

EXHIBIT 1

ABBREVIATIONS AND DEFINED TERMS

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

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

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

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

NEPA	National Environmental Policy Act
NESHAP	National Emission Standards for Hazardous Air Pollutants
NOI	Notice of Intent
NOT	Notice of Termination
NTP	Notice to Proceed
OEM	Original Equipment Manufacturers
OJT	On-the-Job Training
OSHA	Occupational Safety and Health Administration
P3	Public-Private Partnership
PA	Programmatic Agreement
PCCP	Portland Cement Concrete Pavement
PCMS	Portable Changeable Message Signs
PDF	Portable Document Format
PDS	Pavement Design Summary
PIP	Public Involvement Plan
PMP	Project Management Plan
PPE	Personal Protective Equipment
psf	Pounds per Square Foot
PSQMP	Professional Services Quality Management Plan
QA	Quality Assurance
QC	Quality Control
QMP	Quality Management Plan
REC	Recognized Environmental Condition
RFC	Release for Construction
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
RIDs	Reference Information Documents
ROD	Record of Decision
ROW	Right-of-Way
SB	Southbound
SF	Square Foot
SHPO	State Historic Preservation Officer
SMPP	South Mountain Park/Preserve
SPT	Standard Penetration Test
SPUI	Single-Point Urban Interchange
SR	State Route
SRP	Salt River Project

SRVWUA	Salt River Valley Water Users Association
SUE	Subsurface Utility Engineering
SWPPP	Stormwater Pollution Prevention Plan
TCE	Temporary Construction Easement
TCP	Traffic Control Plan
TL	Testing Level
TMP	Transportation Management Plan
TPs	Technical Provisions
TRACS	Transportation Accounting System
TWG	Technical Work Group
UPRR	Union Pacific Railroad
UPS	Uninterruptable Power Supply
US	United States
USACE	United States Army Corps of Engineers
USFWS	United States Fish and Wildlife Service
USPAP	Uniform Standard of Professional Appraisal Practices
UTP	Unshielded Twisted Pair
VAC	Volts Alternative Current
VLN	Virtual Local Area Network
WB	Westbound
WBS	Work Breakdown Structure

3D Model means the models described in Section GP 110.10.2.5.4.2 of the Technical Provisions.

4D Model Simulations means the simulations described in Section GP 110.10.2.5.4.3 of the Technical Provisions.

ACC Submittal Package means the package described in Section DR 436.3.2 of the Technical Provisions.

Acceptance Program means the program comprised of the Quality Acceptance (performed by the IQF) and the Owner Verification (performed by ADOT) meeting the requirements of 23 CFR 637 Subpart B.

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

ADA Compliance and Feasibility Report means the report described in Section DR 440.3.4 of the Technical Provisions.

Adjacent Work means any project, work, improvement or development to be planned, designed or constructed that could or does impact the Project or that is located on property contiguous with the Project. Examples of Adjacent Work include proposed subdivisions, other roads constructed by Governmental Entities, site grading and drainage, and other development improvement plans and Utility projects.

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

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

Adjustments means Utility Adjustments.

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

Administrative Settlement Offer means an offer for an Administrative Settlement.

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

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

ADOT-Caused Delay means any of the following events, to the extent they result in a delay or interruption in performance of any material Developer obligation under the Agreement, and provided such events are beyond Developer's control and are not due

to any act, omission, negligence, recklessness, willful misconduct or breach or violation of contract, the requirements of the Contract Documents or Law by any Developer-Related Entity, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Developer:

(a) Failure of ADOT to issue NTP 1 within five days after the anticipated issuance date set forth in Section 7.1.27.3 of the Agreement;

(b) Failure of ADOT to issue NTP 2 within ten Business Days after the anticipated issuance date set forth in Section 7.1.47.4 of the Agreement;

(c) ADOT-Directed Change;

(d) Except for Retained Parcels, failure or inability of ADOT to make available to Developer any Project ROW parcel, including any ADOT Additional Property, within 180 days after ADOT's receipt and approval of Developer's written request to commence a condemnation proceeding and a complete Condemnation Package, subject, however, to the exceptions and limitations set forth in Section 14.4.3 of the Agreement; provided that "make available" means that 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, which in each case may be subject to covenants, conditions, restrictions and limitations with which Developer must comply. For clarity, "make available" does not require commencement or completion of relocation, demolition or clearance (such as but not limited to data recovery for cultural resources);

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

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

(ii) ADOT has completed relocation, demolition and clearance (which includes data recovery for any identified cultural resources), except Utility Adjustments;

(f) Failure of ADOT to provide responses to proposed schedules, plans, Design Documents, Acquisition Packages, Condemnation Packages, and other Submittals and matters submitted to ADOT after the Effective Date for which response is required under the Contract Documents as an express prerequisite to Developer's right to proceed or act, within the time periods (if any) indicated in the Contract Documents, or if no time period is indicated, within a reasonable time, taking into consideration (i) the nature, importance and complexity of the Submittal or matter, (ii)

the number of Submittals or such other items which are then pending for ADOT's response, (iii) the completeness and accuracy of the Submittal or such other item, and (iv) Developer's performance and history of Nonconforming Work under the Contract Documents, following delivery of written notice from Developer requesting such action in accordance with the terms and requirements of the Contract Documents;

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

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

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

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

(i) Failure or inability to complete an ADOT Utility Adjustment by the applicable deadline set forth in Section DR 430.3.4 of the Technical Provisions; and

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

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

ADOT Condemnation Letter means the letter described in Section DR 470.4.5 of the Technical Provisions.

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

ADOT-Directed Change means:

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

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

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

ADOT's Recoverable Costs means:

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

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

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

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

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

ADOT Systems Engineering Checklist means the checklist described in Section DR 466.3.1 of the Technical Provisions.

ADOT Utility Adjustment means the Utility Adjustments for which ADOT is responsible, as more particularly set forth in Section DR 430.3.4 of the Technical Provisions.

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

Aesthetics and Landscape Master Plan means the plan described in Section DR 450.2.7 of the Technical Provisions.

Aesthetics and Landscape Plans means the plans described in Section DR 450.3.5 of the Technical Provisions.

Affiliate means:

- (a) Any shareholder, member, partner or joint venture member of Developer;
- (b) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Developer or any of its shareholders, members, partners or joint venture members; and
- (c) Any Person for which 10 percent or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of the shareholders, members, partners or joint venture members of Developer, or (iii) any Affiliate of Developer under clause (b) of this definition.

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

Affiliated means having the status of an Affiliate.

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

AHERA Asbestos Report means an Asbestos Emergency Response Act Asbestos Report as contemplated by Section DR 470.4.7 of the Technical Provisions.

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

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

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

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

Application for Governmental Approval means any application for a Governmental Approval.

Appraisal means an appraisal, as described in and satisfying the requirements of Section DR 470.3.5.1 of the Technical Provisions.

Appraisal Review means the process for reviewing an Appraisal or Appraisals as more particularly described in Section DR 420.3.5.2 of the Technical Provisions.

Appraisal Reviewer means an individual that performs an Appraisal Review as more particularly described in and satisfying the requirements of Section GP 110.08.3.22 of the Technical Provisions.

Appraiser means an individual that performs an Appraisal, as more particularly described in and satisfying the requirements of Section GP 110.08.3.22 of the Technical Provisions.

