the Draw Request, including that of Professional Services firms, Subcontractors, and Suppliers, has been checked or inspected by the Professional

Services Quality Manager, with respect to Professional Services, and the Construction Independent Quality Manager, with respect to the Construction Work;

(b) Except as specifically noted in the certification, all Work that is the subject of the Draw Request conforms to the requirements of the Contract Documents;

(c) All of the measures and procedures provided in the Professional Services Quality Management Plan and the Construction Quality Management Plan are functioning properly and are being followed;

(d) The Professional Services percentages and construction percentages indicated are accurate and correct; and

(e) All quantities for which payment is requested on a unit price basis are accurate.

13.2.6 Payment by ADOT

13.2.6.1 Within ten Business Days after ADOT receives the Draw Request (including all materials and reports required under Section 13.2.3.2) and the related Draw Request Certificate, ADOT will review the Draw Request and all attachments thereto for consistency with the draft Draw Request package prepared at the most recent monthly progress meeting and conformity with all requirements of the Contract Documents, and shall notify Developer of the amount approved for payment and specify the reason for disapproval of any remaining invoiced amounts. Developer may include such disapproved amounts in the next month's Draw Request after correction of the deficiencies noted by ADOT (all such disapproved amounts shall be deemed in Dispute unless otherwise agreed).

13.2.6.2 No later than the Contractor Cycle Key Date first occurring after the ten Business Day period described in Section 13.2.6.1, ADOT will pay Developer the amount of the Draw Request approved for payment less any amounts that ADOT is otherwise entitled to withhold or deduct.

13.2.6.3 For Work authorized by NTP 1, ADOT will not have any obligation to pay Developer any amount: that (a) is inconsistent with Section 13.2.1.3; (b) was not approved during the monthly progress meeting reviewing the draft invoice for such month; or (c) would result in aggregate payments in excess of the Maximum Allowable Cumulative Draw for the month in which the Payment Request is received.

13.2.6.4 For Work authorized by NTP 2 and NTP 3, in no event shall ADOT have any obligation to pay Developer any amount that: (a) would result in payment for any activity in excess of the value of the activity times the completion percentage of such activity (for non-unit priced Work); (b) was not approved during the monthly progress meeting reviewing the draft invoice for such month; or (c) would result in aggregate payments hereunder in excess of (i) the overall completion percentage for the Project multiplied by the Contract Price (for non-unit priced Work); or (ii) the

Maximum Allowable Cumulative Draw for the month in which the Payment Request is received.

13.3 Limitations, Deductions and Exclusions

13.3.1 Maximum Allowable Cumulative Draw

13.3.1.1 The aggregate amount of progress payments to Developer out of the D&C Price (including mobilization payments) shall not exceed at any time the then applicable Maximum Allowable Cumulative Draw, as it may be modified by Supplemental Agreement or amendment, without the prior written approval of ADOT in its sole discretion.

13.3.1.2 The determination of whether progress payments out of the D&C Price will exceed the then applicable Maximum Allowable Cumulative Draw shall be determined as if there are no deductions therefrom under Section 13.3.2.

13.3.1.3 The Maximum Allowable Cumulative Draw shall not limit payment for Supplemental Agreement Work unless otherwise specified in the Supplemental Agreement. The Maximum Allowable Cumulative Draw shall be revised from time to time, as appropriate, to account for any changes in the D&C Price as evidenced by Supplemental Agreements. In addition, if Developer and ADOT mutually agree in writing to a different cumulative expenditure rate at any time other than the Maximum Allowable Cumulative Draw, then the Parties shall amend Exhibit 6 accordingly and such revised rate shall thereafter be the Maximum Allowable Cumulative Draw.

13.3.1.4 If Developer satisfactorily performs D&C Work which entitles it to payment from the D&C Price but payment of any portion earned is deferred due to the then applicable Maximum Allowable Cumulative Draw, then Developer may include the deferred portion in any subsequent Draw Request, the payment of which will be subject to the then applicable Maximum Allowable Cumulative Draw.

13.3.1.5 If Developer satisfactorily performs D&C Work which entitles it to payment from the D&C Price but payment of any portion earned is deferred due to the then applicable Maximum Allowable Cumulative Draw, then, upon Developer's request, ADOT will provide reasonable certification of such deferred amount owing from ADOT to Developer. Notwithstanding any other provision in this Agreement, Developer may assign all or any portion of its rights, title and interests in and to payment of such amounts certified by ADOT, or to any other payment made or owed by ADOT under this Agreement, to any Person from which Developer obtains financing to complete any portion of the Work.

13.3.2 Deductions and Withholdings

13.3.2.1 ADOT may deduct (1) from each payment of the D&C Price, including the Final D&C Payment, any of the following applicable to the D&C Work or accruing prior to Final Acceptance, and (2) from each payment of the Maintenance

Price, any of the following applicable to the Maintenance Services or accruing during the Maintenance Period:

(a) Any ADOT or third party Losses for which Developer is responsible hereunder and which are not covered by insurance proceeds, except in the case where the underlying claim against Developer is still the subject of a legitimate Dispute;

(b) Any Liquidated Damages or Noncompliance Charges that have accrued as of the date of the application for payment or for D&C Work that are anticipated to accrue based on the Substantial Completion and Final Acceptance dates shown in the current Project Schedule;

(c) Any sums expended by or owing to ADOT as a result of Developer's failure to maintain the Record Drawings;

(d) Any sums expended by ADOT in performing any of Developer's obligations under the Contract Documents which Developer has failed to perform; and

(e) Any other sums that ADOT is entitled to recover or withhold from Developer under the terms of this Agreement, including any carry-over deductions (including for Noncompliance Charges and Liquidated Damages) or other adjustments from prior months not yet paid by Developer.

13.3.2.2 ADOT may deduct from payments of the D&C Price, including the Final D&C Payment, the costs to acquire any parcel or partial parcel, or to acquire any Temporary Construction Easement on any parcel or partial parcel, identified in Exhibit 2-3, or identified pursuant to Section 5.6, for which Developer receives credit for avoiding but ultimately cannot avoid in completing the D&C Work. In such a case, the amount deducted shall cover the costs to acquire the parcel or partial parcel or Temporary Construction Easement, as applicable, up to the amount of the credit received by Developer plus, in the case of those identified in Exhibit 2-3, 50% of any additional costs in excess of the credit. Such costs to acquire shall include: (a) the acquisition or condemnation price; (b) severance damages (including cost-to-cure damages); (c) relocation costs; and (d) demolition costs, if part of the prior credit received by Developer. Developer shall not be entitled to any Completion Deadline adjustment for failure to avoid parcels or partial parcels identified in Exhibit 2-3 or identified pursuant to Section 5.6. The provisions of this Section 13.3.2.2 do not apply, however, where the parcel or partial parcel or Temporary Construction Easement thereon is required as ADOT Additional Property.

13.3.2.3 The failure by ADOT to deduct any of the sums set forth in Sections 13.3.2.1 or 13.3.2.2 from a payment shall not constitute a waiver of ADOT's right to such sums. Notwithstanding the foregoing, any Liquidated Damages or offsets related to the D&C Work shall be deducted solely from the D&C Price and any

Liquidated Damages or offsets related to the Maintenance Services shall be deducted solely from the O&M Price.

13.3.3 Unincorporated Materials; Long Lead Items

13.3.3.1 ADOT will not pay Developer for materials not yet incorporated in the Work unless all of the following conditions are met:

(a) Material shall be: (i) delivered to the Site; (ii) delivered to Developer and promptly stored by Developer in bonded storage at a location approved by ADOT in its good faith discretion; or (iii) stored at a Supplier's fabrication site, which must be a bonded commercial location approved by ADOT, in its good faith discretion. Developer shall submit certified bills for such materials with the Draw Request, as a condition to payment for such materials. ADOT will allow only such portion of the amount represented by these bills as, in its good faith discretion, is consistent with the reasonable cost of such materials. If such materials are stored at any site not approved by ADOT, Developer shall accept responsibility for and pay all personal and property taxes that may be levied against ADOT by any state or subdivision thereof on account of such storage of such material.

(b) All such materials that meet the requirements of the Contract Documents shall be and become the property of ADOT. Developer at its own cost shall promptly execute, acknowledge and deliver to ADOT proper bills of sale or other instruments in writing in a form acceptable to ADOT conveying and assuring to ADOT title to such material included in any Draw Request, free and clear of all Liens. Developer, at its own cost, shall conspicuously mark such material as the property of ADOT, shall not permit such materials to become commingled with non-ADOT-owned property or with materials that do not conform with the Contract Documents, and shall take such other steps, if any, as ADOT may require or regard as necessary to vest title to such material in ADOT free and clear of Liens.

13.3.3.2 For the avoidance of doubt, ADOT will not pay Developer for long lead items ordered for the Project unless such items meet the requirements set forth in Section 13.3.3.1.

13.3.4 Mobilization Payments; Bond and Insurance Premiums

13.3.4.1 Developer shall be entitled to payment for mobilization in an amount equal to the lesser of (1) the bid item price for mobilization set forth in Exhibit 2-4.1 or (2) 5% of the D&C Price (other than mobilization). This amount shall be fixed (i.e. not adjusted by any Claim or Supplemental Agreement), and shall be paid in installments as follows:

(a) The first payment for mobilization shall be in an amount not to exceed 10% of the total payment for mobilization, payable as part of the first Draw Request following NTP 1.

(b) The second payment for mobilization shall be in an amount not to exceed 10% of the total payment for mobilization, payable as part of the second Draw Request following NTP 1.

(c) The third payment for mobilization shall be in an amount not to exceed 30% of the total payment for mobilization, payable as part of the first Draw Request following NTP 2.

(d) The fourth payment for mobilization shall be in an amount not to exceed 25% of the total payment for mobilization, payable as part of the first draft request after 5% of the D&C Price is earned on items other than mobilization.

(e) The fifth payment for mobilization shall be in the remaining amount of the total payment for mobilization, payable as part of the first draft request after 10% of the D&C Price is earned on items other than mobilization.

13.3.4.2 The amounts paid under Section 13.3.4.1 shall be taken into account in assessing whether cumulative payments are within the then applicable Maximum Allowable Cumulative Draw.

13.3.4.3 ADOT will pay Developer as part of the first Draw Request following NTP 1 the portion of the D&C Price allocable to bond and insurance premiums, as set forth in the Proposal, to reimburse Developer for bond and insurance premiums actually paid, without markup. The amounts paid under this Section 13.3.4.3 shall be taken into account in assessing whether cumulative payments are within the then applicable Maximum Allowable Cumulative Draw.

13.3.5 Equipment

ADOT will not pay for direct costs of equipment. Costs of equipment, whether new, used or rented, and to the extent not included in the mobilization payments under Section 13.3.4, shall be allocated to and paid for as part of the activities with which the equipment is associated, in a manner which is consistent with the requirements of Section 1.2.3 of Exhibit 14.

13.4 Final D&C Payment

Final D&C Payment for all D&C Work will be made as follows.

13.4.1 Application for Final D&C Payment

13.4.1.1 On or about the date of Final Acceptance, Developer shall prepare and submit a proposed Application for Final D&C Payment to ADOT showing the proposed total amount due Developer as of the date of Final Acceptance, including any amounts owing from Supplemental Agreements.

13.4.1.2 In addition to meeting all other requirements for Draw Requests hereunder, the Application for Final D&C Payment shall propose a schedule of payments that do not exceed the Maximum Cumulative Allowable Draw.

13.4.1.3 The Application for Final D&C Payment shall list all outstanding Relief Event Notices and Relief Requests, stating the amount at issue associated with each such Relief Event Notice and Relief Request.

13.4.1.4 The Application for Final D&C Payment shall also be accompanied by:

(a) Evidence regarding the status of all existing or threatened claims and stop notices of Subcontractors, Suppliers, laborers, Utility Companies and or other third parties against Developer, ADOT or the Project;

(b) Consent of any Guarantors and Surety to the proposed payment schedule;

(c) Such other documentation as ADOT may reasonably require; and

(d) The release described in Section 13.4.4, executed by Developer.

13.4.1.5 Prior applications and payments shall be subject to correction in the Application for Final D&C Payment. Relief Event Notices and Relief Requests filed concurrently with the Application for Final D&C Payment must be otherwise timely and meet all requirements under Article 14.

13.4.2 ADOT's obligation to make payment to Developer based on the Application for Final D&C Payment is conditioned on ADOT's receipt of an executed release meeting the requirements of Section 13.4.4 and otherwise satisfactory in form and content to ADOT. The payment amount will be reduced by any amounts deductible under Section 13.2.3.

13.4.3 ADOT may withhold from the Final D&C Payment such amount as ADOT deems advisable to cover any amounts owing or which may become owing to ADOT by Developer, including costs to complete or remediate uncompleted Work or Nonconforming Work.

13.4.4 The executed release from Developer shall be from any and all Claims of Developer arising from the D&C Work, and shall release and waive any claims against the Indemnified Parties, excluding only those matters identified in any Relief Event Notices and Relief Requests that have been timely delivered and are listed as outstanding in the Application for Final D&C Payment. The release shall be accompanied by an affidavit from Developer certifying that:

(a) All D&C Work has been performed in strict accordance with the requirements of the Contract Documents;

(b) Developer has resolved any claims made by Subcontractors, Suppliers, Utility Companies , laborers, or other third parties against Developer, ADOT or the Project (except those listed by Developer in accordance with Section 13.4.1.4(a));

(c) Developer has no reason to believe that any Person has a valid claim against Developer, ADOT or the Project which has not been communicated in writing by Developer to ADOT as of the date of the certificate; and

(d) All guarantees, Warranties, the D&C Payment Bond, the D&C Performance Bond (or, if applicable, Warranty Bond), the Maintenance Payment Bond, and the Maintenance Performance Bond are in full force and effect.

13.4.5 Prior Relief Requests that are not in Dispute shall be reconciled in the Final Application for D&C Payment.

13.4.6 ADOT will review Developer's proposed Application for Final D&C Payment, and within 20 Business Days after receipt will deliver to Developer any changes or corrections. Any changes or corrections made pursuant to this Section 13.4.6 will be reflected in an updated payment schedule showing the net amount owed to Developer by applicable period.

13.4.7 ADOT will fulfill its payment obligations in respect of the D&C Work under this Agreement by paying the amounts identified in Section 13.4.6, in accordance with the schedule described in Section 13.4.6.

13.5 Maintenance Price

13.5.1 During the Maintenance Period, in full consideration for the performance by Developer of its duties and obligations related to the Maintenance Services, ADOT will pay the Maintenance Price in the amounts determined as set forth in Sections 13.5.3 and 13.5.4, subject only to such additions to and deductions from the compensation as may be provided for pursuant to this Article 13 and Section 9.6.2.2, and Articles 14, 15, 17 and 20, including deductions for Liquidated Damages and Noncompliance Charges. The term "Maintenance Price" as used herein shall mean (a) the sum of the Annual Routine Maintenance Payments set forth in the Routine Maintenance Breakdown (Exhibit 2-4.4), plus (b) the sum of the Annual Capital Asset Replacement Work Payments set forth in the Capital Asset Replacement Work Breakdown (Exhibit 2-4.5), each as adjusted pursuant to Section 13.5.6.

13.5.2 ADOT will pay the Maintenance Price in accordance with this Section 13.5 and Section 13.6. Except for the adjustments and deductions to the Maintenance Price otherwise described herein, the Maintenance Price (and the individual components thereof) shall be increased or decreased only by a Supplemental

Agreement issued in accordance with Article 14 or 15 or by an amendment to this Agreement. The obligation of ADOT to pay the Maintenance Price to Developer shall commence upon the start of the Maintenance Period and no portion of the Maintenance Price shall be payable on account of services provided: (a) as part of the D&C Work; (b) prior to the Substantial Completion Date; or (c) after the termination or expiration this Agreement.

13.5.3 Each of year 1 through 30 as listed in Exhibits 2-4.4 and 2-4.5 means the 12-month period beginning on the Substantial Completion Date and each anniversary of the Substantial Completion Date thereafter during the Maintenance Period. If the Maintenance Period is less than 30 years because the Substantial Completion Date occurs later than the Substantial Completion Deadline, then the Annual Routine Maintenance Price Payments in the Routine Maintenance Price Breakdown falling beyond the end of the Maintenance Period shall be null and void and shall not be owing to Developer.

13.5.4 If Developer performs Capital Asset Replacement Work in a year other than the year for such Work and payment therefor listed in Exhibit 2-4.5, ADOT will pay the applicable Annual Capital Asset Replacement Work Payment in the year or years in which such Work is actually performed, escalated as provided in Section 13.5.6 to the year or years of payment. If the Capital Asset Replacement Work must be performed earlier than the year listed and as a result further Capital Asset Replacement Work that is not scheduled for payment in Exhibit 2-4.5 must be performed by Developer later in the Maintenance Period to meet the requirements of the Contract Documents, ADOT will have no obligation to make additional payments therefor, except to the extent compensable under Article 14.

13.5.5 Every month during the Maintenance Period, subject to deductions as permitted herein, ADOT will pay Developer for Maintenance Services performed under this Agreement a "Monthly Disbursement" composed of the sum of:

(a) The amount equal to one-twelfth of the Annual Routine Maintenance Payment shown as owing to Developer in the applicable year; plus

(b) Subject to Section ~~13.6.6,~~13.5.4, the amount equal to the value of the Capital Asset Replacement Work (if any) actually completed during the prior month, which value shall be determined based on (i) the percentage completion of the corresponding Capital Asset Replacement Work, and (ii) the pricing for the applicable Capital Asset Replacement Work.

Such Monthly Disbursements shall be payable pursuant to Maintenance Draw Requests submitted in accordance with Section 13.6.

13.5.6 The annual payments of the Maintenance Price will be escalated or reduced as described in this Section 13.5.6. The Parties shall document such escalations or reductions annually in a Supplemental Agreement, or as otherwise mutually agreed.

(a) Each Annual Routine Maintenance Payment will be escalated or reduced based on changes in CPI, as follows:

$$\text{Adjusted Annual Routine Maintenance Payment}_{\text{Year Y}} = \text{Annual Routine Maintenance Payment}_{\text{Year Y}} \times \left({}^{CPI}/_{BCPI}\right)$$

Where:

$\text{Annual Routine Maintenance Payment}_{\text{Year Y}}$ = the applicable year's Annual Routine Maintenance Payment as listed in Exhibit 2-4.4;

"CPI" = the CPI for the month that is three months prior to the month in which Year "Y" commenced; and

BCPI = Base CPI.

If the CPI is not published for a designated month above, then the Parties shall use the next earlier month for which it is published.

(b) Each Annual Capital Asset Replacement Work Payment will be escalated or reduced based on changes in CCI, as follows:

$$\text{Adjusted Annual Capital Asset Replacement Work Payment}_{\text{Year Y}} = \text{Annual Capital Asset Replacement Work Payment}_{\text{Year Y}} \times \left({}^{CCI}/_{BCCI}\right)$$

Where:

$\text{Annual Capital Asset Replacement Work Payment}_{\text{Year Y}}$ = the applicable year's Annual Capital Asset Replacement Work Payment as listed in Exhibit 2-4.5;

"CCI" = the CCI for the month that is three months prior to the beginning of each year in which expenditure of the applicable year's Annual Capital Asset Replacement Work Payment actually occurs; and

BCCI = Base CCI.

If the CCI is not published for a designated month above, then the Parties shall use the next earlier month for which it is published.

(c) For increases in either an Annual Routine Maintenance Payment or an Annual Capital Asset Replacement Work Payment pursuant to Section 14.1.5.2, such increases will be escalated or reduced in the same manner, except that the BCPI or BCCI, as applicable, shall be the month and year in which the Parties establish such increase in a Supplemental Agreement.

13.6 Invoicing and Payment for the Maintenance Price

The process described in this Section 13.6 shall apply solely to invoicing and payment of the Maintenance Price.

13.6.1 On or about the 25th day of each month, Developer shall submit to ADOT five copies of a Maintenance Draw Request in the form required by ADOT for a Monthly Disbursement for Maintenance Services performed for the preceding month and meeting all requirements specified herein, including any Capital Asset Replacement Work for which Developer seeks payment pursuant to Sections 13.5. Each Maintenance Draw Request shall be executed by Developer's Authorized Representative and Maintenance Quality Manager. Developer acknowledges that ADOT may obtain funding for portions of the Maintenance Services from the federal government, local agencies and other third parties, and Developer agrees to segregate Maintenance Draw Requests for all such Maintenance Services in a format reasonably requested by ADOT and with detail and information as reasonably requested by ADOT. Each Maintenance Draw Request shall be organized to account for applicable reimbursement requirements and to facilitate the reimbursement process. In addition, the Maintenance Draw Request for a Monthly Disbursement must be accompanied by an attached report containing information that ADOT can use to verify the Maintenance Draw Request and Monthly Disbursement and all components of the Liquidated Damages and Noncompliance Charges for the prior month. Such attached report shall include:

(a) A description of any Capital Asset Replacement Work for which Developer is claiming payment pursuant to Section 13.5 and additional materials supporting the amount of payment requested thereunder;

(b) A description of any Noncompliance Events, Noncompliance Points assessed during the prior month and any Noncompliance Charges owed for assessed Noncompliance Points;

(c) A description of any other Liquidated Damages assessed against Developer during the prior month in relation to the Maintenance Services, including the date and time of occurrence and a description of the events and duration of the events for which the Liquidated Damages were assessed;

(d) Any adjustments to reflect previous over-payments or under-payments;

(e) A detailed calculation of any interest payable in respect of any amounts owed; and

(f) Any other amount due and payable from Developer to ADOT or from ADOT to Developer under this Agreement, including any deductions related to the Maintenance Services that ADOT is entitled to make and any carry-over deductions or other adjustments from prior months not yet paid by Developer.

13.6.2 ADOT will not be required to pay any Monthly Disbursement unless and until Developer also submits to ADOT, in addition to the Maintenance Draw Request:

(a) The then applicable report(s) and update(s) regarding Maintenance Services required under Section MR ~~400.3.4~~400.3.3 of the Technical Provisions;

~~(b) The Asset Condition Score report then required under Section MR 400.6 of the Technical Provisions;~~

(b) ~~(c)~~ The Noncompliance Events report then required under Section ~~MR 500~~17.2.1;

(c) The Asset Condition Scorecard then required under Section MR 400.7.2 of the Technical Provisions ~~;~~(unless previously provided);

(d) Whenever the Monthly Disbursement is to include a payment for Capital Asset Replacement Work, the Monthly Progress Report, DBE Monthly Utilization Progress Report and other information required under Section 18.0 of the DBE Special Provisions (Exhibit 7); and

(e) If applicable, the monthly update on the status of disputes with Subcontractors as required under Section 13.7.6.

~~**13.6.3** Developer's resolution of all punchlist items regarding Capital Asset Replacement Work or Routine Maintenance necessary to satisfy the Handback Requirements is a condition of final acceptance and the final Monthly Disbursement. If any items of punchlist Work remain incomplete at the end of the Maintenance Term or any continuation as ADOT may allow, then ADOT has the right to complete it at Developer's expense and adjust the final Monthly Disbursement accordingly.~~

13.6.3 ~~**13.6.4**~~ Within ten Business Days after ADOT's receipt of a complete Maintenance Draw Request and the then-required reports, updates and information, ADOT will review the Maintenance Draw Request and all attachments and certificates thereto, and shall notify Developer of the amount approved for payment and the reason

for disapproval of any remaining invoiced amounts or of any other information set forth in the Maintenance Draw Request. Developer may include such disapproved amounts in the next month's O&M Draw Request after correction of the deficiencies noted by ADOT and satisfaction of the requirements of the Contract Documents related thereto.

13.6.4 ~~**13.6.5**~~ Within ten Business Days after ADOT approves a Maintenance Draw Request, ADOT will pay Developer the Monthly Disbursement in the amount of the Maintenance Draw Request approved for payment less any amounts that ADOT is otherwise entitled to withhold or deduct. No payment by ADOT will, at any time, preclude ADOT from showing that such payment was incorrect, or from recovering any money paid in excess of those amounts due hereunder.

13.6.5 ~~**13.6.6**~~ Developer's resolution of all punchlist items regarding Capital Asset Replacement Work or Routine Maintenance necessary to satisfy the Handback Requirements is a condition of final acceptance and the final Monthly Disbursement. If any items of punchlist Work remain incomplete at the end of the Maintenance ~~Term~~Period or any continuation as ADOT may allow, then ADOT has the right to complete it at Developer's expense and adjust the final Monthly Disbursement accordingly.

13.6.6 ~~**13.6.7**~~ If Developer is obligated to pay in-lieu fees to ADOT pursuant to Section 8.11.4, then ADOT shall have the right to collect the in-lieu fees by deducting the amount thereof (a) first, from each Monthly Disbursement of the Annual Capital Asset Replacement Work Payment occurring after Developer exercises its option to pay in-lieu fees, and (b) second, to the extent necessary, from each Monthly Disbursement of the Annual Routine Maintenance Payment occurring after Developer exercises its option to pay in-lieu fees. No failure of ADOT to make such deductions, and no insufficiency of Monthly Disbursements to cover the in-lieu fees, shall excuse Developer from the obligation to pay the in-lieu fees.

13.6.7 ~~**13.6.8**~~ If Developer has not been paid any portion of the Capital Asset Replacement Work Payment scheduled in Exhibit 2-4.5 for Capital Asset Replacement Work to satisfy the Handback Requirements, then ADOT shall pay such portion to Developer, less deductions under Section ~~13.6.6~~13.6.5 for punch list items, less deductions under Section ~~13.6.7~~13.6.6 for any in-lieu fee payments, and less any other amounts that ADOT is otherwise entitled to withhold or deduct, as part of the final Monthly Disbursement at the maturity of the Term.

13.6.8 ~~**13.6.9**~~ The Annual Capital Asset Replacement Work Payments and Annual Routine Maintenance Payments payable for any partial month or payable for any partial year shall be prorated.

13.6.9 ~~**13.6.10**~~ ADOT will have the right to dispute, in good faith, any amount specified in a Maintenance Draw Request submitted pursuant to this Section 13.6. ADOT will pay the amount of the Maintenance Draw Request in question that is not in Dispute. Developer and ADOT will use their reasonable efforts to resolve any such Dispute within 30 days after the Dispute arises. If they fail to resolve the Dispute within

that period, then the Dispute shall be resolved according to the Dispute Resolution Procedures.

13.6.10 ~~**13.6.11**~~ Any amount determined to be due pursuant to the Dispute Resolution Procedures will be paid within 20 days following resolution of the Dispute, together with interest thereon in accordance with this Agreement.

13.7 Prompt Payment to Subcontractors

13.7.1 Upon receipt of payment from ADOT, Developer shall pay each Subcontractor with which it holds a direct Subcontract, and shall cause the Lead Subcontractor and Lead Maintenance Firm to pay each of its Subcontractors, within seven days after Developer receives payment from ADOT, out of the amount paid to Developer on account of such Subcontractor's portion of the Work, the amount to which such Subcontractor is entitled, less any retainage provided for in the Subcontract. Developer shall pay retainage, if any, on a Subcontractor's Work within ten days after satisfactory completion of all of the Subcontractor's Work. For the purpose of this Section 13.7.1, satisfactory completion shall have been accomplished when:

(a) The Subcontractor has fulfilled the Subcontract requirements and the requirements under the Contract Documents for the subcontracted Work, including the submission of all submittals required by the Subcontract and Contract Documents; and

(b) The Work done by the Subcontractor has been inspected and approved by Developer and the final quantities of the Subcontractor's Work have been determined and agreed upon.

13.7.2 If Developer fails to pay a Subcontractor within the time periods set forth in Section 13.7.1, Developer shall pay the Subcontractor interest on the unpaid balance, beginning on the eighth day or tenth day, as applicable, at a rate of 1% per month or fraction of a month.

13.7.3 Arizona Revised Statutes Sections 28-411(C), (D) and (E) shall apply to all Work. For purposes of this Section 13.7, Subcontractors of the Lead Subcontractor shall be treated and recognized as Subcontractors under Subcontracts with Developer and entitled to all the protections of Arizona Revised Statutes Sections 28-411(C), (D) and (E).

13.7.4 If Developer submits work to ADOT for payment, the invoice constitutes a representation that the work of the Subcontractors included in the invoice was satisfactorily performed.

13.7.5 Except for retainage, if any, Developer may withhold payments to a Subcontractor only if the Subcontractor's work is deficient, incomplete or otherwise not in compliance with the terms of the Contract Documents applicable to the Subcontractor's work. If any Subcontractor is not paid promptly, Developer shall provide to the Subcontractor and to ADOT via the comment section of ADOT's DBE

System a written explanation of the reasons and when payment can be expected. Developer shall provide such explanation within seven days after the time the Subcontractor was otherwise entitled to payment.

13.7.6 If there is a dispute with a Subcontractor regarding prompt payment or withholding thereof, Developer shall immediately provide to ADOT written verifiable explanation of the matter in dispute and update ADOT monthly on the status of the dispute until it is resolved. Developer shall implement and use, and cause the Lead Subcontractor to implement and use, the dispute resolution process in the applicable Subcontract to resolve payment disputes as quickly as possible.

13.7.7 ADOT reserves the right to request and receive documents from Developer, all Subcontractors of any tier, and Suppliers in order to determine whether prompt payment requirements were met.

13.8 Subcontractor Payment and Payroll Reporting

13.8.1 Subcontractor Payment Reporting

13.8.1.1 Developer shall report on a monthly basis, throughout the D&C Work and any Capital Asset Replacement Work, the amounts earned by and paid to all DBE and non-DBE Subcontractors working on the D&C Work or Capital Asset Replacement Work. Developer shall deliver this report to ADOT by the 15th day of each month, for the preceding month, using the Monthly DBE Subconsultant/Subcontractor Payment Form and Monthly Non-DBE Subconsultant/Subcontractor Payment Form, as applicable, provided in Attachments G and H, respectively, of the DBE Special Provisions (Exhibit 7). Developer shall report separately, using different forms, payments for the Professional Services, Construction Work and Capital Asset Replacement Work components of the Project.

13.8.1.2 This report shall include all lower-tier Subcontractors regardless of whether the Subcontractor is a DBE under a Subcontract with another DBE. For each DBE trucking operation, Developer shall also indicate the type of trucking operation performed, the number of trucks owned/leased, the number of trucks working on-site or off-site, rate per hour/ton/load, etc., duration or amount, and total dollar value and DBE credit for trucking services for the month. Developer shall provide copies of truck leases, for verification as needed, upon request of ADOT.

13.8.1.3 Developer shall enter the same information required under Sections 13.8.1.1 and 13.8.1.2 by the 15th day of each month into ADOT's web-based DBE System (available at https://adot.dbesystem.com/) for payments made to DBEs and other Subcontractors for the previous month. This includes all lower-tier subcontracting regardless of whether the Subcontractor is a DBE under a Subcontract with another DBE. Developer shall enter separately into ADOT's web-based DBE System payments made for the Professional Services, Construction Work and Capital Asset Replacement Work components of the Project.

