

**DESIGN-BUILD AGREEMENT
EXHIBITS**

for

010 MA 149 F0072 01C
Federal Aid No. 010-C(220)S
**PHOENIX-CASA GRANDE HIGHWAY (I-10)
I-17 (SPLIT) TO SR 202L (SANTAN)**

between



ARIZONA DEPARTMENT OF TRANSPORTATION

and

**Pulice Construction, Inc., FNF Construction, Inc., and
Flatiron Constructors, Inc., A Joint Venture**

Dated as of: January 5, 2021

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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, the Instructions to Proposers, 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, <i>et seq.</i>
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
ATTI	Arizona Technical Testing Institute
AWS	American Welding Society
AZPDES	Arizona Pollutant Discharge Elimination System
BBS	Battery Back-Up System
BMP	Best Management Practice
CAD	Computer-Aided Design
CADD	Computer Aided Drafting and Design
CCI	ENR Construction Cost Index

1	CCTV	Closed Circuit Television
2	C-D	Collector Distributor Roads
3	CFR	Code of Federal Regulations
4	CGP	Construction General Permit
5	CHST	Construction Health and Safety Technician
6	CISPI	Cast Iron Soil Pipe Institute
7	CLOMR	Conditional Letter of Map Revision
8	COP	City of Phoenix
9	COT	City of Tempe
10	CPI	Consumer Price Index
11	CPM	Critical Path Method
12	CQCM	Construction Quality Control Manager
13	CQMP	Construction Quality Management Plan
14	CRM	Comment Resolution Meeting
15	CRSP	Colorado Rockfall Simulation Program
16	CWA	Clean Water Act
17	D&C	Design and Construction
18	DB	Design Build
19	DBE	Disadvantaged Business Enterprise
20	DEA	Draft Environmental Assessment
21	DHOV	Directional High Occupancy Vehicle
22	DMS	Dynamic Message Sign
23	DPDs	Detailed Pricing Documents
24	DPS	Arizona Department of Public Safety
25	DR	Design Requirements
26	DTM	Digital Terrain Model
27	DTPA	Diethylene Triamine Pentaacetic Acid
28	EB	Eastbound

1	ECC	Erosion Control Coordinator
2	ECM	Environmental Compliance Manager
3	ECP	Environmental Communications Protocol
4	EDMS	Electronic Data Management System
5	EMP	Environmental Management Plan
6	EO	Executive Order
7	EPA	United States Environmental Protection Agency
8	ESA	Environmental Prior Assessment
9	ESAL	Equivalent Single-Axle Load
10	°F	Degrees Fahrenheit
11	FEA	Final Environmental Assessment
12	FEMA	Federal Emergency Management Agency
13	FHWA	U.S. Department of Transportation, Federal Highway Administration
14	FMS	Freeway Management System
15	FONSI	Finding of No Significant Impact
16	fps	Feet per Second
17	FTP	File Transfer Protocol
18	GAAP	Generally Accepted Accounting Principles
19	GEC	General Engineering Consultant
20	GPS	Global Positioning System
21	HCRS	Highway Condition Reporting System
22	H:V	Horizontal: Vertical
23	HEC	Hydraulic Engineering Circular
24	HOV	High-Occupancy Vehicle
25	HVAC	Heating, Ventilation and Air Conditioning
26	I-10	Interstate 10
27	I-17	Interstate 17
28	IA	Independent Assurance

1	ID	Identification
2	IGA	Intergovernmental Agreement
3	IQF	Independent Quality Firm
4	IRI	International Roughness Index
5	ISO	International Organization for Standardization
6	ITP	Instructions to Proposers
7	ITS	Intelligent Transportation System
8	ksi	Kips per Square Inch
9	L/DCR	Location/Design Concept Report
10	LAADCR	Landscape Architecture and Aesthetics Design Concept Report
11	LED	Light-Emitting Diode
12	LF	Linear feet
13	LiDAR	Light Detection and Ranging
14	In	Lane
15	LOS	Level of Service
16	LRFD	Load and Resistance Factor Design
17	m²	Square meter
18	MAG	Maricopa Association of Governments
19	MASH	Manual for Assessing Safety Hardware
20	mcd	Millicandelas
21	MDR	Materials Design Report
22	mil	One-thousandth of an inch (0.001")
23	MOT	Maintenance of Traffic
24	mph	Miles per Hour
25	MS4	Municipal Separate Storm Sewer System
26	MSE	Mechanically Stabilized Earth
27	MUTCD	Manual of Uniform Traffic Control Devices
28	NAD	North American Datum

1	NAVD	North American Vertical Datum
2	NB	Northbound
3	NCHRP	National Cooperative Highway Research Program
4	NCR	Non-Conformance Report
5	NEC	National Electrical Code
6	NEMA	National Electrical Manufacturers Association
7	NEPA	National Environmental Policy Act
8	NESHAP	National Emission Standards for Hazardous Air Pollutants
9	NOI	Notice of Intent
10	NOT	Notice of Termination
11	NTP	Notice to Proceed
12	OEM	Original Equipment Manufacturers
13	OJT	On-the-Job Training
14	OSHA	Occupational Safety and Health Administration
15	P3	Public-Private Partnership
16	PA	Programmatic Agreement
17	PCCP	Portland Cement Concrete Pavement
18	PCMS	Portable Changeable Message Signs
19	PDF	Portable Document Format
20	PDS	Pavement Design Summary
21	PIP	Public Involvement Plan
22	PMP	Project Management Plan
23	PPE	Personal Protective Equipment
24	PROWAG	Public Right-of-Way Accessibility Guidelines
25	psf	Pounds per Square Foot
26	PSQMP	Professional Services Quality Management Plan
27	QA	Quality Acceptance
28	QC	Quality Control

1	QMP	Quality Management Plan
2	REC	Recognized Environmental Condition
3	RFC	Release for Construction
4	RFI	Request for Information
5	RFP	Request for Proposals
6	RFQ	Request for Qualifications
7	RIDs	Reference Information Documents
8	ROD	Record of Decision
9	ROW or R/W	Right-of-Way
10	SB	Southbound
11	SDPP	Sewage Discharge Prevention Plan
12	SF	Square Foot
13	SHPO	State Historic Preservation Officer
14	SMS	Stakeholder Management System
15	SPT	Standard Penetration Test
16	SPUI	Single-Point Urban Interchange
17	SR	State Route
18	SRP	Salt River Project
19	SRVWUA	Salt River Valley Water Users Association
20	SUE	Subsurface Utility Engineering
21	SWPPP	Stormwater Pollution Prevention Plan
22	TCE	Temporary Construction Easement
23	TCP	Traffic Control Plan
24	TL	Testing Level
25	TMP	Transportation Management Plan
26	TPs	Technical Provisions
27	TRACS	Transportation Accounting System
28	TWG	Technical Work Group

1	UPS	Uninterruptable Power Supply
2	URL	Uniform Resource Locator
3	US	United States
4	USACE	United States Army Corps of Engineers
5	USEPA	United States Environmental Protection Agency
6	USFWS	United States Fish and Wildlife Service
7	USPAP	Uniform Standard of Professional Appraisal Practices
8	UTP	Unshielded Twisted Pair
9	VAC	Volts Alternative Current
10	VLN	Virtual Local Area Network
11	WB	Westbound
12	WBS	Work Breakdown Structure

13

14 **Adjacent Work** means any project, work, improvement or development to be planned,
15 designed or constructed that could or does impact the Project or that is located on
16 property contiguous with the Project.

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

23 **Adjustments** means Utility Adjustments.

24 **ADOT** means the Arizona Department of Transportation, a public agency as constituted
25 under the laws of the State of Arizona.

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

28 **ADOT-Caused Delay** means any of the following events, to the extent they result in a
29 delay or interruption in the performance of any material Developer obligation under the
30 Agreement, and provided such events are beyond Developer's control and are not due to
31 any act, omission, negligence, recklessness, willful misconduct or breach or violation of
32 contract, the requirements of the Contract Documents or Law by any Developer-Related
33 Entity, and further provided that such events (or the effects of such events) could not have

1 been avoided by the exercise of caution, due diligence or reasonable efforts by
2 Developer:

- 3 (a) ADOT-Directed Change under clause (a) of the definition thereof;
- 4 (b) Failure or inability of ADOT to make available to Developer any Schematic ROW
5 parcel within the time frame set forth in TP Attachment 118-1;
- 6 (c) Failure or inability of ADOT to make available to Developer any parcel outside the
7 Schematic ROW where ADOT has agreed, in accordance with Section 5.2.1.4 of
8 the Agreement to exercise its powers of eminent domain to acquire the parcel,
9 within 180 days after the date on which ADOT delivers notice to Developer that
10 ADOT agrees to exercise eminent domain to acquire the parcel.

11
12 For purposes of clause (b) above and this clause (c), “make available” means that
13 ADOT has:

- 14 (i) obtained an order for immediate possession,
- 15 (ii) closed the acquisition of the parcel, or
- 16 (iii) otherwise obtained permanent right of entry through settlement,
17 negotiation, the condemnation process or otherwise, which in each case
18 may be subject to covenants, conditions, restrictions, and limitations with
19 which Developer must comply; provided that “make available” shall not
20 include where such covenants, conditions, restrictions, and limitations
21 prevent Developer’s reasonable access to the parcel.

22 For purposes of clause (b) above, “make available” additionally means that, to the
23 extent ADOT is responsible under the Contract Documents to perform relocation,
24 demolition, or clearance (such as but not limited to data recovery for cultural
25 resources) of the parcel, ADOT has completed sufficient relocation, demolition,
26 and clearance of the parcel so as not to interfere unreasonably with Developer’s
27 performance of the Work with respect to such parcel;

- 28 (d) Following delivery of written notice from Developer requesting such action in
29 accordance with the terms and requirements of the Contract Documents, the
30 failure of ADOT to provide responses to proposed schedules, plans, Design
31 Documents, and other Submittals and matters submitted to ADOT after the
32 Effective Date for which a response is required under the Contract Documents as
33 an express prerequisite to Developer’s right to proceed or act, within the time
34 periods (if any) indicated in the Contract Documents, or if no time period is
35 indicated, within a reasonable time, taking into consideration (i) the nature,
36 importance, and complexity of the Submittal or matter, (ii) the number of Submittals
37 or such other items which are then pending for ADOT’s response, (iii) the
38 completeness and accuracy of the Submittal or such other item, and (iv)
39 Developer’s performance and history of Nonconforming Work under the Contract
40 Documents;
- 41 (e) Suspensions of the Work that ADOT orders under Section 17.1 of the Agreement,
42 subject to the following:

- (i) Any suspension of Work lasting up to 45 days arising from a Relief Event under clause (e), (h), (i), (j), (l), (n) or (o), respectively, of the definition of “Relief Event” (Force Majeure Events, presence or Release of Hazardous Materials, ADOT’s performance of data recovery respecting archeological, paleontological, historical or cultural resources, ADOT’s actions related to endangered or threatened species, litigation, or security threat, rule, order or directive) shall not be considered an ADOT-Caused Delay (although it would qualify as a Relief Event under clause (e), (h), (i), (j), (l), (n) or (o), respectively, of the definition of “Relief Event”, with all rights to relief set forth in Article 13 of the Agreement), despite the fact that ADOT may specifically direct Developer to suspend the Work; but
- (ii) If any such suspension extends beyond 45 days, then suspension thereafter shall be a separate and independent ADOT-Caused Delay and Relief Event.
- (f) Failure of ADOT to complete testing and data recovery of cultural resources at the Known Cultural Resource Sites, as defined in the NEPA Approval, within 180 days after issuance of NTP 2; and
- (g) Any other event that the Contract Documents expressly state is an “ADOT-Caused Delay”.

Any proper suspension of Work pursuant to Section 17.2 of the Agreement shall not be considered an ADOT-Caused Delay.

ADOT’s Compliance Oversight Committee means the committee that oversees the compliance of ADOT’s contractors with DBE and OJT regulations and goals.

ADOT Consultant means any firm or person under contract to ADOT to perform services for or on behalf of ADOT, whether or not the identity or status of such firm or person is known to Developer.