Appraiser's Parcel File has the meaning set forth in Section DR 470.3.5.1 of the Technical Provisions.

Approved Appraiser means the appraiser who prepared the ADOT-approved Appraisal.

Archaeological Documentation and Reporting means the compilation and synthesis of the background, field and laboratory research that results from the archaeological surveying, whether performed by ADOT, Developer or another party, of parcels on which Developer will perform any Work.

Arizona 811 shall mean the field locator that performs all requirements as specified in A.R.S. §§ 40-360.21 through 40-360.29 for all underground facilities.

As-Built Drainage Report means the report described in Section DR 445.3.3 of the Technical Provisions.

As-Built Geotechnical Engineering Report means the report described in Section DR 416.3.2 of the Technical Provisions.

As-Built Load Rating Report means the report described in Section CR 455.3.6 of the Technical Provisions.

As-Built Schedule means a schedule, as more particularly described in and satisfying the requirements of Section GP 110.06.2.12 of the Technical Provisions.

Asset Condition Score means the score for the condition of an Element resulting from an Inspection, as more particularly described in Section MR ~~400.6~~400.7 of the Technical Provisions.

Asset Condition Score ~~includes the Baseline Asset Condition Score.~~ **Asset Condition Score Table Scorecard** means the table for setting forth Asset Condition Scores for all Elements ~~of all Auditable Sections~~ and for setting forth the Project Asset Condition Score, as more particularly described in Section MR ~~400.6.1~~ 400.7.2.1 of the Technical Provisions.

Asset Condition Scoring means the process for determining Asset Condition Scores and the Project Asset Condition Score, as more particularly described in Section MR ~~400.6~~ of the Technical Provisions.

~~**Auditable Section** means a segment or area of the Project having an identifiable inventory of Elements that is measured separately for maintenance compliance purposes, as further described in Section MR 400.3.1 of the Technical Provisions.~~
~~**Auditable Sections Table** has the meaning set forth in Section MR 400.3.1~~ 400.7 of the Technical Provisions.

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

Barrier, End Treatment, and Crash Cushion Certifications means Developer's certifications as described in Section CR 440.3 of the Technical Provisions.

Base CCI means [] *[NTD: ENTER THE CCI PUBLISHED FOR THE MONTH AND YEAR OF THE PROPOSAL DUE DATE]*.

Base CPI means [] *[NTD: ENTER THE CPI PUBLISHED FOR THE MONTH AND YEAR OF THE PROPOSAL DUE DATE]*.

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

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

Basis of Design Report means a report, as described in and satisfying the requirements of Section GP 100.01.2.2 of the Technical Provisions.

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

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement. In all other cases, "Betterment" means any upgrading of a Utility or related facilities in the course of a Utility Adjustment that is not attributable to the construction of the Project, and is made solely for the benefit of and

at the election of the Utility Company, including an increase in the capacity, capability, efficiency or function of an Adjusted Utility over that which was provided by the existing Utility; provided, however, that the following shall not be considered Betterments:

- (a) Any upgrading which is required by the Project;
- (b) Replacement devices or materials that are of equivalent standards although not identical;
- (c) Replacement of devices or materials no longer regularly manufactured with an equivalent or next higher grade or size;
- (d) Any upgrading required by applicable Law;
- (e) Replacement devices or materials that are used for reasons of economy (e.g., non-stocked items may be uneconomical to purchase);
- (f) Any upgrading required by the Utility Company's written "standards" meeting the requirements described in Section DR 430 of the Technical Provisions; or
- (g) Any discretionary decision by a Utility Company that is contemplated within a particular standard described in clause (f) above.

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

Blast Monitoring Plan means a plan, as described in and satisfying the requirements of Section CR 416.3.4.4 of the Technical Provisions.

Blasters in Charge means the individuals described in Section GP 110.08.3.13 of the Technical Provisions.

Blasting Information Report means a report, as described in and satisfying the requirements of Section CR 416.3.4.5 of the Technical Provisions.

Blasting Plan means a plan, as described in and satisfying the requirements of Section CR 416.3.4.7 of the Technical Provisions.

Blasting Report means a report, as described in and satisfying the requirements of Section CR 416.3.4.4 of the Technical Provisions.

Blasting Supervisors means the individuals described in Section GP 110.08.3.12 of the Technical Provisions.

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

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

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

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

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

Bridge Hydraulics Report means the report described in Section DR 457.3.8 of the Technical Provisions.

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

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

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

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

Capital Asset Replacement Work Schedule means the schedule for Capital Asset Replacement Work, to be prepared and updated by Developer pursuant to Section 8.3.38.3.2.2 of the Agreement. The Capital Asset Replacement Work Schedule is part of the Capital Asset Replacement Work Plan.

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

Certificate of Final Acceptance means the certificate issued by ADOT indicating that the Project has achieved the conditions for Final Acceptance set forth in Section 6.6.4(b)6.6.4.2 of the Agreement.

Certificate of Substantial Completion means the certificate issued by ADOT indicating that the Project has achieved the conditions for Substantial Completion set forth in Section 6.6.1(a)Sections 6.6.1.1 and 6.6.3 of the Agreement.

Change in Law means:

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

The term “Change in Law” excludes:

- (i) Any change in, or new, federal or local Law;
- (ii) Any change in, or new, Law of the State that also constitutes or causes a change in, or new, Adjustment Standards;
- (iii) Any change in, or new, Law passed or adopted but not yet effective as of the Setting Date; and
- (iv) Any change in, or new, Law of the State relating to Developer’s general business operations, including licensing and registration fees, income taxes, gross receipts taxes, property taxes, sales and use taxes, social security, Medicare, unemployment and other payroll-related taxes.

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

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

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

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

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

(e) The voluntary resignation of a shareholder, member, partner or joint venture member of Developer during the Maintenance Period, but only if (i) the resigning shareholder, member, partner or joint venture member has not been in control of the management of Developer at any time prior thereto, (ii) the resignation occurs following expiration of the statutory period of repose under Arizona Revised Statutes Section 12-552, and (iii) after the resignation the minimum Tangible Net Worth requirements of Section 10.4.6 of the Agreement will continue to be met.

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

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

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

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

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

Collocated Office Layout Plan means the layout plan for the collocated office to be occupied by ADOT and Developer, as more particularly described in Section GP 110.05.2.6 of the Technical Provisions.

Color Samples means the color samples described in Section CR 450.3.2.3 of the Technical Provisions.

Comment Resolution Form means the form described in Section GP 110.10.2.6 of the Technical Provisions.

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

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

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

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

Compliance Evaluation Report means the report referred to in Section CR 420.3.2.5.1 of the Technical Provisions.

Computer Disaster Recovery Plan means the plan described in and complying with the requirements of Section GP 110.05.4.1 of the Technical Provisions.

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

Construction Documents means all Project and Utility Adjustment Shop Drawings and Working Drawings, fabrication plans, material and hardware descriptions and specifications.

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

Construction Manager means the individual described in Section GP 110.08.2.2 of the Technical Provisions. The Construction Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

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

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

Construction Quality Manager means the individual described in Section GP 110.08.3.2 of the Technical Provisions.