13.8.1.4 Developer shall require that all DBE and non-DBE Subcontractors verify payments using the DBE System by responding to automated emails generated by ADOT's web based DBE System each month. Developer shall actively monitor ADOT's web based DBE System on a regular basis to ensure that all DBE and non-DBE Subcontractors verify receipt of payment by the last day of each month for the previous month's payment. Furthermore, Developer shall proactively work to resolve any payment discrepancies on the DBE System, between payment amounts it reports and payment confirmation amounts reported by DBE and non-DBE Subcontractors on a monthly basis.

13.8.1.5 If no payments are made to any Subcontractor, DBE or non-DBE, during a given month, Developer shall enter the dollar value "0" for that month and indicate clearly that either (a) no work was done, or that (b) no invoices were submitted by the Subcontractor requiring payment during that month.

13.8.2 Subcontractor Payroll Reporting

Not later than the 15th day of every month, Developer shall submit complete and accurate payrolls to ADOT's web-based certified payroll tracking system (LCPtracker) for all Work performed by all DBE and non-DBE Subcontractors (regardless of tier) during the previous month. If ADOT does not receive all such payrolls by this deadline, ADOT will identify in a written notice to Developer any missing payrolls and other discrepancies or inaccuracies, and the following shall apply:

(a) If Developer does not submit the missing or corrected payrolls within ten days of the notice date, ADOT will have the right to withhold $2,500.00 per missing or inaccurate payroll, as applicable, from each subsequent progress payment until Developer cures;

(b) If Developer cures within 90 days of the notice date, ADOT will pay any corresponding, accumulated withholdings with the next progress payment; and

(c) If Developer does not cure within 90 days after the notice date, then, with respect to each missing or inaccurate payroll, ADOT will have the right to retain the accumulated withholdings as Liquidated Damages. These Liquidated Damages shall be in addition to any other rights or remedies ADOT may have hereunder or under Law.

ARTICLE 14.
RELIEF EVENTS

This Article 14 sets forth the requirements for obtaining monetary and schedule relief under the Contract Documents due to Relief Events. Developer hereby acknowledges and agrees that the D&C Price and Maintenance Price provide for full compensation for performance of all the Work, and the Completion Deadlines provide reasonable and adequate time to perform the Work required within the Completion Deadlines, subject only to those exceptions specified in this Article 14. The compensation amounts, Completion Deadline adjustment and performance relief specified in this Article 14 shall represent the sole and exclusive right against ADOT, the State and their respective successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees to compensation, damages, deadline extension and performance relief for the adverse financial and schedule effects of any event affecting the Work, the Project or Developer. No award of compensation or damages shall be duplicative. Developer unconditionally and irrevocably waives the right to any claim against ADOT, the State and their respective successors, assigns, agencies, divisions, officeholders, officers, directors, commissioners, agents, representatives, consultants and employees for any monetary compensation, Completion Deadline adjustment or other relief except to the extent specifically provided in this Article 14. The foregoing waiver encompasses all theories of liability, whether in contract, tort (including negligence), strict liability, equity, *quantum meruit* or otherwise, and encompasses all theories to extinguish contractual obligations, including impracticability, mutual or unilateral mistake, and frustration of purpose. Notwithstanding anything to the contrary herein, no liability of Developer that arose before the occurrence of the Relief Event giving rise to a claim under this Article 14 shall be excused as a result of the occurrence. Nothing in the Technical Provisions shall have the intent or effect or shall be construed to create any right of Developer to any claim for additional monetary compensation, Completion Deadline adjustment or other relief, any provision in the Technical Provisions to the contrary notwithstanding. The provisions of this paragraph shall not affect Developer's rights and protections under Section 6.8, Developer's right to potential adjustments to compensation for insurance cost increases under Section 11.1.13, or Developer's remedies under the Contract Documents in the event of an ADOT Default or upon termination of this Agreement prior to the stated expiration of the Term.

14.1 Relief Event Claim Process

14.1.1 General Provisions

14.1.1.1 This Section 14.1 applies to all Relief Events, except Relief Events that are an ADOT-Directed Change. The process for ADOT-Directed Changes shall be through a Supplemental Agreement or Directive Letter pursuant to Sections 15.1 and 15.3, respectively.

14.1.1.2 ADOT acknowledges that Developer may enter into Subcontracts pursuant to which additional costs directly attributable to the occurrence of a Relief Event, or the Relief Event's impact on schedule or performance of the Work, may be borne by a Subcontractor subject to the right to claim relief from Developer to the extent Developer obtains relief from ADOT under this Agreement. For purposes of evaluating the merits of any Relief Event Notice, Relief Request or Claim against ADOT for such Relief Event, such costs or impact on schedule or performance of Work will be deemed to be directly incurred by Developer.

14.1.2 Relief Event Notice

14.1.2.1 If at any time Developer determines that a Relief Event has occurred or is imminent, Developer shall submit a written Relief Event Notice to ADOT. ADOT will promptly acknowledge receipt of each Relief Event Notice.

14.1.2.2 The Relief Event Notice shall include, to the maximum extent of the information then available:

(a) A description of the Relief Event and its date of occurrence or inception in reasonable detail;

(b) Developer's preliminary good faith estimate of the anticipated adverse and beneficial effects (including cost impacts) of the Relief Event and the basis for such estimate;

(c) Developer's preliminary good faith estimate of the Critical Path impact directly attributable to the Relief Event and the basis for such estimate;

(d) Developer's initial analysis of any adverse effect of the Relief Event on its ability to perform its obligations under this Agreement;

(e) The actions Developer has taken prior to the Relief Event Notice to prevent, and proposes to take thereafter to mitigate, the cost, delay, and other consequences of the Relief Event; and

(f) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

14.1.2.3 The nature and scope of the potential claim stated in the Relief Event Notice shall remain consistent (except for reductions) for the remainder of the Relief Event claim process and, if applicable, during any subsequent Dispute Resolution Procedures, except with respect to consequences of a Relief Event that: (a) are of a different nature or scope; (b) first arise or occur after Developer delivers the Relief Event Notice to ADOT; and (c) could not have been anticipated through the exercise of reasonable diligence and Good Industry Practice prior to delivering the

Relief Event Notice to ADOT. If any such new consequences arise or occur prior to submission of the Relief Request, Developer shall report them to ADOT by a supplemental Relief Event Notice.

14.1.2.4 Developer shall submit the Relief Event Notice on a standardized form approved by ADOT.

14.1.2.5 Developer shall assign an exclusive identification number for each Relief Event Notice, determined by chronological sequencing. The exclusive identification number shall be used on each of the following corresponding documents: (a) Relief Request; (b) supplemental Notices and submissions pertaining to the Relief Event Notice; and (c) final documentation of the Relief Event claim.

14.1.2.6 If a single Relief Event is a continuing cause of delay, only one Relief Event Notice shall be necessary.

14.1.3 Relief Request

14.1.3.1 Developer shall, within a further 45 days after the date of the Relief Event Notice, submit to ADOT a Relief Request that provides Developer's complete reasoning for additional compensation for Extra Work Costs or Delay Costs, Completion Deadline adjustments and other requested relief relating to the Relief Event. ADOT will promptly acknowledge receipt of each Relief Request. The Relief Request shall include the following information, to the maximum extent then available:

(a) Full details of the Relief Event, including its nature, the date of its occurrence, its duration (to the extent that the Relief Event and the effects thereof have ceased, or estimated duration to the extent that the Relief Event and the effects thereof have not ceased), affected locations, and items of Work affected. Impacts to the Maintenance Services, if any, shall be stated by Fiscal Year;

(b) Identification of all pertinent documents and the substance of any oral communications between ADOT and Developer, if any, relating to the Relief Event and the name of the person or persons making such material oral communications;

(c) Identification of the specific provisions of the Contract Documents that Developer claims entitles Developer to the relief sought, and a statement that explains the reasons why the provisions entitle Developer to that relief. If Developer seeks relief for ADOT's alleged breach of the Contract Documents, then Developer shall identify the specific provisions of the Contract Documents that ADOT allegedly breached and the actions constituting the breach;

(d) Where Developer makes a request for a Completion Deadline adjustment, a Time Impact Analysis of the Project Schedule that: (i) identifies Controlling Work Items and Critical Path (with activity durations, predecessor and successor activities and resources, including total Float), and illustrates the effect of

schedule changes or disruptions on the Completion Deadlines; and (ii) complies with the requirements of Section GP 110.06.2.11 of the Technical Provisions;

(e) A detailed, itemized estimate of all amounts claimed for Extra Work Costs and Delay Costs to the extent such amounts are eligible for compensation under this Article 14 for the Relief Event in question. All such amounts shall be broken down in terms of the eligible direct costs for labor (including hourly wage rates, fringe benefits rates and burden), materials, equipment, third party fees and charges, extra insurance and performance and payment security (e.g., bonds and letters of credit), as applicable, and other direct costs, including expenses and profit, and any other cost category or categories ADOT reasonably specifies. The estimate shall include, to the extent applicable, the Extra Work Costs for future Maintenance Services, stated by Fiscal Year and in present value dollars as of the time of the estimate (i.e., as if the future Maintenance Services were to be performed and the Extra Work Costs thereof paid for in the year of the estimate);

(f) Only if Developer makes a request for a Completion Deadline adjustment, and if so requested by ADOT in its sole discretion, a detailed, itemized estimate of all acceleration costs associated with meeting the non-adjusted Completion Deadlines, as well as any additional costs permitted hereunder. If Developer reasonably believes that it is not feasible to recover to the non-adjusted Completion Deadlines, or that the costs associated with such a recovery are prohibitive, then Developer shall so state and provide its applicable, supporting analysis;

(g) The effect of the Relief Event on Developer's ability to perform any of its obligations under this Agreement, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect;

(h) An explanation of the measures that Developer has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay and other consequences of the Relief Event; and

(i) The type and amount of insurance that may be applicable and amounts that have been or are anticipated to be collected under such insurance.

14.1.3.2 Developer shall submit the Relief Request on a standardized form approved by ADOT.

14.1.3.3 If, following issuance of any Relief Request, Developer receives or becomes aware of any further information or estimates relating to the Relief Event and its impact on cost, schedule, Closures or performance of Work, including information on new consequences as described in Section 14.1.2.3, Developer shall submit such further information to ADOT as soon as possible. ADOT may request from Developer any further information that ADOT may reasonably require, and Developer shall supply the same within a reasonable period after such request.

14.1.3.4 Neither the fact that Developer submits to ADOT a Relief Request, nor the fact that ADOT keeps account of the costs of labor, materials, or equipment or time, shall in any way be construed as establishing the validity of the Relief Request or the Claims therein or method of computing any compensation or extension of Completion Deadlines.

14.1.4 ADOT Evaluation and Response to Relief Request; Negotiations

14.1.4.1 ADOT will evaluate the information presented in the Relief Request and provide a written response to Developer within 45 days after its receipt. If Developer complies with the notice and information requirements in Sections 14.1.2 and 14.1.3, but ADOT does not provide Developer a written response within such 45-day period, then, except as provided otherwise in Section 14.1.7, Developer shall have the right to assert a Claim against ADOT for the relevant Relief Event and have such Claim determined according to the Dispute Resolution Procedures.

14.1.4.2 If Developer timely complies with the notice and information requirements in Sections 14.1.2 and 14.1.3 and ADOT provides a written response within such 45-day period indicating that there are any matters in Dispute regarding the Relief Request, then the Parties shall commence good faith negotiations to determine the matters in Dispute.

14.1.4.3 If ADOT or Developer determines after engaging in good faith negotiations that continuation of such negotiations is not likely to resolve the matters in Dispute, then, except as provided otherwise in Section 14.1.7, Developer may initiate the Dispute Resolution Procedures.

14.1.5 Final Documentation of Relief Event Claim

14.1.5.1 Within 30 days of the completion of work related to a Relief Event that is the subject of a Relief Request, Developer shall submit to ADOT the full and final documentation of the Relief Event claim. Pertinent information, references, arguments, and data to support the Relief Event claim shall be included in the full and final documentation, including updated analyses, descriptions, actual amounts and impacts, specific dates for Completion Deadline adjustments, and other documentation covering the same scope of information as required for the Relief Request.

14.1.5.2 Without limiting the foregoing, if Developer claims compensation under Section 14.2, and except to the extent that said compensation is the subject of a previous written agreement by the Parties to be paid as a negotiated fixed price, Developer shall provide an itemized accounting of the actual direct costs broken down in terms of labor (including burden), materials, equipment, third party fees (e.g., permit fees, plan check fees and charges) and other direct costs and indirect costs, field office overhead and profit, and any other cost category reasonably requested by ADOT. The documentation also shall include, to the extent applicable, the Extra Work Costs for future Maintenance Services, stated by Fiscal Year and in present value dollars as of the time of the estimate (i.e. as if the future Maintenance

Services were to be performed and the Extra Work Costs thereof paid for in the year of the estimate). The labor, materials, and equipment cost categories shall account for the following items:

(a) As to labor, a listing of individuals, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information related to the requested payment of labor costs.

(b) As to materials, invoices, purchase orders, location of materials either stored or incorporated into the Project, dates materials were transported to the Site or incorporated into the Project, and other pertinent information related to the requested payment of material costs.

(c) As to equipment, a listing of detailed description (make, model, and serial number), hours of use, dates of use, and equipment rates. Equipment rates shall be determined pursuant to Section 1.2.3 of Exhibit 14 as of the first date when the affected work related to the Relief Event claim was performed.

(d) Developer shall submit the full and final documentation of the Relief Event claim on a standardized form approved by ADOT, and shall certify the Relief Event claim to be accurate, truthful, and complete. Information submitted subsequent to the full and final documentation submittal will not be considered. No full and final documentation of Relief Event claim will be considered that does not have the same nature, scope (except for reductions) and circumstances, and basis of the Relief Event claim, as those specified in the Relief Event Notice and any supplements submitted in accordance with Section 14.1.2.3 and in the Relief Request.

14.1.6 ADOT Response to Final Documentation; Supplemental Agreement

14.1.6.1 ADOT's failure to respond to a full and final documentation of a Relief Event claim arising out of a Relief Event within 45 days after receipt shall constitute ADOT's rejection of the Relief Event claim, which shall thereafter constitute a Claim subject to the Dispute Resolution Procedures.

14.1.6.2 If ADOT finds the Relief Event claim or any part thereof to be valid, or if the Relief Event claim or any part thereof is deemed to be valid as a result of completion of the Dispute Resolution Procedures, ADOT will:

(a) Deliver to Developer notice authorizing such partial or whole Relief Event claim;

(b) Pay such Relief Event claim to the extent deemed valid (as to Extra Work Costs and Delay Costs, by one of the methods set forth in Section 14.2.2); and

(c) Grant a commensurate Completion Deadline adjustment, if applicable, as provided in the Contract Documents.

(d) The Parties shall thereafter promptly execute a Supplemental Agreement documenting the Relief Event claim or part thereof that ADOT finds to be valid or that is upheld through the Dispute Resolution Procedures.

14.1.7 Waiver

Time is of the essence in Developer's delivery of its written Relief Event Notice, supplemental Relief Event Notice and Relief Request. Accordingly:

14.1.7.1 If for any reason Developer fails to deliver such written Relief Event Notice or supplement thereto in substantial compliance with all applicable requirements:

(a) Within 45 days following the date (for purposes of this Section 14.1.7, the "starting date") on which Developer first became aware (or should have been aware, using all reasonable due diligence) of the Relief Event (or, in the case of a supplement, the new consequences described in Section 14.1.2.3), Developer shall be deemed to have irrevocably and forever waived and released the portion of any Claim or right to relief for adverse effect attributable to the Relief Event accruing after such 45-day deadline and until the date Developer submits the written Relief Event Notice or supplement thereto; and

(b) Within 90 days following the starting date, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief for any adverse effect attributable to such Relief Event.

14.1.7.2 If for any reason Developer fails to deliver such written Relief Request in substantial compliance with all applicable requirements in Section 14.1.3 within 45 days after the date of the Relief Event Notice, Developer shall be deemed to have irrevocably and forever waived and released any and all Claim or right to relief (including extension of the Term) for any adverse effect attributable to such Relief Event.

14.1.8 Open Book Basis

Developer shall share with ADOT all data, documents and information, and shall conduct all discussions and negotiations, pertaining to a claimed Relief Event on an Open Book Basis.

14.2 Payment for Extra Work Costs and Delay Costs

14.2.1 Except as provided otherwise in this Agreement, ADOT will compensate Developer for Extra Work Costs and Delay Costs directly attributable to occurrence of a Relief Event.

14.2.2 ADOT will compensate Developer for amounts due for Extra Work Costs and Delay Costs: (a) to the extent permitted by Law, as a lump sum payment; (b) as progress payments invoiced as Work is completed; or (c) through any combination of the above, as determined by ADOT in its sole discretion but subject to Section 14.2.4. Subject to Section 14.3, ADOT will pay for any Extra Work Costs and Delay Costs resulting from ADOT-Directed Changes as progress payments invoiced as Work is completed.

14.2.3 ADOT will provide Developer with a notice of the method chosen for paying Developer for the amounts of Extra Work Costs and Delay Costs owed.

14.2.4 Following receipt of complete and conforming Claim documentation pursuant to Sections 14.1.1 and 14.1.2, if ADOT chooses to compensate Extra Work Costs or Delay Costs, as applicable, owed under this Section 14.2:

(a) As a lump sum payment other than a negotiated fixed price, then payment of all undisputed amounts will be due and owing not later than the Contractor Cycle Key Date first occurring after ADOT's receipt of all pertinent data, documents and information on an Open Book Basis with respect to such Extra Work Costs or Delay Costs, as applicable;

(b) As a lump sum payment that is a negotiated fixed price, then payment(s) of all undisputed amounts will be due and owing not later than the Contractor Cycle Key Date first occurring after ADOT receives from Developer all documentation required pursuant to the negotiated fixed price terms in order to receive scheduled payments under the negotiated fixed price terms with respect to such Extra Work Costs or Delay Costs, as applicable; and

(c) As progress payments invoiced as Work is completed, then payment of all undisputed amounts shall be due and owing not later than the Contractor Cycle Key Date first occurring after each date ADOT receives from Developer an invoice, not more often than monthly, of such Extra Work Costs or Delay Costs incurred, as applicable, for such Work during the previous month, which invoice shall be itemized as set forth in Section 14.1.5 and by the components of Extra Work Costs or Delay Costs, as applicable, allowable under Exhibit 14.

14.2.5 Subject to the provisions of Section 14.2.2, if any portion of the Extra Work Costs and Delay Costs consist of costs of design or construction to be performed, or other future capital expenditures, then ADOT will have no obligation to make advance payments and shall have the right to pay such portion in monthly progress payments according to ADOT's standard practices and procedures for paying its contractors and applicable Laws.

14.2.6 If ADOT elects to make monthly or other periodic payments, at any later time it may choose to complete compensation through a lump sum payment of the present value of the remaining Extra Work Costs and Delay Costs.

14.2.7 For the purpose of any discounting of future cost impacts, the Parties shall use as the discount rate the then-applicable yield on U.S. Treasury bonds having a tenor closest in length to the then-remaining length of the Term plus 100 basis points.

14.2.8 Extra Work Costs and Delay Costs attributable to a Relief Event shall:

(a) Exclude:

(i) Third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of ADOT in the regular course of business; and

(ii) Unallowable costs under the following provisions of the federal Contract Cost Principles, 48 CFR §§ 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings).

(b) Exclude amounts paid or to be paid to Affiliates in excess of the pricing Developer could reasonably obtain in an arms' length, competitive transaction with an unaffiliated Subcontractor;

(c) Exclude those costs incurred in investigating, analyzing, asserting, pursuing or enforcing any Claim or Dispute, including legal, accounting, financial advisory, and technical advisory fees and expenses, and including such costs in connection with preparing Relief Event Notices, Relief Requests, and final documentation of Claims in respect of Relief Events;

(d) Take into account any savings in costs or time resulting from the Relief Event;

(e) Be subject to Developer's obligation to prevent and to mitigate cost increases and augment cost decreases in accordance with Section 14.8; and

(f) Exclude any amounts covered by applicable insurance required in Exhibit 12 or deemed self-insurance, as more particularly provided in Section 14.5.

14.2.9 ADOT, at its election, may offset any amounts owing to Developer in respect of Relief Events against any amounts due and owing to ADOT from Developer pursuant to this Agreement, such offset rights being in addition to ADOT's offset rights under Section ~~19.2.4.~~ 19.2.5.

14.3 Claim Deductible

14.3.1 Except as provided in this Section 14.3, each separate occurrence of a Relief Event for which a Claim is made seeking the recovery of Extra Work Costs and Delay Costs, as applicable, shall be subject to the Claim Deductible. The Claim Deductible reflects the Parties' agreement that: (a) Developer shall bear the financial risks for Extra Work Costs and Delay Costs, as applicable, for each separate occurrence of a Relief Event, up to the Claim Deductible; and (b) except as otherwise provided in this Article 14, ADOT will compensate Developer for Extra Work Costs and Delay Costs, as applicable, in excess of the Claim Deductible; provided, however, that each Claim complies with Section 14.1.

14.3.2 The Claim Deductible shall not apply to a Claim seeking recovery for a Relief Event set forth in clauses (a), (b), (c), (d), (e), (i) (but only as to ADOT Releases of Hazardous Materials), (o) or (q) of the definition of Relief Event.

14.3.3 The Claim Deductible for Extra Work Costs shall be adjusted annually at the beginning of each Fiscal Year after the Substantial Completion Date to equal the original amount of the Claim Deductible for Extra Work Costs multiplied by a fraction the numerator of which is the CCI most recently published prior to the beginning of the applicable Fiscal Year and the denominator of which is the Base CCI.

14.4 Other Deductibles; Special Provisions

Developer's rights and remedies respecting certain Relief Events and Losses are subject to the provisions of this Section 14.4. The provisions of this Section 14.4 supersede any contrary provisions of this Agreement, but do not replace or supersede the other conditions and requirements for obtaining relief under this Article 14.

14.4.1 Necessary Schematic ROW Changes

14.4.1.1 A Necessary Schematic ROW Change shall arise only where all the following criteria are satisfied:

(a) Developer establishes with clear and convincing evidence that it is not physically possible, including through commercially reasonable design modifications to deliver the Basic Configuration within the Schematic ROW. The Parties stipulate that it is not commercially reasonable to require as a design modification: (i) retaining walls where retaining walls are not shown in the Schematic Design; (ii) an added structure not shown in the Schematic Design; or (iii) cut slopes in the Center Segment steeper than 3/4:1.

(b) A Necessary Schematic ROW Change shall not include areas outside the Schematic ROW for Temporary Construction Easements.

(c) A Necessary Schematic ROW Change shall not include areas outside the Schematic ROW necessary to accommodate the specific portions of the Basic Configuration that ADOT identified in Exhibit 16.

14.4.1.2 With respect to a Necessary Schematic ROW Change:

(a) Developer shall be entitled to Delay Costs and Completion Deadline adjustment only if (i) Developer notifies ADOT, by Relief Event Notice, of the Necessary Schematic ROW Change, including a reasonable identification of the subject property, within 360 days after NTP 2, (ii) ADOT is unable to deliver access to the necessary additional ROW for demolition and clearing within 180 days after approving the corresponding Condemnation Package, and (iii) the delay affects the Critical Path. The percentage of Delay Costs and Completion Deadline adjustment to which Developer shall be entitled, however, shall vary based on when Developer delivers to the appropriate Relief Event Notice, as follows:

(i) 100% if Developer notifies ADOT within 120 days, inclusive, of NTP 2;

(ii) 75% if Developer notifies ADOT within 240 days, inclusive, of NTP 2;

(iii) 50% if Developer notifies ADOT within 360 days, inclusive, of NTP 2; and

(iv) No compensation for Delay Costs and no Completion Deadline adjustment if Developer notifies ADOT on or after the 361st day after NTP 2.

(b) Developer shall bear Extra Work Costs for ROW Services and for any re-design and construction for the necessary additional ROW; and ADOT will bear Extra Work Costs for environmental approvals, demolition and clearing, Utility Adjustments, Hazardous Materials Management and purchase price, severance damages (including cost-to-cure damages), relocation assistance and title insurance for the necessary additional ROW.

14.4.2 Non-Discriminatory Maintenance Change

14.4.2.1 If ADOT requires a Non-Discriminatory Maintenance Change in order to comply with or implement a Change in Law or revised air quality requirement, then, subject to Section 14.4.2.3, Developer shall be entitled to compensation for capital and non-capital Extra Work Costs of Maintenance Services, and Delay Costs, directly attributable to the Non-Discriminatory Maintenance Change.

14.4.2.2 If ADOT requires a Non-Discriminatory Maintenance Change for reasons other than to comply with or implement a Change in Law or revised air quality requirement, Developer shall not be entitled to compensation for increases in the

costs of Maintenance Services (i.e., Extra Work Costs or Delay Costs), except for the capital costs of required major new improvements or required major repair, reconstruction, rehabilitation, restoration, renewal or replacement of any affected Element, subject to Section 14.4.2.3.

14.4.2.3 Developer shall be entitled to Extra Work Costs for increases in capital costs only if ADOT directs Developer to implement the Non-Discriminatory Maintenance Changes prior to the date when Developer performs or is scheduled to perform the Capital Asset Replacement Work (if any) on the affected Element or, otherwise, outside the ordinary course of performing the Maintenance Services. Developer shall not be entitled to any Extra Work Costs for implementing Non-Discriminatory Maintenance Changes if Developer replaces the affected Element during the ordinary course of performing the Maintenance Services.

14.4.2.4 ADOT will be entitled to a credit from Developer for capital and non-capital costs, if any, that Developer would have incurred if not for the Non-Discriminatory Maintenance Change.

14.4.3 Project ROW Acquisition

If a Relief Event occurs under clause (e) of the definition of Relief Event (concerning ADOT-Caused Delay) where the ADOT-Caused Delay is under clause (d) of such definition (concerning a time period to make available to Developer parcels being acquired) and such Relief Event concerns Developer-Designated ROW, then Developer shall have no Claim to compensation, Completion Deadline adjustment or Supplemental Agreement on account of, and Developer shall have the sole risk arising out of:

(a) The refusal of any Governmental Entity that owns or controls Developer-Designated ROW to grant necessary rights of access, entry, and use to ADOT after ADOT makes diligent efforts to negotiate acquisition of such Developer-Designated ROW; or

(b) The holding by the court in any condemnation action for the taking of Developer-Designated ROW to the effect that: (i) ADOT's power of eminent domain does not extend to such Developer-Designated ROW; or (ii) the proposed condemnation does not satisfy legal requirements for necessity of the taking.

14.4.4 Utility Company Delay

14.4.4.1 Developer shall not be entitled to any Claim for Extra Work Costs relating to Utility Company Delay, except for Extra Work Costs allowable under Section 14.8.3 to mitigate Delay Costs.

14.4.4.2 Developer shall be entitled to Completion Deadline adjustment for delay to the Critical Path that is directly attributable to Utility Company Delay.

14.4.4.3 Developer shall not be entitled to any Claim for Delay Costs relating to a Utility Company Delay described in clause (c) of the definition of Utility Company Delay unless the applicable Utility Agreement precludes an adequate damages remedy to Developer for Utility Company delays.

14.4.5 Inaccurate Utility Information

The following limitations apply to the Relief Event set forth in clause (h) of the definition thereof (concerning Inaccurate Utility Information).

14.4.5.1 Developer's compensation for Extra Work Costs shall be limited to the aggregate Extra Work Costs of the Utility Work (including reimbursements payable to Utility Companies) that Developer would not have incurred if the Utility Information had been reasonably accurate.

14.4.5.2 Developer shall be entitled to compensation for reasonable and necessary costs to acquire Replacement Utility Property Interests for Adjustment of a Utility only where:

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

(b) It is not physically possible, including through commercially reasonable design modifications as described in Section 14.4.1.1(a), to perform the subject Utility Adjustment within the Schematic ROW or to use Protection in Place; and

(c) The Utility Company is not legally responsible under Law for the acquisition costs, such as in the case of a Replacement Utility Property Interest that is a Betterment.

14.4.5.3 Developer shall be entitled to Delay Costs only if:

(a) The subject Utility is not a Service Line; and

(b) Either (i) the applicable Utility Information does not indicate that the subject Utility exists anywhere within the portion of the Schematic ROW covered by the Utility Information, or (ii) both the Utility Information and public and private records fail to indicate that the Utility Company holds or is assumed to hold Prior Rights Documentation with respect to the subject Utility.

14.4.5.4 Developer shall be entitled to a Completion Deadline adjustment only if:

(a) The subject Utility is not a Service Line; and

(b) (i) the applicable Utility Information does not indicate that the subject Utility exists anywhere within the portion of the Schematic ROW covered by the Utility Information, (ii) both the Utility Information and public and private records fail to indicate that the Utility Company holds or is assumed to hold Prior Rights Documentation with respect to the subject Utility, or (iii) the subject Utility lies underground and both the Utility Information and public and private records incorrectly indicate that it is abandoned (i.e. nonexistent except on paper, or existent but no longer active for any type of Utility use).

14.4.6 Hazardous Materials

14.4.6.1 This Section 14.4.6 supersedes any Relief Event other than that under clauses (i) and (j) of the definition of Relief Event that might otherwise be triggered by the presence, existence or Release of Hazardous Materials.

14.4.6.2 If there occurs any Relief Event under clause (i) of the definition of Relief Event, and if Developer timely satisfies the terms and conditions for asserting a Relief Event set forth in Section 14.1, then ADOT will pay the applicable Extra Work Costs directly attributable to the handling, containment, storage, treatment, transport, removal, remediation and disposal of such Hazardous Materials, subject to each of the following:

(a) Such Extra Work Costs shall be limited as set forth in Section 14.4.6.4 and shall be subject to adjustment as provided in Section 14.5.

(b) If (i) the Hazardous Materials are contained in soils or other solid materials or objects that may be returned to trenches or other areas of excavation within or adjacent to the Project ROW pursuant to regulations, policies or approvals of applicable Governmental Entities, and (ii) the excavation of such contaminated soils or other solid materials or objects is undertaken for any purpose or reason other than the fact of contamination, then the Extra Work Costs shall be limited to the reasonable out-of-pocket costs of handling such contaminated soils, materials and objects in excess of the out-of-pocket costs Developer would incur to handle the same if they were not contaminated.