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) that ADOT has directed Developer to perform; and
- (b) Suspensions of the Work that ADOT orders under Section 17.1 of the Agreement, subject to the following:
- (i) Any suspension of Work lasting up to 45 days arising from a Relief Event under clause (e), (h), (i), (j), (l), (n) or (o), respectively, of the definition of “Relief Event” (Force Majeure Events, presence or Release of Hazardous Materials, ADOT’s performance of data recovery respecting archeological, paleontological, historical or cultural resources, ADOT’s actions related to endangered or threatened species, litigation, or security threat, rule, order or directive) shall not be considered an ADOT- Directed Change (although it would qualify as a Relief Event under clause (e), (h), (i), (j), (l), (n) or (o),

1 respectively, of the definition of “Relief Event”, with all rights to relief set
2 forth in Article 13 of the Agreement), despite the fact that ADOT may
3 specifically direct Developer to suspend the Work; but

- 4 (ii) If any such suspension extends beyond 45 days, then suspension thereafter
5 shall be a separate and independent ADOT-Directed Change and Relief
6 Event.

7 **ADOT's Recoverable Costs** means:

- 8 (a) The costs of any assistance, action, activity or Work undertaken by ADOT and for
9 which Developer is liable, or is to reimburse ADOT, under the terms of the Contract
10 Documents, including the charges of additional services by the GEC, third party
11 contractors, and reasonably allocated wages, salaries, compensation, and
12 overhead of ADOT staff and employees performing such action, activity or Work;
13 plus
14 (b) Third-party costs ADOT incurs to procure or contract with any third-party
15 contractors; plus
16 (c) Reasonable fees and costs of attorneys, including the reasonably allocable fees
17 and costs of the Arizona Attorney General's Office (but not including attorney's
18 fees and costs incurred in prosecuting or defending Disputes and Claims under
19 the Dispute Resolution Procedures against Developer, as provided by Section
20 21.2.8 of the Agreement), financial advisors, engineers, architects, insurance
21 brokers and advisors, investigators, traffic and revenue consultants, risk
22 management consultants, other consultants, and expert witnesses, as well as
23 court costs and other litigation costs, in connection with any such assistance,
24 action, activity or Work, including in connection with defending claims by and
25 resolving disputes with third party contractors; plus
26 (d) Interest on all of the foregoing sums at the applicable floating rate set forth in
27 Section 24.14.2 of the Agreement, commencing on the date due under the
28 applicable terms of the Contract Documents and continuing until paid.

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

32 **Affiliate** means:

- 33 (a) Any member, partner or joint venture member of Developer;
34
35 (b) Any Person that directly or indirectly through one or more intermediaries controls,
36 or is controlled by, or is under common control with, Developer or any of its
37 shareholders, members, partners or joint venture members; and
38
39 (c) Any Person for which 20 percent or more of the equity interest in such Person is
40 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 Agreement, including all Exhibits attached hereto, as such Agreement or any such Exhibits may be amended, supplemented, restated or otherwise modified in accordance with the terms hereof, and the executed originals of Exhibits that are contracts.

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

As-Built Geotechnical Engineering Report means the report described in Section 300.03.02 of the Technical Provisions.

As-Built Load Rating Report means the report described in Section 600.04.10 of the Technical Provisions.

Authorized Representative has the meaning set forth in Section 24.6.1 of the Agreement.

Basic Configuration has the meaning set forth in Section 100.04.01 of the Technical Provisions.

Basis of Design Report means a report, as described in, and satisfying the requirements of, Section 100.03.02 of the Technical Provisions.

Betterment has, with respect to a given Utility being Adjusted, the meaning (if any) set forth in the applicable Utility Agreement. When not defined by a Utility Agreement, then in all other cases, “Betterment” means any upgrading of a Utility or related facilities in the course of a Utility Adjustment that is not necessary for the construction of the Project, and is made 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 upgrade that 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 grade or size;
- (d) Any upgrading required by applicable Law;

- (e) Replacement devices or materials that are used for reasons of economy in accordance with the Utility Company's Adjustment Standards (e.g., non-stocked items may be uneconomical to purchase); or
- (f) Any upgrading required by the Utility Company's written Adjustment Standards.

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 (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, and details regarding expenses and capital expenditures;
- (c) All budgets, certificates, claims, contracts, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, materials generated pursuant to Developer's Public Involvement obligations under Section 107.20 of the Technical Provisions, notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information, and vehicle jurisdiction data) that is analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Developer or any of its Representatives in connection with the Project; and
- (d) With respect to all of the above, any information that is stored electronically or on computer-related media, including in the Electronic Document Management System.

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

Business Hours means 8:00 a.m. to 5:00 p.m., local prevailing time in Phoenix, Arizona.

Buy America means the Buy America requirements set forth in 23 C.F.R. § 635.410.

Certificate of Final Acceptance means the certificate issued by ADOT stating that the Project has achieved the conditions for Final Acceptance set forth in Section 6.6.3.1 of the Agreement.

Certificate of Substantial Completion means the certificate issued by ADOT stating that the Project has achieved the conditions for Substantial Completion set forth in Sections 6.6.1.1 of the Agreement.

Change in Law means:

- 1 (a) The adoption of any Law of the State after the Setting Date that materially
2 increases the costs of, or the time required to complete, Developer's performance
3 of its obligations under the Contract Documents; or
4 (b) Any change in the Law of the State, or in the interpretation or application thereof
5 by any Governmental Entity of the State, after the Setting Date, in each case that
6 is materially inconsistent with Laws of the State in effect on the Setting Date and
7 that materially increases the costs of, or the time required to complete, Developer's
8 performance of its obligations under the Contract Documents.

9 The term "Change in Law" excludes:

- 10 (i) Any change in, or new, federal or local Law;
11 (ii) Any change in, or new, Law of the State that also constitutes or causes a
12 change in, or new, Adjustment Standards;
13 (iii) Any change in, or new, Law passed or adopted but not yet effective as of
14 the Setting Date;
15 (iv) Any change in, or new, Law of the State relating to Developer's general
16 business operations, including licensing and registration fees, income
17 taxes, gross receipts taxes, property taxes, transaction privilege taxes,
18 sales and use taxes, social security, Medicare, unemployment, and other
19 payroll-related taxes; and
20 (v) Any change in, or new, Law that constitutes a Force Majeure Event as
21 described in clause (i) of the definition thereof.

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

- 33 (a) A change in possession of the power to direct or control the management of
34 Developer or a material aspect of its business due solely to a bona fide transaction
35 involving beneficial interests in the ultimate parent organization of a shareholder,
36 member, partner or joint venture member of Developer, (but not if the shareholder,
37 member, partner or joint venture member is the ultimate parent organization),
38 unless the transferee in such transaction is at the time of the transaction
39 suspended or debarred or subject to a proceeding to suspend or debar from
40 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; or
- (d) The exercise of minority veto or voting rights (whether provided by 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.

Change Request means a written request, in the form attached to the Agreement as Exhibit 12 to the Agreement, as it may be revised by ADOT, issued by Developer to ADOT under Section 14.2 of the Agreement.

Claim means: (a) a demand by Developer, which is or potentially could be disputed by ADOT, for (i) a Completion Deadline adjustment under the Contract Documents, (ii) payment of money or damages from ADOT to Developer, including Extra Work Costs and Delay Costs, or (iii) any other type of relief from ADOT, whether claimed under the Contract Documents or at Law or in equity; 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. A Claim includes each request by Developer due to a Relief Event, which is subject to the procedures under Article 13 of the Agreement.

Claim Deductible means the following amounts, as applicable, for each separate occurrence of a Relief Event: (a) the first \$25,000 of Extra Work Costs; and (b) the amount equal to the Delay Costs for the first five days of delay to the Critical Path (provided that a delay to the Critical Path shall not start until all Float is exhausted) due to the Relief Event.

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

Collocated means that an individual performs assigned duties and job tasks substantially within the Project Limits or in the collocated office established by Developer for the Project, and is otherwise regularly performing duties and job tasks within the Project Limits.

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 112.02.06 of the Technical Provisions.

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

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

3 **Construction DBE Goal** means the DBE goal for Construction Work.

4 **Construction Documents** means all Project and Utility Adjustment Construction
5 Drawings, fabrication plans, material and hardware descriptions, and specifications.

6 **Construction Drawings** means Plans.

7 **Construction Independent Quality Manager** means the individual appointed by the IQF
8 who is responsible for management of construction Quality Acceptance functions, as
9 more particularly described in Section 114.03.03 of the Technical Provisions.

10 **Construction Manager** means the individual described in Section 114.02.02 of the
11 Technical Provisions. The Construction Manager is one of the Key Personnel listed in
12 Exhibit 9 to the Agreement.

13 **Construction Quality Management Plan** means the plan that establishes quality control
14 and quality acceptance procedures for the Work, as more particularly described in Section
15 113.02.03 of the Technical Provisions.

16 **Construction Quality Manager** means the individual described in Section 114.03.02 of
17 the Technical Provisions.

18 **Construction Work** means all Work to build or construct, make, form, manufacture,
19 furnish, install, supply, deliver or equip the Project or the Utility Adjustments. Construction
20 Work includes landscaping and landscape establishment.

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

22 **Contract Price** means the lump sum price for Work set forth in Section 12.1.1 of the
23 Agreement, as it may be modified from time to time in accordance with the express
24 provisions of the Agreement.

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

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

34 **Day** or **day** means calendar day.

35 **DBE Goals** has the meaning set forth in Section 8.2.1 of the Agreement.

DBE/OJT Outreach and Compliance Manager means the individual described in Section 114.02.10 of the Technical Provisions. The DBE/OJT Outreach and Compliance Manager is one of the Key Personnel listed in Exhibit 9 to the Agreement.

DBE Monthly Utilization Progress Report means the report by that name described in Section 18.02.2 of 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 8.2.5 of the Agreement.

Defect means an attribute, 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; or
- (e) Failure of the affected Element or any other part of the Project to meet a requirement of the Contract Documents.

Delay Costs means Developer's additional costs attributable to a Relief Event Delay, which costs are limited to those provided under Section 2 of Exhibit 13. However, in the event of a Relief Event Delay that is concurrent with delay for which Developer is responsible under the Contract Documents, Developer shall not be entitled to Delay Costs, except that, and subject to other limitations in the Contract Documents on Delay Costs, where the Relief Event Delay is an ADOT-Caused Delay, Developer may be entitled to Delay Costs notwithstanding the occurrence of a concurrent delay for which Developer is responsible under the Contract Documents. Delay Costs do not include any costs that Developer can or could reasonably mitigate. Delay Costs are not recoverable for delays to work that is not a Controlling Work Item.

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 Manager means the individual described in Section 114.02.03 of the Technical Provisions, and identified in Exhibit 9 as Key Personnel.

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 or Utility Adjustments.

Detailed Pricing Documents has the meaning set forth in Section 22.1 of the Agreement.

Detour Plans means the Plans described in, and satisfying the requirements of, Section 700.06.03.09 of the Technical Provisions.

Developer means Pulice Construction, Inc., an Arizona Corporation, FNF Construction, Inc., an Arizona Corporation, and Flatiron Constructors, Inc., a Delaware Corporation, a Joint Venture, together with its permitted successors and assigns.

Developer 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 Developer Cycle Key Date through ten Business Days before the current Developer Cycle Key Date. ADOT publishes Developer Cycle Key Dates annually for the applicable year-long period.

Developer Default has the meaning set forth in Section 18.1.1 of the Agreement.

Developer-Designated ROW means any permanent or temporary interest in real property (which term is inclusive of all estates and interests in real property), improvements, and fixtures outside of the Schematic ROW for Developer's convenience. The term specifically includes (a) any easements required for drainage for the Project that are not shown in the Schematic Design or TP Attachment 118-1, (b) the necessity to condemn an entire parcel even though only a portion of the parcel is acquired as Developer-Designated ROW, (c) ROW acquired to implement an approved ATC, and (d) any air space, surface rights, and subsurface rights within the Developer-Designated ROW. The term specifically excludes (1) Replacement Utility Property Interests and (2) Developer's Temporary Work Areas.

Developer Intellectual Property means all Intellectual Property developed by Developer or its Affiliates or Subcontractors independently of and not related to its (their) obligations to perform under the Contract Documents.

Developer-Related Entity means:

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

- (d) Any other Persons performing any of the Work directly or indirectly on Developer's behalf or over which Developer directly or indirectly exercises control;
- (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 ROW means all ROW outside the Schematic ROW that is acquired by Developer or at Developer's request for the Project. Developer ROW includes all Developer-Designated ROW, Temporary Construction Easements outside the Schematic ROW, Developer's Temporary Work Areas, and Replacement Utility Property Interests.