Construction Survey Report means the report described in and satisfying the requirements of Section CR 410.3.3 of the Technical Provisions.

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

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

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

Contractor Cycle Key Date means the dates on which ADOT will make payments owing from ADOT to Developer under the Agreement. Such payment dates will occur

on the third Wednesday of each month, and cover the monthly period ten Business Days before the previous Contractor Cycle Date through ten Business Days before the current Contractor Cycle Key Date. ADOT publishes Contractor Cycle Key Dates annually for the applicable year-long period.

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

Control Segment has the meaning set forth in [Section MR 400.7.1 of the Technical Provisions](#).

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

CRM Notes means the meeting notes from a CRM, which include the date of the CRM, list of all attendees, issues considered by participants, and related responses given or decisions made in the CRM.

Curative Document has the meaning set forth in [Section DR 470.3.6 of the Technical Provisions](#).

D&C Guaranty has the meaning set forth in [Section 10.4 of the Agreement](#).

D&C Payment Bond means the bond required in accordance with [Section 10.1.3 of the Agreement](#).

D&C Performance Bond means the bond required in accordance with [Section 10.1.2 of the Agreement](#).

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

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

D&C Price means the lump sum price for D&C Work set forth in [Section 13.1.1 of the Agreement](#), as it may be modified from time to time in accordance with the express provisions of the Agreement.

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

Day or **day** means calendar day.

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

DBE/OJT Outreach and Compliance Manager means the individual described in Section 110.08.2.11 of the Technical Provisions. The DBE/OJT Outreach and Compliance Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

DBE Monthly Progress Utilization Progress Report has the meaning set forth in Section 18.02.2 if the DBE Special Provisions.

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

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

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

- (a) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of those traveling on the Project;
- (b) A structural deterioration of the affected Element or any other part of the Project;
- (c) Damage to a third party's property or equipment;
- (d) Damage to the Environment;
- (e) Failure of the affected Element or any other part of the Project to meet a requirement of the Contract Documents; or
- (f) Failure of an Element to meet the Target for a measurement record as set forth in the columns headed "Target" and "Measurement Record" in TP Attachment 500-1 of the Technical Provisions.

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

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

Demolition Completion Notification means the notification as described in Section DR 470.4.7 of the Technical Provisions.

Demolition Photographs means the photographs described in Section DR 470.4.7 of the Technical Provisions.

Deputy Maintenance Manager means the individual described in Section GP 110.08.3.26 of the Technical Provisions.

Design Change has the meaning set forth in Section GP 110.10.2.8.3 of the Technical Provisions.

Design Documents means all drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records and submittals necessary for, or related to, the design of the Project or the Utility Adjustments in accordance with the Contract Documents, the Governmental Approvals and applicable Law.

Design Exception has the meaning as defined in the ADOT Design Exception and Design Variance Process Guide.

Design Exception and Design Variance Report means the report described in Section DR 440.3.5 of the Technical Provisions.

Design Manager means the individual described in Section GP 110.08.2.3 of the Technical Provisions.

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

Design Variance has the meaning as defined in the ADOT Design Exception and Design Variance Process Guide.

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

Detailed Pricing Documents has the meaning set forth in Section 23.1 of the Agreement.

Detour Plans means the plans described in and satisfying the requirements of Section DR 462.3.1.4 of the Technical Provisions.

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

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

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

Developer-Designated ROW means any permanent interest in real property (which term is inclusive of all estates and interests in real property), improvements and fixtures outside of the Schematic ROW that Developer determines is necessary or advisable to be acquired for the Project. The term specifically includes (a) any easements required for drainage for the Project, (b) Temporary Construction Easements to the extent located outside of the Schematic ROW and outside of ADOT Additional Property, (c) the necessity to condemn an entire parcel even though only a portion of the parcel is required as Developer-Designated ROW, and (d) any air space, surface rights and subsurface rights within the Developer-Designated ROW. The term specifically excludes (1) Replacement Utility Property Interests, (2) Developer's Temporary Work Areas, and (3) any property within the GRIC lands.

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

Developer-Related Entity means:

- (a) Developer;
- (b) Developer's shareholders, partners, joint venturers or members;
- (c) Subcontractors (including Suppliers);

- (d) Any other Persons performing any of the Work;
- (e) Any other Persons for whom Developer may be legally or contractually responsible; and
- (f) The employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

Developer Release of Hazardous Materials means:

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

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

Developer's Temporary Work Areas means areas in which Developer carries out, on a temporary basis, Project-specific or Project-related activities in connection with the Work, but not within the Project ROW boundaries identified in the NEPA Approval, such as construction work sites, the collocated office (as described in Section GP 110.05.2 of the Technical Provisions), field office locations (as described in Section GP 110.05.3 of the Technical Provisions), staging areas, storage areas, lay-down areas, earth work material borrow sites, and other locations for the convenience of Developer. "Developer's Temporary Work Areas" do not include Temporary Construction Easements.

Deviation means:

- (a) Any proposed or actual change, deviation, modification, alteration or exception from the Technical Provisions; or
- (b) A change in the Work or other requirements of the Contract Documents issued under Section 15.2.8 of the Agreement. Such Deviations include "Design Exceptions" and "Design Waivers."

Differing Site Conditions means:

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

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

The term Differing Site Conditions shall specifically exclude:

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

(ii) Changes in surface topography;

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

(iv) Utility facilities;

(v) Hazardous Materials, including contaminated groundwater;

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

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

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

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

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

Discriminatory Maintenance Change means:

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

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

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

Displacee Move Facilitation Recommendation means the recommendation described in Section DR 470.4.2 of the Technical Provisions.

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

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

Document Management Plan means a plan, as described in and satisfying the requirements of Section GP 110.04.2 of the Technical Provisions.

Drainage Master Plan means a plan, as described in and satisfying the requirements of Section DR 445.3.2 of the Technical Provisions.

Drainage Report means a report described in Section DR 445.3.3 of the Technical Provisions.

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

Drilled Shaft Installation Plan means a plan, as described in and satisfying the requirements of Section CR 416.3.1 of the Technical Provisions.

Drilled Shaft Load Test Program means a program, as described in and satisfying the requirements of Section 416.3.1 of the Technical Provisions.

Drilled Shaft Load Test Report means a report, as described in and satisfying the requirements of Section 416.3.1 of the Technical Provisions.

Drilled Shaft Quality Assurance Report means a report as described in and satisfying the requirements of Section CR 416.3.1 of the Technical Provisions.

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

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

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

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

Emergency Incident Report means a report, as described in and satisfying the requirements of Section MR ~~400.4~~400.5 of the Technical Provisions.

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

Environmental Analysis means an analysis, as described in and satisfying the requirements of Section CR 417.3.2.1 of the Technical Provisions.

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

- (a) The NEPA Approval;
- (b) Other approvals and permits required under NEPA; and
- (c) Any revision, modification, supplement or amendment of the foregoing approvals and permits.

Environmental Compliance Manager means the individual described in and satisfying the requirements of Section GP 110.08.2.9 of the Technical Provisions. The Environmental Compliance Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Environmental Law means any Law applicable to the Project or the Work regulating or imposing liability or standards of conduct that pertains to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment, Hazardous Materials, contamination of any type whatsoever, or environmental health and safety matters, set forth in any permits, licenses, approvals, plans, rules,

regulations or ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws applicable to the Project or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those relating to:

- (a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (c) Releases of Hazardous Materials;
- (d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (e) The operation and closure of underground storage tanks;
- (f) and safety of employees and other persons; and
- (g) Notification, documentation, and record keeping requirements relating to the foregoing.