(c) If the Hazardous Materials are contained in soils or other solid materials or objects that are removed from the Site for any purpose or reason other than the fact of contamination, then the Extra Work Costs for which ADOT is liable shall be limited to the incremental increase in out-of-pocket cost to excavate, handle, contain, haul, transport, remove, remediate and dispose of the soils or other solid materials or objects over the out-of-pocket cost to excavate, handle, contain, haul, transport, remove, remediate and dispose of such soils or other solid materials or objects if they did not contain Hazardous Materials.

(d) If avoidance or remediation of such Hazardous Materials is capable of being accomplished under applicable Laws and Governmental Approvals through measures less costly than excavation, removal and off-site disposal

of contaminated soil and groundwater, or less costly than return to trenches and other areas of excavation, then ADOT will only be liable for the least costly alternative. Such alternate, less costly measures may include (i) design modifications and construction techniques to avoid such Hazardous Materials or reduce the quantities to be excavated, handled, contained, hauled, transported, removed, remediated and disposed of off-site, and (ii) on-site containment and institutional controls. If, however, Developer demonstrates that the total cost of alternate measures, including Delay Costs to be borne by Developer, will exceed the total cost of excavation, removal and off-site disposal or return to trenches and other areas of excavation, including Delay Costs to be borne by Developer, then Developer shall not be obligated to implement the alternate measure. Developer shall respond to all reasonable requests by ADOT for supporting information regarding such cost comparison.

(e) The Extra Work Costs available under this Section 14.4.6.2 are subject to the Claim Deductible, except with respect to ADOT Releases of Hazardous Materials.

14.4.6.3 None of the following liabilities, costs, expenses and Losses shall be chargeable against or reimbursable by ADOT:

(a) Liabilities, costs, expenses and Losses to the extent attributable to Developer Releases of Hazardous Materials;

(b) Extra Work Costs arising out of Releases of Hazardous Materials from vehicles operating within the Project ROW. Without limiting the foregoing, Developer shall not be entitled to additional compensation for the costs to repair damage to Project improvements caused by such Releases of Hazardous Materials (but, as provided in Sections 6.8.7 and 8.1.4, is not responsible to remediate such Releases of Hazardous Materials by parties other than Developer-Related Entities). For purposes hereof, "vehicle" has the meaning set forth in Arizona Revised Statutes Section 28-101, and also means railroad train and aircraft;

(c) Liabilities, costs, expenses and Losses that could be avoided by the exercise of Good Industry Practice to mitigate and reduce cost, including exercise of Developer's duties to avoid and mitigate set forth in Section 6.8.2;

(d) Costs and expenses to investigate and characterize Hazardous Materials (including phase 1 and phase 2 environmental site assessments), except with respect to Hazardous Materials of an unexpected and extraordinary quantity or toxicity;

(e) Administrative and overhead expenses and profit of Developer or its Subcontractors arising out of or relating to Hazardous Materials, except for that of the Subcontractor directly performing investigation, characterization and remediation of the Hazardous Materials;

(f) Developer Releases of Hazardous Materials;

(g) Liabilities, costs, expenses and Losses incurred attributable to acts or omissions of any Developer-Related Entity that exacerbates release of, or costs to excavate, handle, contain, haul, transport, remove, remediate or dispose of Hazardous Materials or ADOT Releases of Hazardous Materials;

(h) Liabilities, costs, expenses and Losses incurred if ADOT is not afforded the opportunity to inspect sites containing Hazardous Materials or ADOT Releases of Hazardous Materials before Developer takes any action which would inhibit ADOT's ability to ascertain, based on a site inspection, the nature and extent of the Hazardous Materials, except for Developer's Emergency actions necessary to stabilize and contain a sudden release or otherwise required by Law to immediately address the Emergency;

(i) Liabilities (except generator liability to the extent assumed by ADOT under Section 6.8.6.1), costs, expenses and Losses with respect to Hazardous Materials in, on or under Developer-Designated ROW, Replacement Utility Property Interests (except if Section 14.4.5.2 applies) or Developer's Temporary Work Areas; and

(j) Liabilities, costs, expenses and Losses with respect to Hazardous Materials in, on or under locations Developer is required to avoid pursuant to the Technical Provisions.

14.4.6.4 Extra Work Costs for off-site disposal of soils contaminated with Hazardous Materials for which ADOT is liable under this Section 14.4.6 shall be determined by applying the same unit price (per ton or cubic yard) that applies to Developer under the Lead Subcontract with respect to off-site disposal of Hazardous Materials of similar character for which Developer is not compensated by ADOT. If no such unit price is stated in the Lead Subcontract, then the unit price shall not exceed the unit price ADOT could obtain through competitive low bid from a qualified contractor for such work.

14.4.7 Differing Site Conditions

Developer's entitlement to Extra Work Costs, Delay Costs and Completion Deadline adjustment for Differing Site Conditions shall be subject to the following conditions:

(a) During progress of the D&C Work, if Differing Site Conditions are encountered, Developer shall immediately notify ADOT thereof telephonically or in person, to be followed immediately by notification. Developer shall be responsible for determining the appropriate action to be undertaken, subject to concurrence by ADOT. In the event that any Governmental Approvals specify a procedure to be followed, Developer shall follow the procedure set forth in the Governmental Approvals.

(b) Developer shall bear the burden of proving that a Differing Site Condition exists and that Developer could not reasonably have worked around the Differing Site Condition so as to avoid additional cost or delay.

(c) Each Relief Event Notice and Relief Request relating to a Differing Site Condition shall include a statement setting forth all relevant assumptions made by Developer with respect to the condition of the affected area, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts Developer undertook to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

(d) Unless Developer proves that a Differing Site Condition exists in an affected area, Developer shall not be entitled to additional compensation or Completion Deadline adjustment in connection with work stoppages in the affected area during the period of time Developer investigates conditions in the affected area.

(e) Except to the extent provided otherwise in Section 14.6.3 regarding Completion Deadline adjustment, Developer shall not be entitled to any Extra Work Costs, Delay Costs or Completion Deadline adjustment for Differing Site Conditions in, on or under Developer-Designated ROW, Replacement Utility Property Interests (except if Section 14.4.5.2 applies) or Developer's Temporary Work Areas.

14.4.8 Change in Law

14.4.8.1 New or revised State statutes adopted after the Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures and specifications, including Safety Standards relating to the D&C Work, as well as revisions to the Technical Provisions to conform to such new or revised State statutes, shall be treated as a Change in Law (clause (n) of the definition of Relief Event) rather than an ADOT-Directed Change to Technical Provisions; provided, however, that changes in Adjustment Standards caused by new or revised State statutes shall constitute neither a Change in Law nor an ADOT-Directed Change.

14.4.8.2 New or revised State statutes adopted after the Setting Date that change, add to or replace applicable standards, criteria, requirements, conditions, procedures and specifications, including Safety Standards, relating to Maintenance Services, as well as revisions to the Technical Provisions to conform to such new or revised State statutes, shall be treated as a Non-Discriminatory Maintenance Change, as provided in Section 14.4.2.

14.4.9 Change in Adjustment Standards

Developer shall not be entitled to any Claim for Delay Costs due to a Change in Adjustment Standards.

14.4.10 ADOT-Directed Changes for ITS Improvements

Developer's entitlement to additional compensation or Completion Deadline adjustment for ADOT-Directed Changes to construct ITS improvements described in Section 7.6.2 shall be as follows:

(a) If ADOT issues the corresponding Supplemental Agreement or Directive Letter within 30 days after ADOT receives the ITS Inventory from Developer, then Developer shall be entitled to the Extra Work Costs to complete the ITS improvements but shall not be entitled to any Delay Costs or Completion Deadline adjustment therefor; or

(b) If ADOT issues the corresponding Supplemental Agreement or Directive Letter later than 30 days after ADOT receives the ITS Inventory from Developer, then Developer shall be entitled to the Extra Work Costs to complete the ITS improvements as well as any Delay Costs and Completion Deadline adjustment directly attributable to the delayed issuance of the Supplemental Agreement or Directive Order.

14.4.11 Collision During Maintenance Period

If a Force Majeure Event as described in clause (h) of the definition thereof occurs, Developer shall be entitled to Extra Work Costs only for the repair or replacement of damage or destruction to the affected bridge structure, noise wall, retaining wall or overhead sign structure.

14.4.12 D&C Price Adjustment Due to Delay in NTP 1

14.4.12.1 If ADOT does not issue NTP 1 within 180 days after the Proposal Due Date, and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any Developer-Related Entity, the D&C Price shall be subject to adjustment, as described in this Section 14.4.12.

14.4.12.2 The D&C Price adjustment shall be applied to the period beginning on the date of issuance of NTP 1.

14.4.12.3 The D&C Price for D&C Work performed on and after the date of issuance of NTP 1 will be adjusted pursuant to a Supplemental Agreement solely by adding to the D&C Price the "adjustment amount" (or "Δ"), calculated in accordance with this Section 14.4.12.3, and without the right to any additional compensation pursuant to the Supplemental Agreement.

$$\Delta = N \times \text{D\&C Price} \times (([A-B]/B)/T)$$

where:

"Δ" is the adjustment amount distributed on a *pro rata* basis over the remaining payments on Exhibit 6;

"N" is the number of days in the period starting on the 181st day after the Proposal Due Date and ending on the effective date of NTP 1;

"A" is the CCI value published for the month in which the effective date of NTP 1 occurs;

"B" is the CCI published for the month which contains the day which is N +15 days prior to the 15th day of the month which contains the effective date of NTP 1; and

"T" is the number of days between the 15th of the month for which the CCI value for "A" was taken and the 15th of the month for which the CCI value for "B" was taken.

14.4.12.4 In the event of a delay to NTP 1 as described in this Section 14.4.12, Developer will be entitled to request a Supplemental Agreement to extend a Completion Deadline in accordance with Section 14.6.

14.4.13 D&C Price Adjustment Due to Delay in NTP 2

14.4.13.1 If ADOT does not issue NTP 2 within ten Business Days after Developer satisfies the conditions precedent to issuance of NTP 2 set forth in Section 7.4.1, and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval by any Developer-Related Entity (including Developer's failure to satisfy any particular condition(s) to NTP 2), the D&C Price shall be subject to adjustment, as described in this Section 14.4.13.

14.4.13.2 The D&C Price adjustment shall be applied to the period beginning on the date of issuance of NTP 2.

14.4.13.3 The D&C Price for D&C Work performed on and after the date of issuance of NTP 2 will be adjusted pursuant to a Supplemental Agreement solely by adding to the D&C Price the "adjustment amount" (or "Δ"), calculated in accordance with this Section 14.4.13.3, and without the right to any additional compensation pursuant to the Supplemental Agreement.

$$\Delta = N \times (\text{D\&C Price} - C) \times (([A-B]/B)/T)$$

where:

"Δ" is the adjustment amount distributed on a *pro rata* basis over the remaining payments on Exhibit 6;

"C" is the amount paid or owing from ADOT to Developer for D&C Work performed prior to issuance of NTP 2;

"N" is the number of days in the period starting on the later of the 11th Business Day after Developer satisfies the conditions precedent to issuance of NTP 2 set forth in Section 7.4.1;

"A" is the CCI value published for the month in which the effective date of NTP 2 occurs;

"B" is the CCI published for the month which contains the day which is N +15 days prior to the 15th day of the month which contains the effective date of NTP 2; and

"T" is the number of days between the 15th of the month for which the CCI value for "A" was taken and the 15th of the month for which the CCI value for "B" was taken.

14.4.13.4 In the event of a delay to NTP 2 as described in this Section 14.4.13, Developer will be entitled to request a Supplemental Agreement to extend a Completion Deadline in accordance with Section 14.6.

14.4.14 D&C Price Adjustment in Connection with Issuance of NTP 3

14.4.14.1 If ADOT issues NTP 3 prior to the NTP 3 Window, the D&C Price will be decreased by the sum of the applicable dollar amount per diem set forth in Exhibit 2-4.2 for each day NTP 3 is issued prior to the start date of the NTP 3 Window, up to a cap of 180 days before the start date of the NTP 3 Window. For each day, if any, that NTP 3 is issued before the 180th day prior to the start date of the NTP 3 Window, the D&C Price will be further reduced by the amount of the decrease in Developer's costs attributable thereto, including savings from schedule acceleration and from efficiency gains. The Parties shall negotiate the amount of such decrease in Developer's costs in accordance with Section 15.1.6, as applicable. The Parties shall document any decrease in the D&C Price in a Supplemental Agreement for a reductive ADOT-Directed Change.

14.4.14.2 If ADOT issues NTP 3 after the NTP 3 Window, the D&C Price will be increased by the sum of the applicable dollar amount per diem set forth in Exhibit 2-4.2 for each day NTP 3 is issued after the end date of the NTP 3 Window, up to a cap of 180 days after the end date of the NTP 3 Window. For each day, if any, that NTP 3 is issued after the 180th day following the end date of NTP 3 Window, the D&C Price will be further increased by the amount of the Delay Costs attributable to such further period of delay. The Parties shall negotiate the amount of such Delay Costs in accordance with Section 2 of Exhibit 14, as applicable. The Parties shall document any increase in the D&C Price in a Supplemental Agreement.

14.4.14.3 If ADOT issues NTP 3 anytime within the NTP 3 Window, inclusive, there shall be no adjustment to the D&C Price in connection with the issuance of NTP 3.

14.5 Insurance Adjustments

14.5.1 Application of insurance proceeds in the event of any loss, damage or destruction to the Project is governed by Section 11.3.

14.5.2 In all other circumstances, each Claim seeking the recovery of compensation for Extra Work Costs and Delay Costs, as applicable, shall be net of all insurance available to Developer, or deemed to be self-insured by Developer under Section 11.2.4, with respect to the Relief Event giving rise to the Extra Work Costs or Delay Costs. The amount of such insurance or deemed self-insurance shall be netted out before determining the amount of Extra Work Costs and Delay Costs to be charged against the Claim Deductible.

14.6 Effect of Relief Events on Completion Deadlines, Performance, Developer Default, Noncompliance Points and Deductions

14.6.1 Subject to Section 14.6.2 and satisfaction of any conditions or requirements set forth in the Contract Documents, including in Section 14.4, Developer shall be entitled to extension of applicable Completion Deadlines by the period that the end of the Critical Path extends beyond the original Completion Deadline due to any Relief Event Delay that (a) is not concurrent with any other delay which is not caused by a Relief Event, and (b) Developer cannot reasonably avoid through mitigation as required under Section 14.8.

14.6.2 As an alternative to the Completion Deadlines extensions to which Developer is otherwise entitled under Section 14.6.1, ADOT in its sole discretion may pay Developer accelerations costs, as contemplated in Sections 14.1.3.1(f) and 15.1.3(c). In such cases, ADOT's election to pay acceleration costs in lieu of Completion Deadlines extensions shall be set forth in the applicable Supplemental Agreement.

14.6.3 Developer shall be entitled to extension of applicable Completion Deadlines by the period that the end of the Critical Path extends beyond the original Completion Deadline due to (a) any Relief Event Delay that is directly attributable to existence or occurrence of a Relief Event under clause (i), (k), (l) or (m) of the definition of Relief Event on or directly affecting Developer-Designated ROW that is part of an approved ATC, or (b) unreasonable delay, beyond Developer's reasonable control, in obtaining new or modified Governmental Approvals necessary for implementing an approved ATC; provided that the cumulative extensions of a Completion Deadline under this Section 14.6.3 shall not exceed 120 days.

14.6.4 Developer shall not be excused from timely payment of monetary obligations under this Agreement due to the occurrence of a Relief Event. Developer

shall not be excused from compliance with the Contract Documents or applicable Laws due to the occurrence of a Relief Event, except temporary inability to comply due solely and directly to the Relief Event.

14.6.5 Developer shall be entitled to rely upon the occurrence of a Relief Event as a defense against a Developer Default where the occurrence of the Relief Event causes such Developer Default.

14.6.6 Refer to Section 17.5 regarding the effect of a Relief Event on the accrual of Noncompliance Events and Noncompliance Points and assessment of Noncompliance Charges for Noncompliance Events.

14.6.7 Refer to Sections 20.2.3 and 20.2.4 regarding the effect of a Relief Event on Liquidated Damages for Lane Closures.

14.7 Exclusive Relief; Release of Claims

The relief provided through agreement or pursuant to Dispute Resolution Procedures for a Relief Event shall represent the sole right to compensation, damages, and other relief from the adverse effects of a Relief Event. As a condition precedent to ADOT's obligation to pay any compensation amount or grant or abide by such relief, Developer shall execute a full, unconditional, irrevocable waiver and release, in form reasonably acceptable to ADOT, of any other Claims, Losses or rights to relief associated with such Relief Event that is not the subject of a Dispute.

14.8 Prevention and Mitigation

14.8.1 Developer shall be entitled to the relief and protection provided under this Section 14 only if the occurrence of a Relief Event and the effects of such occurrence:

(a) Are beyond the reasonable control of Developer-Related Entities;

(b) Are not due to any act, omission, negligence, recklessness, willful misconduct, fault, breach of contract, or breach of the requirements of the Contact Documents, or violation of Law or a Governmental Approval of or by any of the Developer-Related Entities; and

(c) Could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Developer-Related Entities.

14.8.2 Developer shall take all steps reasonably necessary to mitigate the consequences of any Relief Event, including all steps that would generally be taken in accordance with Good Industry Practice.

14.8.3 Re-sequencing and Re-scheduling of Work

14.8.3.1 Without limiting Section 14.8.2, Developer shall not be entitled to submit a claim for Extra Work Costs, Delay Costs, Completion Deadline adjustment or other relief for impacts that could have been avoided through re-sequencing and re-scheduling of the Work or other work-around measures the cost of which is justified by equal or greater savings in Extra Work Costs and Delay Costs.

14.8.3.2 Whenever a Relief Event occurs and Developer submits an original or supplemental Relief Event Notice for Extra Work Costs or Delay Costs, Developer shall concurrently submit to ADOT an analysis of potential re-sequencing, re-scheduling and other work-around measures and a comparison of the estimated costs thereof to the estimated savings in the Extra Work Costs or Delay Costs that would result.

14.8.3.3 Developer shall cooperate with ADOT thereafter to identify the re-sequencing, re-scheduling and other work around measures that will maximize mitigation of costs to ADOT taking into account the cost of potential re-sequencing, re-scheduling and other work-around measures.

14.8.3.4 ADOT will compensate Developer for the reasonable costs of re-sequencing, re-scheduling and other work-around measures authorized in writing by ADOT pursuant to this provision, in the same manner it compensates for Extra Work Costs and Delay Costs under Section 14.2.

14.8.4 Without limiting Section 14.8.3, if any claim is asserted or administrative proceeding, litigation or other legal action is brought against Developer by any third party (other than a Developer-Related Entity) seeking relief that would or could entitle Developer to Extra Work Costs, Delay Costs or Completion Deadline adjustment if determined adversely to Developer, then Developer, at its expense, shall defend against such claim, administrative proceeding, litigation or other legal action diligently and professionally, shall not interfere with or resist ADOT's intervention in the claim negotiations or administrative proceeding, litigation or other legal action, and shall actively assist and cooperate with ADOT in its defense against the claim, administrative proceeding, litigation or other legal action. At the request of either Party, both Parties shall enter into, or cause their respective legal counsel to enter into, a joint defense agreement setting forth terms for their joint cooperation and defense. The Parties also may mutually choose, but are not obligated, to be jointly represented by legal counsel in such administrative proceeding, litigation or other legal action.

14.8.5 For further mitigation obligations of Developer respecting Hazardous Materials and Recognized Environmental Conditions, refer to Section 6.8.2.

ARTICLE 15.
ADOT-DIRECTED CHANGES; DEVELOPER CHANGES; DIRECTIVE LETTERS

15.1 ADOT-Directed Changes

15.1.1 ADOT's Right to Issue Supplemental Agreement

15.1.1.1 ADOT may, at any time and from time to time, without notice to any Surety, authorize or require, pursuant to a Supplemental Agreement, changes in the Work (including reductions in the scope of the D&C Work or Maintenance Services) or in terms and conditions of the Technical Provisions (including changes in the standards applicable to the Work); provided, however that ADOT's right to reduce Developer's scope of Work under this provision will be subject to an aggregate cap of 10% of the initial D&C Price or initial Maintenance Price, as applicable, in effect on the Effective Date. Solely for the purpose of measuring whether aggregate reductions in the scope of Maintenance Services are with the 10% cap, the Parties shall use the unescalated price of the reduced Maintenance Services and compare it to the initial Maintenance Price. The Parties shall determine the actual reduction in the Maintenance Price, as escalated pursuant to Section 13.5.6, based on the savings in the escalated Maintenance Price. Any reductions in the scope of the D&C Work or Maintenance Services in excess of the applicable aggregate cap shall constitute and be treated as a Partial Termination for Convenience.

15.1.1.2 ADOT also shall have the right to issue a Supplemental Agreement for any other event that the Contract Documents expressly state shall be treated as an ADOT-Directed Change.

15.1.1.3 Such alterations and changes shall be documented through issuance of an ADOT-Directed Change or Directive Letter. No document, including any field directive, shall be valid, effective or enforceable as a Supplemental Agreement unless expressly identified as a "Supplemental Agreement" and signed by the ADOT project director, by the ADOT construction manager for Supplemental Agreements less than $350,000, or by other ADOT individual identified in a written notice from the project director or construction manager to Developer as having authority to execute Supplemental Agreements.

15.1.2 Request for Change Proposal

15.1.2.1 If ADOT desires to issue an ADOT-Direct Change or to evaluate whether to initiate such a change, then ADOT may, at its sole discretion, issue a Request for Change Proposal. The Request for Change Proposal shall set forth the nature, extent and details of the proposed ADOT-Directed Change.

15.1.2.2 Within five Business Days after Developer receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, ADOT and Developer shall consult to define the proposed scope of the change.

Within five Business Days after the initial consultation, or such longer period to which the Parties may mutually agree, ADOT and Developer shall consult concerning the estimated financial, schedule and other impacts.

15.1.3 Response to Request for Change Proposal

As soon as possible through the exercise of diligent efforts, and in any event within 60 days, following ADOT's delivery to Developer of the Request for Change Proposal, Developer shall provide ADOT with a detailed assessment of the cost, schedule, and other impacts of the proposed ADOT-Directed Change, including the following:

(a) Developer's detailed estimate of the impacts on costs of carrying out the proposed ADOT-Directed Change, including any Extra Work Costs or Delay Costs;

(b) If the Change Notice is issued prior to the Final Acceptance Date, the effect of the proposed ADOT-Directed Change on the Project Schedule, including achievement of the Completion Deadlines, taking into consideration Developer's duty to mitigate any delay;

(c) If so requested by ADOT, in its sole discretion, an alternative cost and schedule proposal showing the acceleration costs associated with meeting the non-adjusted Completion Deadlines, as well as any additional costs permitted hereunder;

(d) The effect (if any) of the proposed ADOT-Directed Change on Performance Requirements, the Capital Asset Replacement Work Schedule, and Handback Requirements; and

(e) Any other relevant information related to carrying out the proposed ADOT-Directed Change.

15.1.4 Negotiation and Directed Changes

15.1.4.1 Following ADOT's receipt of Developer's detailed assessment and of such further assessment by ADOT and its consultants of the cost, schedule and other impacts of the proposed ADOT-Directed Change, ADOT and Developer shall exercise good faith efforts to negotiate a mutually acceptable Supplemental Agreement, including: (a) if applicable, adjustment of the Completion Deadlines; and (b) either (i) if applicable, any Extra Work Costs or Delay Costs to which Developer is entitled, and the timing and method for payment of any Extra Work Costs or Delay Costs (in accordance with Section 14.2.4) or (ii) if applicable, any net cost savings and schedule savings to which ADOT is entitled under Section 15.1.6 and the timing and method for realizing such cost savings.

15.1.4.2 If ADOT and Developer are unable to reach agreement on a Supplemental Agreement, ADOT may, in its sole discretion, resolve the Dispute

according to the Dispute Resolution Procedures without issuing a Directive Letter, or deliver to Developer a Directive Letter pursuant to Section 15.3.1 directing Developer to proceed with the performance of the Work in question notwithstanding such disagreement. Upon receipt of such Directive Letter, pending final resolution of the relevant Supplemental Agreement according to the Dispute Resolution Procedures: (a) Developer shall implement and perform the Work in question as directed by ADOT; and (b) ADOT will make interim payment(s) to Developer on a monthly progress payment basis for the reasonable documented Extra Work Costs and Delay Costs in question, subject to subsequent adjustment through the Dispute Resolution Procedures.

15.1.5 Payment and Schedule Adjustment

ADOT will be responsible for payment of the Extra Work Costs or Delay Costs agreed upon or determined through the Dispute Resolution Procedures (through one of the payment mechanisms set forth in Section 14.2.4), and the Project Schedule and Completion Deadlines shall be adjusted as agreed upon or determined through the Dispute Resolution Procedures, and in accordance with Section 14.6, to reflect the effects of the Supplemental Agreement.

15.1.6 Reductive ADOT-Directed Changes

15.1.6.1 In addition to a Request for Change Proposal, ADOT may deliver to Developer a written notice that, in ADOT's opinion, the ADOT-Directed Change will reduce Developer costs, or save time. In such event, ADOT may prepare an analysis and a detailed assessment of the advantageous cost and schedule impacts of the proposed ADOT-Directed Change, either independently of or in reply to Developer's written response, including the following:

(a) ADOT's detailed estimate of the advantageous impacts on costs of carrying out the proposed ADOT-Directed Change;

(b) If the written notice is issued prior to the Final Acceptance Date, the effect of the proposed ADOT-Directed Change on shortening the Project Schedule and Completion Deadlines;

(c) The effect (if any) of the proposed ADOT-Directed Change on the Capital Asset Replacement Work Schedule and Handback Requirements; and

(d) Any other relevant information related to carrying out the proposed ADOT-Directed Change.

15.1.6.2 Developer and ADOT thereafter shall cooperate in good faith to mutually determine the estimated net cost savings and time savings, if any, attributable to the Request for Change Proposal. Any Dispute regarding such savings shall be resolved according to the Dispute Resolution Procedures.

15.1.6.3 ADOT will be entitled to 100% of the estimated net cost savings, if any, attributable to any reductive ADOT-Directed Change. Such net cost savings shall include the net reduction, if any, in labor, material, equipment and overhead costs associated with the ADOT-Directed Change. Developer shall pay such savings to ADOT: (a) as periodic payments over the Term; (b) as an adjustment to the Monthly Disbursement over the Term; (c) through a reduction in the Term; or (d) through any combination of the above, as selected by ADOT. ADOT also may take such reduction in labor, material, equipment and overhead costs as a credit against ADOT's liability for Extra Work Costs and Delay Costs during the Term. If ADOT selects periodic payments over the Term, such payments shall be due and owing to ADOT monthly on the last day of each month.

15.1.6.4 ADOT will be entitled to 100% of the effect of the proposed ADOT-Directed Change on shortening the Project Schedule and Completion Deadlines.

15.2 Developer Changes

15.2.1 By submittal of a written Change Request using a form approved by ADOT, Developer may request ADOT to approve:

(a) Modifications to the Technical Provisions;

(b) Modifications to Developer's Proposal commitments as set forth in Exhibit 2; or

(c) Adjustments to the Project ROW or Temporary Construction Easements not already indicated in Developer's Schematic Design.

The Change Request shall set forth Developer's detailed estimate of net impacts (positive and negative) on costs and schedule attributable to the requested change, consistent with applicable provisions of this Agreement.

15.2.2 ADOT, in its sole discretion (and, if it so elects, after receiving a comprehensive report, at no cost to ADOT, from an independent engineer regarding the proposed Change Request), may accept or reject any Change Request proposed by Developer. If ADOT accepts such Change Request, Developer shall execute a Supplemental Agreement and shall implement such change in accordance with the Supplemental Agreement, applicable Technical Provisions, the Project Management Plan, Good Industry Practice and all applicable Laws. No acceptance shall be deemed to take effect unless documented in a written Supplemental Agreement signed by ADOT's Authorized Representative or by his/her designee appointed in writing. No such Supplemental Agreement shall constitute an ADOT-Directed Change regardless of its title, designation or wording.

15.2.3 Developer shall solely bear the risk of any increase in the costs of the D&C Work or other costs, and for any additional risks, resulting from a Change Request accepted by ADOT. Developer shall not be entitled to any extension of the Project

Schedule and Completion Deadlines for delays or other impacts resulting from a Change Request accepted by ADOT.

15.2.4 Without limiting the foregoing, Developer shall compensate ADOT for any incremental increase in ADOT's overhead, administrative and out-of-pocket costs resulting from a Change Request accepted by ADOT. Developer shall make payment in the amount and at the time or times agreed upon in the Supplemental Agreement or determined through the Dispute Resolution Procedures.

15.2.5 To the extent a Change Request accepted by ADOT results in a net cost savings to Developer, ADOT will be entitled to 50% of such savings that the analysis indicates will occur in the first five years after approval of the Change Request, and 100% of such savings that the analysis indicates will occur thereafter. ADOT will obtain its share of the savings in the manner described in Section 15.1.6.3.

15.2.6 Developer may implement and permit a Utility Company to implement, without a Change Request or Supplemental Agreement, changes to a Utility Adjustment design that do not vary from the Technical Provisions.

15.2.7 No Change Request shall be required to implement any change to the Work that is not a Deviation and is not specifically regulated or addressed by the Contract Documents or applicable Law.

15.2.8 Certain minor changes without significant cost savings may be approved in writing by ADOT as Deviations, as described in Sections 6.2.4 and 8.1.2.6, and in such event shall not require a Supplemental Agreement. Any other change in the requirements of the Contract Documents shall require a Supplemental Agreement.

15.3 Directive Letters

15.3.1 ADOT may at any time issue a Directive Letter to Developer regarding any matter for which a Supplemental Agreement can be issued or in the event of any Dispute regarding the scope of the Work or whether Developer has performed in accordance with the requirements of the Contract Documents. No document, including any field directive, shall be valid, effective or enforceable as a Directive Letter unless expressly identified as a "Directive Letter" and signed by the ADOT project director, by the ADOT construction manager for Supplemental Agreements less than $350,000, or by other ADOT individual identified in a written notice from the project director or construction manager to Developer as having authority to execute Supplemental Agreements.

15.3.2 The Directive Letter will state that it is issued under this Section 15.3, will describe the Work in question and, if the Directive Letter concerns a matter for which a Supplemental Agreement can or will be issued, will provide for, as applicable, payment of Extra Work Costs and Delay Costs, if any, or reductions in compensation, if any, and schedule adjustment, if any, directly attributable to such matters.

15.3.3 Developer shall proceed immediately as directed in the Directive Letter, pending the execution of a formal Supplemental Agreement (or, if the Directive Letter states that the Work is within Developer's original scope of Work or is necessary to comply with the requirements of the Contract Documents, Developer shall proceed with the Work as directed but shall have the right to assert a Claim that an ADOT-Directed Change has occurred).