Developer's Proposal Commitments means (a) the content of Exhibits 2-3 and 2-5 through 2-9 to the Agreement and (b) any other content of the Proposal as determined in accordance with Section 1.2.4 of the Agreement.

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 112.02 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 any proposed or actual change, deviation, modification, alteration or exception from the TPs.

Differing Site Conditions means:

- 1 (a) Subsurface or latent conditions encountered within one foot from the actual boring
2 holes identified in the geotechnical reports included in the Reference Information
3 Documents, which differ materially from those conditions indicated in the
4 geotechnical reports for such boring holes; or
5 (b) Subsurface or surface physical conditions of an unusual nature, differing materially
6 from those ordinarily encountered in the area and generally recognized as inherent
7 in the type of work provided for in the Agreement.

8 The term Differing Site Conditions shall specifically exclude:

- 9 (i) All such subsurface, latent or surface conditions that (A) were known to
10 Developer prior to the Setting Date or (B) would have become known to
11 Developer by undertaking Reasonable Investigation;
12 (ii) Changes in surface topography;
13 (iii) Variations in subsurface moisture content and variations in the water
14 table;
15 (iv) Utility facilities;
16 (v) Hazardous Materials, including contaminated groundwater;
17 (vi) Acquisition of real property for drainage purposes;
18 (vii) Any conditions that constitute or are caused by a Force Majeure Event;
19 and
20 (viii) Any Claim arising from Developer's use of or reliance on ADOT-provided
21 geotechnical information related to the Salt River Bridge.

22 **Directive Letter** has the meaning set forth in Section 14.3 of the Agreement.

23 **Disadvantaged Business Enterprise** has the meaning set forth in 49 C.F.R. Part 26.

24 **Dispute** means any dispute, Claim, disagreement or controversy between ADOT and
25 Developer concerning their respective rights and obligations under the Contract
26 Documents, including concerning any alleged breach or failure to perform and remedies
27 therefor, that has satisfied all predicate notice and information requirements set forth in
28 the Agreement and that is eligible for resolution using the Dispute Resolution Procedures.
29 Dispute includes all disputes that the Agreement expressly designates as Disputes or as
30 eligible for resolution under the Dispute Resolution Procedures without any further
31 prerequisites. The word "dispute" in its lower case spelling shall have its plain language
32 meaning.

33 **Dispute Resolution Procedures** means collectively, the procedures established under
34 Section 21.2 of the Agreement.

35 **Draw Request** means a draw request and certificate described in Section 12.2.3.2 of the
36 Agreement.

37 **Effective Date** means the date of the Agreement, which shall be the last date on which
38 all required signatures for the Agreement to be in effect are obtained.

1 **Electronic Document Management System** means the secure data management
2 system provided by Developer containing all of the data Developer is required to submit
3 to ADOT in connection with the Work and compatible with data systems, standards, and
4 procedures employed by ADOT, as more particularly described in Section 111.02 of the
5 Technical Provisions.

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

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

13 **Emergency Work** means any Work necessary to abate or resolve an Emergency.

14 **Engineer of Record** means the professional engineer(s) or engineering firm registered
15 and licensed in the State that performs the design and analysis, and is responsible for the
16 preparation of the Design Documents.

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

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

23 **Environmental Compliance Manager** means the individual described in, and satisfying
24 the requirements of, Section 114.02.09 of the Technical Provisions. The Environmental
25 Compliance Manager is one of the Key Personnel listed in Exhibit 9 to the Agreement.

26 **Environmental Law** means any Law applicable to the Project or the Work regulating or
27 imposing liability or standards of conduct that pertain to the environment, Hazardous
28 Materials, contamination of any type whatsoever, or environmental health and safety
29 matters, and any lawful requirements and standards that pertain to the environment,
30 Hazardous Materials, contamination of any type whatsoever, or environmental health and
31 safety matters, set forth in any permits, licenses, approvals, plans, rules, regulations or
32 ordinances adopted, or other criteria and guidelines promulgated, pursuant to Laws
33 applicable to the Project or the Work, as such have been or are amended, modified, or
34 supplemented from time to time (including any present and future amendments thereto
35 and reauthorizations thereof) including those relating to:

- 36 (a) The manufacture, processing, use, distribution, existence, treatment,
37 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) 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 9 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 18 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.*);

- 1 (xviii) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as
2 amended;
3 (xix) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*),
4 as amended;
5 (xx) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*),
6 as amended;
7 (xxi) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as
8 amended;
9 (xxii) General (A.R.S. § 49- 101 to 191);
10 (xxiii) Water Quality Control (A.R.S. § 49-201 to 391);
11 (xxiv) Air Quality (A.R.S. § 49-401 to 581);
12 (xxv) Solid Waste Management (A.R.S. § 49-701 to 881);
13 (xxvi) Hazardous Waste Disposal (A.R.S. § 49 -901 to 971);
14 (xxvii) Underground Storage Tank Regulation (A.R.S. § 49-1001 to 1091);
15 (xxviii) Light Pollution (A.R.S. §49-1101);
16 (xxix) Water Infrastructure Finance Program (A.R.S. § 49-1201 to 1221);
17 and
18 (xxx) Natural Gas Facilities (A.R.S. § 49-1301).

19 **Environmental Management Plan** means Developer's plan for performing all
20 environmental mitigation measures set forth in the Environmental Approvals, and for
21 complying with all other conditions and requirements of the Environmental Approvals, as
22 more particularly described in Section 119.02.03 of the Technical Provisions.

23 **Equity Member** means: (a) each entity with a direct equity interest in Developer (whether
24 as a member, partner, joint venture member or otherwise); and (b) each entity with an
25 indirect interest in Developer through one or more intermediaries and that exercises
26 control over Developer or otherwise has the ability to direct Developer's decision-making.

27 Notwithstanding the foregoing, if Developer is a publicly traded company, shareholders
28 with less than a 20% interest in Developer shall not be considered Equity Members.

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

30 **Event of Default** has the meaning set forth in Section 18.1.3 of the Agreement.

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

37 **Existing Conditions Site Documentation** means the documentation described in
38 Section 117.01 of the Technical Provisions.

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

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

11 **Extra Work Costs** means the incremental increase in Developer’s cost of labor, material,
12 equipment, and other direct and indirect costs directly attributable to Extra Work. Such
13 Extra Work Costs shall be calculated in accordance with Exhibit 13 (Extra Work Costs
14 and Delay Costs Specifications) to the Agreement.

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

18 **Final Acceptance** means the occurrence of all of the events and satisfaction of all of the
19 conditions set forth in Section 6.6.3 of the Agreement, as and when ADOT delivers a
20 Certificate of Final Acceptance.

21 **Final Acceptance Deadline** means the deadline for Final Acceptance, which shall be no
22 later than 90 days after the conclusion of the Landscaping Establishment Phase, unless
23 adjusted by Supplemental Agreement pursuant to the Agreement.

24 **Final Payment** means payment by ADOT of the final installment of the Contract Price.

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

28 **Final Design Submittal** means the design Submittal described in, and satisfying the
29 corresponding requirements of, Section 116.04.04 of the Technical Provisions.

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

36 **Flood Event** means (a) storms and floods for which the Governor of the State has
37 proclaimed a state of emergency, and when the damaged work of the Project is located
38 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 per second and that affects or delays Work.

FONSI means the NEPA Approval.

Force Account Work means Extra Work Costs determined on a force account basis, in accordance with Section 1.2 of Exhibit 13 to the Agreement.

Force Majeure Event means the occurrence of any of the following events that (1) is beyond the reasonable control of Developer, (2) is 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, 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 within the Project ROW that hinders or precludes achievement of Substantial Completion by the Substantial Completion Deadline;
- (c) National strikes not specific to Developer, embargoes, acts or omissions of a port or transportation authority, wars, and currently-listed events that occur outside of the State that, in each case, directly causes interruption to construction 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 of a moment magnitude greater than 5.0 (measured by the United States Geological Survey moment magnitude) with an epicenter within 150 miles of the northernmost point of the Project ROW, 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;
- (h) A vehicle collision on any of the roadways within the Project ROW that causes damage to a bridge structure, noise wall, retaining wall or overhead sign structure on which Developer is working or has already completed, and requires repair due to the collision. The foregoing does not include: (i) a collision due to the negligence,

gross negligence, recklessness or intentional act by a Developer-Related Entity; or (ii) a collision involving a vehicle owned, leased, or operated by a Developer-Related Entity when used in furtherance of the Work. For the purposes hereof, a “vehicle” has the meaning set forth in A.R.S. § 28-101, and also means railroad train and aircraft; and

(i) One or more of the following occurring directly due to COVID-19 or any other declared pandemic or epidemic:

- 1) A mandatory federal, State, or Local Jurisdiction order issued on or after August 4, 2020, which materially and adversely impacts Developer’s ability to perform the Work;
- 2) A delay to the supply of materials necessary for the Project;
- 3) The quarantine of a worker or workers located in the State due to a positive test for COVID-19 or a different pandemic or epidemic; or
- 4) A worker or workers located in the State are prevented from working while awaiting the results of a test for COVID-19 or a different pandemic or epidemic where such test was administered due to the worker(s) having a suspected case of such disease as a result of contact with an infected person or the exhibition of symptoms common to such disease.

General Engineering Consultant means the entity, as well as its personnel, designated by ADOT as its program manager for the Project, and which shall have all duties, responsibilities, and rights granted by ADOT.

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.

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

Good Industry Practice means the exercise of the degree of skill, diligence, prudence, and foresight that would reasonably and ordinarily be expected from a skilled and experienced designer, engineer or construction 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 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. Governmental Entity includes the Local Jurisdictions.

Guaranteed Obligations has the meaning set forth in the Guaranty.

Guarantor means each of the entities that provided, in the applicable form of Exhibit 10 to the Agreement, a guaranty of the obligations of Developer under the Contract Documents.

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

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 that 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 handling, sampling, stock-piling, containment, storage, backfilling in place, asphalt batching, recycling, treatment, clean-up, remediation, removal, 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 114.03.06 of the Technical Provisions.

Holidays means those days defined as legal holidays in A.R.S. § 1-301.

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 the Utility Information incorrectly indicates that the subject Utility does not exist anywhere within the portion of the Schematic ROW covered by the Utility Information;
- (b) The subject Utility lies underground and the horizontal centerline of the actual location of the subject Utility lies more than six horizontal feet from the horizontal centerline as shown in the Utility Information;
- (c) The subject Utility lies underground and the Utility Information incorrectly indicates that the subject Utility is abandoned (i.e., nonexistent except for its presence in the records, or existent but no longer active for any type of Utility use);

(d) The Utility Information fails to indicate, and Developer otherwise lacks actual or constructive knowledge, that the Utility Company holds or is assumed to hold Prior Rights Documentation with respect to the subject Utility; or

(e) The subject Utility lies underground and the pothole data provided by ADOT prior to the Setting Date does not indicate the existence of the subject Utility within the dimensions of the pothole.

If any discrepancy exists between the information provided by (a) one component of the Utility Information and (b) that provided by any other component of the Utility Information, only the more recent information shall be relevant for purposes of this definition.

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

Indemnified Parties means ADOT, the State, the Arizona State Transportation Board, and the General Engineering Consultant, and for each of the foregoing, 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 Work and the Construction Quality Management Plan. The initial ADOT-approved IQF is Professional Services Industries, Inc., a Corporation.

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 carried out by duly qualified personnel. 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 December 6, 2019 as part of the RFP with respect to the Project, including all Exhibits, forms, and attachments thereto, and any subsequent addenda.

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 700.07 of the Technical Provisions.

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

Issue Resolution Ladder has the meaning set forth in Section 21.2.1 of the Agreement.

Key Personnel means those individuals identified in Developer's Statement of Qualifications to fill the "Key Personnel" positions identified in Section 114.02 of the Technical Provisions, or those individuals approved by ADOT, in accordance with the Agreement, to serve as replacements. The specific individuals appointed by Developer and approved by ADOT to initially fill the Key Personnel positions are identified in Exhibit 9 to the Agreement.

Known Cultural Resource Sites means those specific locations within the Project Limits identified in the NEPA Approval that were found to contain cultural resources.

Known or Suspected Hazardous Materials means Hazardous Materials and Recognized Environmental Conditions that are known, reasonably suspected to exist as of the Setting Date, or could be discovered through a Reasonable Investigation.

Landscapable Area means area within the Project ROW subject to the work specified in Section 800 of the Technical Provisions, excluding those areas specifically identified as not part of the Landscapable Area described in Section 800.03.02 of the Technical Provisions.