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

- (i) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (ii) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
- (iii) Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. § 303[c])
- (iv) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 C.F.R. Part 24)
- (v) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (vi) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (vii) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (viii) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xxiv) Air Quality (A.R.S. §49-401 to 581);

(xxv) Solid Waste Management (A.R.S. §49-701 to 881);

(xxvi) Hazardous Waste Disposal (A.R.S. §49 -901 to 971);

(xxvii) Underground Storage Tank Regulation (A.R.S. §49-1001 to 1091);

(xxviii) Light Pollution (A.R.S. §49-1101);

(xxix) Water Infrastructure Finance Program (A.R.S. §49-1201 to 1221); and

(xxx) Natural Gas Facilities (A.R.S. §49-1301).

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

Environmental Management Program means the program described in Section DR 420.2.2 of the Technical Provisions.

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

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

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

Equipment Demobilization Plan means the plan described in Section GP 110.05.4.1 of the Technical Provisions.

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

Erosion Control Coordinator means the individual described in Section GP 110.08.3.17 of the Technical Provisions.

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

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

Eviction Memorandum means the memorandum described in Section DR 470.46 of the Technical Provisions.

Existing Conditions Site Documentation means the documentation described in Section GP 110.11.1 of the Technical Provisions.

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

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

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

Falsework Drawings means the drawings described in Section CR 455.3.3 of the Technical Provisions.

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

Final Acceptance means, ~~for Project,~~ the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 6.6.4(b)6.6.4.2 of the Agreement, as and when confirmed by ADOT’s issuance of a Certificate of Final Acceptance.

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

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

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

Final Design Documents Submittal means the design Submittal described in, satisfying the requirements of, and prepared in accordance with Section GP 110.10.2.7.6 of the Technical Provisions.

Final Design Submittal means the applicable design Submittal described in and satisfying the corresponding requirements of Section GP 110.10.2.7.4 of the Technical Provisions.

Final Technical Noise Analysis and Mitigation Report means the report described in and satisfying the requirements of Section DR 420.3.5 of the Technical Provisions.

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

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

Flood Event means (a) storms and floods for which the Governor of the State has proclaimed a state of emergency, when the damaged work of the Project is located within the territorial limits to which such proclamation is applicable, or (b) a water flow in the Salt River channel at the Project location in excess of 1500 cubic feet for second.

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

Force Majeure Event means the occurrence of any of the following events that is (1) beyond the reasonable control of Developer, (2) not attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any Developer-Related Entity, and (3) actually, demonstrably, materially and adversely affects performance of Developer's obligations (other than payment obligations) in accordance with the terms of the Contract Documents to a material extent, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence or reasonable efforts, by any Developer-Related Entity:

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

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

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

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

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

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

(g) One or more earthquakes, including all foreshocks and aftershocks, where such earthquakes include ground shaking, liquefaction, settlement, or ground movements that directly impact, and cause damage to, temporary or permanent works of the Project; and

(h) A vehicle collision that occurs during the Maintenance Period, the impact of which causes damage to a bridge structure, noise wall, retaining wall or overhead sign structure of the Project. For the purposes hereof, a “vehicle” has the meaning set forth in Arizona Revised Statutes Section 28-101, and also means railroad train and aircraft.

Foundation Report means a report, as described in and satisfying the requirements of Section DR 455.3.1 of the Technical Provisions.

Future Projects List means the list described in Section GP 110.01.3.2.1 of the Technical Provisions.

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

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

Geotechnical Engineering Report means a report, as described in and satisfying the requirements of Section DR 416.3.2 of the Technical Provisions.

Geotechnical Manager means the individual described in Section GP 110.08.3.10 of the Technical Provisions.

Geotechnical Software means the software described in Section DR 416.2.3 of the Technical Provisions.

Geotechnical Supplement means a supplement to the applicable Geotechnical Engineering Report, as more particularly described in Section DR 416.3.2 of the Technical Provisions.

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

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

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

Governmental Approval Package means the package described in Section DR 420.2.6.2 of the Technical Provisions.

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

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

Guaranteed Obligations has the meaning set forth in the Guaranty.

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

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

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

Handback Transition Plan means the plan for transitioning maintenance of the Project from Developer to ADOT at the end of the Maintenance ~~Term~~Period, as more particularly described in Section 24.13 of the Agreement and Section MR 501.2.5~~501.2.4~~ of the Technical Provisions.

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

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

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

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

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

(d) Any flammable substances or explosives;

(e) Any radioactive materials;

(f) Any asbestos or asbestos-containing materials;

(g) Any lead and lead-based paint;

- (h) Any radon or radon gas;
- (i) Any methane gas or similar gaseous materials;
- (j) Any urea formaldehyde foam insulation;
- (k) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
- (l) Pesticides;
- (m) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and
- (n) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

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

Hazardous Materials Management Plan means the plan prepared by Developer for the safe handling, storage, treatment or disposal of Hazardous Materials both within and outside the Project ROW.

Hazardous Materials Manager means the individual described in Section GP 110.08.3.14 of the Technical Provisions.

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

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

Hydraulics Engineer means the individual described in Section GP 110.08.3.18 of the Technical Provisions.

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

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

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

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

(d) 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.

If any discrepancy exists between the information provided by one component of the Utility Information or public or private records and that provided by any other component of the Utility Information or public or private utility records, only the more recent information shall be relevant for purposes of this definition.

Incident means a localized disruption to the free flow of traffic on or to the safety of users of the Project.

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

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

Initial Design Submittal means the applicable design Submittal described in and prepared in accordance with Section GP 110.10.2.7.3 of the Technical Provisions.

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

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

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

Instrumentation Data means the data from the monitoring of instrumentation of all geotechnical Work that requires monitoring, as described in Section DR 416.3.3.2 of the Technical Provisions.

Instrumentation Plan means the plan described in and satisfying the requirements of Section CR 416.3.6 of the Technical Provisions.

Instrumentation Report means the report described in and satisfying the requirements of Section CR 416.3.6 of the Technical Provisions.

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

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

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

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

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

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

Irrigation Water Use and Conservation Plan means the plan described in Section DR 450.3.3.1 of the Technical Provisions.

Irrigation Systems Designer means the individual described in Section GP 110.08.3.20 of the Technical Provisions.

Issue Resolution Ladder has the meaning set forth in Section ~~22.2.3.1~~22.2.1 of the Agreement.

ITS Certifications means the certification required by the ADOT *Draft Intelligent Transportation Systems Specifications for South Mountain Freeway* included in the RIDs.

ITS Element Number Request means the request described in Section DR 466.3.3 of the Technical Provisions.

ITS Inventory means the inventory described in Section DR 466.2.3 of the Technical Provisions.

ITS Master Plan means a plan described in Section DR 466.3.2 of the Technical Provisions.

ITS Testing Documentation means documentation of the ITS test results as identified in Section CR 466.3.4 of the Technical Provisions.

ITS Training Material means the training material described in and satisfying the requirements of Section CR 466.3.7 of the Technical Provisions.