15.3.4 The fact that a Directive Letter was issued by ADOT will not be considered evidence that in fact an ADOT-Directed Change occurred. The determination whether an ADOT-Directed Change in fact occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination as to whether the Directive Letter in fact constituted a change in those requirements.

ARTICLE 16. NOT USED

ARTICLE 17.
NONCOMPLIANCE EVENTS AND NONCOMPLIANCE POINTS

17.1 Noncompliance Points System

17.1.1 This Agreement uses a Noncompliance Points system to measure Developer's performance of certain obligations listed in the Noncompliance Event Tables and trigger remedies described in this Article 17 for breaches and failures to perform such obligations (i.e., "Noncompliance Events"). The Noncompliance Event Tables list separately the Noncompliance Events that apply during the D&C Period and Maintenance Period, as well as the corresponding cure period that is available to Developer for each Noncompliance Event. Inclusion in the Noncompliance Event Tables of a Noncompliance Event bears no implication regarding the materiality of the underlying breach or failure to perform. For purposes of this Section 17.1, references to "cure periods" shall mean those cure periods listed or referenced in the Noncompliance Event Tables.

17.1.2 The Noncompliance Event Tables contain a representational, but not exhaustive, list of Noncompliance Events possible under the Contract Documents. Accordingly, and subject to Section 17.1.3, ADOT, from time to time, may add to the Noncompliance Event Tables new Noncompliance Events. For any new Noncompliance Event, ADOT will establish the applicable assessment category ("A" or "B") as set forth in Section 17.2.3, number of Noncompliance Points, Noncompliance Charges, and cure period. ADOT's right to make additions or adjustments to the Noncompliance Event Tables shall not be exercised in a manner to expand, nor shall it be deemed to expand, Developer's obligations under the Contract Documents; but rather to add to or eliminate from the Noncompliance Event Tables existing contractual obligations for which Noncompliance Points may be assessed. ADOT will notify Developer in writing whenever ADOT separately proposes to make additions or adjustments to the Noncompliance Event Tables, and Developer shall have 15 days after receipt of such notification to deliver to ADOT its written comments, if any. Thereafter, ADOT will provide Developer written notice of ADOT's decision whether and on what terms to incorporate the proposed additions or adjustments to the Noncompliance Event Tables.

17.1.3 ADOT's right to add existing contractual obligations to the Noncompliance Event Tables is limited such that the total number of Noncompliance Points and total Noncompliance Charges set forth in each Noncompliance Event Table, as it exists on the Effective Date, shall not increase. ADOT may elect to remove contractual obligations and reduce Noncompliance Points allocated to listed contractual obligations, and may elect to remove or reduce Noncompliance Charges allocated to listed contractual obligations, in order to avoid a net increase. Further, ADOT will have no right to assess Noncompliance Points or Noncompliance Charges on account of a

Noncompliance Event that occurs prior to the addition of existing contractual obligations to the Noncompliance Event Tables.

17.2 Assessment Notification and Cure Process

17.2.1 Notification Initiated by Developer; Monthly Reporting

17.2.1.1 As an integral part of Developer's self-monitoring obligations, Developer shall establish and maintain an electronic database of all Noncompliance Events that occur during the Term. During the Maintenance Period, Developer shall incorporate such electronic database into the Maintenance Information System. Developer shall enter each Noncompliance Event into the database in real time upon discovery. The format and design of the database shall be subject to ADOT's approval. At a minimum, the database shall provide the following information for each Noncompliance Event:

(a) Description of the Noncompliance Event, including its item number set forth in the first column of the applicable Noncompliance Event Table;

(b) Date and time the Noncompliance Event commenced;

(c) Location of the Noncompliance Event (if applicable);

(d) Applicable cure period;

(e) Determination whether the Noncompliance Event was cured during the applicable cure period;

(f) Date and time of cure (if any);

(g) Status of Noncompliance Event;

(h) The number of Noncompliance Points (if any) to be assessed; and

(i) The amount of Noncompliance Charges to be assessed.

17.2.1.2 Developer shall retain each Noncompliance Event entry in the electronic database until at least four years after the date of cure.

17.2.1.3 Commencing on the Effective Date, Developer shall deliver to ADOT, by the 15th day of each month, a monthly report of all Noncompliance Events that occur during the immediately preceding month, and any Noncompliance Events from previous months that remain uncured as of the start of the preceding month. During the Maintenance Period, Developer shall incorporate such monthly report into the monthly Maintenance Services report. For each such Noncompliance Event, the

monthly report must provide the same information required in the electronic database, as described in Section 17.2.1.1.

17.2.1.4 Within a reasonable time after receiving the monthly report, ADOT will deliver to Developer a written notice setting forth:

(a) ADOT's determination whether the Noncompliance Events reported as cured were cured within the applicable cure periods; and

(b) The Noncompliance Points and Noncompliance Charges to be assessed.

17.2.2 Notification Initiated by ADOT

If ADOT believes that a Noncompliance Event specified in the Noncompliance Event Tables has occurred but has not been entered into the electronic database, ADOT may deliver to Developer a notice of determination, in writing or via electronic email describing the following:

(a) Description of the Noncompliance Event, including its item number set forth in the first column of the applicable Noncompliance Event Table;

(b) Date and time the Noncompliance Event commenced;

(c) Location of the Noncompliance Event (if applicable);

(d) Applicable cure period;

(e) If applicable, determination whether the Noncompliance Event was cured during the applicable cure period;

(f) Date and time of cure (if any);

(g) ADOT's opinion of the current status of Noncompliance Event;

(h) The number of Noncompliance Points (if any) to be assessed.

17.2.3 Cure Periods

17.2.3.1 Developer shall cure Noncompliance Events by the end of the applicable cure periods set forth in the applicable Noncompliance Event Table.

17.2.3.2 For each Noncompliance Event identified by the assessment category "A" in the Noncompliance Event Tables, Developer's cure period with respect to the Noncompliance Event shall be deemed to start upon the date Developer first obtained knowledge or had reason to know of the Noncompliance Event. For this purpose, if the notice of the Noncompliance Event is initiated by ADOT, Developer shall be deemed to first obtain knowledge of the Noncompliance Event not later than the date of delivery of the notice to Developer.

17.2.3.3 For each Noncompliance Event identified by the assessment category "B" in the Noncompliance Event Tables, Developer's cure period shall be deemed to start upon the date the Noncompliance Event occurred, regardless of whether ADOT has delivered a notice to Developer.

17.2.3.4 Each of the cure periods set forth in the Noncompliance Event Tables shall be the only cure period available to Developer for the corresponding Noncompliance Event, and shall control if it differs from any cure period that is set forth in Section 19.1.2 and might otherwise apply to the Noncompliance Event.

17.2.4 Notification of Cure

17.2.4.1 When Developer determines it has cured any Noncompliance Event, Developer shall enter in the electronic database, as well as in the next monthly report, notice identifying the Noncompliance Event, stating that Developer has completed cure and briefly describing the cure, including any modifications to the Project Management Plan to protect against future, similar Noncompliance Events. Thereafter, ADOT will have the right, but not the obligation, to inspect and verify completion of the cure.

17.2.4.2 ADOT may reject any Developer notice of cure if ADOT determines that Developer has not fully cured the Noncompliance Event. Upon making this determination, ADOT will deliver a written notice of rejection to Developer either in a separate writing or electronic mail. Any Dispute regarding rejection of cure shall be resolved according to the Dispute Resolution Procedures.

17.3 Assessment of Noncompliance Points

Upon notification of a Noncompliance Event, whether initiated by Developer under Section 17.2.1 or ADOT under Section 17.2.2, ADOT may assess Noncompliance Points in accordance with Exhibit 15-1 or 15-2, as applicable, and subject to the terms and conditions set forth in Sections 17.3.1 through 17.3.8.

17.3.1 For each Noncompliance Event identified by the assessment category "A" in the Noncompliance Event Tables, if it is cured by the end of the first cure period, no Noncompliance Points shall be assessed; but if it is not cured by the end of the first cure period, the Noncompliance Points shall be assessed at the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, as described in Section 17.3.3(a), unless cured by the end of the subsequent cure period.

17.3.2 For each Noncompliance Event identified by the assessment category "B" in the Noncompliance Event Tables, the Noncompliance Points shall first be assessed on the date the Noncompliance Event occurred (the start of the first cure period). Provided that the Noncompliance Event is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period, as described in Section 17.3.3(b).

17.3.3 Continuation of any Noncompliance Event identified by the assessment category "A" or "B" in the Noncompliance Event Tables beyond the initial cure period into subsequent cure periods shall be treated as a separate Noncompliance Event. Accordingly:

(a) With respect to a Noncompliance Event in assessment category "A", a new cure period equal to the prior cure period shall commence upon expiration of the prior cure period, without necessity for further notice; and

(b) With respect to a Noncompliance Event in assessment category "B", successive new cure periods shall arise and each shall equal the initial cure period but shall be measured starting upon the later of (i) the expiration of the initial cure period or (ii) the date that Developer first obtained knowledge or had reason to know of the Noncompliance Event. For this purpose, if the notice of the Noncompliance Event is initiated by ADOT, Developer shall be deemed to first obtain knowledge of the Noncompliance Event not later than the date of delivery of the notice to Developer. (For example, if the initial cure period is ten days and Developer first obtains knowledge of the Noncompliance Event 30 days after it occurs, then the initial cure period shall expire at ten days, the next separate Noncompliance Event shall take effect day 30 and initiate a new ten-day cure period ending day 40, and each successive Noncompliance Event and cure period shall take effect every ten days thereafter until cure.)

17.3.4 ADOT will not assess Noncompliance Points under more than one assessment category for any particular Noncompliance Event.

17.3.5 Developer's failure to enter into the electronic database a Noncompliance Event as and when required under Section 17.2.1.1 or to report to ADOT a Noncompliance Event as and when required under Section ~~17.2.1.3 or Section MR 400.3.4 of the Technical Provisions,~~17.2.1.3, on the one hand, and the subject Noncompliance Event, on the other hand, constitute separate Noncompliance Events for the purpose of assessing Noncompliance Points.

17.3.6 The number of points listed in the Noncompliance Event Tables for any particular Noncompliance Event, as such number of points may be adjusted pursuant to Section 17.1.2, is the maximum number of Noncompliance Points that may be assessed for each occurrence or circumstance that constitutes a Noncompliance Event. ADOT may, but is not obligated to, assess less than the maximum number of points.

17.3.7 Noncompliance Charges shall be assessed against Developer in accordance with Section 20.4 and deducted from the applicable Monthly Disbursement of the D&C Price or Maintenance Price, as applicable, in accordance with Article 13.

17.3.8 Regardless of the continuing assessment of Noncompliance Points under this Section 17.3, ADOT will be entitled to exercise its step-in rights in accordance with Section 19.5 and, if applicable, its work suspension rights in

accordance with Article 18, after expiration of the initial cure period available to Developer

17.4 Trigger Points for Persistent Developer Default

17.4.1 A "Persistent Developer Default", entitling ADOT to require submittal of Developer's remedial plan under Section 19.2.2, shall exist on any date when:

[NTD – POINT THRESHOLDS TO COME.]

(a) [___] Noncompliance Points have been assessed in any consecutive 365-day period during the D&C Period;

(b) [___] Noncompliance Points have been assessed in any consecutive 365-day period during the Maintenance Period;

(c) [___] Noncompliance Points have been assessed in any consecutive 365-day period that overlaps the D&C Period and the Maintenance Period;

(d) [___] Noncompliance Points have been assessed in any consecutive 1,095-day period during the D&C Period;

(e) [___] Noncompliance Points have been assessed in any consecutive 1,095-day period during the Maintenance Period; or

(f) [___] Noncompliance Points have been assessed in any consecutive 1,095-day period that overlaps the D&C Period and the Maintenance Period.

17.4.2 The number of Noncompliance Points that would otherwise be counted under Section 17.4.1 is subject to reduction in accordance with Section 19.2.2.3.

17.5 Special Provisions for Certain Noncompliance Events

17.5.1 This Section 17.5 applies only to a Noncompliance Event that has an assessment category of "A" or "B," as set forth in the Noncompliance Event Tables and is directly attributable to:

(a) A Relief Event;

(b) A traffic accident on the Project ROW not caused by the negligence, willful misconduct, breach of contract, or violation of Law or Governmental Approval by any Developer-Related Entity; or

(c) Unexpected loss, disruption, break, explosion, leak or other damage of a Utility serving or in the vicinity of the Project but not within the maintenance responsibility of Developer.

17.5.2 If a Noncompliance Event set forth in Section 17.5.1 occurs, then:

(a) The applicable cure period shall be extended if the Noncompliance Event is not reasonably capable of being cured within the applicable cure period due solely to an occurrence set forth in Section 17.5.1. The extension shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of such occurrence on Developer's ability to cure, availability of temporary remedial measures, and need for rapid action due to impact of the Noncompliance Event on safety or traffic movement;

(b) The Noncompliance Event shall not be counted toward a Persistent Developer Default for purposes of Section 17.4, provided the Noncompliance Event is cured within the applicable cure period, as it may be extended pursuant to Section 17.5.2(a);

(c) Regardless of which Party initiates notification of the Noncompliance Event, no Noncompliance Points shall be assessed if Developer cures such Noncompliance Event within the applicable cure period, as it may be extended pursuant to Section 17.5.2(a); and

(d) The Noncompliance Event shall not result in Noncompliance Charges under Section 20.4 if the Noncompliance Event is cured within the applicable cure period, as it may be extended pursuant to Section 17.5.2(a).

17.6 Special Provisions for ADOT Step-in

17.6.1 If ADOT exercises a suspension right under Section 18 or a step-in right under Section 19.5, with respect to any portion of the Project (the "affected Project portion"), then:

(a) During the period that ADOT is in control of the Work for the affected Project portion (the "step-in or suspension period"), neither the condition of the affected Project portion nor the performance of or failure to perform Work respecting the affected Project portion shall result in a new Noncompliance Event, assessment of new Noncompliance Points or new Noncompliance Charges under Section 20.4.

(b) All cure periods that are available for Noncompliance Events respecting the affected Project portion and that arose prior to and are pending as of the date the step-in or suspension period commences shall be deemed forfeited by Developer.

(c) During the step-in or suspension period for the affected Project portion, Section 17.3.3 shall not be applied to Noncompliance Events that arose prior to the date such step-in or suspension period commences.

(d) The step-in or suspension period for the affected Project portion shall be disregarded for purposes of determining a Persistent Developer Default under Section 17.4. For avoidance of doubt, this means that (i) such step-in or suspension period shall not be included in counting the consecutive time periods set forth in Section

17.4 and (ii) such consecutive time periods shall be treated as consecutive notwithstanding the intervening step-in or suspension period.

17.6.2 Refer to Section 19.5.3 for ADOT's right to damages and to offset the payments to Developer under this Agreement if ADOT incurs costs arising out of exercise of its step-in right under Section 19.5.

17.7 Provisions Regarding Dispute Resolution

17.7.1 Developer may object to the assessment of Noncompliance Points or the starting point for or duration of the cure period respecting any Noncompliance Event by delivering to ADOT notice of such objection not later than five days after ADOT delivers its corresponding notice of determination. Such notice also shall constitute notice for purposes of Section 22.2.

17.7.2 Developer may object to ADOT's rejection of any certification of completion of a cure given pursuant to Section 17.2.4.3 by delivering to ADOT notice of such objection not later than 15 days after ADOT delivers its notice of rejection. Such notice also shall constitute notice for purposes of Section 22.2.

17.7.3 If for any reason Developer fails to deliver its notice of objection within the applicable time period, Developer shall be conclusively deemed to have accepted the matters set forth in the applicable notice, and shall be forever barred from challenging them.

17.7.4 If Developer gives timely notice of objection and the Parties are unable to reach agreement on any matter in Dispute within ten days of such objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures. The Parties agree to such ten-day period in lieu of (and not in addition to) the period for Informal Resolution Procedures set forth in Section 22.2.

17.7.5 In the case of any Dispute as to the number of Noncompliance Points to assign for Noncompliance Events added to the Noncompliance Event Tables, the sole issue for decision shall be how many Noncompliance Points should be assigned in comparison with the number of Noncompliance Points set forth in the Noncompliance Event Tables for Noncompliance Events of equivalent severity.

17.7.6 Pending the resolution of any Dispute arising under this Section 17.7, the provisions of this Article 17 shall take effect as if the matter were not in Dispute. If the final decision regarding the Dispute is that (a) the Noncompliance Points should not have been assessed, (b) the number of Noncompliance Points must be adjusted, (c) the starting point or duration of the cure period must be adjusted, or (d) a Noncompliance Event has been cured, then the number of Noncompliance Points assigned or assessed, the Noncompliance Points balance and the related liabilities of Developer shall be adjusted to reflect such decision.

17.7.7 For the purpose of determining whether ADOT may declare an "Event of Default" under clause (r) of Section 19.1.1 for failure to timely submit or comply with the remedial plan, the number of Noncompliance Points in Dispute:

(a) Shall not be counted pending resolution of the Dispute if Developer initiates the Dispute Resolution Procedures within the applicable time limit set forth in Section 19.3; and

(b) Shall be counted if Developer for any reason does not initiate the Dispute Resolution Procedures within the applicable time limit set forth in Section 22.2, or does not diligently pursue the Dispute Resolution Procedures to conclusion (and in any such case Developer shall be deemed to have irrevocably waived the Dispute).

ARTICLE 18.
SUSPENSION

18.1 Suspensions for Convenience

18.1.1 ADOT may, at any time and for any reason, by notice, order Developer to suspend all or any part of the Work required under the Contract Documents for the period of time that ADOT deems appropriate for the convenience of ADOT. Developer shall promptly comply with any such suspension order. Developer shall promptly recommence the Work upon receipt of notice from ADOT directing Developer to resume work.

18.1.2 Any such suspension for convenience shall be considered an ADOT-Directed Change; provided, however, that ADOT will have the right to direct suspensions for convenience (a) not exceeding 48 hours each up to a total of 96 hours during the Construction Period, and (b) not exceeding 48 hours each up to a total of 480 hours during the Maintenance Period, neither of which shall be considered an ADOT-Directed Change. Price adjustments and Completion Deadline adjustments shall be available to Developer for such ADOT-Directed Changes, subject to Developer's compliance with the terms and conditions set forth in Article 14.

18.2 Suspensions for Cause

18.2.1 Upon ADOT's delivery of notice of a Developer Default for any of the following breaches or failures to perform, ADOT will have the right and authority to suspend for cause any affected portion of the Work by order to Developer, regardless of whether an Event of Default has been declared or any cure period (other than any cure period provided below in this Section 18.2.1) has not yet lapsed:

(a) The existence of conditions unsafe for workers, other Project personnel or the general public, including failure to comply with any provision of the Safety Management Plan;

(b) Failure to comply with any Law or Governmental Approval (including failure to implement protective measures for endangered and threatened species, failure to handle, preserve and protect archeological, paleontological or historic resources, or failure to handle Hazardous Materials, in accordance with applicable Laws and Governmental Approvals, including the NEPA Approval);

(c) Performance of Construction Work prior to NTP 2, or performance of any ground disturbing activity or Construction Work in the Center Segment prior to NTP 3;

(d) Discovery of Nonconforming Work or of any activity that is proceeding or about to proceed that would constitute or cause Nonconforming Work, where the Nonconforming Work or activity is not substantially cured within 15 days after

ADOT delivers written notice thereof to Developer, unless Developer demonstrates to ADOT's reasonable satisfaction that full and complete cure of the Nonconforming Work, and verification of such cure, will remain practicable despite continuation of Work without suspension;

(e) Developer's failure to pay in full when due sums owing any Subcontractor for services, materials or equipment, except only for retainage provided in the relevant Subcontract and amounts in dispute;

(f) Failure to carry out and comply with Directive Letters, where such failure is not substantially cured within 15 days after ADOT delivers written notice thereof to Developer;

(g) Failure to replace or remove personnel as set forth in Sections 9.6 and 9.8.3, as applicable, where such failure is not substantially cured within 30 days after ADOT delivers written notice thereof to Developer;

(h) Failure to provide proof of required insurance coverage as set forth in Section 11.1.5 (which suspension is also available in the case of such failure following a written request rather than notice of a Developer Default, as set forth in Section 11.1.5);

(i) Other failure to perform the Work in compliance with, or other breach of, the Contract Documents, except Noncompliance Events where no Persistent Developer Default exists, where such failure is not substantially cured within 15 days after ADOT delivers notice thereof to Developer;

(j) Failure to deliver or maintain the D&C Payment Bond, D&C Performance Bond, Maintenance Performance Bond, Maintenance Payment Bond and any other bonds or other security required hereunder;

(k) Failure to comply with any provision of the Quality Management Plan, where such failure is not substantially cured within 15 days after ADOT delivers written notice thereof to Developer;

(l) If at any time ADOT gives Developer notice of ADOT's determination that Developer is in violation of any of its DBE or OJT commitments and obligations, that Developer's DBE or OJT utilization and Good Faith Efforts to meet the DBE Goals or OJT Goals are inconsistent with Developer's DBE or OJT commitments and obligations, or that Developer is failing to undertake Good Faith Efforts with respect to either the DBE Goals or OJT Goals, and the matter is not cured or the determination is not reversed upon any administrative reconsideration pursuant to Section 9.2.7;

(m) If at any time during the D&C Work Developer does not have at least one ADOT-approved IQF under Subcontract.

18.2.2 Developer shall promptly comply with any such suspension order, even if Developer disputes the grounds for suspension. ADOT will lift the suspension

order promptly after Developer fully cures and corrects the applicable breach or failure to perform or all other reasons for the suspension order cease to apply. Developer shall promptly recommence the Work upon receipt of notice from ADOT directing Developer to resume work. ADOT will have no liability to Developer, and Developer shall have no right to additional compensation or Completion Deadline adjustment in connection with any suspension of Work properly founded on any of the grounds set forth in Section 18.2.1. If ADOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, the suspension shall be treated as a suspension for ADOT's convenience under Section 18.1.

18.3 Responsibilities of Developer during Suspension Periods

During periods in which Work is suspended, Developer shall make passable, place in a maintainable condition and shall open to traffic such portions of the Project and temporary roadways as may be agreed upon between ADOT and Developer for temporary accommodation of traffic during the anticipated period of suspension. Additionally, Developer shall continue other Work that has been or can be performed at the Site or offsite during the period that Work is suspended.

ARTICLE 19.
DEFAULT; REMEDIES

19.1 Default of Developer

19.1.1 Events and Conditions Constituting Default

Developer shall be in breach under this Agreement upon the occurrence of any one or more of the following events or conditions (each a "Developer Default"):.

(a) Developer (i) fails to begin Work authorized by NTP 1 or NTP 2 within 30 days following issuance of NTP 1 or NTP 2, or (ii) fails to satisfy all conditions to commencement of the Construction Work, and commence the Construction Work with diligence and continuity.

(b) Developer fails to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, as the same may be extended pursuant to this Agreement.

(c) Developer fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in design and construction of the Project, or refuses to correct, remove and replace Nonconforming Work.

(d) Developer suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work (exclusive of work stoppage (i) due to termination by ADOT, or (ii) due to and during the continuance of a Force Majeure Event or suspension by ADOT, (iii) due to and during the continuance of any work stoppage under Section 19.7).

(e) Developer fails to comply with applicable Governmental Approvals and Laws, including the Federal Requirements.

(f) Developer fails to obtain, provide and maintain any insurance, bonds, guarantees or other performance security as and when required under this Agreement for the benefit of relevant parties, or fails to comply with any requirement of this Agreement pertaining to the amount, terms or coverage of the same;

(g) Developer makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this Agreement in violation of Section 25.4.

(h) Developer fails, absent a valid dispute, to make payment when due for labor, equipment, materials or property in accordance with its agreements with Subcontractors, Suppliers and Utility Companies and in accordance with applicable

Laws, or fails to make payment to ADOT when due of any amounts owing to ADOT under this Agreement.

(i) Developer fails to timely observe or perform or cause to be observed or performed any other covenant, agreement, obligation, term or condition required to be observed or performed by Developer under the Contract Documents.

(j) Any representation or warranty in the Contract Documents made by Developer or any Guarantor, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Developer to ADOT pursuant to the Contract Documents is false or materially misleading or inaccurate when made or omits material information when made.

(k) Developer commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing.

(l) An involuntary case is commenced against Developer seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Developer or Developer's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Developer or any substantial part of Developer's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Developer in good faith or shall remain undismissed and unstayed for a period of 60 days.

(m) In any voluntary or involuntary case seeking liquidation, reorganization or other relief with respect to Developer or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, this Agreement or any of the other Contract Documents is rejected, including a rejection pursuant to 11 USC § 365 or any successor statute.

(n) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect.

(o) Any final judgment is issued holding Developer or any Guarantor liable for an amount in excess of $100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act.

(p) Developer fails to resume performance that has been suspended or stopped, within the time specified in the originating notification after

receipt of notice from ADOT to do so or (if applicable) after cessation of the event preventing performance.

(q) After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or State department or agency of (~~a~~i) Developer, (~~b~~ii) any affiliate of Developer (as "affiliate" is defined in 29 CFR § 105 or successor regulation of similar import), (~~c~~iii) any Equity Member, or (~~d~~iv) any Key Subcontractor whose work is not completed.

(r) There occurs any Persistent Developer Default, ADOT delivers to Developer notice of the Persistent Developer Default, and either: (~~a~~i) Developer fails to deliver to ADOT, within 45 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 19.2.2; or (~~b~~ii) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan.

(s) There occurs any Closure of the Facility or any portion thereof, or any Lane Closure, except as expressly permitted otherwise or expressly excused under this Agreement, the Technical Provisions and the ADOT-approved Traffic Management Plan.

(t) Developer fails to comply with ADOT's written suspension of Work order issued in accordance with Section 18.2.1 within the time reasonably allowed in such order.

(u) There occurs any use of the Project or Airspace or any portion thereof in violation of this Agreement, the Technical Provisions, Governmental Approvals or Laws (except violations of Law by Persons other than Developer-Related Entities).

(v) There occurs a change in any Key Personnel that is not otherwise permitted under Section 9.6.3.1.

(w) Developer fails to achieve a Target Asset Condition Score and: (i) Developer fails to deliver to ADOT, within 30 days after such notice is delivered, a remedial plan meeting the requirements for approval set forth in Section 19.2.3; (ii) Developer fails to fully comply with the schedule or specific elements of, or actions required under, the approved remedial plan, or (iii) the remedial plan, though implemented, nevertheless fails to achieve the Target Asset Condition Score.

19.1.2 Notice and Opportunity to Cure

For Developer breaches or failures listed in the Noncompliance Event Tables, the cure periods set forth therein shall exclusively govern for the sole purpose of assessing Noncompliance Points and Noncompliance Charges. For the purpose of ADOT's exercise of other remedies, and subject to remedies that this Section 19

expressly states may be exercised before lapse of a cure period, Developer shall have the following cure periods with respect to the following Developer Defaults:

(a) Respecting a Developer Default under clause (t) of Section 19.1.1, a period of five days after ADOT delivers to Developer written notice of the Developer Default;

(b) Respecting a Developer Default under clauses (a), (d), (f) through (h), (p) and (s) of Section 19.1.1, a period of 15 days after ADOT delivers to Developer notice of the Developer Default; provided, however, that with respect to a Developer Default under clause (f) of Section 19.1.1, (i) ADOT will have the right, but not the obligation, to effect cure, at Developer's expense, if such Developer Default under clause (f) of Section 19.1.1 continues beyond five days after such notice is delivered, and (ii) Developer may effect a temporary cure of failure to deliver replacement Maintenance Bonds, and obtain an additional 120 days to effect full cure, by providing interim security as and when provided in Section 10.2.5.2;

(c) Respecting a Developer Default under clauses (c), (e), (i), (j), (q), (u) and (v) of Section 19.1.1, a period of 30 days after ADOT delivers to Developer notice of the Developer Default; provided, however, that: (i) if the Developer Default is of such a nature that the cure cannot with diligence be completed within such time period and Developer has commenced meaningful steps to cure immediately after receiving the default notice, Developer shall have such additional period of time, up to a maximum cure period of 60 days, as is reasonably necessary to diligently effect cure; and (ii) as to clause (i), cure will be regarded as complete when the adverse effects of the breach are cured; ~~and~~

(d) Respecting a Developer Default under clauses (b), (k), (l), (m), (n), (o) and (r) of Section 19.1.1, no cure period, and there shall be no right to notice of a Developer Default under clauses (b), (k), (l), (m), (n), (o) and (r) of Section ~~19.1.1~~ 19.1.1; and

(e) Respecting a Developer Default under clause (w) of Section 19.1.1 (i) for failure to deliver to ADOT the required remedial plan within 30 days, a period of five days after ADOT delivers to Developer notice of the Developer Default, (ii) for failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan, a cure period of 30 days after ADOT delivers to Developer notice of the Developer Default, and (iii) for failure of the remedial plan work to achieve a Project Asset Condition Score that complies with the Target Asset Condition Score, a cure period of 30 days after ADOT delivers to Developer notice of the Developer Default.

19.1.3 Declaration of Event of Default

If any event or condition described in Section 19.1.1 is not subject to cure or is not cured within the period (if any) specified in Section 19.1.2, ADOT may declare that

an “Event of Default” has occurred. The declaration of an Event of Default shall be in writing and given to Developer and the Surety.

19.2 ADOT Remedies for Developer Default

19.2.1 Termination for Default

19.2.1.1 Subject to Section 19.3, in the event of any Developer Default that is or becomes an Event of Default, ADOT may terminate this Agreement or a portion thereof for default, including Developer’s rights of entry upon and control of the Project. Such termination shall be effective upon delivering notice of termination or any other date specified in such notice, which notice may be included in the declaration of the Event of Default. If this Agreement or a portion thereof is so terminated for an Event of Default, ADOT will have the following rights without further notice and without waiving or releasing Developer from any obligations and Developer shall have the following obligations (as applicable):

(a) ADOT may deduct from any amounts (including interest thereon as permitted under this Agreement) payable by ADOT to Developer such amounts payable by Developer to ADOT, including reimbursements owing, Liquidated Damages and Noncompliance Charges, amounts ADOT deems advisable to cover any existing or threatened claims and stop notices of Subcontractors, laborers or other Persons, amounts of any Losses that have accrued, the cost to complete or remediate uncompleted Work or Nonconforming Work, interest owing ADOT under this Agreement, or other damages or amounts that ADOT has determined are or may be payable to ADOT under the Contract Documents.

(b) ADOT will have the right, but not the obligation, to pay such amount or perform such act as may then be required from Developer under the Contract Documents or Subcontracts.