Landscaping Establishment Phase shall mean the period described in Section 800.04.06 of the Technical Provisions. The Landscaping Establishment Phase shall be 365 days, commencing on the Substantial Completion Date.

Lane Closure Request means a written request from Developer to ADOT for a Lane Closure. A Lane Closure Request must identify the specific time requested 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

1 impact on the Project or the Work, whether taking effect before or after the Effective Date,
2 including Environmental Laws. "Laws", however, excludes Governmental Approvals.

3 **Lead Engineering Firm** means T.Y. Lin International, a Corporation.

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

9 **Liquidated Damages** means the liquidated damages specified in Articles 8 and 19 of the
10 Agreement, and in any other part of the Agreement.

11 **Local Jurisdictions** means the cities of Phoenix, Tempe, and Chandler; the Town of
12 Guadalupe; and the County of Maricopa.

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

19 **Maintenance During Construction** means any and all management, administration,
20 maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration,
21 renewal, and replacement to be performed by Developer in connection with the Project
22 prior to Substantial Completion, as more fully described in Section 105.15 of the Technical
23 Provisions.

24 **Meeting Notes** means the notes that Developer records from Project-related meetings
25 Developer attends, as described in Section 108.03 of the Technical Provisions.

26 **Monthly Progress Report** means the report described in Section 108.04.02.08 of the
27 Technical Provisions.

28 **Monthly Progress Schedule** means the schedule submitted by Developer, consistent
29 with the Completion Deadlines, setting forth the approved schedule of Work on a monthly
30 basis against which any subsequent schedule amendments are tracked, as more
31 particularly described in Section 108.04.02.07 of the Technical Provisions.

32 **Necessary Schematic ROW Change** means real property (which term is inclusive of all
33 permanent estates and interests in real property), improvements, and fixtures located
34 outside the Schematic ROW that must be permanently acquired for Developer to deliver
35 the Basic Configuration and satisfy the requirements of the Contract Documents. A
36 Necessary Schematic ROW Change arises only in accordance with Section 13.4.1.1 of
37 the Agreement.

1 **NEPA Approval** means the Finding of No Significant Impact For Interstate 10 Broadway
2 Curve: I-17 (Split) to SR202 (Santan Freeway), dated April 27, 2020.

3 **Noncompliance Charges** means the liquidated amounts specified in Section 19.4 of the
4 Agreement.

5 **Noncompliance Event** means any Developer breach or failure to perform any one of the
6 obligations set forth in the Noncompliance Event Table.

7 **Noncompliance Event Table** means the Noncompliance Event Table, set forth in Exhibit
8 14, that identifies the Noncompliance Events and corresponding cure periods, if any, that
9 apply during the Work. The Noncompliance Event Table is subject to change in
10 accordance with Section 16.1.2 of the Agreement.

11 **Noncompliance Points** means the point(s) ADOT may assess against Developer for the
12 occurrence of Noncompliance Events, in accordance with Section 16.3 of the Agreement
13 and the Noncompliance Event Table.

14 **Non-Conformance Report** means documentation of Nonconforming Work.

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

18 **Notice of Partial Termination for Convenience** means written notice issued by ADOT
19 to Developer terminating part of the Work of Developer for convenience under Section
20 23.1 of the Agreement.

21 **Notice of Termination for Convenience** means written notice issued by ADOT to
22 Developer terminating the Work of Developer for convenience under Section 23.1 of the
23 Agreement.

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

26 **NTP 2** means a written notice issued by ADOT to Developer pursuant to Section 7.4 of
27 the Agreement authorizing Developer to proceed with the Work described in Section 7.4.2
28 of the Agreement.

29 **OJT Goals** has the meaning set forth in Section 8.3.1 of the Agreement.

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

32 **OJT Trainee** has the meaning set forth in Section 923-1.03 of the OJT Special Provisions.

33 **OJT Utilization Plan** means Developer's ADOT-approved plan for meeting the OJT
34 Goals, described in Section 8.3.3 of the Agreement.

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

10 **Oversight** means monitoring, inspecting, sampling, measuring, spot checking, attending,
11 observing, testing, investigating, and conducting any other oversight respecting any part
12 or aspect of the Project or the Work, including all the activities described in Section 3.6 of
13 the Agreement.

14 **Partial Termination for Convenience** means a partial termination of the Agreement
15 pursuant to Section 23.1 of the Agreement.

16 **Parties** means Developer and ADOT, collectively.

17 **Partnering Meetings** has the meaning set forth in Section 21.1.1.1 of the Agreement.

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

19 **Payment Bond** means the bond referred to in Section 9.1.2 of the Agreement.

20 **Performance Bond** means the bond referred to in Section 9.1.1 of the Agreement.

21 **Permitted Closure** means a Lane Closure that ADOT approves upon written request
22 from Developer, and that involves one of the following:

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

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

32 (c) A Lane Closure required due to a Relief Event, subject to Section 19.2.4 of the
33 Agreement; or

34 (d) A Lane Closure that is approved by ADOT under Sections 700.06.04.05.01,
35 700.06.04.05.06, or 700.06.04.05.08 of the Technical Provisions, during the time
36 period approved by ADOT.

37 **Persistent Developer Default** has the meaning set forth in Section 16.4.1 of the
38 Agreement.

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

Plans means the plans described in, and satisfying the requirements of, Section 116.04.01 of the Technical Provisions. When used in its lower case spelling, the term “plan(s)” shall have its plain language meaning.

Preliminary DBE Utilization Plan means the plan that Developer submitted in its Proposal concerning the recruiting and use of Persons to fulfill the DBE Goals.

Preliminary OJT Utilization Plan means the plan that Developer submitted in its Proposal concerning the recruiting and use of workers to fulfill the OJT Goals.

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.

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.

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 and Maintenance During Construction, including the following services and Work:

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

1 **Professional Services DBE Goal** means the DBE goals for Professional Services.

2 **Professional Services Quality Management Plan** means the plan described in, and
3 satisfying the requirements of, Section 113.02.02 of the Technical Provisions.

4 **Professional Services Quality Manager** means the individual filling the position with the
5 responsibility to cause the methods and procedures contained in the ADOT-approved
6 Professional Services Quality Management Plan to be implemented and followed by
7 Developer's Professional Services staff in the performance of the Work, as more
8 particularly described in Section 114.03.01 of the Technical Provisions. These methods
9 and procedures include, among others, procedures to ensure all design products are
10 accurate and checked before release. The individual filling this position shall have the
11 authority to stop Work and shall be Collocated as provided in Section 114.03.01 of the
12 Technical Provisions.

13 **Project** means the transportation facilities and all related structures, improvements, and
14 systems to be developed, designed, and constructed pursuant to the terms of the
15 Contract Documents. "Project" does not include Developer's Temporary Work Areas.

16 **Project Baseline Schedule** means the schedule, consistent with the Completion
17 Deadlines, submitted by Developer and approved by ADOT as a condition to issuance of
18 NTP 2, setting forth the schedule of Work against which any subsequent schedule
19 amendments are tracked, as more particularly described in Section 108.04.02.06 of the
20 Technical Provisions.

21 **Project Environmental Commitment Requirements** means the commitments and
22 obligations set forth in TP Attachment 119-1 of the Technical Provisions.

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

25 **Project Limits** means the area within the Project ROW that defines the area available
26 for access by the Developer in accordance with the Contract Documents.

27 **Project Management Plan** means the document submitted by Developer and approved
28 by ADOT containing the component parts, plans, and documentation described in Section
29 111 of the Technical Provisions.

30 **Project Manager** means the individual described in Section 114.02.01 of the Technical
31 Provisions. The Project Manager is one of the Key Personnel listed in Exhibit 9 to the
32 Agreement.

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

- 36 (a) Within the lines delineating the outside boundaries of the Project as set forth in the
37 Schematic ROW or as adjusted in accordance with the Contract Documents

(including adjustments for Developer ROW, except for Developer's Temporary Work Areas outside the Schematic ROW and Replacement Utility Property Interests); or

(b) Outside such lines and required for performance of the Work or construction, operation or maintenance of the Project, 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 airspace, 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; and

(ii) Replacement Utility Property Interests.

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 Work leading up to and including Final Acceptance, and for tracking the performance of such Work, as the same may be revised and updated from time to time in accordance with Section 108.04 of the Technical Provisions (as revised in accordance with the Agreement).

Project Special Provisions means the special provisions prepared for the Project by Developer, as detailed in Section 120 of the Technical Provisions.

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

Proposal Due Date means August 11, 2020, the deadline for submission of the Proposal to ADOT under the RFP.

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 May 7, 2019, as amended, and that submitted a Proposal in response to the RFP.

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 that 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, or installing physical barriers. The term includes both temporary measures and permanent installations meeting the foregoing definition.

Public Involvement Program means Developer's plan described in, and satisfying the requirements of, Section 107.20 of the Technical Provisions.

Public Relations Manager means the individual described in Section 114.02.07 of the Technical Provisions. The Public Relations Manager is one of the Key Personnel listed in Exhibit 9 to the Agreement.

Public Records Act means A.R.S., Title 39, Chapter 1, Article 2.

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. The Punch List is subject to the limitations described in Section 6.6.2.3 of the Agreement.

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 Quality Management Plan, the Professional Services Quality Management Plan, and the Construction Quality Management Plan, as more fully described in Section 113.02 of the Technical Provisions.

Quality Manager means the individual described in Section 114.02.05 of the Technical Provisions. The Quality Manager is one of the Key Personnel listed in Exhibit 9 to the Agreement.

Quality Records means the records and documentation described in Section 113.02 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 TPs;
- (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;
- (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 Governmental Entities that issue Environmental Approvals for the Project or the Work; and
- (g) Review and analysis of Laws applicable to the Project or the Work as of the Setting Date.

Recognized Environmental Conditions means environmental conditions known to exist within the Project ROW and which the NEPA Approval requires Developer to avoid disturbing or otherwise impacting.

Record Drawings means construction drawings and related documentation revised to show changes made during the construction process; usually based on modified or edited

RFC Submittals furnished by Developer; also known as as-built plans or as-built drawings, and more fully described in Section 116.05.04 of the Technical Provisions.

Recovery Schedule means the schedule Developer is required to provide under Section 7.10 of the Agreement and more fully described in Section 108.04.02.10 of the Technical Provisions.

Reference Information Documents means those documents identified 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 covenants under the Contract Documents;
- (b) ADOT-Directed Change;
- (c) Safety Compliance Orders;
- (d) ADOT-Caused Delay;
- (e) Force Majeure Event;
- (f) Utility Company Delay;
- (g) Inaccurate Utility Information that directly affects the Work, subject to the following:
 - (i) Excluding Work outside the Schematic ROW;
 - (ii) Excluding Inaccurate Utility Information with respect to Service Lines;
 - (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 prior to the Setting Date, including by requesting and reviewing Utility plans provided by Utility Companies; and
 - (iv) Excluding where the existence of a Utility in the correct location or size could have been determined with a reasonable visual inspection.

- (h) Discovery of any Hazardous Materials (including ADOT Release(s) of Hazardous Material), excluding Developer Releases of Hazardous Materials and Known or Suspected Hazardous Materials;
- (i) 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 within the Project ROW unsafe or potentially unsafe absent assessment, containment or remediation;
- (j) Discovery on or under the Project ROW, excluding Developer ROW, of any archaeological, paleontological or cultural resources, excluding any such resources at the Known Cultural Resource Sites;
- (k) Differing Site Conditions in the Schematic ROW;
- (l) Discovery at, near or on the Project ROW, excluding Replacement Utility Property Interests and Developer ROW, 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;
- (m) Change in Law;
- (n) 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 negligent, reckless, intentional or wrongful act or omission of any Developer-Related Entity;
- (o) 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 or construction procedures to comply; or
- (p) Any Necessary Schematic ROW Change.

Relief Event Delay means a delay to a Controlling Work Item, after consumption of all Float available pursuant to Section 7.9.2 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 to non-Controlling Work Items or due to loss, damage or destruction described in Section 10.3.7 of the Agreement.

Relief Event Notice means the Notice required to be provided by Developer under Section 13.1.2 of the Agreement.

Relief Request has the meaning set forth in Section 13.1.3 of the Agreement.

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

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

12 **Request for Change Proposal** means a written notice issued by ADOT to Developer
13 under Section 14.1.2 of the Agreement, advising Developer that ADOT may issue an
14 ADOT-Directed Change or wishes to evaluate whether to initiate such a change pursuant
15 to Section 14.1 of the Agreement.