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

Key Professional Services Firm means:

- (a) The Independent Quality Firm, and

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

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

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

(b) The Lead Subcontract;

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

(d) All Maintenance Services Subcontracts; and

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

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

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

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

Known or Suspected Hazardous Materials means:

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

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

(c) Hazardous Materials that are part of any materials, or are contained in any materials, incorporated into roadway and street structures, improvements and fixtures of any kind, including landscaping, that exist in, on or under the Schematic

ROW as of the Setting Date, regardless of whether indicated or not indicated in the NEPA Approval, Reference Information Documents or any other source; and

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

Laboratory Testing Location Plan means the plan described in Section CR 420.3.2.2.2 of the Technical Provisions.

Landform Graphic Layout Artist means the individual described in Section GP 110.08.3.21 of the Technical Provisions.

Landscape Architect means the individual described in Section GP 110.08.3.19 of the Technical Provisions.

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

Lane Closure Request means a written request from Developer to ADOT for a Lane Closure.

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

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

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

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

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

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

Letter of Acceptance means a letter from a Utility Company to Developer whereby the Utility Company accepts from Developer the Record Drawings for the corresponding Utility Adjustment Work performed by Developer, as described in Section CR 430.3.1.4 of the Technical Provisions.

Letters of Introduction means the letters described in Section DR 470.3.3 of the Technical Provisions.

Lien means any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement under the Uniform Commercial Code of any jurisdiction).

Lighting Design Report means the report described in and satisfying the requirements of Section DR 460.3.6 of the Technical Provisions.

Liquidated Damages means the liquidated damages specified in Articles 9 and 20 of the Agreement, and in any other part of the Agreement.

Load Rating Report means the report described in and satisfying the requirements of Section DR 455.3.7.2.2 of the Technical Provisions.

Look-Ahead Schedule means the schedule described in and satisfying the requirements of Section GP 110.06.2.9 of the Technical Provisions.

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

Maintenance Annual Report means the report described in and satisfying the requirements of Section GP 110.07.2.1.4.1 of the Technical Provisions.

Maintenance Bonds means, collectively, the Maintenance Performance Bond and Maintenance Payment Bond.

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

Maintenance During Construction means ~~any and all management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement to be performed by Developer~~ the maintenance and repair Work in connection with the Project that Developer is required to perform pursuant to the Contract Documents prior to Substantial Completion. For clarity, Maintenance During Construction is included in the D&C Work.

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

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

Maintenance Management Plan means the plan prepared by Developer and which defines the process and procedures for the maintenance of the Project for the Maintenance Period as more particularly described in Section 8.9 of the Agreement and Section MR 400.2.1 of the Technical Provisions.

Maintenance Manager means the individual described in Section GP 110.08.2.10 of the Technical Provisions. The Maintenance Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

Maintenance Payment Bond has the meaning set forth in Section ~~10.2.3~~ 10.2.2 of the Agreement.

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

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

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

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

Maintenance QC Manager means the individual described in Section GP 110.08.3.6 of the Technical Provisions.

Maintenance Quality Management Plan means the plan described in and satisfying the requirements of Section GP 110.07.2.1.4 of the Technical Provisions.

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

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

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

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

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

- (a) At least 50% of the aggregate value of the Maintenance Services (excluding Capital Asset Replacement Work and Handback Requirements Work); or
- (b) Capital Asset Replacement Work or Handback Requirements Work.

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

Maintenance Unit Device Decal Request means Developer's written request to ADOT for unit device decals, as described in Section CR 460.3.4 of the Technical Provisions.

Major Lane Closure Package means the Submittal package described in and satisfying the requirements of Section DR 462.3.3.1 of the Technical Provisions.

Materials Design Report means a report described in Section DR 419.3.6 of the Technical Provisions.

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

Meeting Notes means the notes that Developer records from Project-related meetings Developer attends, as described in Section GP 110.02 of the Technical Provisions.

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

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

MIS Architecture has the meaning set forth in Section MR 400.2.4 of the Technical Provisions.

Mockups means the mockups described in and satisfying the requirements of Section CR 450.3.1.1 of the Technical Provisions.

Monthly Disbursement has the meaning set forth in Section 13.5.5 of the Agreement.

Monthly Progress Report means the report described in Section GP 110.06.2.8 of the Technical Provisions.

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

Monthly Safety Report means the report described in Section GP 110.09.2.1.11.2 of the Technical Provisions.

MOT Task Force means the task force described in and satisfying the requirements of Section DR 462.2.2 of the Technical Provisions.

MOT Task Force Invitees List means the list described in Section GP 110.02.6 of the Technical Provisions.

MSE Wall Drawings means the drawings described in Section CR 455.3.2 of the Technical Provisions.

Necessary Schematic ROW Change means real property (which term is inclusive of all permanent estates and interests in real property), improvements and fixtures located outside the Schematic ROW that must be permanently acquired in order for Developer to deliver the Basic Configuration and satisfy the requirements of the Contract

Documents. A Necessary Schematic ROW Change arises only where indicated in Section 14.4.1.1 of the Agreement.

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

NEPA Approval Package means the package described in and satisfying the requirements of Section DR 420.2.6.1 of the Technical Provisions.

NESHAP Notification means a notification, as described in and satisfying the requirements of Section DR 470.4.7 of the Technical Provisions.

Network Administration Plan means the plan described in and satisfying the requirements of Section GP 110.05.4.2 of the Technical Provisions.

Node Building Access Request means the request described in Section CR 466.3.2.6 of the Technical Provisions.

NOI means the ADEQ form that requests coverage under the AZPDES stormwater construction general permit.

Non-Conformance Report has the meaning set forth in Section GP 110.07.2.1 of the Technical Provisions.

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

Noncompliance Event Tables means, collectively, the D&C Period Noncompliance Event Table and Maintenance Period Noncompliance Table, as these tables may be revised from time to time in accordance with Sections 17.1.2 and 17.1.3 of the Agreement.

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

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

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

Non-Discriminatory Maintenance Change means any alteration or change (including addition) to provisions in the Technical Provisions and Safety Standards that relate to the Maintenance Services and are of general application to Comparable Facilities.

Such alterations or changes include revisions to manuals, publications and guidelines, adoption of new manuals, publications and guidelines, changed, added or replacement standards, criteria, requirements, conditions, procedures and specifications, including Safety Standards that relate to the Maintenance Services and are of general application to Comparable Facilities; provided, however, that, for purposes of changes in Price permitted pursuant to Section 14 of the Agreement, a Non-Discriminatory Maintenance Change that is required to implement a Change in Law shall be treated as a Change in Law rather than a Non-Discriminatory Maintenance Change.

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

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

Notice of Termination means the ADEQ form that terminates coverage under the AZPDES stormwater construction general permit.

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

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

Noxious and Invasive Species Control Plan means the plan described in Section DR 450.2.5 of the Technical Provisions.

NTP 1 means a written notice issued by ADOT to Developer authorizing Developer to proceed with the portion of the Work described in Section 7.3 of the Agreement.

NTP 2 means a written notice issued by ADOT to Developer pursuant to Section 7.4 of the Agreement authorizing Developer to proceed with design and construction of the Project, except construction or other ground-disturbing activities in the Center Segment.