(c) ADOT may appropriate any or all materials, supplies and equipment on the Site as may be suitable and acceptable and may direct the Surety to complete this Agreement or may enter into an agreement for the completion of this Agreement according to the terms and provisions hereof with another contractor or the Surety, or use such other methods as may be required for the completion of the Work and the requirements of the Contract Documents, including completion of the Work by ADOT.

(d) If ADOT exercises any right to perform any obligations of Developer, in the exercise of such right ADOT may, but is not obligated to, among other things: (1) perform or attempt to perform, or cause to be performed, such Work; (2) spend such sums as ADOT deems necessary and reasonable to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required for the purpose of completing such Work; (3) execute all applications, certificates and other documents as may be required for completing the Work; (4) modify or terminate any contractual arrangements; (5) take

any and all other actions that it may in its good faith discretion consider necessary to complete the Work; and (6) prosecute and defend any action or proceeding incident to the Work.

19.2.1.2 Developer and each Guarantor shall be jointly and severally liable to ADOT for all costs reasonably incurred by ADOT or any Person acting on ADOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). ADOT will be entitled to withhold all or any portion of further payments to Developer until such time as ADOT is able to determine (a) how much, if any, remains payable to Developer and (b) the amount payable by Developer to ADOT in connection with ADOT's damages and Claims against Developer-Related Entities or as otherwise required by the Contract Documents. Promptly following the date set forth in the preceding sentence, the total cost of all completed Work shall be determined, and ADOT will notify Developer and each Guarantor of the amount, if any, that Developer and each Guarantor shall pay ADOT or ADOT will pay Developer or its Surety with respect thereto. ADOT's Recoverable Costs will be deducted from any moneys due or which may become due Developer or its Surety. If such expense exceeds the sum which would have been payable to Developer under this Agreement, then Developer and each Guarantor shall be liable and shall pay to ADOT the amount of such excess.

19.2.1.3 In lieu of the provisions of this Section 19.2.1 for terminating this Agreement for default and completing the Work, ADOT may, in its sole discretion, pay Developer for the parts already done according to the provisions of the Contract Documents and ADOT may treat the parts remaining undone as if they had never been included or contemplated by this Agreement. No Claim under this Section 19.2.1.3 will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Developer.

19.2.1.4 If ADOT determines under Section 19.2.1.2 that amounts are owed by ADOT to Developer or its Surety related to the D&C Work or ADOT elects to pay Developer the amount owed for D&C Work completed in accordance with Section 19.2.1.3, such amounts shall be payable by ADOT solely in accordance with the Maximum Allowable Cumulative Draw.

19.2.1.5 If this Agreement is terminated for grounds which are later determined not to justify a termination for default, such termination shall be deemed to constitute a Termination for Convenience pursuant to Section 24.

19.2.2 Remedial Plan Delivery and Implementation Upon Persistent Developer Default

19.2.2.1 Developer recognizes and acknowledges that a pattern or practice of continuing, repeated or numerous Noncompliance Events will undermine the confidence and trust essential to the success of the public-private arrangement under this Agreement and will have a material, cumulative adverse impact on the value of this

Agreement to ADOT. Developer acknowledges and agrees that measures for determining the existence of such a pattern or practice described in the definition of Persistent Developer Default are a fair and appropriate objective basis to conclude that such a pattern or practice will continue.

19.2.2.2 Upon the occurrence of a Persistent Developer Default (refer to the trigger points in Section 17.4), Developer shall, within 45 days after notice of the Persistent Developer Default, prepare and submit a remedial plan for ADOT approval. The remedial plan shall set forth a schedule and specific actions to be taken by Developer to improve its performance, reduce the number, frequency and severity of Noncompliance Events, and reduce the assessment of Noncompliance Points under Section 17.4 to the point that such Persistent Developer Default will not continue. ADOT may require that such actions include improving Developer's quality management practices, plans and procedures, revising and restating the Project Management Plan, as applicable, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, ~~replacement of~~replacing Subcontractors, and delivering security to ADOT.

19.2.2.3 If (i) Developer complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan; (ii) as a result thereof Developer ~~achieves the requirements set forth in Sections 19.2.2.2(i) and (ii)~~reduces the assessment of Noncompliance Points under Section 17.4 to the point that such Persistent Developer Default will not continue; and (iii) as of the date it achieves such requirements there exist no other uncured Developer Defaults for which a Notice was given, then ADOT will reduce the number of Noncompliance Points that would otherwise then be counted toward Persistent Developer Default by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Developer Default.

19.2.2.4 Developer's failure to deliver to ADOT the required remedial plan within such 45-day period shall constitute a material Developer Default that may result in issuance of a notice thereof by ADOT triggering a five-day cure period. Failure to comply in any material respect with the schedule or specific elements of, or actions required under, the remedial plan shall constitute a material Developer Default that may result in issuance of a notice thereof by ADOT triggering a 30-day cure period. If either of the events remains uncured within the period specified in this ~~subclause (d)~~Section, then ADOT may declare that an ~~"Event of Default"~~Event of Default has occurred in accordance with Section 19.1.3.

19.2.3 Remedial Plan Delivery and Implementation Upon Failure to Meet Target Asset Condition Score

19.2.3.1 Developer recognizes and acknowledges the importance to ADOT of Developer consistently maintaining the Project during the Maintenance Period in a condition that meets the relevant Target Asset Condition Score, and that the system for measuring the Project's condition set forth in Section MR 400.7 of the

Technical Provisions is a fair and appropriate objective basis to conclude whether the Project's condition is consistent with the relevant Target Asset Condition Score.

19.2.3.2 If at any time the Project Asset Condition Score is less than the Target Asset Condition Score, Developer shall have 30 days to prepare and submit to ADOT for its approval a remedial plan that will bring the Project Asset Condition Score into compliance with the Target Asset Condition Score and thereafter consistently keep the Project Asset Condition Score in compliance. The remedial plan shall set forth a schedule and specific actions to be taken by Developer. ADOT may require that such actions include repairing and replacing specified Elements, increasing Surveillance and Inspections, improving Developer's maintenance quality management practices, plans and procedures, revising and restating the Maintenance Management Plan, changing organizational and management structure for Maintenance Services, changing the Maintenance Manager and other important personnel, and replacing Subcontractors.

19.2.3.3 Developer shall comply in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan. Not later than the scheduled date in the remedial plan, Developer shall give ADOT written notice that it has completed all actions required by the schedule. Promptly thereafter, the Parties shall jointly conduct Inspections to prepare an updated Asset Condition Scorecard and re-determine whether the Project Asset Condition Score complies with the Target Asset Condition Score.

19.2.3.4 If (a) Developer complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan; (b) as a result thereof Developer achieves a Project Asset Condition Score that complies with the Target Asset Condition Score; and (c) Developer continues thereafter to implement the actions set forth in the remedial plan to sustain compliance, then ADOT will not declare a Developer Default under Section 19.1.1(w).

19.2.3.5 If Developer fails to cure a Developer Default under Section 19.1.1(w) within the applicable cure period, then ADOT may declare that an Event of Default has occurred in accordance with Section 19.1.3.

19.2.4 ~~19.2.3~~ Developer Defaults Related to Safety

Notwithstanding anything to the contrary in this Agreement, if in the good faith judgment of ADOT a Developer Default results in an Emergency or danger to persons or property, and if Developer is not then diligently taking all necessary steps to rectify or deal with such Emergency or danger, ADOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to): (a) immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Developer shall pay to ADOT on demand the cost of such action, including ADOT's Recoverable Costs; or (b) suspend the Work or close or cause to be closed any and all portions of the Project affected by the Emergency or danger. So long as ADOT undertakes such

action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose ADOT to any liability to Developer and shall not entitle Developer to any other remedy, it being acknowledged that ADOT has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas. ADOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary. Immediately following rectification of such Emergency or danger, as determined by ADOT, acting reasonably, ADOT will allow the Work to continue or such portions of the Project to reopen, as the case may be.

19.2.5 ~~19.2.4~~ Damages; Offset

19.2.5.1 ~~19.2.4.1~~ Subject to Section 20, ADOT will be entitled to recover any and all damages available at Law (subject to the duty at Law to mitigate damages) on account of the occurrence of a Developer Default. Developer shall owe any such damages that accrue after the occurrence of the Developer Default and the delivery of notice thereof, if any, required by this Agreement regardless of whether the Developer Default is subsequently cured or ripens into an Event of Default.

19.2.5.2 ~~19.2.4.2~~ Developer, Sureties and Guarantors shall not be relieved of liability for continuing Liquidated Damages or Noncompliance Charges on account of a Developer Default nor by ADOT's declaration of an Event of Default, or by actions taken by ADOT under this Section 19.2.

19.2.5.3 ~~19.2.4.3~~ ADOT's remedies with respect to Nonconforming Work shall include the right to accept such Work and receive payment as provided in Section 6.7 in lieu of the remedies specified in this Section 19.2.

19.2.5.4 ~~19.2.4.4~~ Where this Agreement is not terminated, damages include: (a) costs ADOT incurs to complete the Design Work and Construction Work in excess of the D&C Price and amounts due under Supplemental Agreements, not previously paid to Developer; (b) compensation and reimbursements due but unpaid to ADOT under the Contract Documents; (c) costs to remedy any defective part of the Work; and (d) costs to rectify any breach or failure to perform by Developer or to bring the condition of the Project to that required by the Contract Documents.

19.2.5.5 ~~19.2.4.5~~ If the amount of damages owing ADOT is not liquidated or known with certainty at the time a payment is due from ADOT to Developer, ADOT may deduct and offset up to 105% of the amount it reasonably estimates will be due, subject to ADOT's obligation to adjust such deduction or offset when the amount of damages owing ADOT is liquidated or becomes known with certainty.

19.2.6 ~~19.2.5~~ Performance Security

Upon the occurrence of an Event of Default and without waiving or releasing Developer from any obligations, ADOT will be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other performance security available to ADOT under this Agreement with respect to the Event of Default in question. Where access to a bond is to satisfy damages owing, ADOT will be entitled to make demand, enforce and collect, regardless of whether the Event of Default is subsequently cured. Where access to a letter of credit or other performance security is to satisfy damages owing, ADOT will be entitled to make demand, draw, enforce and collect, regardless of whether the Event of Default is subsequently cured. ADOT will apply the proceeds of any such action to the satisfaction of Developer's obligations under this Agreement, including payment of amounts due ADOT. The foregoing does not limit or affect ADOT's right to give notice to or make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit, guaranty or other performance security, immediately after ADOT is entitled to do so under the bond, letter of credit, guaranty or other performance security.

19.2.7 ~~19.2.6~~ Other Rights and Remedies; Cumulative Remedies

Subject to Sections 20.9 and 20.10, ADOT will also be entitled to exercise any other rights and remedies available under this Agreement, or available at law or in equity, and each right and remedy of ADOT hereunder shall be cumulative and shall be in addition to every other right or remedy provided herein or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by ADOT of any one or more of any of such rights or remedies shall not preclude the simultaneous or later exercise by ADOT of any or all other such rights or remedies.

19.3 Event of Default Due Solely to Developer's Failure to Achieve Completion Deadlines

19.3.1 If an Event of Default consists solely of Developer's failure to achieve Substantial Completion or Final Acceptance by the applicable Completion Deadline, then ADOT agrees not to terminate or seek damages respecting the delay except its right to Liquidated Damages so long as: (x) the ADOT-approved Project Schedule (incorporating any ADOT-approved Recovery Schedule) demonstrates that Developer is capable of meeting such Completion Deadline within 365 days of the Substantial Completion Deadline or 180 days of the Final Acceptance Deadline, as applicable; and (y) Developer diligently performs the Work in accordance with said schedule. Nothing in this Section 19.3 shall prejudice any other rights or remedies that ADOT may have due to any other Event of Default during such 365-day period or 180-day period, as applicable.

19.3.2 If Substantial Completion or Final Acceptance of the Project has not occurred within 365 days or 180 days, respectively, of the applicable Completion

Deadline, ADOT will have the right to exercise any other right or remedy under this Agreement, at law or in equity, including termination of this Agreement.

19.4 Immediate ADOT Entry to Cure Wrongful Use or Closure

19.4.1 Without prior notice and without awaiting lapse of the period to cure, if any Developer Default occurs under clause (s) or (u) of Section 19.1.1, ADOT may enter and take control of the relevant portion of the Project to reopen and continue traffic operations for the benefit of the public and restore the permitted uses, until such time as such Developer Default is cured or ADOT terminates this Agreement.

19.4.2 Developer shall pay to ADOT on demand ADOT's Recoverable Costs in connection with such action.

19.4.3 So long as ADOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Developer Default, such action shall not be deemed unlawful or a breach of this Agreement, shall not expose ADOT to any liability to Developer and shall not entitle Developer to any other remedy except if ADOT's action constitutes gross negligence, recklessness or willful misconduct. Developer acknowledges that ADOT has a high priority, paramount public interest in maintaining continuous public access to the Project and maintaining the authorized uses of the Project. ADOT's good faith determination that such action is needed shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

19.4.4 Immediately following rectification of such Developer Default, as determined by ADOT, acting reasonably, ADOT will relinquish control of the relevant portion of the Project back to Developer.

19.4.5 Notwithstanding the foregoing, ADOT will rely solely on Liquidated Damages under Section 20.2 or 20.3 (as applicable) for an unpermitted Lane Closure occurring and lasting not more than one hour after the expiration of the time period for an approved Lane Closure under Section DR 462.3.2 of the Technical Provisions.

19.5 ADOT Step-in Rights

19.5.1 ADOT may exercise its step-in rights on the terms and conditions set forth in this Section 19.5:

(a) If a Developer Default has occurred;

(b) If the cure period, if any, available to Developer under Section 19.1.2, or any shorter period specified in Section 19.1.2, has expired without full and complete cure by Developer; and

(c) Without necessity for declaration of an Event of Default.

19.5.2 ADOT will have the right, but not the obligation, to pay and perform all or any portion of Developer's obligations and the Work that are the subject of such

Developer Default, as well as any other then-existing Developer Defaults or failures to perform for which Developer received prior written notice from ADOT but has not commenced or does not continue diligent efforts to cure. Exercise of such cure rights shall not waive or release Developer from any obligations.

19.5.3 ADOT may, to the extent reasonably required for or incident to curing the Developer Default or such other Developer Defaults or failures to perform:

(a) Perform or attempt to perform, or caused to be performed, such Work;

(b) Employ security guards and other safeguards to protect the Project;

(c) Spend such sums as ADOT deems reasonably necessary to employ and pay such architects, engineers, consultants and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to Developer or any Subcontractors for loss of opportunity to perform the same Work or supply the same materials and equipment;

(d) In accordance with Section ~~19.2.5,~~19.2.6, draw on and use proceeds from the D&C Payment Bond and D&C Performance Bond and any other available security to the extent such instruments provide recourse to pay such sums;

(e) Execute all applications, certificates and other documents as may be required;

(f) Make decisions respecting, assume control over and continue Work as may be reasonably required;

(g) Modify or terminate any contractual arrangements in ADOT's good faith discretion, without liability for termination fees, costs or other charges;

(h) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Developer irrevocably appoints ADOT as its attorney-in-fact with full power and authority to act for and bind Developer in its place and stead;

(i) Take any and all other actions it may in its good faith discretion consider necessary to effect cure and perform the Work; and

(j) Prosecute and defend any action or proceeding incident to the Work.

19.5.4 Developer shall reimburse ADOT, within 30 days of receiving an invoice, for ADOT's Recoverable Costs in connection with the performance of any act

or Work authorized by this Section 19.5. In lieu of reimbursement, ADOT may elect, in its sole discretion, to deduct such amounts from any amounts payable to Developer under this Agreement. Developer acknowledges that amounts owing from Developer to ADOT as Noncompliance Charges are not intended to liquidate such ADOT's Recoverable Costs.

19.5.5 Neither ADOT nor any of its Authorized Representatives, contractors, subcontractors, vendor and employees shall be liable to Developer in any manner for any inconvenience or disturbance arising out of its entry onto the Project, Project ROW or Developer's Temporary Work Areas in order to perform under this Section 19.5, unless caused by the gross negligence, recklessness, intentional misconduct or bad faith of such Person. If any Person exercises any right to pay or perform under this Section 19.5, it nevertheless shall have no liability to Developer for the sufficiency or adequacy of any such payment or performance, or for the manner or quality of design, construction, operation or maintenance, unless caused by the gross negligence, recklessness, intentional misconduct or bad faith of such Person.

19.5.6 ADOT's rights under this Section 19.5 are subject to the right of any Surety under payment and performance bonds to assume performance and completion of all bonded work.

19.5.7 In the event ADOT takes action described in this Section 19.5 and it is later finally determined that ADOT lacked the right to do so because there did not occur a Developer Default and expiration, without full and complete cure, of the cure period, if any, available to Developer, then ADOT's action shall be treated as a Directive Letter for an ADOT-Directed Change.

19.6 DBE and OJT Special Remedies

19.6.1 Notwithstanding any contrary provision in any other Section of this Article 19, if ADOT determines at any time that Developer is in violation of any of its DBE or OJT commitments and obligations, that Developer's DBE or OJT utilization and Good Faith Efforts to meet the DBE Goals or OJT Goals are inconsistent with Developer's DBE or OJT commitments and obligations, or that Developer is failing to undertake Good Faith Efforts with respect to either the DBE Goals or OJT Goals, then:

(a) ADOT may require Developer to submit in writing corrective action documentation for ADOT's approval, which ADOT may require to include a revised plan for achieving the DBE Goals or OJT Goals if the violation jeopardizes achievement, and Developer shall diligently undertake the approved corrective action;

(b) If Developer does not submit such documentation within ten Business Days of request, if the proposed corrective action is disapproved as inadequate, or if Developer fails to diligently carry out the approved corrective action, then ADOT will have the right to withhold (i) in the case of DBE, 1% of progress payments or 1% of Monthly Disbursements, as applicable, until cure, and (ii) in the case of OJT, $10,000 for each of the first two progress payments thereafter, and $50,000 for

each subsequent progress payment thereafter, until cure. Developer may include such withheld amounts in the next month's Draw Request after Developer effects cure;

(c) Except as provided in Sections 19.6.2, 19.6.3, 19.6.4 and 20.5, before exercising other remedies, ADOT will provide Developer an opportunity for administrative reconsideration, by an official who did not take part in the original determination. Developer shall have the right to provide written documentation to such official to support its case no later than ten Business Days after ADOT gives written notice of its determination and, upon request, to meet in person with such official at a date and time the official sets to present its case. ADOT will then consider the findings and opinions of such official and issue a written decision on reconsideration to Developer within 30 days after receiving Developer's written documentation and conclusion of any meeting with such official. ADOT's decision is not administratively appealable to the USDOT; and

(d) If as a result of such administrative process ADOT does not reverse its determination, then ADOT may issue a notice of Developer Default, withhold (or continue to withhold) progress payments or Monthly Disbursements, as applicable, issue an order to suspend Work and, if Developer's failure continues without cure within the applicable cure period, terminate this Agreement for an Event of Default. In addition, if ADOT does not reverse its determination, and if the Event of Default is egregious, then ADOT may elect to pursue proceedings to disqualify or debar Developer and the Lead Subcontractor from future bidding as non-responsible, as well as any Subcontractor or Supplier that has violated or participated in violation of DBE or OJT requirements.

19.6.2 If Developer fails to (a) timely deliver to ADOT in complete form any Monthly Progress Report required under Section 18.01 of the DBE Special Provisions (Exhibit 7), (b) enter the same information by the 15th day of each month into ADOT's web-based DBE System, or (c) correctly complete and submit any other required reports, forms and documentation required by the DBE Special Provisions (Exhibit 7) within the applicable time specified therein, and Developer does not cure such failure within ten Business Days after ADOT delivers to Developer notice of such failure, then ADOT will have the right to withhold 1% of progress payments thereafter or 1% of Monthly Disbursements thereafter, as applicable, until cure. Developer may include such withhold amounts in the next month's Draw Request after Developer effects cure.

19.6.3 If Developer fails to (a) timely deliver to ADOT in complete form any OJT Monthly Progress Report and updated OJT Schedule required under Section 7.0 of the OJT Special Provisions (Exhibit 8), or (b) correctly complete and submit any other required reports, forms and documentation required by the OJT Special Provisions (Exhibit 8) within the applicable time specified therein, and Developer does not cure such failure within ten Business Days after ADOT delivers to Developer notice of such failure, then ADOT will have the right to withhold $10,000 for each of the first two progress payments thereafter, and $50,000 for each subsequent progress payment thereafter, until cure. Developer may include such withheld amounts in the next month's Draw Request after Developer effects cure.

19.6.4 If at any time during the course of the Construction Work the use of OJT Trainees is not in conformance with the schedule or supplemental schedule as submitted and approved pursuant to the OJT Special Provisions (Exhibit 8), then ADOT will have the right to withhold $10,000 for each of the first two progress payments thereafter, and $50,000 for each subsequent progress payment thereafter until Developer conforms to the schedule or supplemental schedule. Conformance with the schedule or supplemental schedule will be considered acceptable when the OJT Trainee utilization to date is at least 90% of that shown on the schedule or supplemental schedule, for the Construction work performed to date.

19.7 Right to Stop Work for Failure by ADOT to Make Undisputed Payment

Subject to Section 13.3.1, Developer shall have the right to stop Work if ADOT fails to make an undisputed payment due hereunder (including failure due to non-appropriation) within 15 Business Days after ADOT's receipt of notice of nonpayment from Developer. Any such work stoppage shall be considered a suspension for convenience under Section 18.1 and shall be considered an ADOT-Directed Change. Developer shall not have the right to terminate this Agreement for default as the result of any failure by ADOT to make an undisputed payment due hereunder; provided, however, that if such nonpayment continues for more than 90 days after ADOT's receipt of such notice, upon notice from Developer to ADOT, the nonpayment may be deemed a Termination for Convenience pursuant to Section 24. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 24.

ARTICLE 20.
LIQUIDATED DAMAGES, NONCOMPLIANCE CHARGES AND LIMITATION OF LIABILITY

20.1 Liquidated Damages Respecting Delays

20.1.1 Developer shall be liable for and pay to ADOT Liquidated Damages with respect to any failure to achieve Substantial Completion or Final Acceptance of the Project by the applicable Completion Deadline, as the same may be extended pursuant to this Agreement. The amounts of such Liquidated Damages are as follows, respectively:

(a) $54,100.00 for each day that Substantial Completion is delayed beyond the Substantial Completion Deadline, not to exceed 365 days; and

(b) $10,800.00 for each day that Final Acceptance is delayed beyond the Final Acceptance Deadline, not to exceed 180 days.

20.1.2 The Liquidated Damages described in this Section 20.1 shall commence on the applicable Completion Deadline, as the same may be extended pursuant to this Agreement, and shall continue to accrue until the date of the applicable Substantial Completion or Final Acceptance, completion of the Work described in Section 6.6.4, or until termination of this Agreement. Such Liquidated Damages shall constitute ADOT's sole right to damages for such delay. For clarity, such Liquidated Damages do not liquidate damages for cost to complete the Project or any other damages except damages due to delay in Substantial Completion or Final Acceptance.

20.1.3 Developer agrees and acknowledges that:

(a) If Developer fails to achieve Substantial Completion or Final Acceptance of the Project by the applicable Completion Deadline, ADOT will incur substantial damages;

(b) As of the Effective Date, the amounts of Liquidated Damages under this Section 20.1 represent good faith estimates and evaluations by the Parties as to the actual potential damages that ADOT would incur as a result of late Substantial Completion or late Final Acceptance of the Project, as applicable, and do not constitute a penalty;

(c) Such actual potential damages include loss of use, enjoyment and benefit of the Project and connecting ADOT transportation facilities by the general public, injury to the credibility and reputation of ADOT's transportation improvement program with policy makers and with the general public who depend on and expect availability of service of the Project by the Substantial Completion Deadline, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs);

(d) The Parties have agreed to Liquidated Damages in order to fix and limit Developer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Developer;

(e) Such sums are reasonable in light of the anticipated or actual harm caused by delayed Substantial Completion or delayed Final Acceptance of the Project, the difficulties of the proof of loss, and the inconvenience or infeasibility of otherwise obtaining an adequate remedy; and

(f) Liquidated Damages are not intended to, and do not, liquidate Developer's liability under the indemnification provisions of Section 21.1, even though third party claims against Indemnified Parties may arise out of the same event, breach or failure that gives rise to the Liquidated Damages.

20.2 Liquidated Damages Respecting Construction Period Lane Closures

20.2.1 Subject to Sections 20.2.3 and 20.2.4, for any full or partial Lane Closure that occurs on Interstate 10 during the Construction Period and is not approved by ADOT under Section DR 462.3.3 of the Technical Provisions, Developer shall be liable for and pay to ADOT Liquidated Damages in the following amounts for every 15-minute interval, or portion thereof, that the unapproved Lane Closure persists or that an initially approved Lane Closure persists outside the approved time periods, as applicable:

	Type of Lane Closure									
	HOV Lane Closed		**Three Lanes Open**		**Two Lanes Open**		**One Lane Open**		**All Lanes Closed**	
Direction	EB	WB	EB	WB	EB	WB	EB	$ WB	EB	$ WB
Amount	$2,600	$800	$5,200	$1,500	$10,300	$3,000	$32,600	$9,500	$57,000	$16,800

20.2.2 Developer acknowledges and agrees that the Liquidated Damages described in this Section 20.2 are reasonable in order to compensate ADOT for damages ADOT will incur by reason of the matters that result in Liquidated Damages for Lane Closures. Such damages include loss of use, enjoyment and benefit of the Project, and connection to ADOT transportation facilities, by the general public, injury to the credibility and reputation of ADOT's Transportation Facilities Construction Program with policy makers and with the general public who depend on and expect availability of service, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of,

among other things, the unique nature of the Project and the unavailability of a substitute for it.

20.2.3 ADOT will not assess Liquidated Damages for Lane Closures that are necessary because of damage or destruction to a traffic lane, ramp, structure, cross road, shoulder or sidewalk directly attributable to a Relief Event; provided that such waiver of Liquidated Damages will continue only for so long as necessary, taking into account Developer's duty to mitigate under Section 14.8, to repair or replace the damage or destruction and reopen the affected traffic lane, ramp, structure, cross road, shoulder or sidewalk.

20.2.4 ADOT will not assess Liquidated Damages for any full or partial Lane Closure to the extent it persists beyond the end of the approved time period as a result of any of the following, provided that (1) such waiver of Liquidated Damages shall only apply to the minimum extra time period that would be required to end the Lane Closure through use of diligent efforts, and (2) Developer shall immediately notify ADOT if any such event occurs that Developer believes will delay ending the Lane Closure on time:

(a) A Relief Event that occurs during the Lane Closure and directly adversely impacts the ability to end the Lane Closure on time;

(b) An Incident or Emergency that occurs during the Lane Closure and directly adversely impacts the ability to end the Lane Closure on time, provided that the Incident or Emergency is not caused by the negligence, willful misconduct, breach of contract, or violation of Law or Governmental Approval by any Developer-Related Entity;

(c) Unexpected loss, disruption, break, explosion, leak or other damage of a Utility that occurs during the Lane Closure and directly adversely impacts the ability to end the Lane Closure on time, provided that the same is not caused by the negligence, willful misconduct, breach of contract, or violation of Law or Governmental Approval by any Developer-Related Entity; or

(d) ADOT's unjustified and direct delay of, or unjustified and direct interference with, Developer's efforts to end the Lane Closure on time.

20.2.5 Assessment of such Liquidated Damages shall not preclude ADOT's exercise of its right to remove an unpermitted Lane Closure at Developer's expense under Section 19.4.

20.3 Liquidated Damages Respecting Maintenance Period Lane Closures

20.3.1 Subject to Section 20.3.5, for any full or partial Lane Closure on Interstate 10 that occurs during the Maintenance Period and is not approved by ADOT under Section DR 462.3.3 of the Technical Provisions, Developer shall be liable for and pay to ADOT Liquidated Damages in the following amounts for every 15-minute interval, or portion thereof, that the unapproved Lane Closure persists or that an initially approved Lane Closure persists outside the approved time periods, as applicable:

	Type of Lane Closure									
	HOV Lane Closed		Three Lanes Open		Two Lanes Open		One Lane Open		All Lanes Closed	
Direction	EB	WB	EB	W WB	EB	W WB	EB	$ WB	EB	$ WB
Amount	$2,600	$800	$5,200	$1,500	$10,300	$3,000	$32,600	$9,500	$57,000	$16,800

20.3.2 Subject to Section 20.3.5, for any full or partial Lane Closure on Project that occurs during the Maintenance Period and is not approved by ADOT under Section DR 462.3.3 of the Technical Provisions, Developer shall be liable for and pay to ADOT Liquidated Damages in the following amounts for every 15-minute interval, or portion thereof, that the unapproved Lane Closure persists or that an initially approved Lane Closure persists outside the approved time periods, as applicable:

[NTD – LD AMOUNTS TO COME.]

	Type of Lane Closure									
	HOV Lane Closed		Three Lanes Open		Two Lanes Open		One Lane Open		All Lanes Closed	
Direction	SB or EB	NB or WB	SB or EB	W NB or WB	SB or EB	W NB or WB	SB or EB	$ NB or WB	SB or EB	$ NB or WB
Amount	$	$	$	$	$	$	$	$	$	$

20.3.3 The Liquidated Damages set forth in Section 20.3.1 and 20.3.2 shall be adjusted annually on the first anniversary of the Effective Date and continuing on each anniversary thereafter during the Term to equal the original Liquidated Damages amount multiplied by the greater of 1.0 or a fraction the numerator of which is the CCI most recently published prior to the applicable anniversary and the denominator of which is the Base CCI.

20.3.4 Developer acknowledges and agrees that the Liquidated Damages described in this Section 20.3 are reasonable in order to compensate ADOT for damages it will incur by reason of the matters that result in Liquidated Damages for Lane Closures. Such damages include loss of use, enjoyment and benefit of the

Project, and connection to ADOT transportation facilities, by the general public, injury to the credibility and reputation of ADOT's Transportation Facilities Construction Program with policy makers and with the general public who depend on and expect availability of service, and additional costs of administering this Agreement (including engineering, legal, accounting, overhead and other administrative costs). Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute for it.

20.3.5 The waiver of Liquidated Damages under Sections 20.2.3 and 20.2.4 shall apply to Liquidated Damages for Lane Closures during the Maintenance Period.

20.3.6 Assessment of such Liquidated Damages shall not preclude ADOT's exercise of its right to remove an unpermitted Lane Closure at Developer's expense under Section 19.4.

20.4 Noncompliance Charges for Noncompliance Points

20.4.1 Developer shall be liable for and pay to ADOT amounts to compensate ADOT for damages due to the occurrence of Noncompliance Events that constitute Developer's failure to satisfy certain requirements for the Project during the Construction Period and Maintenance Period, as described in the applicable Noncompliance Event Tables. The amounts owing from Developer to ADOT as Noncompliance Charges are not intended to liquidate the costs to ADOT to rectify the corresponding Noncompliance Event.