16 **Request for Proposals** means the request for proposals referenced in Recital D of the
17 Agreement.

18 **Request for Qualifications** means the request for qualifications referenced in Recital B
19 of the Agreement.

20 **RFC Submittal** means the Submittal described in, and satisfying the requirements of,
21 Section 116.04.05 of the Technical Provisions.

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

26 **Roadway** means that portion of the Project ROW required for construction, limited by the
27 outside edges of slopes, including ditches, channels, and all structures pertaining to the
28 Work.

29 **Safety Management Plan** means the plan described in, and satisfying the requirements
30 of Section 115.02.01 of the Technical Provisions.

31 **Safety Manager** means the individual described in Section 114.02.06 of the Technical
32 Provisions. The Safety Manager is one of the Key Personnel listed in Exhibit 9 to the
33 Agreement.

34 **Safety Standards** means those provisions of the Technical Provisions that ADOT
35 indicates that it considers to be important measures to protect public safety, worker safety
36 or the safety of property. As a matter of clarification, provisions of the Technical Provisions
37 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.

Schedule Narrative means the narrative described in, and satisfying the requirements of, Section 108.04.02.04 of the Technical Provisions.

Schedule of Values means the itemized allocation of Developer's pricing for each component of the Work.

Schematic Design means the placemark file, roll plots, utility matrix, wall report, traffic data, and associated CAD files that ADOT prepared depicting ADOT's conceptual design for the Project, as included in the Reference Information Documents in folder 02 Design "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. Schematic ROW includes the ROW and Temporary Construction Easements shown in TP Attachment 118-1. The Schematic ROW does not include Developer ROW.

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 Project ROW.

Segment Limits Map means the map of the Project's design segments, as described in, and satisfying the requirements of, Section 116.03.02 of the Technical Provisions.

Selection Official means a person, designated by ADOT for the Proposals evaluation, who was tasked with making the Best Value ranking determination of the received Proposals, and with presenting the recommended Developer to the ADOT Director for contract execution.

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.

Service Line Adjustment means any work or adjustment to a Service Line to accommodate a Utility Adjustment.

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

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

SRP Utility Adjustment Work shall have the meaning set forth in Section 5.4.2.10.

Stakeholder Management System means ADOT's stakeholder engagement software, developed by Boréal, used for the Project.

State means the State of Arizona.

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

Stormwater Pollution Prevention Plan means the plan described in, and satisfying the requirements of, Section 800.02.07 of the Technical Provisions.

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

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

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, including those items identified as Submittals in the Technical Provisions. "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 116.03.02 of the Technical Provisions.

Substantial Completion means the occurrence of all of the events and satisfaction of all of the conditions set forth in Section 6.6.1.1 of the Agreement, as and when ADOT delivers a Certificate of Substantial Completion for the Project.

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

Substantial Completion Deadline means the date that is 1400 days after issuance of NTP 1, beginning on, and including, the date that ADOT issues NTP 1, as such deadline may be subject to adjustment by Supplemental Agreement pursuant to the Agreement.

Supplemental Agreement means a written order issued by ADOT to Developer delineating changes in the Work or in the terms and conditions of the Contract Documents in accordance with Articles 13 and 14 of the Agreement, and establishing, if appropriate,

an adjustment to the Contract Price or a Completion Deadline. Except as provided in Sections 5.4.2.11, 6.6.4, and 12.1.1, a Supplemental Agreement shall be the sole means of adjusting the Contract Price or a Completion Deadline. Developer shall not be entitled to any additional compensation for the Project, including for Extra Work Costs and Delay Costs, except as provided through a Supplemental Agreement that increases the Contract Price.

Supplier means any Person not performing work at or on the Site that supplies machinery, equipment, materials, hardware, software, systems or any other appurtenance to the Project to Developer or to any Subcontractor in connection with the performance of the Work. Persons who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Site shall not be deemed to be performing Work at the Site.

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

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 (15 U.S.C. § 78a *et seq.*).

Technical Provisions means the project-specific technical provisions entitled “Technical Provisions for 010 MA 149 F007201C, Phoenix-Casa Grande Highway (I-10) I-17 (Split) to SR 202L (Santan).”

Temporary Construction Easement means temporary easements or other temporary property interests within the Schematic ROW or Developer ROW granting rights of use to Developer for the limited purposes of carrying out Construction Work or providing detour routes during 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.

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 24.16 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 23.1 of the Agreement.

Third-Party Agreement means any agreement between ADOT and any third-party listed in Table 100-2 of Section 100.05 of the Technical Provisions. Such executed agreements are included in the Reference Information Documents as of the Effective Date.

Third Party Intellectual Property means any Intellectual Property owned by any Person unrelated to Developer or its Affiliates or Subcontractors and that 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 108.04.02.11 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 C.F.R. 630 Subpart J and Section 700.06.02.03 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.

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,

1 electric power, heat, telephone, telegraph, water, gas, oil, petroleum products, steam,
2 chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with
3 the drainage of the Project, and similar substances that directly or indirectly serve the
4 public. The term "Utility" or "utility" includes private irrigation facilities that are available on
5 a common carriage basis throughout the relevant service area.

6 The term "Utility" or "utility" specifically excludes:

- 7 (a) Stormwater facilities providing drainage for the Project ROW;
- 8 (b) Street lights and traffic signals; and
- 9 (c) ITS facilities.

10 The necessary appurtenances to each utility facility shall be considered part of such utility.
11 Without limitation, any Service Line up to and including the meter, connecting directly to
12 a utility shall be considered an appurtenance to that utility, regardless of the ownership of
13 such Service Line.

14 **Utility Adjustment** means each relocation (temporary or permanent), abandonment,
15 Protection in Place, removal (of previously abandoned Utilities as well as of newly
16 abandoned Utilities), replacement, reinstallation, or modification of existing Utilities
17 necessary to accommodate construction, operation, or use of the Project.

18 For any Utility crossing the Project ROW, the Utility Adjustment Work for each crossing
19 of the Project ROW by that Utility shall be considered a separate Utility Adjustment. For
20 any Utility installed longitudinally within the Project ROW, the Utility Adjustment Work for
21 each continuous segment of that Utility located within the Project ROW shall be
22 considered a separate Utility Adjustment.

23 **Utility Adjustment Work** means all efforts and costs necessary to accomplish the Utility
24 Adjustments, whether provided by Developer or by the Utility Companies, including all
25 coordination, design, design review, permitting, construction, inspection, maintenance of
26 records, relinquishment of Existing Utility Property Interests, preparation of Utility
27 Adjustments, and acquisition of Replacement Utility Property Interests. The term also
28 includes any reimbursement of Utility Companies that is Developer's responsibility
29 pursuant to Section 5.4.4 of the Agreement. Any Utility Adjustment Work furnished or
30 performed by Developer is part of the Work; any Utility Adjustment Work furnished or
31 performed by a Utility Company is not part of the Work.

32 **Utility Agreement** means an agreement between Developer and a Utility Company that
33 establishes the rights and obligations of Developer and the Utility Company with respect
34 to one or more Utility Adjustments. Such an agreement may be general or comprehensive
35 or may address only certain aspects of a Utility Adjustment.

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

1 **Utility Company Delay** means, only with respect to a necessary Utility Adjustment, delay
2 to the Critical Path caused by:

3 (a) A Utility Company's failure to provide material information necessary for Developer
4 to present to the Utility Company a proposed design package for the applicable
5 Utility Adjustment and proposed Utility Agreement for negotiation within 45 days
6 after (i) ADOT receives Developer's request for ADOT's assistance as described
7 in Section 5.4.7.1 of the Agreement, and (ii) ADOT receives satisfactory evidence
8 that Developer satisfied the "conditions to assistance" set forth in Section
9 5.4.7.2(a) of the Agreement;

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

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

18 (ii) ADOT receives Developer's request for ADOT's assistance as described in
19 Section 5.4.7.1 of the Agreement; and

20 (iii) ADOT receives satisfactory evidence that Developer satisfied the
21 "conditions to assistance" set forth in Section 5.4.7.2(a) of the Agreement;

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

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

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

38 **Utility Company Project** means the design and construction by or at the direction of a
39 Utility Company (or by Developer pursuant to Section 5.4.6 of the Agreement) of a new
40 Utility other than as part of a Utility Adjustment. Betterments are not Utility Company

1 Projects. Utility Company Projects shall be entirely the financial obligation of the Utility
2 Company.

3 **Utility Coordination Plan** means the plan described in, and satisfying the requirements
4 of, Section 107.15.04.01 of the Technical Provisions.

5 **Utility Information** means the information regarding Utilities included in the Reference
6 Information Documents or in TP Attachments 107-2 and 107-3, together with any other
7 information ADOT provided to Developer prior to the Setting Date with regard to
8 identification of Utilities, and the information contained in any encroachment permits
9 ADOT has issued prior to the Setting Date. The Utility Information includes:

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

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

21 **Vehicle Project Logo** means the Project logo to be placed on vehicles, as more
22 particularly described in Section 112.03.04 of the Technical Provisions.

23 **Work** means all of the work required under the Contract Documents, including all
24 administrative, design, engineering, ROW acquisition, support services, Utility
25 Adjustment Work to be furnished or provided by Developer, reimbursement of Utility
26 Companies for Utility Adjustment Work furnished or provided by such Utility Companies
27 or their contractors and consultants, procurement, professional, manufacturing, supply,
28 installation, construction, supervision, management, testing, verification, labor, materials,
29 equipment, maintenance, documentation, and other duties and services to be furnished
30 and provided by Developer as required by the Contract Documents, including all efforts
31 necessary or appropriate to achieve Final Acceptance, except for those efforts that the
32 Contract Documents expressly specify will be performed by Persons other than the
33 Developer-Related Entities.

34
35 **[END OF EXHIBIT 1]**

EXHIBIT 2

DEVELOPER'S PROPOSAL COMMITMENTS AND CLARIFICATIONS

EXHIBIT 2-1

DEVELOPER'S SCHEMATIC DESIGN INCLUDING ALTERNATIVE TECHNICAL CONCEPTS

Developer's Schematic Design
PFF JV SCHEMATIC TYPICAL SECTIONS SHEET 7 OF 8 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 1 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 2 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 3 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 4 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 5 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 6 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 7 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 8 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 9 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 10 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 12 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 11 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 13 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 14 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 15 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 16 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 17 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 18 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 19 OF 21 (Rev. 1)
PFF JV SCHEMATIC ROADWAY PLAN SHEET 20 OF 21
PFF JV SCHEMATIC ROADWAY PLAN SHEET 21 OF 21
Developer's Alternative Technical Concepts
ATC No. 02, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 02 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.
ATC No. 03, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 03 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.
ATC No. 08, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 08 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.
ATC No. 15, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 15 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.

ATC No. 18, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 18 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.

ATC No. 19, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 19 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.

ATC No. 21, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated March 17, 2020. ATC No. 21 and ADOT's response letter dated March 17, 2020 are incorporated herein by reference.

ATC No. 23, only to the extent incorporated into the Technical Provisions, and subject to the terms, conditions, and limitations in ADOT's response letter dated May 15, 2020. ATC No. 23 and ADOT's response letter dated May 15, 2020 are incorporated herein by reference.

EXHIBIT 2-2

PRELIMINARY PROJECT BASELINE SCHEDULE

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I-10 BROADWAY CURVE - POST PROPORSAL SCHEDULE						Classic Schedule Layout												11-Dec-20 13:27																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																					
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EXHIBIT 2-3

PROPOSAL COMMITMENTS

General

Item	Topic	Reference	Commitment
1	Communication	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 14 of 45	[Developer] strategic communications/outreach team will embed an MOT outreach coordinator and 2 engagement outreach specialists (under the direction of the Public Relations Manager) with our traffic management team fulltime in the collocated office.
2	Communication	Volume I - Technical Proposal, Project Development Plan, Project Delivery Approach, Pg. 28 of 51	[Developer] states "Sentiment tracking software, such as Sprout Social, will monitor project dialogue and provide social platform analytics. We will use this data to get ahead of negative trends and address them." In the standard Developer provided social listening plan, there will be 10 profiles provided with the following most recognized social profiles as follows: Facebook, Twitter, Instagram, LinkedIn, Youtube, Reddit (read/listening only) The plan will also include 10 users and the ability to identify three topics (words, phrases and/or hashtags).
3	Communication	Volume I - Technical Proposal, Project Development Plan, Project Delivery Approach, Pg. 27 of 51	"[Developer] will partner with Cox Communications Connect2Compete and PCs for People to provide free or low-cost internet access and computers so residents can use the website and mobile app....We will provide information at churches, Getting Arizona Involved in Neighborhoods (GAIN) events and other gathering locations" The commitment will be for the Developer to 'promote' the Cox Communications Connect2Compete and PCs for People programs during outreach and marketing activities; the commitment for the Developer to 'provide' sponsorship for the noted programs is removed.