NTP 3 means a written notice issued by ADOT to Developer pursuant to Section 7.7 of the Agreement authorizing Developer to proceed with construction and other ground-disturbing activities of the Center Segment.

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

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

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

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

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

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

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

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

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

Open Trench Safety and Security Plan means the plan described in Section GP 110.09.2.2 of the Technical Provisions.

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

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

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

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

Oversight means monitoring, inspecting, sampling, measuring, spot checking, attending, observing, testing, investigating and conducting any other oversight

respecting any part or aspect of the Project or the Work, including all the activities described in Section 3.6.2 of the Agreement.

Owner Verification means sampling and testing performed by ADOT or ADOT's representatives to verify that the Project is constructed in compliance with the Contract Documents.

Owner Verification Testing and Inspection Plan has the meaning as set forth in Section 7 of TP Attachment 110-2.

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

Parties means Developer and ADOT, collectively.

Partnering Meetings has the meaning set forth in Section 22.1.1.1 of the Agreement.

Party means Developer or ADOT, as the context may require.

Paint Draw Downs means the paint samples described in Section CR 450.3.1.2 of the Technical Provisions.

Pavement Design Summary means the summary described in Section DR 419.3.5 of the Technical Provisions.

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

Paving Plan means the plan described in and satisfying the requirements of Section CR 419.3.3 of the Technical Provisions.

Payment Submittal means a Submittal documenting payments for which ADOT is responsible in connection with the Project's ROW acquisition activities, as described in and satisfying the requirements of Section DR 470.4.4 of the Technical Provisions.

Pedestrian Access Modification/Closure Request means the request described in Section DR 462.3.1.3 of the Technical Provisions.

Performance Requirements means, for each Element of the Project, the requirements set forth in TP Attachment 500-1 of the Technical Provisions under the heading "Performance Requirements".

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

Permitted Closure means:

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

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

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

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

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

Phase I Environmental Site Assessment Report means a report, as described in and satisfying the requirements of Section DR 470.3.4 of the Technical Provisions.

Phase II Environmental Site Assessment Report means a report, as described in and satisfying the requirements of Section DR 470.3.4 of the Technical Provisions.

Phasing and Construction Sequence Report means the report described in and satisfying the requirements of Section DR 462.3.4 of the Technical Provisions.

Photometric Analysis Strip Map means the map described in and satisfying the requirements set forth in Section DR 460.3.6 of the Technical Provisions.

~~**Planned Maintenance Activities** has the meaning set forth in Section MR 400.2 of the Technical Provisions.~~

Plans means the plans described in and satisfying the requirements of Section GP 110.10.2.7.1 of the Technical Provisions.

Plant Inventory means the inventory of plants described in and satisfying the requirements of Section DR 450.2.3 of the Technical Provisions.

Plating Report means the report described in and satisfying the requirements set forth in Section DR 450.2.6 of the Technical Provisions.

Preliminary Project Baseline Schedule means the time-scaled, Critical Path network that depicts Project sections, Project milestones, and subordinate activities and their respective durations, sequencing, and interrelationships that represent Developer's

Work plan for designing, constructing, and completing the Project, attached as Exhibit 2-2 to the Agreement.

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

Prime Rate means the prime rate as published from time to time by the board of governors of the Federal Reserve System in statistical release H.15 or any publication that may supersede it.

Principal Investigator means the individual described in and satisfying the requirements of Section GP 110.08.3.15 of the Technical Provisions.

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

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

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

- (a) Design and engineering;
- (b) Utility Adjustment design;
- (c) Environmental permitting and compliance;
- (d) Public involvement;
- (e) ROW Services; and
- (f) Surveying.

Professional Services Quality Management Plan means the plan described in and satisfying the requirements of Section GP 110.07.2.1.2 of the Technical Provisions.

Professional Services Quality Manager means the individual filling the position with the responsibility to cause the methods and procedures contained in the ADOT-approved Professional Services Quality Management Plan to be implemented and followed by Developer's Professional Services staff in the performance of the Work, as more particularly described in Section GP 110.08.3.1 of the Technical Provisions. These methods and procedures include, among others, procedures to

ensure all design products are accurate and checked before release. The individual filling this position shall have the authority to stop Work and shall be co-located whenever design activities are being performed, including design activities related to field design changes.

Project means the transportation facilities and all related structures, improvements and systems to be developed, designed, constructed, operated and maintained, or any of the foregoing, pursuant to the terms of the Contract Documents, as more particularly described in TP Attachment 110-1 to the Technical Provisions; provided, however, that, from and after the Substantial Completion Date, “Project” does not include the Non-Maintained Elements for purposes of any provision of the Contract Documents relating to Maintenance Services, except to the extent of Work required for Final Acceptance, the D&C Warranty and the plant establishment period for the Non-Maintained Elements. “Project” does not include Developer’s Temporary Work Areas.

Project Administration Chapter means the chapter of the Project Management Plan covering Project administration, as more particularly described in Section GP 110.04.1 of the Technical Provisions.

Project Asset Condition Score means the score for the condition of the Project pavement resulting from Inspections, as more particularly described in Section MR 400.7 of the Technical Provisions.

Project Baseline Schedule means the schedule, consistent with the Completion Deadlines, submitted by Developer and approved by ADOT as a condition to issuance of NTP 2, setting forth the schedule of Work against which any subsequent schedule amendments are tracked, as more particularly described in Section GP 110.06.2.6 of the Technical Provisions.

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

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

Project Manager means the individual described in Section GP 110.08.2.1 of the Technical Provisions. The Project Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

(a) Within the lines delineating the outside boundaries of the Project as set forth in the Schematic ROW or as adjusted from time to time in accordance with the

Contract Documents (including adjustments for ADOT Additional Properties, Developer-Designated ROW and avoided parcels or partial parcels, in whole or in part); or

(b) Outside such lines and required for performance of the Work or construction, operation or maintenance of the Project, including Temporary Construction Easements outside such lines during their terms, and easements and other property interests for the Project and other components and features required for roadway function or environmental compliance.

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

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

(ii) Replacement Utility Property Interests; and

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

Project ROW Status Report means the report described in Section DR 470.2.3 of the Technical Provisions.

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

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

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

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

~~**Proposed Updates to MMP** has the meaning set forth in Section MR 400.3.4 of the Technical Provisions.~~

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

Proprietary Intellectual Property means all Intellectual Property created, authored or invented under or for the purposes of a Proposal, the Contract Documents or the Project.

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

Public Involvement Plan means Developer's plan described in and satisfying the requirements of Section CR 425.2.2 of the Technical Provisions.

Public Relations Officer means the individual described in Section GP 110.08.2.6 of the Technical Provisions. The Public Relations Officer is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

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

Pull Box Location Report means the report described in Section CR 460.3.4 of the Technical Provisions.

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

Qualified Biologist means the individual described Section GP 110.08.3.16 of the Technical Provisions.

Quality Acceptance means all planned and systematic actions performed by the IQF, as defined in the Contract Documents for their portion of the Acceptance Program.

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

Quality Management Plan General Requirements means Volume 1 of the QMP, as described in Section GP 110.07.2.1.1 of the Technical Provisions.

Quality Manager means the individual described in Section GP 110.08.2.4 of the Technical Provisions. The Quality Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Quality Records means the records and documentation described in Section GP 110.07.2.1.1 of the Technical Provisions.