20.4.2 For each assessed Noncompliance Point, Developer shall be subject to Liquidated Damages in the amount of $8,000.00 (the "Noncompliance Charges"). The Noncompliance Charges will not be adjusted during the D&C Period. The Noncompliance Charges, however, shall be adjusted (up or down, as applicable) commencing on the commencement date of the Maintenance Period and on each anniversary of such date thereafter throughout the Maintenance Period by a fraction, the numerator of which is the CPI most recently published prior to the commencement date or anniversary thereof, as applicable, and the denominator of which is the Base CPI.

20.4.3 ADOT will waive Noncompliance Charges assessed for Noncompliance Events set forth in Exhibit 15-2 (Maintenance Period Noncompliance Event Table), subject to the following terms and conditions:

(a) ADOT will waive such Noncompliance Charges first accruing in a calendar month only if the total of such monthly Noncompliance Charges does not exceed $80,000.00 (the "monthly waiver limit"). The monthly waiver limit shall be adjusted (up or down, as applicable) commencing on the commencement date of the Maintenance Period and on each anniversary of such date thereafter throughout the Maintenance Period by a fraction, the numerator of which is the CPI most recently published prior to the commencement date or anniversary thereof, as applicable, and

the denominator of which is the Base CPI. The monthly waiver limit for a partial calendar month during the Maintenance Period shall be prorated;

(b) For clarity, if Noncompliance Charges first accruing in a calendar month exceed the monthly waiver limit, none of such Noncompliance Charges will be waived;

(c) Noncompliance Charges that accrue due to (i) a second or further failure to cure the corresponding Noncompliance Event as provided in Section 17.3.3 or (ii) Noncompliance Events that adversely affect the safety of the traveling public, as determined by ADOT, will not be waived even if Developer does not exceed the monthly waiver limit, and will count toward whether the monthly waiver limit is exceeded; and

(d) Waiver of Noncompliance Charges does not waive the corresponding Noncompliance Event or Noncompliance Points; and ADOT shall have all other rights and remedies under the Contract Documents regarding such Noncompliance Event.

20.4.4 Developer shall pay ADOT the amount of the Noncompliance Charges accrued within 20 days after ADOT requests payment from time to time. Alternatively, ADOT shall have the right to deduct the Noncompliance Charges from payments of the D&C Price or Monthly Disbursements of the Maintenance Price, as applicable, in accordance with Section 13.

20.4.5 Developer acknowledges that the Noncompliance Charges assessed in accordance with the Contract Documents are reasonable liquidated amounts in order to compensate ADOT for damages it will incur by reason of Developer's failure to comply with the applicable provisions of the Contract Documents. The damages addressed by the Noncompliance Charges include:

(a) ADOT's increased costs of administering this Agreement, including the increased costs of engineering, legal, accounting, monitoring, oversight and overhead, and could also include obligations to pay or reimburse Governmental Entities with regulatory jurisdiction over the Maintenance Services Limits for violation of applicable Governmental Approvals or for their increased costs of monitoring and enforcing Developer's compliance with applicable Governmental Approvals;

(b) Potential harm and future costs to ADOT from reduction in the condition and useful life of the Elements;

(c) Potential harm to the credibility and reputation of ADOT with other Governmental Entities, with policy makers and with the general public who depend on and expect timely and quality delivery and availability of service;

(d) Potential harm and detriment to those using the Project, which may include loss of use, enjoyment and benefit of the Project and of facilities

connecting to the Project, additional wear and tear on vehicles, and increased costs of congestion, travel time and accidents; and

(e) ADOT's increased costs of addressing potential harm to the Environment, including increased harm to air quality caused by congestion, and harm to water quality, soils conditions, historic structures and other environmental resources caused by Noncompliance Events.

20.4.6 Developer further acknowledges that the damages described in Section 20.4.4 would be difficult and impracticable to measure and prove, because, among other things:

(a) The Project is of a unique nature and no substitute for it is available;

(b) The costs of monitoring and oversight prior to increases in the level thereof will be variable and extremely difficult to quantify;

(c) The nature and level of increased monitoring and oversight will be variable depending on the circumstances; and

(d) The variety of factors that influence use of and demand for the Project make it difficult to sort out causation of the matters that will trigger these Liquidated Damages and to quantify actual damages.

20.5 Liquidated Damages Respecting DBEs and OJT

20.5.1 DBEs

20.5.1.1 If Developer replaces or substitutes, or allows or suffers replacement or substitution, for a Committed DBE in violation of Section 19.0 of the DBE Special Provisions (Exhibit 7), then Developer shall be liable for and pay to ADOT Liquidated Damages in an amount equal to 1.5 times the unpaid portion of the Subcontract amount under the Subcontract with the wrongfully replaced Committed DBE.

20.5.1.2 If, following Substantial Completion, ADOT determines that Developer has not met the DBE Goals for Professional Services and Construction and did not exercise Good Faith Efforts to meet such DBE Goals, then Developer shall be liable for and pay to ADOT Liquidated Damages in an amount equal to the total contract value that would have had to be paid to DBEs performing Commercially Useful Functions in order to meet each of the DBE Goals, minus the total contract value of Work actually performed by DBEs and credited toward each of the DBE Goals.

20.5.1.3 If, following completion of any interval of Capital Asset Replacement Work, ADOT determines that Developer has not met the DBE Goal for such interval of Capital Asset Replacement Work and did not exercise Good Faith Efforts to meet such DBE Goal, then Developer shall be liable for and pay to ADOT

Liquidated Damages in an amount equal to the total contract value that would have had to be paid to DBEs performing Commercially Useful Functions in order to meet such DBE Goal, minus the total contract value of Work actually performed by DBEs and credited toward such DBE Goal.

20.5.1.4 Developer acknowledges and agrees that the Liquidated Damages respecting DBEs described in this Section 20.5.1 are reasonable in order to compensate ADOT for damages ADOT will incur by reason of the violations or failures described in this Section 20.5.1. Such damages include jeopardy to attaining ADOT's overall DBE goals, injury to the credibility and reputation of ADOT's DBE program, potential loss of federal funding equal to or exceeding the value of Work denied to DBEs, imposition of other costly measures and requirements by the FHWA, and additional costs of administering this Agreement and enforcing Developer's compliance with its DBE obligations. Further, the severity of such damages is expected to vary with the portion of the Subcontract amount denied to the Committed DBE or the portion of the DBE Goal not attained. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, their imprecise nature.

20.5.2 OJT

20.5.2.1 If, following Substantial Completion, ADOT determines that Developer has not met the OJT Goals and did not exercise Good Faith Efforts to meet the OJT Goals, then Developer shall be liable for and pay to ADOT Liquidated Damages in the amount that ADOT is then holding pursuant to Section 19.6.4.

20.5.2.2 Developer acknowledges and agrees that the Liquidated Damages respecting OJT described in this Section 20.5.2 are reasonable in order to compensate ADOT for damages it will incur by reason of the violations or failures described in this Section 20.5.2. Such damages include jeopardy to attaining ADOT's overall OJT goals, injury to the credibility and reputation of ADOT's OJT program, potential loss of federal funding equal to or exceeding the value of Work denied to OJT Trainees, imposition of other costly measures and requirements by the FHWA, and additional costs of administering this Agreement and enforcing Developer's compliance with its OJT obligations. Further, the severity of such damages is expected to vary with the portion of the employment work denied to OJT Trainees. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, their imprecise nature.

20.6 Liquidated Damages for Unavailability of Key Personnel

Developer shall be subject to Liquidated Damages for unavailability of Key Personnel to work on the Project, as set forth in Section 9.6.2.2.

20.7 Liquidated Damages Respecting Subcontractor Payroll Reporting

20.7.1 Developer shall be subject to Liquidated Damages if Developer does not comply with certain requirements respecting Subcontractor payroll reporting, as set forth in Section 13.8.2(c).

20.7.2 Developer acknowledges that ADOT requires timely receipt of the Subcontractor payrolls described in Section 13.8.2 in order for ADOT to comply with applicable federal and State labor laws. Developer further acknowledges that the Liquidated Damages described in Section 13.8.2(c) are reasonable in order to compensate ADOT for damage it will incur if ADOT fails to comply with these laws. Such damages include potential loss of federal funding, the imposition of other sanctions by the US Department of Labor or FHWA, and additional costs of administering this Agreement and enforcing Developers compliance with applicable requirements herein. Developer further acknowledges that these damages are incapable of accurate measurement because of, among other things, their imprecise nature.

20.8 Payment; Satisfaction; Waiver; Non-Exclusive Remedy

20.8.1 Developer shall pay any Liquidated Damages and Noncompliance Charges owing under this Article 20 within 20 days after ADOT delivers to Developer ADOT's invoice or demand therefor.

20.8.2 ADOT will have the right to deduct and offset Liquidated Damages and Noncompliance Charges from any amounts owing to Developer. ADOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Developer pursuant to this Agreement to satisfy Noncompliance Charges and Liquidated Damages not paid when due.

20.8.3 Permitting or requiring Developer to continue and finish the Work or any part thereof after a Completion Deadline, as applicable, shall not act as a waiver of ADOT's right to receive Noncompliance Charges and Liquidated Damages hereunder or any rights or remedies otherwise available to ADOT.

20.8.4 Subject to Section 19.3, ADOT's right to, and imposition of, Noncompliance Charges and Liquidated Damages are in addition, and without prejudice, to any other rights and remedies available to ADOT under this Agreement, at law or in equity respecting the breach, failure to perform or Developer Default that is the basis for the Noncompliance Charges or Liquidated Damages or any other breach, failure to perform or Developer Default, except for recovery of the monetary damages that the Noncompliance Charges or Liquidated Damages are intended to compensate.

20.9 Limitation on Developer's Liability

20.9.1 D&C Work

20.9.1.1 Notwithstanding any other provision of the Contract Documents and except as set forth in Section 20.9.1.2, to the extent permitted by

applicable Law, ADOT will not seek to recover damages from Developer resulting from breach of this Agreement with respect to the D&C Work (whether arising in contract, negligence or other tort, or any other theory of law) in excess of $100,000,000 which amount shall specifically include any Liquidated Damages paid with respect to the D&C Work pursuant to this Article 20).

20.9.1.2 The foregoing limitation on Developer's liability respecting the D&C Work shall not apply to or limit any right of recovery ADOT may have respecting the following:

(a) Costs reasonably incurred by ADOT, or any Person acting on ADOT's behalf, to complete or correct the D&C Work, or have the D&C Work completed or corrected by another Person, in excess of the sum otherwise payable to Developer under this Agreement for the D&C Work, including the cost of the work required or arising under the Warranties;

(b) Amounts paid by or on behalf of Developer with respect to the D&C Work that are covered by insurance proceeds, including any amounts Developer is deemed to self-insure pursuant to Section 11.2.4;

(c) Losses incurred by any Indemnified Party relating to or arising out of Developer's indemnities set forth in Sections 6.8.9 and 21.1, related to the D&C Work or occurring during the Construction Period;

(d) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness or bad faith on the part of any Developer-Related Entity;

(e) Losses arising out of Developer Releases of Hazardous Materials; and

(f) Any claims against and amounts paid from the D&C Payment Bond.

20.9.1.3 Any claims by third-party owners of facilities or improvements within the D&C Work shall not reduce or erode the amounts described in Section 20.10.1.1.

20.9.2 Maintenance Services

20.9.2.1 Notwithstanding any other provision of the Contract Documents and except as set forth in Section 20.9.2.2, to the extent permitted by applicable Law, ADOT will not seek to recover damages from Developer resulting from breach of this Agreement with respect to the Maintenance Services (whether arising in contract, negligence or other tort, or any other theory of law) in excess of $15,000,000.00, as adjusted pursuant to Section 20.9.2.3 (which amount shall specifically include any Liquidated Damages paid with respect to the Maintenance Services) for each five-year period during the Maintenance Period ~~commencing with~~

~~Maintenance NTP~~. For clarity, this amount is a cap that shall apply separately to each such five-year period and shall not carry over into subsequent five-year periods. If the last period before the end of the Term is less than five years, the cap for that period nevertheless shall not be reduced.

20.9.2.2 The foregoing limitation on Developer's liability respecting the Maintenance Services shall not apply to or limit any right of recovery ADOT may have respecting the following:

(a) Costs reasonably incurred by ADOT, or any Person acting on ADOT's behalf, to perform the Maintenance Services, or have the Maintenance Services performed by another Person, for the balance of the Term in excess of the sum otherwise payable to Developer under this Agreement for the Maintenance Services for the balance of the Term;

(b) Amounts paid by or on behalf of Developer with respect to the Maintenance Services that are covered by insurance proceeds, including any amounts Developer is deemed to self-insure pursuant to Section 11.2.4;

(c) Losses incurred by any Indemnified Party relating to or arising out of Developer's indemnities set forth in Sections 6.8.9 and 21.1, related to the Maintenance Services or occurring during the Maintenance Period;

(d) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness or bad faith on the part of any Developer-Related Entity;

(e) Losses arising out of Developer Releases of Hazardous Materials; and

(f) Any claims against and amounts paid from a Maintenance Payment Bond

20.9.2.3 The $15,000,000.00 amount set forth in Section 20.9.2.1 shall be adjusted annually on the first anniversary of the Effective Date and continuing on each anniversary thereafter during the Term to equal $15,000,000.00 multiplied by the greater of 1.0 or a fraction the numerator of which is the CCI most recently published prior to the applicable anniversary and the denominator of which is the Base CCI.

20.10 Limitation on Consequential Damages

20.10.1 Notwithstanding any other provision of the Contract Documents and except as set forth in this Section 20.10.1 and in Section 20.10.2, to the extent permitted by applicable Law, neither Party shall be liable to the other for punitive damages or indirect or incidental consequential damages, whether arising out of breach of this Agreement, tort (including negligence) or any other theory of liability, and each Party hereby releases the other party from any such liability.

20.10.2 The foregoing limitations on Developer's liability for consequential damages shall not apply to or limit any right of recovery ADOT may have respecting the following:

(a) Losses (including defense costs) to the extent (i) covered by the proceeds of insurance required to be carried pursuant to Article 11, and (ii) covered by the proceeds of insurance actually carried by or insuring any Developer-Related Entity under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Article 11, or (iii) Developer is deemed to have self-insured the Loss pursuant to Section 11.2.4;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness or bad faith on the part of any Developer-Related Entity;

(c) Developer's indemnities set forth in Sections 6.8.9 and 21.1;

(d) Developer's obligation to pay Noncompliance Charges and Liquidated Damages in accordance with Sections 9.6.2 and 13.8.2(c) and this Article 20;

(e) Losses arising out of Developer Releases of Hazardous Materials; and

(f) Amounts Developer may owe or be obligated to reimburse to ADOT under the express provisions of the Contract Documents, including, subject to any agreed scope of work and budget, ADOT's Recoverable Costs.

ARTICLE 21.
INDEMNIFICATION

21.1 Indemnity by Developer

21.1.1 Subject to Section 21.1.2, Developer shall release, protect, defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from:

(a) The breach or alleged breach of any of the Contract Documents by any Developer-Related Entity;

(b) The failure or alleged failure by any Developer-Related Entity to comply with the Governmental Approvals, any applicable environmental laws or other Laws (including laws regarding Hazardous Materials Management);

(c) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to ADOT or another Indemnified Party pursuant to this Agreement; provided, however, that this indemnity shall not apply to any infringement to the extent resulting from ADOT's failure to comply with specific written instructions regarding use provided to ADOT by Developer;

(d) The actual or alleged culpable act, error, omission, negligence, breach or misconduct of any Developer-Related Entity in or associated with performance of the Work;

(e) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any Developer-Related Entity with respect to any payment for the Work made to or earned by any Developer-Related Entity;

(f) The failure or alleged failure by any Developer-Related Entity to pay sums due for the work or services of Subcontractors, laborers, or Suppliers, provided that ADOT has paid all undisputed amounts owing to Developer with respect to such Work;

(g) Any actual or threatened Developer Release of Hazardous Materials;

(h) The claim or assertion by any other ADOT contractor or developer: (i) that any Developer-Related Entity failed to cooperate reasonably with

such other ADOT contractor or developer, so as to cause inconvenience, disruption, delay or loss, except where the Developer-Related Entity was not in any manner engaged in performance of the Work or (ii) that any Developer-Related Entity interfered with or hindered the progress or completion of work being performed by such other ADOT contractor or Developer, so as to cause inconvenience, disruption, delay or loss, to the extent such claim arises out of the actual or alleged culpable act, error, omission, negligence, breach or misconduct of any Developer-Related Entity;

(i) Developer's performance of, or failure to perform, the obligations under any Utility Agreement, or any dispute between Developer and a Utility Company arising out of Utility Adjustments;

(j) Any Developer-Related Entity's breach of or failure to perform an obligation that ADOT owes to a third person, including Governmental Entities, under Law or under any agreement between ADOT and a third person, where ADOT has delegated performance of the obligation to Developer under the Contract Documents or (ii) the acts or omissions of any Developer-Related Entity which render ADOT unable to perform or abide by an obligation that ADOT owes to a third person, including Governmental Entities, under any agreement between ADOT and a third person, where the agreement was expressly disclosed or known to Developer;

(k) The fraud, bad faith, arbitrary or capricious acts, or violation of Law by any Developer-Related Entity in or associated with the performance of the Work;

(l) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of: (i) the failure of any Developer-Related Entity to comply with Good Industry Practices, requirements of the Contract Documents, the Project Management Plan or Governmental Approvals respecting control and mitigation of construction activities and construction impacts, (ii) the intentional misconduct or negligence of any Developer-Related Entity, or (iii) the actual physical entry onto or encroachment upon another's property by any Developer-Related Entity; and

(m) Errors, inconsistencies or other defects in the design, construction or maintenance of the Project or of Utility Adjustments included in the Work.

21.1.2 Subject to the releases and disclaimers herein, including all the provisions set forth in Section 3.1.8 of this Agreement, Developer's indemnity obligation shall not extend to any third party Loss to the extent caused by:

(a) The negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party,

(b) ADOT's material breach of any of its material obligations under the Contract Documents;

(c) An Indemnified Party's material violation of any Laws or Governmental Approvals; or

(d) An unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Technical Provisions, but only where prior to occurrence of the third party Loss: (i) Developer complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement created a potentially unsafe condition or (ii) Developer knew of and reported to ADOT the potentially unsafe requirement.

21.1.3 In claims by an employee of Developer, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 21.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Developer or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

21.1.4 For purposes of this Section 21.1, "third party" means any person or entity other than an Indemnified Party and Developer, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party which is within the scope of the indemnities and which is not covered by the Indemnified Party's worker's compensation program.

21.1.5 Developer hereby acknowledges and agrees that it is Developer's obligation to perform the Work in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Developer's performance of such obligation. Developer further agrees that any certificate, review or approval by ADOT or others hereunder shall not relieve Developer of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 21.

21.1.6 The indemnity set forth in Section 21.1.1(g) is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), and Health and Safety Code section 25364, to insure, protect, hold harmless and indemnify the Indemnified Parties.

21.1.7 The obligations under this Article 21 shall not be construed to negate, abridge, or reduce other rights or obligations that would otherwise exist in favor of an Indemnified Party hereunder.

21.2 Defense and Indemnification Procedures

21.2.1 If ADOT receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 21.1, and if ADOT gives notice thereof pursuant to Section 11.2, then ADOT will have the right to conduct its own defense unless either an Insurer accepts defense of the claim within

the time required by law or Developer accepts the tender of the claim in accordance with Section 21.2.3.

21.2.2 Subject to Section 21.2.6, if the insurer under any applicable insurance policy accepts the tender of defense, ADOT and Developer shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 21.2.3 shall apply.

21.2.3 If the defense is tendered to Developer, then within 15 days after receipt of the tender Developer shall notify the Indemnified Party whether Developer has tendered the matter to an insurer. If Developer does not tender the matter to an insurer, then within such 15 days, or if the insurer has rejected the tender, then within five days after such rejection, Developer shall deliver a notice to the Indemnified Party stating one of the following:

(a) Developer accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any "reservation of rights" to deny or disclaim full indemnification thereafter;

(b) Developer accepts the tender of defense but with a "reservation of rights" in whole or in part; or

(c) Developer rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Agreement.

21.2.4 If Developer accepts the tender of defense under Section 21.2.3(a), Developer shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Developer shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

(a) Developer shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and

(b) The Indemnified Party shall fully cooperate in said defense, provide to Developer all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Developer concerning such defense.

21.2.5 If Developer responds to the tender of defense as specified in Section 21.2.3(b) or 21.2.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

21.2.6 Notwithstanding Section 21.2.3(a) or 21.2.3(b), the Indemnified Party may assume its own defense by delivering to Developer notice of such election and the

reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

(a) A conflict exists between it and Developer which prevents or potentially prevents Developer from presenting a full and effective defense;

(b) Developer is otherwise not providing an effective defense in connection with the claim; or

(c) Developer lacks the financial capacity to satisfy potential liability or to provide an effective defense.

21.2.7 If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Developer shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending, except to the extent the Indemnified Party conducts its own defense as a result of Developer's denial of such defense pursuant Section 21.2.3(c). In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

(a) In the case of a defense conducted under Section 21.2.3(a), it shall have the right to settle or compromise the claim with Developer's prior consent, which shall not be unreasonably withheld or delayed;

(b) In the case of a defense conducted under Section 21.2.3(b), it shall have the right to settle or compromise the claim with Developer's prior consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Developer and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Developer; and

(c) In the case of a defense conducted under Section 21.2.3(c), it shall have the right to settle or compromise the claim without Developer's prior consent and without prejudice to its rights to be indemnified by Developer. If a dispute resolver determines that Developer wrongfully denied the defense of the Indemnified Party, the Indemnified Party shall be entitled to reimbursement of the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, and indemnification of costs to settle or compromise the claim, in addition to interest at the rate calculated in accordance with Section 25.13 payable on such defense and settlement amounts from the date such costs and expenses are incurred by the Indemnified Party.

21.2.8 The Parties acknowledge that while Section 21.1 contemplates that Developer will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on

an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 21.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

21.2.9 In determining responsibilities and obligations for defending suits pursuant to this Section 21.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

ARTICLE 22.
PARTNERING AND DISPUTE RESOLUTION PROCEDURES

22.1 Partnering

22.1.1 General Provisions

22.1.1.1 For the mutual benefit of the Parties, ADOT and Developer shall establish a partnering relationship to effectively complete the Project. The purpose of the partnering relationship is to establish and maintain effective communication between the Parties to cooperatively identify and resolve critical Project-related issues. Neither the partnering relationship itself, nor discussions between the Parties addressed at the initial partnering workshop, refresher partnering meetings or the construction closeout partnering meeting (collectively "Partnering Meetings"), shall modify the terms and conditions of this Agreement.

22.1.1.2 In implementing and managing the partnering relationship required under this Section 22.1, ADOT and Developer shall:

(a) Use early and regular communication with parties involved;

(b) Establish and maintain a relationship of shared trust, equity and commitment;

(c) Identify, quantify, and support attainment of mutual goals;

(d) Develop strategies for using risk-management tools and concepts;

(e) Implement timely communication and decision making;

(f) Resolve potential problems at the lowest level of responsible management to avoid negative impacts and Disputes;

(g) Develop a plan for periodic joint evaluation based on mutually agreed goals;

(h) Hold Partnering Meetings, as set forth in Section 22.1.2, to preserve the partnering relationship and its benefits for the duration of the Term; and

(i) Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

22.1.2 Partnering Meeting Schedule; Participants

22.1.2.1 The Parties shall jointly select, before the initial partnering workshop, a third-party facilitator to facilitate Partnering Meetings.

22.1.2.2 The Parties shall schedule and conduct Partnering Meetings as follows:

(a) The initial partnering workshop prior to NTP 2;

(b) Refresher partnering meetings annually thereafter, or as mutually agreed by the Parties; and

(c) The construction closeout meeting no later than 60 days after the Substantial Completion Date.

22.1.2.3 The Parties shall conduct Partnering Meetings at ADOT's offices or at such other locations as the Parties mutually agree.

22.1.2.4 Key Personnel and executives from both Parties must attend Partnering Meetings.

22.1.3 Partnering Team; Partnering Charter

22.1.3.1 ADOT and Developer shall establish a partnering team for the Project, which team shall consist of Project-level contributors and decision-makers from ADOT, Developer, and, if applicable, stakeholder organizations. Each Party must identify its respective members of the partnering team prior to the initial partnering workshop; all members of the partnering team must attend the initial partnering workshop.

22.1.3.2 The partnering team shall create during the initial partnering workshop a partnering charter that includes:

(a) Mutual goals (e.g., core goals that may also include Project-specific goals and individual goals that are jointly supported by both Parties);

(b) A partnering team commitment statement signed by every member of the partnering team; and

(c) A plan for both Parties to jointly maintain the partnering relationship for the duration of the Term.

22.1.3.3 The members of the partnering team shall:

(a) Identify the appropriate persons in each Party's organization who shall fill the roles of reviewers for the Issues Resolution Ladder described in Section 22.2.1;

(b) Identify the scope of documentation required for review of a Dispute at each level of the Issue Resolution Ladder described in Section 22.2.1;

(c) Participate in a partnering evaluation survey, monthly during the D&C Period and twice a year for the first three years during the Maintenance Period, to measure the progress of mutual goals and key short-term issues as they arise in connection with the Project;

(d) Jointly review the results of the partnering evaluation survey, on a quarterly basis during the D&C Period and once a year for the first three years of the Maintenance Period; and

(e) Document lessons learned regarding the Project's D&C Work after Substantial Completion, and regarding the Project's Maintenance Services no later than 42 months after the Substantial Completion Date.

22.1.3.4 While the provisions of this Section 22.1 are not part of the Dispute Resolution Procedures contemplated under this Agreement, the Parties shall exhaust the use of the partnering relationship when addressing potential Disputes and prior to proceeding to the Disputes Resolution Procedures set forth in Section 22.2.

22.1.4 Confidentiality

Subject to the requirements of the Public Records Law, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be kept in confidence and used only for the purpose of facilitating resolution of potential Disputes via the partnering process, and shall not be utilized or revealed to others, except to officials and agents of the Parties who are authorized to act on the subject matter. However, the Parties understand that such documents may be subsequently discoverable and admissible in mediation, arbitration of court proceedings.

22.1.5 Cost Responsibility

22.1.5.1 The costs of the facilitator, the site and food for Partnering Meetings shall be shared equally by ADOT and Developer. All other costs associated with the partnering process shall be borne separately by the Party that incurs the costs.

22.1.5.2 ADOT will initially pay the full costs of the facilitator, the site and food for Partnering Meetings, and thereafter deduct 50% of the qualifying costs from amounts owing to Developer under this Agreement.

22.2 Disputes Resolution Procedures

The Parties agree that:

(a) Any Dispute arising out of, relating to, or in connection with this Agreement not resolved by partnering, per Section 22.1, shall be resolved pursuant to the multi-step Dispute Resolution Procedures described in this Section 22.2;

(b) The Party bringing a Dispute shall bear the burden of proving the same;

(c) Resolutions of Disputes pursuant to this Section 22.2 shall be final, binding, conclusive and enforceable as set forth in this Section 22.2; and

(d) The Issue Resolution Ladder and mediation processes are administrative procedures and remedies, and failure of Developer to comply with either such process in all material respects as to any Dispute or Claim shall constitute a failure to diligently pursue and exhaust such administrative procedures and remedies, and shall operate as a bar against the Dispute or Claim.

22.2.1 Issue Resolution Ladder

As a condition to the right to bring a Dispute to mediation, arbitration or litigation, the Party bringing the Dispute shall first attempt to informally resolve the Dispute directly with other Party using the Issue Resolution Ladder. The Issue Resolution Ladder is the process for elevating Disputes from the Project's field level to various levels of review, up to the Parties' executive management if necessary, with defined time limits for each level of review. The goal of the Issue Resolution Ladder is to resolve each Dispute as close to the field level as possible while recognizing the requirement to elevate the Dispute to the next level of review before the Dispute impacts cost or schedule.

22.2.1.1 Issue Resolution Ladder Process

(a) The Issue Resolution Ladder shall consist of three levels of review and corresponding time limits to review, as follows:

Level of Review	Developer Reviewer	ADOT Reviewer	Time Limit
3	Executive Officer	Senior Deputy State Engineer	Issue Dependent
2	Project Manager	Design Manager, Construction Manager or Project Manager (as applicable)	14 days
1	Project Level	Lead Inspector/ Construction Compliance Engineer	7 days

(b) The partnering team as set forth in Section 22.1.3 shall identify the individuals from ADOT's and Developer's respective organizations filling the roles of reviewers in the Issue Resolution Ladder, and the documentation required for each level of review in the Issue Resolution Ladder. The individuals filling such roles and the documentation required for each level of review may vary for the D&C Work and Maintenance Services, as appropriate.

(c) If reviewers at any level of the Issue Resolution Ladder cannot resolve a Dispute within the time limits set forth in this Section 22.2.1.1, the reviewers shall elevate the Dispute to the next level of review in the Issues Resolution Ladder.

22.2.2 Issue Resolution Ladder Outcome

(a) If ADOT and Developer succeed in resolving a Dispute using the Issue Resolution Ladder, the Parties shall memorialize the resolution in writing, including execution of any Supplemental Agreement as appropriate, and promptly perform their respective obligations in accordance therewith.

(b) If the Parties do not resolve the Dispute using the Issues Resolution Ladder within the applicable time periods set forth in Section 22.2.1, then either Party shall have 15 days from the conclusion of the Issues Resolution Ladder to bring the Dispute to mandatory mediation, as described in Section 22.2.3.

22.2.3 Mediation

Only upon completion of the requirements of Section 22.2.1, either Party shall have the right to initiate mandatory mediation proceedings for the unresolved Dispute, as a condition to bringing the Dispute to arbitration or litigation.

22.2.3.1 Mediation Process

(a) The Party bringing the Dispute shall do so by serving the other Party with a written notice to initiate mediation proceedings.

(b) Within ten Business Days after providing such notice, the Parties shall mutually select a qualified individual to serve as mediator. The mediator shall have at least ten years of experience serving as a mediator, shall have at least five years of experience mediating design, construction or maintenance work disputes, as applicable based on the nature of the Dispute, and preferably shall be an attorney at law.

(c) If the Parties are unable to agree upon an individual to serve as mediator, then either Party may petition the Superior Court located in Maricopa County to appoint a mediator who meets the foregoing qualifications.