Item	Topic	Reference	Commitment
4	Communication	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 16 of 45	The Mobile Application will include the following features/elements: • Map displaying live traffic information from HERE Technologies and Real-Time Weather data for the area bounded by the following: ○ Northern Limit: McDowell Road ○ Eastern Limit: Loop 101 (Price Freeway) ○ Southern Limit: Loop 202 (South Mountain/San Tan Freeways) ○ Western Limit: 7th Avenue • Hands-free look-ahead feature that will announce upcoming events (closures, restrictions, incidents) in advance as users approach the project area at pre-defined/selected intervals (i.e., 1 mile, 5 miles, or 10 miles) • Ability to view camera feeds from construction area cameras; any of the cameras can be user selected as a “favorite” for easily accessing in the future. • Ability to save favorite locations (i.e., home, office, or any other address they choose to enter and save) • Users can opt-in (or enable) to receive push notifications. This can be for all notifications, certain types of notifications, or notifications for individual routes. Notifications will consist of construction closures, detours, incidents, and significant activities (i.e., major traffic switches or opening the C-D roads for use) occurring within the construction area. • Pre-defined areas of interest will be identified in the app enabling users to check travel times to sites around the project area. Locations anticipated to be included: Phoenix Sky Harbor

Item	Topic	Reference	Commitment
			International Airport, Sky Harbor Rental Car Center, Phoenix Convention Center, Phoenix Suns Arena (formerly Talking Stick Resort Arena), Chase Field, Arizona State University and Sun Devil Stadium, and Tempe Diablo Stadium. • Preferred/recommended detour routes (as pre-approved by ADOT and stakeholders) to be displayed on the map. • For users that wish to submit information requests, complaints, or compliments, the mobile application will link users to the Public Information webpage that is established for public engagement/feedback.
5	Communication	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 20 of 45	"[Developer] will assign an emergency medical services (EMS) liaison for each construction segment to serve as the point of contact in emergencies. After each major traffic shift, EMS liaisons will drive the project with an EMS representative to review access points and confirm suitability for EMS vehicles."
6	Communication	Volume I - Technical Proposal, Project Development Plan, Project Delivery Approach, Pg. 30 of 51	"Placing tip cards and mobile app information at local gathering spots such as Lorenzo's Mexican Food, and Amigo's Carniceria near Guadalupe City Hall" Developer will use tip cards as outreach tool and shall be included in the Developer's provision of a half-day public relations training.
7	Communication	Blank	Developer will provide a storefront at the Project Office to meet the recommendations of the Strategic Communications and Implementation Plan.
8	Drainage	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 35 of 45	"[Developer] constructing entrance aprons on culverts to improve access and allow for use of Microtaxx equipment (or similar) for cleaning"

Item	Topic	Reference	Commitment
9	Drainage	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 32 of 45	"[Developer] construction sequencing plan accommodates drainage while providing a safe corridor for the traveling public. Temporary drainage plans focus on two components - maintenance of pavement drainage (spread) and connectivity to existing drainage facilities."
10	Drainage	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 35 of 45	"[Developer] constructing a regional detention basin to mitigate sedimentation of the 48th Street storm drain"
11	Drainage	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 32 of 45	"[Developer] using directional drilling and/or jack-and-bore operations to mitigate impacts in resident's yard, as well as traffic and slope rehabilitation at Calle Guadalupe"
12	Drainage	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 33 of 45	"[Developer] Improves maintenance access by add two maintenance access roads on either side of channel and inlet and outlet access ramps the from maintenance road to Tempe Drain invert" Two access ramps to be provided as shown on PFF schematic roll plots 1 and 2 of 21.
13	Landscape	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 43 of 45	"[Developer] will contract directly with plant nurseries and suppliers of hardscape material and irrigation equipment. This strategy is important with long-lead items such as form liners and irrigation controllers to ensure that material deliveries support the construction schedule. We will also monitor closely tree availability and approval for the granite color from ADOT's Roadside Development Department to mitigate and avoid construction schedule impacts"
14	Landscape	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 44 of 45	"[Developer] will inventory existing plant material on site and evaluate with ADOT what should remain, what can be destroyed, and what can be salvaged. For plants to be salvaged, we will box and move them to a holding nursery for watering using drip irrigation until they can be replanted within the corridor. Following roadway construction, we will reinstall the salvaged plants and connect them to the new irrigation system."

Item	Topic	Reference	Commitment
15	Landscape	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 35 of 45	"[Developer]s design reduces the number of irrigation controller to 15 (reduced from the existing 21), resulting in reduced maintenance and operations costs for the life of the system."
16	Landscape	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 44 of 45	[Developer] states " Four trees that are major components of the character area plant palette are not typically grown by most wholesale nurseries in Arizona ... Our design requires a minimum of 250 of each species with estimated grow times of 16 to 24 months. After NTP 1, we will coordinate with Arizona nurseries with an intent of establishing contract grow agreements for these species."
17	Landscape	Volume I - 3D Renderings, View of I-10 / US 60 TI in permanent condition looking north	[Developer] commits to 10 artistic fruit on the Alameda Pedestrian Bridge and 10 artistic fruit on the Western Canal Pedestrian Bridge.
18	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 1 of 14	"[Developer] professional services quality team will perform quality assurance (QA) including oversight and review of the QC activities, and back check each interim design submittal and final release for construction (RFC) package to verify that PSQMP - required checks and reviews have been completed."
19	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 7 of 14	"[Developer] will use our superior quality workmanship program with field-level quality incentives to set clear expectations and minimize rework."
20	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 4 of 14	"[Developer] JV executive team will meet monthly with ADOT and IQF leadership to review quality performance and verify the IQF is functioning independently. If warranted, our JV executive team will make the necessary changes to guarantee the impartiality of the IQF, ranging from re-educating the staff to removal of personnel who are not committed to our quality goals."
21	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 6 of 14	"[Developer] coordinate consistency among multiple designers, firms, segments, and disciplines"

Item	Topic	Reference	Commitment
22	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 9 of 14	"[Developer] propose an initial quality partnering meeting with all four groups (Internal QC, the IQF, ADOT OV, and ADOT IA) upon NTP 1 to co-create formal procedures for overseeing, documenting, and reporting quality and processes for resolving issues to clearly define the responsibility of each group."
23	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 9 of 14	"[Developer] [Qestfield & Qestlab] system transfers data directly into ADOT's test data management system."
24	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 10 of 14	"[Developer] CQMP Bruce Victory, Construction Manager Steve Campbell, and CIQM James Peel will co-locate in the project office and collectively drive coordination and communication"
25	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 10 of 14	"[Developer] regular meetings with IQF and ADOT's OV team to discuss processes for acceptance of work in the field and steps to facilitate resolution of non-conformance and other issues."
26	Management	Volume I - Technical Proposal, Project Development Plan, Project Delivery Approach, Pg. 42 of 51	"[Developer] will set up a one-stop shop for DBEs seeking information or pursuing work. The center will be located at our project office and will be open during normal business hours. We will provide access to our project timeline, bidding schedules, bid package information, and DBE assistance information and maintain the information on our their website for 24/7 virtual access. In addition to project-specific outreach events, the DBE resource center will host workshops and one-on-one sessions with DBEs to familiarize them with the team's subcontracting requirements."
27	Management	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 2 of 14	"[Developer] will promptly resolve each nonconformance and take steps to prevent recurrence including updating the QMP to address systematic process and procedure problems, informing production teams about quality concerns and preventing strategies, re-training personnel, and making personnel changes when needed"

Item	Topic	Reference	Commitment
28	MOT	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 19 of 45	"[Developer] minimize the night work in neighborhoods; use noise and vibration monitoring devices and noise abatement barriers as needed; construct permanent noise barriers early; limiting equipment idling and include sound dampeners when possible (including subcontractors); plan haul routes to avoid residential streets; and minimizing light spill-over into neighborhoods and poison temporary lights to avoid interfering with drivers' vision " (Figure I-17).
29	MOT	Volume I - Technical Proposal, Project Development Plan, Preliminary Quality Management Plan, Pg. 19 of 45	"[Developer] maintain construction entrances and haul roads regularly, limit construction vehicle speeds, limit construction site access points for all construction traffic, and provide water or dust palliatives for dust control, crust embankments, and pre-wet excavations"
30	MOT	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 15 of 45	"[Developer] will use ClearGuide to monitor corridor operations, analyzing data to identify whether traffic control set-ups create bottlenecks on the freeways or nearby streets."
31	MOT	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 15 of 45	"[Developer] will prepare traffic signal timing modifications when warranted by changes in traffic patterns due to construction activities."
32	MOT	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 16 of 45	"[Developer] MOT Manager Mike Washkowiak will lead weekly traffic TWG meetings with our design, construction, and traffic management teams; MOT outreach coordinator; ADOT communications and project staff; and representatives from cities, utilities, school districts, as appropriate."
33	Communications	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 14 of 45	"[Developer] if community members or stakeholders raise traffic complaints and questions, our team will acknowledge receipt of the complaint in 24 hours, then research the complaint, determine its validity, extent of impact, and potential mitigation strategies, and reply within 72 hours."
34	MOT	Volume I - Technical Proposal, Project Development Plan, Project Delivery Approach, Pg. 5 of 51	[Developer] states "MOT training for all employees on how to safely assist our MOT crews with maintaining signs, barricades, and other devices and respond to stranded vehicles"

Item	Topic	Reference	Commitment
35	MOT	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 36 of 45	[Developer] freeway guide signs, will be designed in conjunction with the design of the dynamic message signs (DMS), so there will be no obstruction to the motorists' cone of vision. ... Our MOT plans will also clearly identify temporary construction signage which will be reviewed with ADOT and appropriate third-party stakeholders."
36	Roadway	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 6 of 45	"[Developer] flattened the curve of three I-10/SR143 system interchange ramps to eliminate 45 mph and 40 mph design exceptions" 1) Ramp WN - Revised Vd to 55mph (45mph allowed) 2) Ramp DHOV - Revised Vd to 55mph (45mph allowed) 3) Ramp SE - Revised Vd to 55mph (45/40mph allowed)
37	Roadway	Volume I - Technical Proposal, Appendix I-A: Technical Drawings, Graphics and Data, Roadway Plan Sheets, Pg. 18 of 21	[Developer] proposes a design speed of 65 mph for SR 143 NB & SB (Urban Freeway - Mainline).
38	Traffic	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 5 of 45	"[Developer] increases weave distance between 40th Street WB On Ramp and 32nd Street WB Off Ramp" compared to the Schematic Design.
39	Traffic	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 5 of 45	"[Developer] provides 220-foot right-turn-lane storage for SB 40th street, crosswalk for east/west pedestrian movement along south half of 40th Street TI, retaining walls along NW and SE quadrants of 40th Street, and optimized turn movements"
40	Traffic	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 17 of 45	"[Developer] will use the ClearGuide system to support data-driven decisions. We will analyze roadway operations and request early/extended closures only when data indicates that the roadway will maintain an acceptable level-of-service (D or better) during the non-standard hours."