Railroad Right-of-Entry Agreement means the agreement described in Section DR 436.2.4 of the Technical Provisions.

Railroad Submittal Package means a package, including documents and information, covering a proposed railroad crossing as more particularly described in Section DR 436.3.1 of the Technical Provisions.

Rainfall Records means the records described in Section CR 420.3.2.5.1 of the Technical Provisions.

Ramp Meter Warrant Analysis means the analysis described in Section DR 466.3.3.5 of the Technical Provisions.

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

- (a) Review and analysis of all Technical Provisions;
- (b) Visit and visual, non-intrusive inspection of the Site and surrounding locations, except areas to which access rights have not been made available by the Setting Date;
- (c) Review and analysis of all Reference Information Documents (including the documents identified in the definition of Known or Suspected Hazardous Materials), and of other available public and private records;
- (d) Review and analysis of the NEPA Approval;
- (e) Reasonable inquiry with Utility Companies, including requests for and review of Utility plans provided by Utility Companies;
- (f) Reasonable inquiry with railroads, including review of the Schematic Design for the UPRR railroad crossing;
- (g) Reasonable inquiry with Governmental Entities that issue Environmental Approvals for the Project or the Work;
- (h) Review and analysis of Laws applicable to the Project or the Work as of the Setting Date; and

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

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

Record Drawings means construction drawings and related documentation revised to show significant changes made during the construction process; usually based on marked-up RFC Documents furnished by Developer; also known as as-built plans, and more fully described in Section GP 110.10.2.8.4 of the Technical Provisions.

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

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

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

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

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

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

- (b) ADOT-Directed Change;

- (c) Non-Discriminatory Maintenance Change;

- (d) Safety Compliance Orders;

- (e) ADOT-Caused Delay;

- (f) Force Majeure Event;

- (g) Utility Company Delay;
- (h) Inaccurate Utility Information that directly affects the Construction Work, including Construction Work on ADOT Additional Properties, subject to the following exclusions:
 - (i) Excluding Construction Work on any Developer-Designated ROW;
 - (ii) Excluding Inaccurate Utility Information with respect to Service Lines; and
 - (iii) Excluding where the existence of a Utility in the correct location or size, or of a Utility Company's Prior Rights Documentation, as applicable, was known to Developer as of the Setting Date, or would have become known to Developer as of the Setting Date by undertaking a Reasonable Investigation with Utility Companies prior to the Setting Date, including by requesting and reviewing Utility plans provided by Utility Companies;
- (i) Discovery at, near or on the Project ROW, excluding Developer-Designated ROW and Replacement Utility Property Interests, of any Hazardous Materials (including ADOT Release(s) of Hazardous Material), excluding Developer Releases of Hazardous Materials and Known or Suspected Hazardous Materials;
- (j) Any sudden spill of Hazardous Material by ADOT or a third party who is not acting in the capacity of a Developer-Related Entity, which (i) occurs after the Setting Date, (ii) is required to be reported to a Governmental Entity, and (iii) renders use of the roadway or construction area unsafe or potentially unsafe absent assessment, containment or remediation;
- (k) Discovery on or under the Project ROW, excluding Developer-Designated ROW and Replacement Utility Property Interests, of any archaeological, paleontological or cultural resources, excluding any such resources at the Known Cultural Resource Sites;
- (l) Differing Site Conditions;
- (m) Discovery at, near or on the Project ROW, excluding Developer-Designated ROW and Replacement Utility Property Interests, of any Threatened or Endangered Species (regardless of whether the species is listed as threatened or endangered as of the Setting Date), excluding any such presence of the American Bald Eagle or other species known to Developer prior to the Setting Date or that would become known to Developer by undertaking Reasonable Investigation;
- (n) Change in Law or Change in Adjustment Standards, except a Change in Adjustment Standards that is consistent with the terms and limitations, if any, on

changes in Adjustment Standards set forth in any Utility Agreement to which Developer is a party;

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

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

(q) Any Necessary Schematic ROW Change; or

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

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

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

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

Relocation Agent means the individual described in Section GP 110.08.23 of the Technical Provisions.

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

Relocation Supplement Request means the request described in Section DR 470.4.2 of the Technical Provisions.

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

Remaining Useful Life Report has the meaning set forth in Section MR ~~501.3~~501.3.3 of the Technical Provisions.

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

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

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

Request for Design Exception means the request described in Section DR 440.3.5 of the Technical Provisions.

Request for Design Variance means the request described in Section DR 440.3.5 of the Technical Provisions.

Request for Information means the request described in Section GP 110.10.2.8.2 of the Technical Provisions.

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

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

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

Response to ADOT-initiated RFIs means the documentation and information Developer prepares in response to ADOT-initiated RFIs.

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

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

Review Comment Responses means the responses described in Section GP 110.10.2.6 of the Technical Provisions.

RFC Documents means the complete final construction drawings (including plans, profiles, cross-sections, notes, elevations, sections, details and diagrams), specifications, reports, studies, calculations, electronic files, records, and submittals necessary or related to the construction of the Project and any Utility Adjustments, and satisfying the requirements presented in Section GP 110.10.2.7.5 of the Technical Provisions.

RFC Submittal means the Submittal described in and satisfying the requirements of Section GP 110.10.2.7.5 of the Technical Provisions.

RFI Log means the log described in Section GP 110.10.2.8.2 of the Technical Provisions.

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

Roadway means that portion of the ROW required for construction, limited by the outside edges of slopes, including ditches, channels and all structures pertaining to the work.

Rock Engineer/Blasting Professional means the individual described in Section GP 110.08.3.11 of the Technical Provisions.

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

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

ROW Acquisition Manager means the individual described in Section 110.08.2.7 of the Technical Provisions. The ROW Acquisition Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

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

ROW Electronic Files means electronic files relating to Project ROW, as more particularly described in Section DR 470.3.1 of the Technical Provisions.

ROW Exhibit means a surveyor's drawing of a parcel of real property that shows the total parcel boundary, course dimensions, bearings and distances of the part acquired,

ROW acquisition area, and geometric data sufficient to support the legal description of the ROW acquisition area.

ROW Quality Control Specialist means the individual described in Section GP 110.08.3.8 of the Technical Provisions.

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

ROW Submittal shall mean any ROW Exhibit, Legal Descriptions, Appraisals, Acquisition Package, Condemnation Package, and all other Submittals relating to a single Project ROW parcel submitted to ADOT for review and approval.

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

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

Safety Corrective Measure means a Submittal describing the corrective measures Developer plans to take to address errors and deficiencies Developer discovers through a safety performance analysis, as described in Section GP 110.09.2.1.11.1 of the Technical Provisions.

Safety Management Plan means the plan described in and satisfying the requirements of Section GP 110.09.2.1 of the Technical Provisions.

Safety Manager means the individual described in Section GP 110.08.2.5 of the Technical Provisions. The Safety Manager is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Safety Performance Analysis Report means the report described in Section GP 110.09.2.1.11.1 of the Technical Provisions.

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

Salvage Operation Plan means the plan described in and satisfying the requirements of Section DR 450.2.4 of the Technical Provisions.

Schedule Narrative means the narrative described in and satisfying the requirements of Section GP 110.06.2.4 of the Technical Provisions.