(d) The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after the mediator is appointed, or at such other date and time as may be set by the mediator. Each Party shall have the right to present to the mediator such materials and documentation it may deem relevant to the Dispute; provided, however, that it concurrently provide a copy of such materials and documentation to the other Party. Each Party shall provide to the mediator and the other Party further materials, documentation and information as the mediator may reasonably request.

(e) Each Party shall bring to the mediation a representative with authority to mediate and settle the Dispute, and such representative shall actively participate in the mediation process. Each Party may bring to the mediation such other persons as it chooses; provided, however, that neither Party shall be represented at the mediation by legal counsel unless both Parties consent thereto in advance of the mediation.

(f) Each Party shall make good faith efforts to resolve the Dispute through mediation.

(g) Developer and ADOT will share equally the expenses of the mediation. Each Party shall bear its own costs of preparing for and participating in the mediation.

(h) The deadlines in this Section 22.2 for processing a Dispute shall be postponed, day for day, during mediation.

22.2.3.2 Mediation Outcome

If the Parties do not resolve the Dispute using mediation, the Party bringing the Dispute may proceed to either arbitration in accordance with Section 22.2.5 or litigation in accordance with Section 22.2.6, as applicable.

22.2.4 Evidentiary Impact of Issue Resolution Ladder or Mediation

22.2.4.1 The Issue Resolution Ladder process and mediation process shall be considered settlement negotiations for the purpose of all State and federal rules that protect disclosures made during settlement negotiations from later discovery or use in evidence; provided, however, that any settlement executed by the Parties shall not be considered confidential and may be disclosed.

22.2.4.2 Evidence of anything said, or of any admission made, in the course of the Issue Resolution Ladder process or mediation is without prejudice and is not admissible in evidence for any purpose, including impeachment, and disclosure of such evidence shall not be compelled before an arbitrator or in any civil action.

22.2.4.3 No document or copy thereof prepared for the purpose of, in the course of, or pursuant to the Issue Resolution Ladder process or mediation shall be

admissible in evidence, and disclosure of such document or copy shall not be compelled, in any arbitration or civil action.

22.2.4.4 No stenographic or other record of the Issue Resolution Ladder process or mediation session(s) shall be made except to memorialize a settlement record.

22.2.4.5 All conduct, statements, promises, offers, views and opinions, oral or written, made during the Issue Resolution Ladder process or mediation by any party or agent are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be subject to discovery and shall not be admissible for any purpose, including impeachment, before an arbitrator or in any civil action involving the Parties.

22.2.4.6 The limitations of this Section 22.2.4 do not affect the discovery or admissibility of facts, opinions, statements, documents or other evidence existing or developed independent of the Issue Resolution Ladder process or mediation, and the discoverability or admissibility of such evidence is not changed or affected because of its use in the Issue Resolution Ladder process or mediation.

22.2.4.7 The Parties may waive any of the confidentiality provisions of this Section 22.2.4 through a written waiver or consent to disclosure.

22.2.5 Binding Arbitration

Only upon completion of the requirements of Section 22.2.1 and Section 22.2.2, either Party shall have the right to initiate binding arbitration proceedings only for an unresolved Claim or Dispute, or related or similar unresolved Claims or Disputes that arise fairly contemporaneously out of the same set of acts, events or circumstances, that has or have (a) a cumulative amount in controversy not exceeding $2,500,000, and (b) a cumulative Completion Deadline adjustment in controversy not exceeding 45 days. To clarify, all unresolved Claims or Disputes that arise fairly contemporaneously out of the same set of acts, events or circumstances shall be aggregated to determine whether the foregoing arbitration caps are met; and the arbitrator shall have no power whatsoever to make an aggregate arbitration award for all such unresolved Claims or Disputes in excess of such caps. Any such arbitration proceeding shall be *de novo*.

22.2.5.1 Arbitration Process

(a) The Party electing to bring its unresolved Dispute to arbitration shall serve upon the other Party a written request for mandatory and binding arbitration.

(b) The Parties shall then seek to mutually agree upon the arbitration process, and any other matter pertinent to arbitration not otherwise addressed in this Section 22.2.3.

(c) If the Parties cannot agree upon an arbitration process within 30 days, then the Party seeking arbitration shall be entitled to compel arbitration by serving a demand for arbitration, in accordance with American Arbitration Association ("AAA") rules, on the other party and the AAA. If arbitration is administered through the AAA, then the Expedited Procedures of the Construction Industry Arbitration Rules of the AAA shall be used for design and construction Disputes and the Commercial Dispute Resolution Procedures of the AAA shall be used for all other Disputes. The arbitration shall be conducted by a single arbitrator mutually agreeable to the Parties and selected from the complex construction litigation panel developed by AAA in the case of design and construction Disputes, or from a list developed by the AAA in all other cases. If the Parties fail to appoint a mutually agreeable arbitrator within 30 days, the President of the AAA shall appoint the arbitrator from the complex construction litigation panel in the case of design and construction Disputes, or from such list developed by the AAA in all other Disputes. The scope and extent of discovery shall be as determined by the arbitrator in accordance with AAA rules set forth above.

(d) Notwithstanding Section 22.2.3.1(c), for insurance Disputes, the arbitrator(s) shall be experienced in the industry of insurance underwriting.

(e) The arbitrator shall render his or her decision by applying the pertinent provision(s) of the Contract Documents and applicable Law to the relevant facts and circumstances of the case. The arbitrator shall set forth the decision and reasoning for the decision in writing.

(f) If any Party acts to unreasonably delay or prevent arbitration, the other Party shall be entitled to enforce the arbitration provisions of this Agreement by petition to the Superior Court located in Maricopa County, Arizona.

(g) The arbitrator shall not have the power to award punitive damages, rescind this Agreement, reform the Contract Documents, or void any limitations on liability contained in this Agreement.

(h) The venue of any arbitration hearing shall be in Phoenix, Arizona.

(i) Developer and ADOT will share equally the expenses of the arbitrator. Each Party shall bear its own costs of preparing for and participating in the arbitration.

22.2.5.2 Arbitration Outcome

The decision of the arbitrator shall be binding, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court located in Maricopa County, Arizona.

22.2.6 State Court Litigation; Jurisdiction and Venue

22.2.6.1 Only upon completion of the requirements of Section 22.2.1 and Section 22.2.2, and only if the unresolved Dispute is not eligible for arbitration, either Party shall have the right to initiate litigation proceedings for the unresolved Dispute. Any such litigation proceeding shall be *de novo*.

22.2.6.2 All litigation between the parties concerning any Disputes shall be filed, heard and decided in the Superior Court located in Maricopa County, Arizona, which shall have exclusive jurisdiction and venue.

22.2.7 Continuation of Work and Payments During Dispute

22.2.7.1 Failure by ADOT to pay any amount in Dispute shall not alleviate, diminish or modify in any respect Developer's obligation to perform under the Contract Documents, including Developer's obligation to achieve the Completion Deadlines and perform all Work in accordance with the Contract Documents. At all times during the Dispute Resolution Procedures, Developer and all Subcontractors shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay or slow down, in accordance with the Contract Documents, except to the extent enjoined by order of a court or otherwise specified or directed by ADOT. Developer acknowledges that it shall be solely responsible for the results of any delaying actions or inactions that Developer or any Developer-Related Entity takes during the pendency of resolution of a Dispute relating to the Work even if Developer's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

22.2.7.2 During the course of any and all Dispute Resolution Procedures, ADOT will continue to pay to Developer when due all undisputed amounts owing under this Agreement.

22.2.7.3 Any Claim or Dispute regarding such payment shall be resolved pursuant to this Article 22. Developer shall proceed as directed by ADOT pending resolution of the Claim or Dispute. Upon resolution of any such Claim or Dispute, each Party shall promptly pay to the other any amount owing.

22.2.8 Attorney Fees

Except as expressly provided otherwise in this Agreement, each Party shall bear its own attorneys' fees and expenses incurred in connection with any Dispute Resolution Procedures, regardless of the outcome. Each Party hereby waives Arizona Revised Statutes Section 12-341.01 and all benefits thereof. Each Party acknowledges that it understands the provisions and effect of such statute, has consulted with legal counsel regarding such waiver, and willingly grants such waiver.

ARTICLE 23.
RECORDS AND AUDITS; OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

23.1 Detailed Pricing Documents

23.1.1 Contents of DPDs

The "Detailed Pricing Documents," or "DPDs," shall consist of all cost, unit pricing, price quote and other documentary information used in preparation of the Price. The DPDs shall, inter alia, clearly detail how each cost or price included in the Proposal has been determined and shall show cost or price elements in sufficient detail as is adequate to enable ADOT to understand how Developer calculated the Price. The DPDs provided in connection with quotations and Supplemental Agreements shall, *inter alia*, clearly detail how the total cost or price and individual components of that cost or price were determined. The DPDs shall itemize the estimated costs or price of performing the Work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, insurance, bonds, letters of credit, indirect costs, contingencies, mark-up, overhead and profit. The DPDs shall itemize the estimated annual costs of insurance premiums for each coverage required to be provided by Developer under Section 11. The DPDs shall include all assumptions made in determining the scope of the Work and calculating the Price, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and quotes from Subcontractors used by Developer to arrive at the Price, and any adjustments to the Price under this Agreement.

23.1.2 Manner and Duration for Retaining Detailed Pricing Documents

23.1.2.1 Prior to execution of this Agreement, Developer delivered to ADOT one copy of all the DPDs, together with a detailed index and catalogue of the DPDs. Upon execution of this Agreement, the DPDs and index and catalogue shall be held in locked fireproof cabinet(s) supplied by Developer and located in ADOT's project office with the key held only by Developer. Further, concurrently with execution of each Subcontract or with approval of each Supplemental Agreement or amendment to any Contract Document, the Parties shall add to the cabinet one copy of all documentary information respecting the pricing by the Subcontractor or used in preparation of the Supplemental Agreement or amendment, and shall update the index and catalogue.

23.1.2.2 The DPDs and index and catalogue pertaining to the D&C Work, including Maintenance During Construction, shall be held in such cabinet or otherwise maintained until all of the following have occurred:

(a) 180 days have elapsed from the earlier of Project Final Acceptance or termination of this Agreement;

(b) All Warranty Terms have expired pursuant to this Agreement;

(c) All Claims or Disputes regarding the D&C Work have been settled; and

(d) The Final D&C Payment has been made and accepted.

23.1.2.3 The DPDs and index and catalogue pertaining to the Maintenance Services shall be held in such cabinet or otherwise maintained until all of the following have occurred:

(a) 60 days have elapsed from the expiration or earlier termination of this Agreement;

(b) All Claims or Disputes regarding the Maintenance Services have been settled; and

(c) All amounts owing from ADOT to Developer and from Developer to ADOT under this Agreement has been made and accepted.

23.1.3 Availability for Review

The DPDs shall be available during business hours for joint review by Developer and ADOT, or by Developer, ADOT and any dispute resolver, in accordance with Article 22, in connection with approval of the Project Schedule, negotiation of Supplemental Agreements, and resolution of Claims or Disputes under the Contract Documents, and also as described in Section 23.1.7. ADOT will be entitled to review all or any part of the DPDs in order to satisfy itself regarding the applicability of the individual documents to the matter at issue.

23.1.4 Proprietary Information

The DPDs are, and shall always remain, the property of Developer and shall be considered to be in Developer's possession, subject to ADOT's right to review the DPDs as provided in this Section 23.1. Developer will have and control the keys to the filing cabinet containing the DPDs. ADOT acknowledges that Developer may consider that the DPDs constitute trade secrets or proprietary information. ADOT will have the right to copy the DPDs for the purposes set forth in this Section 23.1, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to DPDs that constitute trade secrets or proprietary information, which confidentiality agreement shall explicitly acknowledge that it is subject to applicable Law (including the Arizona Public Records Act).

23.1.5 Representation

Developer represents and warrants that the DPDs constitute all documentary information used in the preparation of its Price. Developer agrees that no other price proposal preparation information will be considered in resolving Disputes or Claims. Developer further agrees that the DPDs are not part of the Contract Documents and that nothing in the DPDs shall change or modify any Contract Document.

23.1.6 Form of DPDs

Except as otherwise provided in the RFP, Developer shall submit the DPDs in such format as is used by Developer in connection with its Proposal. Developer represents and warrants that the DPDs provided with the Proposal were personally examined by an authorized officer of Developer prior to delivery, and that the DPDs meet the requirements of Section 23.1.4. Developer further represents and warrants that all DPDs provided were or will be personally examined prior to delivery by an authorized officer of Developer, and that they shall meet the requirements of Section 23.1.4.

23.1.7 Review by ADOT to Confirm Completeness

ADOT may at any time conduct a review of the DPDs to determine whether they are complete. If ADOT determines that any data is missing from a DPD, Developer shall provide such data within three Business Days after delivery of ADOT's request for such data. At that time of its submission to ADOT, such data will be date stamped, labeled to identify it as supplementary DPD information and added to the DPDs. Developer shall have no right to add documents to the DPDs except upon ADOT's request. The DPDs associated with any Supplemental Agreement or Price adjustment under this Agreement shall be reviewed, organized and indexed in the same manner as the original DPDs.

23.2 Financial Reporting Requirements

23.2.1 Developer shall deliver to ADOT financial and narrative reports, statements, certifications, budgets and information as and when required under the Contract Documents.

23.2.2 Developer shall furnish, or cause to be furnished, to ADOT such financial information and statements as ADOT may reasonably request from time to time for any purpose related to the Project, the Work or the Contract Documents. In addition, Developer shall deliver to ADOT the following financial statements for each Guarantor, at the times specified below:

(a) Within 60 days after the end of each fiscal quarter, duplicate copies of the balance sheet and a consolidated statement of earnings of the Guarantor and its consolidated subsidiaries for such quarter and for the period from the beginning of the then current fiscal year to the end of such quarter, setting forth in comparative

form the figures for the corresponding periods during the previous fiscal year, all in reasonable detail and certified by the chief financial officer of the Guarantor as complete and correct, subject to changes resulting from year-end adjustments;

(b) Within 120 days after the end of each fiscal year, duplicate copies of the financial statements (which shall include a balance sheet and a consolidated statement of financial condition of the Guarantor and its consolidated subsidiaries at the end of such year, and statements of earnings, changes in financial position of the Guarantor and its consolidated subsidiaries for such year, and all related notes to the financial statements, setting forth in each case in comparative form the figures for the previous fiscal year), all in reasonable detail and accompanied by an opinion thereon of an independent public accountant of recognized national standing selected by the Guarantor, which opinion shall state that such financial statements have been prepared in accordance with GAAP consistently applied, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances. If financial statements are prepared in accordance with principles other than GAAP, Developer shall concurrently deliver a letter from the certified public accountant of the applicable entity discussing the areas of the financial statements that would be affected by a conversion to GAAP; and

(c) Upon request of ADOT for particular fiscal quarters, copies of all other financial statements and information reported by the Guarantor to its shareholders generally and of all reports filed by the Guarantor with the Securities Exchange Commission under Sections 13, 14 or 15(d) of the Exchange Act, to be provided to ADOT as soon as practicable after furnishing such information to the Guarantor's shareholders or filing such reports with the Securities and Exchange Commission, as applicable.

23.2.3 Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as determined necessary or desirable by ADOT in connection with any Project financing. Without limiting the generality of the foregoing, Developer shall provide such information deemed necessary or desirable by ADOT for inclusion in ADOT's securities disclosure documents and in order to comply with Securities and Exchange Commission Rule 15c2-12 regarding certain periodic information and notice of material events. Developer shall provide customary representations and warranties to ADOT and the capital markets as to the correctness, completeness and accuracy of any information furnished.

23.2.4 Developer shall cooperate and provide, and shall cause the Subcontractors to cooperate and provide, such information as is necessary or requested by ADOT to assist or facilitate the submission by ADOT of any documentation, reports or analysis required by the State, FHWA or any other Governmental Entity with jurisdiction over the Project.

23.2.5 All reports and information delivered by Developer under Sections 23.2.3 and 23.2.4 shall also be delivered electronically, to the extent electronic files exist, and be suitable for posting on the web.

23.3 Subcontract Pricing Documents

23.3.1 Developer shall require each Key Subcontractor to submit to Developer a copy of all documentary information used in determining its Subcontract price (including the price for Subcontract work included in any Supplemental Agreement), immediately prior to executing the Subcontract and each Subcontract change order. Such documentary information shall be held in the same manner as the DPDs and shall be accessible by ADOT, Developer and Dispute resolvers, on terms substantially similar to those contained herein.

23.3.2 Each Key Subcontract shall include (a) a representation and warranty from the Subcontractor, for the benefit of Developer and ADOT, stating that its submission in the DPDs constitutes all the documentary information used in establishing its Subcontract price, and (b) the Subcontractor's covenant to provide a sworn certification in favor of Developer and ADOT together with each supplemental set of DPDs, stating that the information contained therein is complete, accurate and current.

23.3.3 Each Subcontract that is not subject to the foregoing requirements shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Developer or ADOT in connection with any claim made by such Subcontractor.

23.4 Maintenance and Inspection of Records

23.4.1 Except for DPDs (which shall be maintained as set forth in Section 23.1), Developer shall keep and maintain in a secure, fire proof location in Maricopa County, Arizona, or in another location ADOT approves in its sole discretion, accurate and complete Books and Records, including copies of all original documents delivered to ADOT. Developer shall keep and maintain such Books and Records in accordance with applicable provisions of the Contract Documents, and of the Project Management Plan, and in accordance with Good Industry Practice. Developer shall notify ADOT where the Books and Records are kept.

23.4.2 Developer shall make all its Books and Records available for inspection by ADOT and ADOT's Representatives at Developer's principal offices in Arizona, or at ADOT's project office for DPDs, at all times during normal business hours, without charge. Developer shall provide copies thereof to ADOT, or make available for review to ADOT, as and when expressly required by the Contract Documents, or, for those not expressly required, upon request and at no expense to ADOT. ADOT may conduct any such inspection upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud. The

right of inspection includes the right to make extracts and take notes. The provisions of this Section 23.4.2 are subject to the following:

(a) They shall remain in full force and effect regardless of whether a Claim or Dispute exists or whether either Party or both of the Parties have invoked the Dispute Resolution Procedures; and

(b) Developer reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery or introduction into evidence in legal actions, including information protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to ADOT.

23.4.3 Developer shall retain Books and Records for a minimum of five years after the Final Acceptance date or after the date generated, whichever is later; provided, however, that if the Contract Documents specify any different time period for retention of particular records, such time period shall control. Any provision of the Contract Documents establishing a stated period for retention of Books and Records means the period of time, as stated, after the date the Book or Record is generated, unless specifically provided otherwise.

23.4.4 Notwithstanding the foregoing, Developer shall retain and make available all Books and Records which relate to Claims and Disputes being processed or the subject of the Dispute Resolution Procedures for a period of not less than one year after the date the Dispute is finally resolved (or for any longer period required under any other applicable provision of the Contract Documents). Throughout the course of any Work that is in Dispute and the subject of the Dispute Resolution Procedures, Developer shall keep separate and complete Books and Records that provide a clear distinction between the incurred direct costs of disputed Work and that of undisputed Work, and shall permit ADOT access to these Books and Records on an Open Book Basis.

23.4.5 Refer to Attachment 1 to Exhibit 4 for federal requirements applicable to maintenance and inspection of Books and Records, with which Developer shall comply.

23.5 Audits

23.5.1 ADOT will have such rights to review and audit Developer, its Subcontractors and their respective Books and Records as and when ADOT deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law. Without limiting the foregoing, ADOT will have the right to audit Developer's Project Management Plan and compliance therewith, including the right to inspect Work or activities and to verify the accuracy and adequacy of the Project Management Plan and its component parts, plans and other documentation. ADOT may conduct any such audit of Books and Records upon 48 hours' prior notice, or unannounced and without prior notice where there is good faith suspicion of fraud.

23.5.2 All Claims or Disputes filed against ADOT will be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of ADOT or by an auditor under contract with ADOT. No notice is required before commencing any audit (i) within 60 days after Final Acceptance or (ii) within 60 days after termination of this Agreement. Thereafter, ADOT will provide 20 days' notice to Developer, any Subcontractors or their respective agents before commencing an audit. Developer, Subcontractors or their agents shall provide and cause Developer-Related Entities to provide adequate facilities, acceptable to ADOT, for the audit during normal business hours. Developer shall cooperate and cause Developer-Related Entities to cooperate with the auditors. At a minimum, the auditors shall have available to them the following documents:

(a) Daily time sheets and supervisor's daily reports;

(b) Union agreements;

(c) Insurance, welfare, and benefits records;

(d) Payroll registers;

(e) Earnings records;

(f) Payroll tax forms;

(g) Material invoices and requisitions;

(h) Material cost distribution work sheet;

(i) Equipment records (list of company equipment, rates, etc.);

(j) Subcontractors' (including Suppliers) invoices;

(k) Subcontractors' and agents' payment certificates;

(l) Canceled checks (payroll, Subcontractors and Suppliers);

(m) Job cost report;

(n) Job payroll ledger;

(o) General ledger;

(p) Cash disbursements journal;

(q) Project Schedules;

(r) All documents that relate to each and every Claim or Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and

(s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

23.5.3 Failure of any Developer-Related Entity to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute, to permit the auditor access to the Books and Records of any Developer-Related Entity, or to otherwise fully comply with the provisions of this Section 23.5 shall constitute a waiver of the Claim or Dispute and shall bar any recovery or relief thereunder.

23.5.4 Any rights of the FHWA to review and audit Developer, its Subcontractors and their respective Books and Records are set forth in Exhibit 4.

23.5.5 Developer represents and warrants the completeness and accuracy of all information it or its agents provides in connection with ADOT audits, and shall cause all Subcontractors other than ADOT and Governmental Entities acting as Subcontractors to warrant the completeness and accuracy of all information such Subcontractors or their agents provides in connection with ADOT audits.

23.5.6 ADOT's rights of audit include the right to observe the business operations of Developer and its Subcontractors to confirm the accuracy of Books and Records.

23.5.7 Developer's internal and third party quality and compliance auditing responsibilities shall be set forth in the Project Management Plan, consistent with the audit requirements referred to in Sections GP 110.04.1, GP 110.07.2, GP 110.08 and GP 110.09 of the Technical Provisions.

23.5.8 Nothing in the Contract Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected State officials, including the independent rights of the State Auditor General, in carrying out his or her legal authority. Developer understands and acknowledges that:

(a) The State Auditor General may conduct an audit or investigation of any Person receiving funds from the State directly under this Agreement or indirectly through a Subcontract;

(b) Acceptance of funds directly under this Agreement or indirectly through a Subcontract acts as acceptance of the authority of the State Auditor General, under the direction of the Joint Legislative Audit Committee, to conduct an audit or investigation in connection with those funds; and

(c) A Person that is the subject of an audit or investigation must provide the State Auditor General with access to any information the State Auditor General considers relevant to the investigation or audit.

23.6 Arizona Public Records Law

23.6.1 Developer acknowledges and agrees that all records, documents, drawings, plans, specifications and other materials in ADOT's possession, including materials submitted by Developer, are subject to the provisions of the Arizona Public Records Law. To the extent that this Agreement involves the exchange or creation of "public information," as such term is defined by the Arizona Public Records Act, that ADOT collects, assembles, or maintains or has a right of access to, and is not otherwise excepted from disclosure under the Arizona Public Records Act, Developer is required, at no additional charge to the State, to make any such information available in .pdf format, which is accessible by the public.

23.6.2 If Developer believes information or materials submitted to ADOT constitute trade secrets, proprietary information or other information that is excepted from disclosure under the Arizona Public Records Act, Developer shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate. Any specific proprietary information, trade secrets or confidential commercial and financial information shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim.

23.6.3 If ADOT receives a request for public disclosure of materials marked "CONFIDENTIAL," ADOT will use reasonable efforts to notify Developer of the request and give Developer an opportunity to assert, in writing and at its sole expense, a claimed exception under the Arizona Public Records Act or other applicable Law within the time period specified in the notice issued by ADOT and allowed under the Arizona Public Records Act. Under no circumstances, however, will ADOT be responsible or liable to Developer or any other Person for the disclosure of any such labeled materials, whether the disclosure is required by Law, or court order, or occurs through inadvertence, mistake or negligence on the part of ADOT or its officers, employees, contractors or consultants.

23.6.4 In the event of any proceeding or litigation concerning the disclosure of any material submitted by Developer to ADOT, ADOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that ADOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of ADOT's voluntary intervention or participation in litigation, Developer shall pay and reimburse ADOT within 30 days after receipt of demand and reasonable supporting documentation for all costs and fees,

including attorneys' fees and costs, ADOT incurs in connection with any litigation, proceeding or request for disclosure.

23.6.5 Nothing contained in this Section 23.6 shall modify or amend requirements and obligations imposed on ADOT by the Arizona Public Records Act or other applicable Law, and the provisions of the Arizona Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law. Developer is advised to contact legal counsel concerning such Law and its application to Developer.

23.7 Intellectual Property

23.7.1 Proprietary Intellectual Property

23.7.1.1 Developer acknowledges and agrees that all Proprietary Intellectual Property, in any medium, is specially ordered or commissioned by ADOT, including works made for hire in accordance with Section 101 of the Copyright Act of the United States. Developer hereby assigns to ADOT all rights, title and interest in and to the Proprietary Intellectual Property including any and all software, work product and designs.

23.7.1.2 As a condition of Final Acceptance, Developer shall deliver to ADOT all work product, documents, results and related materials created in the development of Proprietary Intellectual Property during the D&C Period as well as an indexed collection of such materials. Without limiting the generality of the foregoing, delivery of such materials shall include Design Documents and Construction Documents. Developer may retain a copy of such work product, documents, results and related materials.

23.7.1.3 Developer shall deliver to ADOT all work product, documents, results and related materials created in the development of Proprietary Intellectual Property during the Maintenance Period promptly after creation, as well as an indexed collection of such materials. Developer may retain a copy of such work product, documents, results and related materials.

23.7.1.4 ADOT hereby grants to Developer a non-exclusive, irrevocable, perpetual, fully paid up license to use, exploit, manufacture, distribute, copy, adapt and display the Proprietary Intellectual Property, including in connection with (a) incorporation into the Project, (b) the Work for this Project, (c) all other services performed by or on behalf of ADOT to complete the Work, or comply with Developer's obligations under this Agreement, and (d) other projects and work of Developer. No Intellectual Property rights of ADOT are being licensed to Developer except as otherwise expressly provided in this Section. Developer's use or exploitation of the licensed Proprietary Intellectual Property shall be at Developer's sole discretion and risk, and in no way shall be deemed to confer liability or indemnity obligation on ADOT. ADOT shall not be liable to Developer or any other person for any claim, loss, damage, cost, judgment, fee, penalty, charge or expense (including attorneys' fees and costs) to

the extent arising out of or resulting from use or exploitation of the licensed Proprietary Intellectual Property by Developer, any transferee of the license or any of their respective board members, officers, agents or employees. ADOT makes no warranty or representation, express or implied, regarding the licensed Proprietary Intellectual Property or its suitability for any intended purpose.

23.7.2 Developer Intellectual Property

23.7.2.1 Subject to Section 23.7.5, Developer hereby grants to ADOT a non-exclusive, irrevocable, perpetual, fully paid-up right and license to use, exploit, manufacture, distribute, copy, adapt and display the Developer Intellectual Property, including any enhancements thereof.

23.7.2.2 Developer shall identify and disclose all Developer Intellectual Property contained or included in the Project Intellectual Property, including (when reasonably available) full and specific information detailing Intellectual Property claimed, date of authorship, creation or invention, date of application(s), application number(s) and registering entit(ies), date of registration(s), registration number(s) and registering entit(ies), if any, and owner including person or entity name and address.

23.7.2.3 Developer shall deliver to ADOT all Developer Intellectual Property contained or included in the Project Intellectual Property promptly upon request.

23.7.3 Third Party Intellectual Property

23.7.3.1 Whenever using any design, device, material, software or process protectable or protected as Third Party Intellectual Property, Developer shall obtain the right and license for such use. Without limiting the foregoing, and subject to Section 23.7.5, Developer shall secure nonexclusive, transferable, irrevocable, unconditional, royalty-free licenses in the name of ADOT to use, reproduce, modify, adapt and disclose Third Party Intellectual Property and shall pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property. All Third Party Intellectual Property licenses are subject to ADOT's review and approval. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to ADOT using commercially reasonable efforts.

23.7.3.2 Developer shall identify and disclose all Third Party Intellectual Property contained or included in the Project Intellectual Property including (when reasonably available) full and specific information detailing Intellectual Property claimed, date of authorship, creation or invention, date of application(s), application number(s) and registering entit(ies), date of registration(s), registration number(s) and registering entit(ies), if any, and owner including person or entity name and address.

23.7.4 Inclusion in Price

Developer acknowledges and agrees that the Price includes all royalties and costs arising from Project Intellectual Property or in any way involved in the Work.

23.7.5 Licensing Limitations

Licenses granted under Sections 23.7.2 and 23.7.3 shall be limited as follows:

23.7.5.1 The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of ADOT generally or with respect to the Project, and any Governmental Entity having power and authority over any city or county road where the Proprietary Intellectual Property of Developer is installed, deployed or operated.

23.7.5.2 The right to sublicense is limited to State, regional and local Governmental Entities that own or operate a State Highway or other road (tolled or not tolled) where the Proprietary Intellectual Property of Developer is installed, deployed or operated, and to the concessionaires, developers, contractors, subcontractors, employees, attorneys, consultants and agents that are retained by or on behalf of ADOT or any such State, regional or local Governmental Entity in connection with the Project, another State Highway, or other road (tolled or untolled) where the Proprietary Intellectual Property of Developer is installed, deployed or operated.

23.7.5.3 ADOT will:

(a) Not disclose any Developer Intellectual Property or Third Party Intellectual Property to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of ADOT relating thereto;

(b) Enter into a commercially reasonable confidentiality agreement if requested by Developer with respect to the licensed Developer Intellectual Property or Third Party Intellectual Property; and

(c) Include, or where applicable require such State or regional Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Developer Intellectual Property or Third Party Intellectual Property and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

23.7.6 Limitation on ADOT Liability

Notwithstanding any contrary provision of this Agreement, in no event shall ADOT or any of its directors, officers, employees, consultants or agents be liable to Developer, any Affiliate or any Subcontractor for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 23.7.5 if such breach is not the result of gross negligence or intentional misconduct. Developer hereby irrevocably waives all claims to any such damages.

ARTICLE 24.
EARLY TERMINATION OF AGREEMENT; TRANSITION AT END OF TERM

24.1 Termination for Convenience

24.1.1 ADOT may, at any time, terminate this Agreement and the performance of the Work by Developer, in whole or in part, if ADOT determines, in its sole discretion, that a termination is in ADOT's best interest ("Termination for Convenience"). ADOT will terminate by delivering to Developer a Notice of Termination for Convenience or Notice of Partial Termination for Convenience specifying the extent of termination and its effective date. Termination (or partial termination) of this Agreement under this Section 24 shall not relieve Developer or any Surety or Guarantor of its obligation for any claims arising prior to termination.