Item	Topic	Reference	Commitment
41	Traffic	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 6 of 45	"[Developer] increases weave distance by 120 percent compared with the RFP schematic design" The [Developer] shall provide an increase of weaving distance of 400-feet when compared to the Schematic Design.
42	Traffic	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 40 of 45	"[Developer] will select LED fixtures with appropriate drive current to maximize luminaire life and, given the high-temperature environment, luminaires with better heat management and dissipation characteristics"
43	Utilities	Volume I - Technical Proposal, Project Development Plan, Project Delivery Approach, Pg. 8 of 51	"[Developer] during construction, will continue coordination meetings with utility owners. Utility Construction Lead Kyle Rinderknecht will distribute look-ahead schedules weekly and CPM schedules monthly and invite these entities to our construction coordination/scheduling meetings."
44	Utilities	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 25 of 45	[Developer] states "providing lockdown sheets within 90 days of NTP2 that commit to construction components and limits, enabling the utility to confidently proceed with design without redesign risk"
45	Utilities	Volume I - Technical Proposal, Project Development Plan, Technical Approach, Pg. 23 of 45	[Developer] use a compliance checklist to check compliance item requirements in the field and as designs are developed. For example, because we know SRP requires 30 feet of clearance around transmission poles for maintenance truck access, our initial and ongoing checks include verifying this 30-foot zone is maintained." [Developer] will avoid construction coordination impacts to the SRP 69kV transmission line at the Tempe Drain, and shall not be entitled to an increase in the Contract Price, a Completion Deadline adjustment, or any other Claim arising from any work on or associated with this transmission line.
46	MOT	Negotiation Meeting – 12/18/2020	Early opening of EB I-10 South of Baseline Rd., except for landscape and FMS by July 1, 2022. No long-term temporary traffic control allowed after early opening.

Specifically Approved Exceptions to Technical Provisions (See Section 1.2.2 of Agreement)
(NONE)

EXHIBIT 2-4
PRICING TABLES

NOT USED

EXHIBIT 2-4.1

CONTRACT PRICE BREAKDOWN

010 MA 149 F007201C
PHOENIX-CASA GRANDE HIGHWAY (I-10)
1-17 (SPLIT) TO SR 202L (SANTAN)

Price Proposal Form M-1

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for procurement evaluation, negotiation, and execution of a public-private partnership agreement in accordance with A.R.S. §§28-7701 to 28-7711.

INSTRUCTIONS TO PROPOSERS

The following provides a worksheet to provide Price Information following the instructions stated in the RFP for Form M-1. Proposer must complete this Form M-1 as part of the Price Proposal.

DATE: (MM/DD/YYYY): 1/5/2021

PROPOSER'S NAME: Pulice-FNF-Flatiron Joint Venture

**Form M-1:
CONTRACT PRICE BREAKDOWN**

ITEM / LINE No.	CATEGORIZATION FOR DBE % APPLICATION	DESCRIPTION	ITEM TOTAL
A		Professional Services	
1	-	Project Management Plan (PMP)	
1a	Professional Service	Project Administration	\$ 1,200,000.00
1b	Professional Service	QMP General Requirements	\$ 480,000.00
1c	Professional Service	Professional Services Quality Management Plan	\$ 600,000.00
1d	Professional Service	Environmental Management Plan	\$ 720,000.00
2	Professional Service	Public Involvement Plan	\$ 360,000.00
3	Professional Service	Segment Limits Map	\$ 240,000.00
4	Professional Service	Submittal Schedule	\$ 240,000.00
5	Professional Service	Basis of Design Report	\$ 1,000,000.00
6	Professional Service	Utility Coordination Plan	\$ 240,000.00
7	Professional Service	Visual Animation	\$ 240,000.00
8	Professional Service	Professional Services Management	\$ 1,390,000.00
9	Professional Service	Project Design, Design Survey, Site Investigations	\$ 47,000,000.00
10	Professional Service	Environmental Permitting	\$ 1,000,000.00
11	Professional Service	Utility Locates, Utility Survey, and Utility Adjustment Design	\$ 4,300,000.00
12	Professional Service	Independent Quality Firm	\$ 28,000,000.00
13	Professional Service	Community Relations and Public Involvement Program	\$ 1,600,000.00
14		Subtotal A: Professional Services (Sum Lines 1-13)	\$ 88,610,000.00

ITEM / LINE No.	CATEGORIZATION FOR DBE % APPLICATION	DESCRIPTION	ITEM TOTAL
B		Construction	
15	-	Project Management Plan (PMP)	
15a	Construction	Construction Quality Management Plan	\$ 720,000.00
15b	Construction	Safety Management Plan	\$ 480,000.00
16	Construction	Transportation Management Plan (TMP)	\$ 600,000.00
17	-	Collocated Office Elements	

DATE: (MM/DD/YYYY):	1/5/2021

PROPOSER'S NAME:	Pulice-FNF-Flatiron Joint Venture

17a	Construction	Initial Collocated Office Lease & Equipment	\$	3,000,000.00
17b	Construction	Collocated Office Layout Plan	\$	240,000.00
17c	Construction	Network Administration Plan & Setup	\$	360,000.00
18	Construction	Existing Conditions Site Documentation	\$	360,000.00
19	Construction	Project Baseline Schedule	\$	1,000,000.00
20	Construction	DBE Utilization Plan	\$	600,000.00
21	Construction	OJT Utilization Plan	\$	240,000.00
22	Construction	NTP 1 mobilization	\$	5,800,000.00
23	Construction	Construction Management	\$	55,000,000.00
24	Construction	Mobilization (Not including NTP 1 Work)	\$	23,200,000.00
25	Construction	Maintenance of Traffic	\$	15,200,000.00
26	Construction	Roadway	\$	179,998,056.00
27	Construction	Bridges		
27a	-	Alameda Drive Pedestrian Bridge	\$	4,405,000.00
27b	-	Western Canal Pedestrian Bridge	\$	4,000,000.00
27c	-	Other Bridges	\$	72,050,000.00
28	Construction	Walls & Noise Barriers	\$	42,000,000.00
29	Construction	Roadway Lighting	\$	5,300,000.00
30	Construction	Traffic Signals	\$	1,600,000.00
31	Construction	Signing and Pavement Markings	\$	14,000,000.00
32	Construction	Drainage		
32a	-	Drainage	\$	17,000,000.00
32b	-	Tempe Drain (outside of FCDMC maintenance limits)	\$	3,000,000.00
33	Construction	Freeway Management System (FMS)	\$	13,000,000.00
34	Construction	Landscape & Irrigation	\$	14,000,000.00
35	Construction	Environmental Mitigation	\$	1,100,000.00
36	Construction	Utility Adjustments - Prior Rights	\$	5,571,000.00
37	Construction	Project Bond and Insurance Premiums	\$	20,468,103.00
38		Subtotal B: Construction Work (Sum Lines 15-37)	\$	504,292,159.00
PR		Proposal Revisions		\$2,650,000
Total		Construction Work Total	\$	506,942,159.00

ITEM / LINE No.	CATEGORIZATION FOR DBE % APPLICATION	DESCRIPTION	ITEM TOTAL
NFA		Non-Federal Aid Reimbursible	
39	Construction	TEMPE - 48th Street Storm Drain	\$ 250,000.00
40	Construction	TEMPE - Non-Prior Rights Utility Adjustments	
40a	-	TEMPE NPR 1	\$ 80,000.00
40b	-	TEMPE NPR 2	\$ 19,791.00
40c	-	TEMPE NPR 3	\$ 130,000.00
40d	-	TEMPE NPR 4	\$ 85,000.00
40e	-	TEMPE NPR 5	\$ -
40f	-	TEMPE NPR 6	\$ -
40g	-	TEMPE NPR 7	\$ -
40h	-	TEMPE NPR 8	\$ -

DATE: (MM/DD/YYYY):	1/5/2021

PROPOSER'S NAME:	Pulice-FNF-Flatiron Joint Venture

41	Construction	TEMPE - Water Quality Station Relocation	\$ 20,000.00
42	Construction	PHOENIX - Non-Prior Rights Utility Adjustments	
42a	-	PHOENIX NPR 1	\$ -
42b	-	PHOENIX NPR 2	\$ 85,000.00
42c	-	PHOENIX NPR 3	\$ 14,000.00
42d	-	PHOENIX NPR 4	\$ -
42e	-	PHOENIX NPR 5	\$ 515,000.00
43	Construction	Tempe Drain (within FCDMC maintenance limits)	\$ 450,000.00
44	Construction	TEMPE - Alameda Drive Pedestrian Bridge Aesthetics (IGA)	\$ 140,000.00
45	Construction	TEMPE - Western Canal Pedestrian Bridge Aesthetics (IGA)	\$ 140,000.00
46		Subtotal NFA: Non-Federal Work (Sum Lines 39-45)	\$ 1,928,791.00

ITEM / LINE No.	CATEGORIZATION FOR DBE % APPLICATION	DESCRIPTION	ITEM TOTAL
RI		Reimbursable Items	
47	Construction	SRP - Utility Adjustment Work	\$ 18,120,000.00
48		Subtotal RI: Reimbursable Items (Sum Line 47)	\$ 18,120,000.00

TOTAL PRICE (LINE 14 + LINE 38 + LINE 46 + LINE 48)	\$ 615,600,950.00

EXHIBIT 2-5

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Pulice - FNF - Flatiron Joint Venture

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☒ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Victor Jimenez

Title: Attorney-in-Fact

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Proposer and Developer

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Pulice Construction, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Name: Victor Jimenez

Title: Chief Operating Officer

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Equity Member of Proposer and Developer

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

FNF Construction, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____



Name: Robert W. Bottcher

Title: President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Equity Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Flatiron Constructors, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Dale Nelson

Title: Senior Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Equity Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

T. Y. Lin International

that:

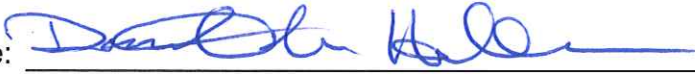
(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Daniel N. Heller, PE

Title: Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Major Non-Equity Member

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

AZTEC Engineering Group, Inc.

that:

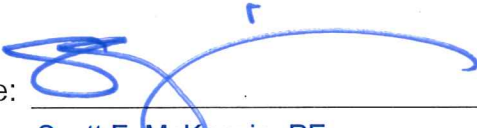
(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Scott F. McKenzie, PE

Title: Chief Executive Officer

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Stanley Consultants, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

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- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Michael R. Chase, PE

Title: Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Iteris, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

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Signature: 

Name: Ramin Massoumi, PR

Title: Senior Vice President & General Manager

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Ritoch-Powell & Associates, Inc.

that:

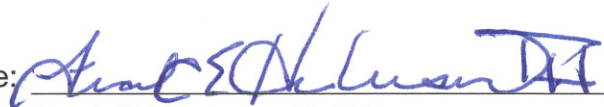
(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Frank E. Henderson III, PE

Title: Executive Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

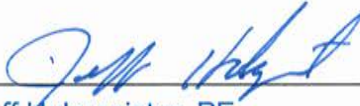
The undersigned certifies on behalf of _____ that:
J2 Engineering and Environmental Design, LLC
(Name of entity making certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Jeff Holzmeister, PE

Title: President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Proposers, Developer, Equity Members, Major Non-Equity Members and proposed Subcontractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 C.F.R. § 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf of

Terracon Consultants, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Brent M. Borchers, PE

Title: Regional Manager / Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Southwest Traffic Engineering, LLC

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Name: Andrew Smigielski, PE

Title: Principal

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

TRACE Consulting, LLC

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Chintan S. Jhaveri, PE

Title: Principal

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Gunn Communications, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Brock Barnhart

Title: Chief Operating Officer

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Torres Multicultural Communications

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☒ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Name: Tania Torres

Title: President / CEO

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf of

Professional Service Industries, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☒ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☐ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Trent Anderson

Title: Regional Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Civic CM

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☒ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☐ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: 

Name: Tyler Chamblin

Title: Principal

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

McNeil Brothers, Inc.

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Name: Greg McNeil

Title: Vice President

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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Form O

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

To be executed by Proposer, Equity Members, Major Non-Equity Members and proposed known Subcontractors.

The undersigned certifies on behalf
of

Roadway Electric LLC

that:

(Name of entity making
certification)

(check one of the following boxes)

- ☐ It has developed and has on file at each establishment affirmative action programs pursuant to 41 C.F.R. Part 60-2 (Affirmative Action Programs).
- ☒ It is not subject to the requirements to develop an affirmative action program under 41 C.F.R. Part 60-2 (Affirmative Action Programs).

(check one of the following boxes)

- ☐ It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.
- ☒ It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a federal government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Name: Charlton Hale

Title: Manager

Date: August 11, 2020

If not Proposer,
relationship to Proposer: Subcontractor

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 C.F.R. 60-1.7(b)(1)), and must be submitted by Proposers only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 C.F.R. § 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.) Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

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EXHIBIT 2-6

DBE ASSURANCE & CONTRACT GOAL DECLARATION

Form H-1

DBE ASSURANCE & PROJECT GOAL DECLARATION

Name of Proposer Pulice - FNF - Flatiron Joint Venture Project Name Phoenix-Casa Grande Highway (I-10), I-17 (Split) to SR 202L (Santan)
ADOT TRACS No. 010 MA 149 F007201C Project Number 010-C(220)T

It is understood and agreed by Proposer that it has carefully examined all documents included in this Request for Proposal (RFP) and acknowledges that Arizona Department of Transportation (ADOT) has established DBE Goals for the Project that were calculated in relation to the price of the various components of the Project as listed below (the "DBE Goals"):

- **Professional Services DBE Goal** – 7.03% of the total contract price for Professional Services
- **Construction DBE Goal** – 10.33% of the total contract price for Construction Work

COMPLETE DETAILS BELOW

Proposer listed above hereby commits to meet or exceed ALL the DBE Goals listed above or to aggressively exercise Good Faith Efforts to the satisfaction of ADOT to do so, in accordance with the DBE Special Provisions.