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

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

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

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

Segment Limits Map means the map of the Project's design segments, as described in and satisfying the requirements of Section GP 110.10.2.6.2 of the Technical Provisions.

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

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

Shop Drawings and Working Drawings means the drawings described in Section GP 110.10.2.8.1 of the Technical Provisions.

Sign Inventory means the inventory of Project signs, as more particularly described Section DR 460.2.3 of the Technical Provisions.

Signing Concept Plan means the plan described in and satisfying the requirements of Section DR 460.3.4.3 of the Technical Provisions.

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

Site Documentation means the documentation described in Section GP 110.11.2 of the Technical Provisions.

Site Documentation Plan means the plan described in Section GP 110.04.3 of the Technical Provisions.

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

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

Stakeholder Inquiry Form means the Submittal used to report community member-initiated inquiries, as more particularly described in Section CR 425.2.3.1.6 of the Technical Provisions.

State means the State of Arizona.

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

Stormwater Management Plan means the plan described in and satisfying the requirements of Section CR 420.3.4 of the Technical Provisions.

Stormwater Pollution Prevention Plan means the plan described in and satisfying the requirements of Section CR 420.3.2.2 of the Technical Provisions.

Structure Calculations Report means the report described in and satisfying the requirements of Section DR 455.3.7.2.1 of the Technical Provisions.

Structure Type Study Report means a report, as described in and satisfying the requirement of Section DR 455.3.1 of the Technical Provisions.

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

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

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

Submittal means any individual document, individual work product item or other written or electronic end product or item required under the Contract Documents to be delivered or submitted to ADOT, and as identified in the Submittal Schedule. “Submittal” does not include notices, correspondence or invoices for payment. When used in its lower case spelling, the term “submittal” shall have its plain language meaning.

Submittal Schedule means the schedule for all design Submittal packages, as more particularly described Section GP 110.10.2.6.2 of the Technical Provisions.

Substantial Completion means the occurrence of all of the events and satisfaction of all of the conditions set forth in Sections 6.6.1(a) 6.6.1.1 and 6.6.3 of the Agreement, as and when confirmed by ADOT’s issuance of a Certificate of Substantial Completion for the Project.

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

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

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

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

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

Survey Manager means the individual described in Section GP 110.08.3.9 of the Technical Provisions.

System Basis has the meaning as set forth in Section 15 of TP Attachment 110-2.

Tangible Net Worth means the difference between (the sum of paid-in capital stock plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority interest plus intangible assets e.g., goodwill, patents, licenses), all determined

in accordance with Generally Accepted Accounting Principles and as interpreted by the Securities and Exchange Commission in connection with financial statements filed pursuant to the Securities Exchange Act of 1934.

Target means, for each Element, the target for the measurement record set forth in the column headed “Target” in TP Attachment 500-1 of the Technical Provisions.

Target Asset Condition Score means the Project Asset Condition Score that Developer is required to achieve at each interval of Asset Condition Scoring, as more particularly described in Section MR 400.7.1.2 of the Technical Provisions.

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

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

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

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

Termination by Court Ruling means any of the following:

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

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

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

(i) Permanently enjoining or prohibiting performance or completion of the Construction Work for a material portion of the Project, except where such injunction or prohibition is attributable to Developer's acts, omissions, negligence, willful misconduct, fraud, breach of an obligation under the Contract Documents or violation of Law or an applicable Governmental Approval, or

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

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

Temporary Phasing Controller Programming Request means the request described in Section CR 460.3.3 of the Technical Provisions.

Test Blast Report means the report described in Section CR 416.3.4.6 of the Technical Provisions.

Test Plot Slope Cut Plan means the plan described in Section CR 416.3.4.1 of the Technical Provisions.

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

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

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

Time Impact Analysis means an analysis, as described in and satisfying the requirements of Section GP 110.06.2.11 of the Technical Provisions.

Traffic Control Plans means the plans described in and satisfying the requirements of Section DR 462.3.2 of the Technical Provisions.

Traffic Report means the report described in Section DR 460.3.2 of the Technical Provisions.

Traffic Software means the software described in Section DR 460.2.2 of the Technical Provisions.

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

Traffic Signal Modification Request means the request described in Section CR 460.3.3 of the Technical Provisions.

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

TWG Report means the report described in Section GP 110.02.4 of the Technical Provisions.

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

UPRR Construction and Maintenance Agreement(s) means the written agreement(s) to be entered into between ADOT and UPRR regarding the construction and maintenance of Elements that affect UPRR ROW.

UPRR Work Authorization means the UPRR's authorization of Developer performing Work within UPRR ROW as described in Section DR 436.3.4 of the Technical Provisions.

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

- (a) Storm water facilities providing drainage for the Project ROW;
- (b) Street lights and traffic signals;
- (c) ITS facilities; and
- (d) Water wells held for private use. The necessary appurtenances to each utility facility shall be considered part of such utility.

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

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

Utility Adjustment Coordinator means the person described in Section GP 110.08.2.8 of the Technical Provisions. The Utility Adjustment Coordinator is one of the Key Personnel listed in Exhibit 9-2 of the Agreement.

Utility Adjustment Package means the package described in Section CR 430.3.3 of the Technical Provisions.

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

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

Utility Clearance Letter means the letter described in Section DR 430.2.4.3 of the Technical Provisions.

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

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

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

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

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

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

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

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

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

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

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

Utility Coordination Plan means the plan described in and satisfying the requirements of Section DR 430.2.2.1 of the Technical Provisions.

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

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

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

Utility Report means the utility report described in and satisfying the applicable requirements of Section DR 430.3.3 of the Technical Provisions.

Utility Service Request Letter means the letter described in and satisfying the requirements of Section DR 430.3.5 of the Technical Provisions.

Utility Work Acceptance Request means the request described in Section CR 430.3.1.2 of the Technical Provisions.

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

Vehicle Project Logo means the Project logo to be placed on vehicles, as more particularly described in Section GP 110.05.4.3 of the Technical Provisions.

Visual Analysis means the analysis described in Section DR 450.2.8 of the Technical Provisions.

Visual Animation means the animation described in Section GP 110.10.2.5.4.4 of the Technical Provisions.

Warranty means the warranty of the D&C Work provided by Developer pursuant to Section 12.1.2 of the Agreement.

Warranty Bond has the meaning set forth in Section 10.1.1 of the Agreement.

Warranty Term has the meaning set forth in Section 12.1.2 of the Agreement.

Water Quality Records means the records described in Section CR 420.3.2.8 of the Technical Provisions.

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

[END OF EXHIBIT 1]

Document comparison by Workshare Compare on Tuesday, September 15, 2015 10:58:53 AM

Input:	
Document 1 ID	interwovenSite://WORKSITE/Nossaman_LL/9022058/20
Description	#9022058v20<Nossaman_LL> - SMF DBM Agreement Ex 1 (Addendum #2 _Final)
Document 2 ID	interwovenSite://WORKSITE/Nossaman_LL/9022058/21
Description	#9022058v21<Nossaman_LL> - SMF DBM Agreement Ex 1 (Addendum #3 Final)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	31
Deletions	38
Moved from	1
Moved to	1
Style change	0
Format changed	0
Total changes	71