24.1.2 If ADOT terminates this Agreement on grounds or in circumstances beyond ADOT's termination rights specifically set forth in this Agreement, such termination shall be deemed a Termination for Convenience for the purpose of determining the amount of termination compensation due (but not for any other purpose).

24.2 Termination for Convenience Compensation Amount

24.2.1 If ADOT exercises its right of Termination for Convenience, it shall owe termination compensation to Developer in an amount equal to the sum of the following:

(a) Payments due but not yet paid in accordance with Article 13 for all D&C Work and Maintenance Services performed up to the date of termination, including work in progress since the last Draw Request or Maintenance Draw Request, as applicable, but without regard to the Maximum Allowable Cumulative Draw; plus

(b) Developer's actual reasonable out-of-pocket cost, without profit, and including equipment costs only to the extent permitted by Section 1.2.3 of Exhibit 14 for demobilization, and work done to secure the applicable portion of the Project for termination, including reasonable overhead; plus

(c) Solely with respect to the Maintenance Services, an amount equal to 6% of the sum of the unescalated Annual Routine Maintenance Payments for the next five years after the year in which such termination occurs; if termination occurs prior to the start of the Maintenance Period, then such amount shall equal 6% of the sum of the unescalated Annual Routine Maintenance Payments for the first five years of the Maintenance Period. If the termination hereunder is a Partial Termination for Convenience and includes a partial loss of scope of Maintenance Services, then such equitable adjustment shall include compensation to Developer in an amount equal to 6% of the sum of the unescalated Annual Routine Maintenance Payments allocable to the lost scope of Maintenance Services for the next five years after the year in which such partial termination occurs; if Partial Termination for Convenience occurs prior to

the start of the Maintenance Period, then such amount shall equal 6% of the sum of the unescalated Annual Routine Maintenance Payments allocable to the lost scope of Maintenance Services for the first five years of the Maintenance Period; plus

(d) The cost of settling and paying claims arising out of the termination of Work under Subcontracts and Utility Agreements, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination for Convenience or Notice of Partial Termination for Convenience of Work under this Agreement, which amounts shall be included in the cost on account of which payment is made under clause (c) above; plus

(e) The reasonable out-of-pocket cost incurred (including reasonable overhead) to preserve and protect property; plus

(f) The reasonable out-of-pocket cost incurred to prepare and carry out the transition plan under Section 24.8.1; plus

(g) Any other reasonable out-of-pocket cost (including overhead) incurred incidental to termination of Work under this Agreement, including the reasonable cost to Developer of handling material returned to the Supplier, delivered to ADOT or otherwise disposed of as directed by ADOT, and including a reasonable allowance for Developer's administrative costs in determining the amount payable due to termination of this Agreement, but excluding any costs and expenses incurred in connection with any Disputes; minus

(h) The cost of property, materials, supplies, equipment and other things to be retained by Developer, the agreed price for, or proceeds from, the sale of such items not otherwise delivered to ADOT, and other appropriate deductions allowed under this Agreement, including those deductions that would be permitted in connection with the Final D&C Payment and each Monthly Disbursement of the Maintenance Price; minus

(i) All unliquidated advance or other payments made to or on behalf of Developer applicable to the terminated portion of the Work or Agreement; minus

(j) The cost of repairing any Nonconforming Work (or, in ADOT's sole discretion, the amount of the reimbursement to which ADOT is entitled under Section 6.7); minus

(k) The amount of any other claim which ADOT may have against any Developer-Related Entity in connection with this Agreement; minus

(l) Any other amounts due or payable by Developer to ADOT pursuant to this Agreement; minus

(m) Amounts that ADOT reasonably deems advisable to retain to cover any existing or threatened claims and stop notices relating to the Project, including claims by Utility Companies, or to cover Warranty work, provided that ADOT will promptly pay to Developer any such retained amounts remaining after the need for the retention ends.

24.2.2 Developer acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in Section 24.2.1) plus its settlement costs, and that, except to the extent provided in Section 24.2.1(a) and (c), items such as lost or anticipated profits, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of this Agreement. The total amount to be paid to Developer for a termination with respect to the Maintenance Services, exclusive of the payment described in Section 24.2.1(d) and the costs described in Sections 24.2.1(d), (e), (f) and (g), may not exceed the sum of the total Annual Routine Maintenance Payment for the year in which the termination occurs less: (a) the amount of said payment previously made; and (b) the portions of the Maintenance Price related to Maintenance Services not terminated, if any. Furthermore, in the event that any refund is payable with respect to insurance or bond premiums, letter of credit fees, deposits or other items which were previously passed through to ADOT by Developer, such refund shall be paid directly to ADOT or otherwise credited to ADOT. Except for normal spoilage, and except to the extent that ADOT will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to Developer under Section 24.2.1, the fair value, as determined by ADOT, of equipment, machinery, materials, supplies and property which is destroyed, lost, stolen, or damaged so as to become undeliverable to ADOT, or sold pursuant to Section 24.8.2.11. Information contained in the DPDs may be a factor in determining the value of the Work terminated.

24.2.3 Upon determination of the amount of the termination payment, the Parties shall amend this Agreement to reflect the agreed termination payment, ADOT will pay Developer the amount due, and, in the case of a Partial Termination for Convenience, the Price shall be reduced to reflect the reduced scope of Work using procedures comparable to those for ADOT reductive changes under Section 15.1.6.

24.2.4 If a termination hereunder is partial, Developer may file a proposal with ADOT for an equitable adjustment of the Price for the continued portion of this Agreement. Any proposal by Developer for an equitable adjustment under this Section 24.2.3 shall be requested within 90 days from the effective date of the partial termination unless extended in writing by ADOT. The amount of any such adjustment as may be agreed upon shall be set forth in a Supplemental Agreement.

24.3 Payment

24.3.1 ADOT will pay amounts owing to Developer, under this Article 24, as follows:

(a) Undisputed amounts, by not later than the next Contractor Cycle Key Date occurring after ADOT approves said amounts; and

(b) Disputed amounts, by not later than the next Contractor Cycle Key Date occurring after the corresponding Dispute is resolved.

24.3.2 ADOT may, but is not obligated to, make advance partial payments to Developer, for costs Developer incurs in connection with a termination under this Article 24, before Developer's termination compensation is finally determined. If the total of such advance partial payments exceeds the amount of the termination compensation finally determined to be owing to Developer under this Article 24, such excess shall be payable by Developer to ADOT upon demand.

24.4 Subcontracts

24.4.1 Provisions shall be included in each Subcontract (at all tiers) regarding terminations for convenience, allowing such termination rights and obligations to be passed through to the Subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the Subcontractor upon a termination, consistent with this Article 24.

24.4.2 Each Subcontract shall provide that, in the event of a termination for convenience by ADOT, the Subcontractor will not be entitled to any anticipatory or unearned profit on Work terminated or partly terminated, except as provided in Section 24.2.1(c), or to any payment which constitutes consequential damages on account of the termination or partial termination.

24.5 Termination Based on Delayed Issuance of NTPs

24.5.1 If NTP 1 has not been issued within 120 days after the Effective Date and this delay is not caused in whole or in part by an act, omission, negligence, intentional misconduct, or breach of applicable Law, contract or Governmental Approval of any Developer-Related Entity, Developer, as its sole remedy, shall have the right to terminate this Agreement, which right shall be exercised by delivery of notice of termination to ADOT. In such event, ADOT's sole liability to Developer is to pay Developer (a) the same payment for work product as provided to unsuccessful Proposers pursuant to Section 6.3 of the ITP, provided, however, that all other conditions for such payment are met, plus (b) reasonable out-of-pocket costs (including overhead) incurred in performing any of the activities described or required in Sections 5.11, 5.12 and 6.1 of the ITP.

24.5.2 If NTP 2 has not been issued within 120 days after satisfaction of all conditions precedent to issuance of NTP 2, Developer, as its sole remedy, may conditionally elect to terminate this Agreement by providing ADOT with notice of such conditional election. If Developer delivers a notice of its conditional election to terminate, ADOT will have the choice of either accepting such notice of termination or continuing this Agreement in effect by delivering to Developer notice of ADOT's choice

not later than 30 days after receipt of Developer's notice. If ADOT does not deliver notice of its choice within such 30-day period, then it will be deemed to have accepted Developer's election to terminate the Agreement. In such event, the termination shall be deemed a termination for convenience and handled in accordance with this Section 24. If ADOT delivers timely notice choosing to continue this Agreement in effect, then the Price adjustment provisions described in Section 14.4.13 shall be extended and continue in effect for the duration of the delay in issuance of NTP 2, or until earlier termination of this Agreement.

24.6 Termination by Court Ruling

24.6.1 This Agreement and the other Contract Documents are subject to Termination by Court Ruling.

24.6.2 Termination by Court Ruling becomes effective, and automatically terminates this Agreement, upon issuance of the final, non-appealable court order by a court of competent jurisdiction; provided, however, that where Section 25.15 applies, Termination by Court Ruling becomes effective only after the Parties determine they are unable to negotiate revisions to the Contract Documents to effect their original intent.

24.6.3 If both Parties agree in writing, they may elect to partially terminate this Agreement due to such court order and to continue the remainder of this Agreement in effect, to the extent it is possible to do so without violating the court order.

24.6.4 If Termination by Court Ruling occurs, then ADOT will owe termination compensation to Developer equal to that owing upon a Termination for Convenience or Partial Termination for Convenience, as applicable, except the amount set forth in Section 24.2.1(c).

24.7 Termination Based on Statutory Grounds

24.7.1 ADOT may terminate this Agreement, without penalty or further obligation, within three years after the Effective Date, if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement for ADOT is or becomes, at any time during such three-year period, an employee or agent of Developer. See Arizona Revised Statutes, Title 38, Chapter 3, Article 8, and, in particular, Section 38-511.

24.7.2 ADOT may terminate this Agreement, without obligation or penalty, if Developer or any member of the Developer's team violates Arizona Revised Statutes Section 41-2517.C, regarding unlawful offering of employment to a procurement officer or procurement employee.

24.8 Responsibilities after Notice of Termination

24.8.1 Within three days after either Party delivers to the other Party a notice of termination of this Agreement, Developer and ADOT shall meet and confer for the

purpose of developing an interim transition plan for the orderly transition of the terminated Work, demobilization and transfer of the Project and its maintenance to ADOT. The Parties shall use diligent efforts to complete preparation of the interim transition plan within 15 days after the date Developer receives such notice of termination. The Parties shall use diligent efforts to complete a final transition plan within 30 days after such date. The transition plan shall be in form and substance acceptable to ADOT in its good faith discretion and shall include and be consistent with the provisions and procedures set forth in Section 24.8.2.

24.8.2 After either Party delivers to the other Party a notice of termination of this Agreement, and except as otherwise directed by ADOT, Developer shall timely comply with the following obligations independent of, and without regard to, the timing for preparing or implementing the transition plan or for determining, adjusting, settling and paying any amounts due Developer under this Agreement:

24.8.2.1 Stop the Work as specified in the notice;

24.8.2.2 Notify all affected Subcontractors and Suppliers that this Agreement is being terminated and that their Subcontracts (including orders for materials, services or facilities) are not to be further performed unless otherwise authorized in writing by ADOT;

24.8.2.3 Enter into no further Subcontracts (including orders for materials, services or facilities), except as necessary to complete the continued portion of the Work;

24.8.2.4 Unless instructed otherwise by ADOT, terminate all Subcontracts and Utility Agreements to the extent they relate to the Work terminated;

24.8.2.5 To the extent directed by ADOT, execute and deliver to ADOT written assignments, in form and substance acceptable to ADOT, acting reasonably, of all of Developer's right, title, and interest in and to: (a) Subcontracts and Utility Agreements that relate to the terminated Work, provided ADOT assumes in writing all of Developer's obligations thereunder that arise after the effective date of the termination; and (b) all assignable warranties, claims and causes of action held by Developer against Subcontractors and other third parties in connection with the terminated Work, to the extent such Work is adversely affected by any Subcontractor or other third party breach of warranty, contract or other legal obligation; provided, however, that Developer may retain claims against Subcontractors for which ADOT has been fully compensated;

24.8.2.6 Subject to the prior approval of ADOT, settle all outstanding liabilities and claims arising from termination of Subcontracts and Utility Agreements that are required to be terminated hereunder;

24.8.2.7 Within 30 days after notice of termination is delivered, provide ADOT with a true and complete list of all materials, goods, machinery, equipment, parts, supplies and other property in inventory or storage (whether held by

Developer or any person or entity on behalf of or for the account of Developer) for use in or respecting the terminated Work, or on order or previously completed but not yet delivered from Suppliers for use in or respecting such Work. In addition, if requested by ADOT, Developer shall promptly transfer title and deliver to ADOT or ADOT's Authorized Representative, through bills of sale or other documents of title, as directed by ADOT, all such materials, goods, machinery, equipment, parts, supplies and other property, provided ADOT assumes in writing all of Developer's obligations under any contracts relating to the foregoing that arise after the effective date of termination;

24.8.2.8 On or about the effective date of termination, execute and deliver to ADOT the following, together with an executed bill of sale or other written instrument, in form and substance acceptable to ADOT, acting reasonably, assigning and transferring to ADOT all of Developer's right, title and interest in and to the following:

(a) All completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, designs, design documents, Record Drawings, surveys, and other documents and information pertaining to the design or construction of the terminated Work;

(b) All samples, borings, boring logs, geotechnical data and similar data and information relating to the terminated Work;

(c) All books, records, reports, test reports, studies and other documents of a similar nature relating to the terminated Work; and

(d) All other work product used or owned by Developer or any Affiliate relating to the terminated Work;

24.8.2.9 In the case of a partial termination, complete performance in accordance with the Contract Documents of all Work not terminated, except to the extent performance of the remaining Work is rendered impossible due to the scope of the partial termination;

24.8.2.10 For the period of time specified by ADOT in the notice of termination or until ADOT takes over the Work, take all action that may be necessary, or that ADOT may direct, for the safety, protection and preservation of:

(a) The public, including public and private vehicular movement;

(b) The Work; and

(c) Equipment, machinery, materials and property related to the Project that is in the possession of Developer and in which ADOT has or may acquire an interest.

24.8.2.11 As authorized by ADOT in writing, use its best efforts to sell, at reasonable prices, any property of the types referred to in Section 24.8.2.10; provided, however, that Developer: (a) is not required to extend credit to any purchaser; and (b) may acquire the property under the conditions prescribed and at prices approved by ADOT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by ADOT under the Contract Documents or paid in any other manner directed by ADOT;

24.8.2.12 Immediately safely demobilize and secure construction, staging, lay down and storage areas for the Project and Utility Adjustments included in the Work in a manner satisfactory to ADOT, and remove all debris and waste materials, except as otherwise approved by ADOT in writing;

24.8.2.13 Assist ADOT in such manner as ADOT may require prior to and for a reasonable period following the effective date of termination to ensure the orderly transition of the terminated Work and its management to ADOT, and shall, if appropriate and if requested by ADOT, take all steps as may be necessary to enforce the provisions of Subcontracts pertaining to the surrender of the terminated Work;

24.8.2.14 Deliver to ADOT all Books and Records and the then-current Electronic Document Management System, except for information in Books and Records exempt under applicable State Law from discovery or introduction into evidence in legal actions, including information protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to ADOT;

24.8.2.15 Carry out such other directions as ADOT may give for the termination of the Work; and

24.8.2.16 Take such other actions as are necessary or appropriate to mitigate further cost.

24.9 No Consequential Damages

Except as provided in Section 24.2.1(c), under no circumstances shall Developer be entitled to anticipatory or unearned profits or consequential or other damages as a result of any termination under this Article 24. The payment to Developer determined in accordance with this Article 24 constitutes Developer's exclusive remedy for a termination hereunder.

24.10 No Waiver; Release

24.10.1 Notwithstanding anything contained in this Agreement to the contrary, a termination under this Article 24 shall not waive any right or claim to damages which ADOT may have and ADOT may pursue any cause of action which it may have at Law, in equity or under the Contract Documents.

24.10.2 Subject to Section 24.11, ADOT's payment to Developer of the amounts required under this Article 24 shall constitute full and final satisfaction of, and upon payment ADOT will be forever released and discharged from, any and all Claims, causes of action, suits, demands and Losses, known or unknown, suspected or unsuspected, that Developer may have against ADOT arising out of or relating to the terminated Work. Upon such payment, Developer shall execute and deliver to ADOT all such releases and discharges as ADOT may reasonably require to confirm the foregoing, but no such release and discharge shall be necessary to give effect to the foregoing satisfaction and release.

24.11 Dispute Resolution

The failure of the Parties to agree on amounts due under this Article 24 shall be a Dispute to be resolved in accordance with Article 22.

24.12 Allowability of Costs

All costs claimed by Developer under this Article 24 must be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

24.13 Transition upon Maturity of Maintenance ~~Term~~Period

24.13.1 ADOT and Developer shall meet and confer between 18 and six months before the maturity of the Maintenance ~~Term~~Period for the purpose of developing a Handback Transition Plan for the orderly demobilization of Developer and its Subcontractors and transfer of Project maintenance from Developer to ADOT at the maturity of the Maintenance ~~Term~~Period. The Parties shall use diligent efforts to complete preparation of the Handback Transition Plan not later than six months prior to the maturity of the Maintenance ~~Term~~Period.

24.13.2 Based on initial consultation, Developer shall prepare a draft of the Handback Transition Plan. ADOT will review and provide comments on the draft Handback Transition Plan within 30 days after receipt. Within ten days after ADOT delivers its comments, the Parties will meet to resolve all comments. Developer shall resolve all comments to ADOT's satisfaction and submit the final Handback Transition Plan for approval no later than 30 days after the comment resolution meeting.

24.13.3 The Handback Transition Plan shall be in form and substance acceptable to ADOT in its good faith discretion, and shall include and be consistent with the provisions and procedures set forth in (a) Sections 24.8.2.7, 24.8.2.8, 24.8.2.12, 24.8.2.13, 24.8.2.14 and 24.8.2.16, and (b) Section MR 501.2.4 of the Technical Provisions.

24.13.4 The Parties shall carry out the provisions and procedures in the Handback Transition Plan in a timely manner in order to effectuate a smooth and uninterrupted transition of Project maintenance to ADOT at the maturity of the Maintenance ~~Term~~Period.

ARTICLE 25.
MISCELLANEOUS PROVISIONS

25.1 Amendments

The Contract Documents may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns, except to the extent expressly provided otherwise in this Agreement.

25.2 Waiver

25.2.1 No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party.

25.2.2 The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

25.2.3 Except as provided otherwise in the Contract Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents.

25.2.4 Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future Claims or Disputes.

25.3 Independent Contractor

25.3.1 Developer is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with ADOT other than that of Project developer and independent contractor.

25.3.2 Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between ADOT and

Developer; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give ADOT control or joint control over Developer's financial decisions or discretionary actions concerning the Project and the Work.

25.3.3 In no event shall the relationship between ADOT and Developer be construed as creating any relationship whatsoever between ADOT and Developer's employees. Neither Developer nor any of its employees is or shall be deemed to be an employee of ADOT. Except as otherwise specified in the Contract Documents, Developer has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Developer or any Subcontractor hires to perform or assist in performing the Work.

25.4 Successors and Assigns; Change of Control

25.4.1 The Contract Documents shall be binding upon and inure to the benefit of ADOT and Developer and their permitted successors, assigns and legal representatives.

25.4.2 ADOT may transfer and assign all or any portion of its rights, title and interests in and to the Contract Documents, including rights with respect to the D&C Payment Bond, the D&C Performance Bond, the Maintenance Performance Bond, the Maintenance Payment Bond, Guarantees, letters of credit and other security for payment or performance:

(a) Without Developer's consent, to any other public agency or public entity as permitted by Law, provided that the successor or assignee has assumed all of ADOT's obligations, duties and liabilities under the Contract Document then in effect;

(b) Without Developer's consent, to any other Person that succeeds to the governmental powers and authority of ADOT; provided, however, that such successor(s) has assumed all of ADOT's obligations, duties and liabilities under the Contract Documents then in effect; and

(c) To any other Person with the prior approval of Developer.

25.4.3 The Warranties and all rights of ADOT under Section 12, as well as all other rights and claims of ADOT, insofar as they relate to Non-Maintained Elements that will be owned by Persons other than ADOT (such as Utility Companies and the City of Phoenix), shall be assignable to such Persons.

25.4.4 In the event of ADOT's assignment of all of its rights, title and interests in the Contract Documents as permitted hereunder, Developer shall have no further recourse to ADOT under the Contract Documents or otherwise except as specifically provided by other contractual agreement or by statute.

25.4.5 Developer shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Developer's interest in and to the Contract Documents or any portion thereof without ADOT's prior approval, except to any entity that is under the same ultimate management control as Developer. Developer shall not grant any right of entry, license or other special occupancy of the Project to any other Person that is not in the ordinary course of Developer performing the Work, without ADOT's prior approval. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, license or other special occupancy in violation of this provision shall be null and void *ab initio* and ADOT, at its option, may declare any such attempted action to be a material Developer Default and Event of Default.

25.4.6 Developer shall not voluntarily or involuntarily cause, permit or suffer any Change of Control during the Term without ADOT's prior approval. If there occurs any voluntary or involuntary Change of Control without ADOT's prior approval, ADOT, at its option, may declare it to be a material Developer Default and Event of Default.

25.4.7 Where ADOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of right of entry, license or other special occupancy, or for any proposed Change of Control during the Term, ADOT may withhold or condition its approval in its sole discretion. Any such decision of ADOT to withhold consent shall be final, binding and not subject to the Dispute Resolution Procedures.

25.4.8 Assignments and transfers of Developer's interest in or to the Contract Documents permitted under this Section 25.4 or otherwise approved by ADOT will be effective only upon ADOT's receipt of notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to ADOT, in which the transferee, without condition or reservation, assumes all of Developer's obligations, duties and liabilities under this Agreement and the other Contract Documents then in effect and agrees to perform and observe all provisions thereof applicable to Developer. Each transferee shall take Developer's interest in or to the Contract Documents subject to, and shall be bound by, the Project Management Plan, the Key Subcontracts, the Utility Agreements, all agreements between the transferor and railroads, the Governmental Approvals, and all agreements between the transferor and Governmental Entities with jurisdiction over the Project or the Work, except to the extent otherwise approved by ADOT in its good faith discretion.

25.5 Change of Organization or Name

25.5.1 Developer shall not change its legal form of business organization in a manner that adversely affects ADOT's rights, protections and remedies under the Contract Documents without the prior approval of ADOT, which consent may be granted or withheld in ADOT's sole discretion.

25.5.2 In the event either Party changes its name, such Party agrees to promptly furnish the other Party with notice of change of name and appropriate supporting documentation.

25.6 Designation of Representatives; Cooperation with Representatives

25.6.1 ADOT and Developer shall each designate an individual or individuals with the authority to make decisions and bind the Parties on matters relating to the Contract Documents (for each Party, its respective "Authorized Representative"). Exhibit 17 hereto provides the Parties' initial Authorized Representative designations. Either Party may change its initial Authorized Representative designation by a subsequent writing delivered to the other Party in accordance with Section 25.11.

25.6.2 Developer's Authorized Representative(s) shall have onsite field and office authority to represent and act on behalf of Developer. Such Authorized Representative(s) shall be present at the jobsite at all times while Work is actually in progress.

25.6.3 The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the design and construction of the Project and negotiate on behalf of each of the Parties, but who do not have authority to bind ADOT or Developer.

25.6.4 Developer shall cooperate with ADOT and all representatives of ADOT designated as described above.

25.7 Survival

Developer's representations and warranties, the provisions regarding invoicing and payment under Article 13, the express rights and obligations of the Parties following termination of this Agreement under Articles 19 and 24, the provisions of Sections 6.8.6 and 6.8.9, the indemnifications and releases contained in Article 21, the Dispute Resolution Procedures contained in Article 22, and all other provisions that by their inherent character should survive termination of this Agreement or completion of the Work, shall survive the termination of this Agreement or completion of the Work. The provisions of Article 22 shall continue to apply after expiration or earlier termination of this Agreement to all Claims and Disputes between the Parties arising out of the Contract Documents.

25.8 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the Warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 25.8, the duties, obligations and responsibilities of the Parties to the Contract Documents with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between ADOT and a Subcontractor or any Person other than Developer.

25.9 No Personal Liability of ADOT Employees; Limitation on State's Liability

25.9.1 ADOT's Authorized Representatives are acting solely as agents and representatives of ADOT when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They shall not be liable to any Developer-Related Entity either personally or as employees of ADOT for actions in their ordinary course of employment.

25.9.2 Each of the Parties agrees to provide to the other Party's Authorized Representative notice of any claim received by the Party from any third party relating in any way to the matters addressed in the Contract Documents.

25.9.3 In no event shall ADOT be liable for injury, damage, or death sustained by reason of a defect or want of repair on or within the Site during the Term, nor shall ADOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Developer-Related Entity.

25.10 Governing Law

The Contract Documents shall be governed by and construed in accordance with the Laws of the State for contracts made and to be performed in the State.

25.11 Notices and Communications

25.11.1 Notices under the Contract Documents shall be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in Sections 25.11.2 and 25.11.3, as applicable (or to such other address as may from time to time be specified in writing by such Person).

25.11.2 All notices, correspondence and other communications to Developer shall be delivered to the following address or as otherwise directed by Developer's Authorized Representative:

_____
_____
_____
_____
Telephone:___-___-____
Mobile:___-___-____
Facsimile:___-___-____
E-mail: _____@_____

With a copy to:

_____
_____
_____
_____
Telephone:___-___-____
Mobile:___-___-____
Facsimile:___-___-____
E-mail: _____@_____

In addition, copies of all notices to proceed and suspension, termination and default notices shall be delivered to the following Persons:

_____
_____
_____
_____
Telephone:___-___-____
Mobile:___-___-____
Facsimile:___-___-____
E-mail: _____@_____

25.11.3 All notices, correspondence and other communications to ADOT will be marked as regarding the Loop 202 South Mountain Freeway Project and shall be delivered to the following address or as otherwise directed by ADOT's Authorized Representative:

Arizona Department of Transportation
206 S. 17th Avenue
Phoenix, AZ 85007
Attn: Robert Samour, P.E.
Telephone: [***NTD – INSERT TELEPHONE NUMBER PRIOR TO EXECUTION***]
E-mail: [***NTD – INSERT EMAIL ADDRESS PRIOR TO EXECUTION***]

In addition, copies of all notices regarding Disputes, suspension, termination and default notices shall be delivered to the following:

Office of the Arizona Attorney General
Transportation Section
1275 W. Washington Street
Phoenix, AZ 85007

25.11.4 Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the email address of the addressee is confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Mountain Standard Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.). Any technical or other communications pertaining to the Work shall be conducted by Developer's Authorized Representative and technical representatives designated by ADOT.

25.12 Taxes

Developer shall pay, prior to delinquency, all applicable taxes. Developer shall have no right to an adjustment to the Price or any other Claim due to its misinterpretation of Laws respecting taxes or incorrect assumptions regarding applicability of taxes.

25.13 Interest on Amounts Due and Owing

25.13.1 Pursuant to Arizona Revised Statutes Section 44-1201D, no prejudgment interest shall be due either Party for any unliquidated amount.

25.13.2 Subject to Section 25.13.1, amounts owed to Developer under this Agreement and not paid when due shall bear interest at a floating rate equal to the following:

(a) If not in good faith Dispute, then at the Prime Rate in effect from time to time plus 100 basis points, commencing on the date due and continuing until paid; and

(b) If subject to a good faith Dispute over whether it is due, then at the Prime Rate in effect from time to time, commencing from the date ADOT responds to a Claim therefor or the date ADOT denies the Claim, whichever is earlier, and continuing until the date the amount is finally determined to be due pursuant to settlement or the Dispute Resolution Procedures, and thereafter at the Prime Rate in effect from time to time plus 100 basis points until paid.

25.13.3 Subject to Section 25.13.1, amount owed to ADOT under this Agreement, including any overpayment to Developer as a result of an inaccuracy in a Draw Request or Maintenance Draw Request, and not paid when due shall bear interest at a floating rate equal to the following:

(a) If not in good faith Dispute, then at the Prime Rate in effect from time to time plus 100 basis points, commencing on the date of ADOT's payment of the Draw Request or Maintenance Draw Request, or the date ADOT claims any other amount is due, and continuing until the date the overpayment or other amount due is deducted or paid; and

(b) If the subject of a good faith Dispute over whether it is due, then at the Prime Rate in effect from time to time, commencing on the date of ADOT's payment of the Draw Request or Maintenance Draw Request, or the date ADOT claims any other amount is due, and continuing until the date the amount is finally determined to be due pursuant to settlement or the Dispute Resolution Procedures, and thereafter at the Prime Rate in effect from time to time plus 100 basis points until paid.

25.13.4 ADOT will not owe interest on any sum ADOT withholds from payments to Developer pursuant to this Agreement, except for the period, if any, from the date the withheld amount becomes due and owing to Developer until paid.

25.13.5 A Party's right to receive interest is without prejudice to any other rights and remedies the Party may have under this Agreement.

25.14 Integration of Contract Documents

ADOT and Developer agree and expressly intend that, subject to Section 25.15, this Agreement and other Contract Documents constitute a single, non-severable, integrated agreement whose terms are interdependent and non-divisible.

25.15 Severability

25.15.1 If any clause, provision, section or part of the Contract Documents is ruled invalid by a court having proper jurisdiction, then the Parties shall:

(a) Promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an equitable adjustment to the Price to account for any change in the Work resulting from such invalidated portion; and

(b) If necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

25.15.2 The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract

Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

25.16 Headings

The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this Agreement.

25.17 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to its subject matter.

25.18 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

DEVELOPER:
[_____]

By: [_____]

By
Name:
Title:

By: [_____]

By
Name:
Title:

By: [_____]

By
Name:
Title:

ARIZONA DEPARTMENT OF TRANSPORTATION

By: [_____]

By
Name: John Halikowski
Title: ADOT Director

Document comparison by Workshare Compare on Tuesday, September 15, 2015 10:51:57 AM

Input:	
Document 1 ID	interwovenSite://WORKSITE/Nossaman_LLP/9013687/35
Description	#9013687v35<Nossaman_LLP> - SMF DBM Agreement (Addendum #2_Final)
Document 2 ID	interwovenSite://WORKSITE/Nossaman_LLP/9013687/37
Description	#9013687v37<Nossaman_LLP> - SMF DBM Agreement (Addendum #3 Final)
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	446
Deletions	381
Moved from	5
Moved to	5
Style change	0
Format changed	0
Total changes	837