In fulfilling Proposer's commitment, Proposer will follow the DBE Utilization Plan that ADOT approves for this Project, and adhere to all DBE provisions set forth in the Contract Documents and applicable regulations referenced in 49 C.F.R. Part 26 and ADOT's DBE Program Plan.

If Proposer reasonably believes that aggressive Good Faith Efforts will produce DBE participation below any of the DBE Goals ADOT has established for the Project as set forth above, indicate below the percentages that Proposer reasonably believes can be achieved through aggressive Good Faith Efforts. No such percentages will excuse Proposer from aggressively exercising Good Faith Efforts to achieve the DBE Goals of record.

- **Achievable Professional Services DBE Goal:** _____ % of the total contract price for Professional Services
- **Achievable Construction DBE Goal:** _____ % of the total contract price for Construction Work

As used herein, "total contract price" in the context of the Professional Services and Construction DBE Goals means the total final Contract Price allocable to Professional Services and Construction Work respectively; as escalated pursuant to the DB Agreement.

Print Name of Authorized Officer of Proposer Victor Jimenez

Signature of Authorized Officer of Proposer _____

Title Attorney-in-Fact

Date August 11, 2020

EXHIBIT 2-7

BUY AMERICA CERTIFICATION

Form R

BUY AMERICA CERTIFICATION

[To be signed by authorized signatory(ies) of Proposer]

The undersigned certifies on behalf of itself, Developer and all Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Proposer, Developer and all Subcontractors shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 C.F.R. 635.410. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Notwithstanding any other provision of this certification, this requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Contract Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, Proposer has the burden of proof to establish that it is in compliance.
- C. At Proposer's request, ADOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it, Developer and all Subcontractors will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by ADOT.
- D. All material fully incorporated into the Project must be certified to comply with Buy America on the appropriate material certification documents. Material certification documents must be signed by the appropriate material Suppliers and not Developer or Subcontractors.

Date: August 11, 2020

Proposer's Name: Pulice - FNF - Flatiron Joint Venture

Signature: 

Name (printed or typed): Victor Jimenez

Title: Attorney-in-Fact

EXHIBIT 2-8

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

Form P

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

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

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

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

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Entity Signing: Pulice - FNF - Flatiron Joint Venture

Date: August 11, 2020


Signature

Victor Jimenez, Attorney-in-Fact

Name and Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of Proposer, all partners, members or joint venturers of Proposer and all other Equity Members and Major Non-Equity Members.]

Form P

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

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

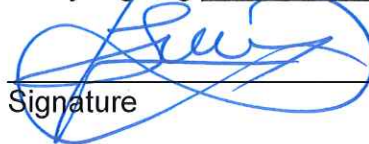
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with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

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

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Date: August 11, 2020

Entity Signing: Pulice Construction, Inc.


Signature

Victor Jimenez, Chief Operating Officer

Name and Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of Proposer, all partners, members or joint venturers of Proposer and all other Equity Members and Major Non-Equity Members.]

Form P

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

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

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

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The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Date: August 11, 2020

Entity Signing: FNF Construction, Inc.


Signature

Robert W. Bottcher, President

Name and Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of Proposer, all partners, members or joint venturers of Proposer and all other Equity Members and Major Non-Equity Members.]

Form P

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

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The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Date: August 11, 2020

Entity Signing: Flatiron Constructors, Inc.



Signature

Dale Nelson, Senior Vice President

Name and Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of Proposer, all partners, members or joint venturers of Proposer and all other Equity Members and Major Non-Equity Members.]

Form P

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, to the best of its knowledge and belief (after due inquiry and investigation), that:

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

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

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

The undersigned shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

Entity Signing: T.Y. Lin International

Date: August 11, 2020



Signature

Daniel N. Heller, PE, Vice President

Name and Title

[Duplicate or modify this form as necessary so that it accurately describes the entity making the Proposal and so that it is signed on behalf of Proposer, all partners, members or joint venturers of Proposer and all other Equity Members and Major Non-Equity Members.]

EXHIBIT 2-9

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS

Form Q

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION FROM TRANSACTIONS

FINANCED IN PART BY THE U.S. GOVERNMENT

Name of Proposer: Pulice - FNF - Flatiron Joint Venture

I, Victor Jimenez, am the Attorney-in-Fact
of Proposer and hereby certify that Proposer, Developer and all of its Subcontractors
identified in this Proposal

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency or from participation in the Project;
2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
4. Have not within a three-year period preceding this Proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If Proposer is unable to certify to any of the statements in this certification, it shall attach an explanation to this certification. [See attached about Item 4.](#)

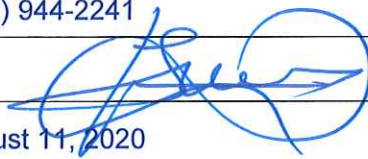
I hereby certify and affirm the truthfulness and accuracy of the above statement, and I understand that the provisions of 31 United States Code (U.S.C.) §3801 *et seq.* (Administrative Remedies for False Claims and Statements) are applicable hereto.

Name of Proposer	<u>Pulice - FNF - Flatiron Joint Venture</u>
Street Address of Proposer	<u>8660 E. Hartford Dr., Suite 305</u>
City, State, Zip	<u>Scottsdale, AZ 85255</u>

Telephone Number of Firm

(602) 944-2241

Signature of Certifying Officer



Date

August 11, 2020

Note: The above certification merely certifies that a Proposer, Developer and its Subcontractors are not declared by the federal government or have not voluntarily declared themselves debarred, suspended, or declared ineligible from doing transactions with the federal government or any of its agencies.

EXHIBIT 3

REFERENCE INFORMATION DOCUMENTS

Refer to Volume III of the RFP.

EXHIBIT 4
FEDERAL REQUIREMENTS

Exhibit	Description	No. of Pages
Attachment 1	Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2	FHWA Form 1273	23
Attachments 3-a and 3-b	Federal Prevailing Wage Rates	18
Attachment 4	Equal Employment Opportunity	5
Attachment 5	Affirmative Action	2
Attachment 6	Appendix A to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Contractor Assurances	2
Attachment 7	Appendix E to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Pertinent Non-Discrimination Authorities	2
Attachment 8	Compliance with Federal Immigration Laws	3
Attachment 9	Compliance with Cargo Preference Act	1

ATTACHMENT 1 TO EXHIBIT 4

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

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

Whenever in said required contract provisions, or elsewhere in this Exhibit 4 (as applicable), references are made to:

- (a) "contracting officer" or "authorized representative" such references shall be construed to mean ADOT or its Authorized Representative;
- (b) "contractor," "prime contractor," "bidder," "proposer," "Federal-aid construction contractor," "prospective first tier participant," or "First Tier Participant," such references shall be construed to mean Developer or its Authorized Representative;
- (c) "contract," "prime contract," "Federal-aid construction contract," or "design- build contract," such references shall be construed to mean the Contract between Developer and ADOT for the Project;
- (d) "subcontractor," "supplier," "vendor," "prospective lower tier participant," "lower tier prospective participant," "Lower tier participant," or "lower tier subcontractor," such references shall be construed to mean any Subcontractor or Supplier; and
- (e) "department," "agency," "department or agency with which this transaction originated," "department or agency entering into this transaction," or "contracting agency," such references shall be construed to mean ADOT, except where a different department or agency is specified.

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

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

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

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

CONVICT PRODUCED MATERIALS

- a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.
- b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

ACCESS TO RECORDS

- a. As required by 49 CFR 18.36(i)(10), Developer and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its subcontractors shall retain all books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.
- b. Developer agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

ATTACHMENT 2 TO EXHIBIT 4

FHWA FORM 1273

[See attached]

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

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

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

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

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for

ATTACHMENTS

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

I. GENERAL

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

withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

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

II. NONDISCRIMINATION

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

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

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies

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

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

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

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

their review of activities under the contract.

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

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

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

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

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

explained. The meetings will be conducted by the EEO Officer.

- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

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

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

sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

- b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.
- c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

- a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided

under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

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

- a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.
- b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities:

The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable

accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

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

- a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.
- b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

- a. The records kept by the contractor shall document the following:
 - 1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
 - 2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
 - 3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;
- b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA- 1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data

should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually

performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- (i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the

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

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

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

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe

benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

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

advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

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

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the

contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

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

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of

Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written

notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site

in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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

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

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by

formal certification by the U.S. Department of Labor, Employment and Training Administration.

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

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

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

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

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

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

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

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

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

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and

interpretations of the Davis- Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards.

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

terms laborers and mechanics include watchmen and guards.

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or

subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635).

The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree

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

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

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

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

pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented; Shall be fined under this title or imprisoned not more than 5 years or both."

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost

\$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and

1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred,

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

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

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

* * * * *

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in

covered transactions by any Federal department or agency;

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

b. The certification in this clause is a material representation of fact upon which

reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be

entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

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

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

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

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

* * * * *

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

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

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

* * * * *

**XI. CERTIFICATION REGARDING USE OF
CONTRACT FUNDS FOR LOBBYING**

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

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

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

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

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

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

that all such recipients shall certify and disclose accordingly.

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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the

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

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

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

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

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

ATTACHMENT 3-a TO EXHIBIT 4
FEDERAL PREVAILING WAGE RATES

The federal prevailing wage rates for the Work shall be those set forth below.

"General Decision Number: AZ20210008 01/01/2021

Superseded General Decision Number: AZ20200008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/01/2021

CARP0408-005 07/01/2019

	Rates	Fringes
CARPENTER (Including Cement Form Work).....	\$ 28.08	12.74

* ENGI0428-001 06/01/2020

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1.....	\$ 27.04	11.72
Group 2.....	\$ 30.31	11.72
Group 3.....	\$ 31.39	11.72
Group 4.....	\$ 32.42	11.72

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1: A-frame boom truck, air compressor, Belcrete, boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:

ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd), Tractor (dozer, pusher-all).

GROUP 3:

ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman & similar types), Tower Crane or similar type.

MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive \$0.01 per hour per foot over 80 ft in addition to regular rate of pay

Premium pay for performing hazardous waste removal \$0.50 per

hour over base rate.

IRON0075-004 08/01/2019

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar.....	\$ 27.80	19.05

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson

Zone 2: 050 to 100 miles - Add \$4.00

Zone 3: 100 to 150 miles - Add \$5.00

Zone 4: 150 miles & over - Add \$6.50

* LAB01184-008 06/01/2020

	Rates	Fringes
Laborers:		
Group 1.....	\$ 20.93	6.06
Group 2.....	\$ 20.93	6.06
Group 3.....	\$ 21.63	6.06
Group 4.....	\$ 22.57	6.06
Group 5.....	\$ 23.43	6.06

LABORERS CLASSIFICATIONS:

GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only: General/Cleanup Laborer. Maricopa County Only: Flagger.

GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).

GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed Control, Scissor Lift, Hydro Mobile Scaffold Builder.

PAIN0086-001 04/01/2017

	Rates	Fringes

PAINTER

PAINTER (Yavapai County
only), SAND BLASTER/WATER
BLASTER (all Counties).....\$ 19.58 6.40

ZONE PAY: More than 100 miles from Old Phoenix Courthouse
\$3.50 additional per hour.

SUAZ2009-001 04/20/2009

	Rates	Fringes
CEMENT MASON.....	\$ 19.28	3.99
ELECTRICIAN.....	\$ 22.84	6.48
IRONWORKER (Rebar)		
Pima County.....	\$ 23.17	14.83
Pinal County.....	\$ 20.27	8.35
LABORER		
Asphalt Raker.....	\$ 15.49	3.49
Compaction Tool Operator....	\$ 14.59	2.91
Concrete Worker.....	\$ 13.55	3.20
Concrete/Asphalt Saw.....	\$ 13.95	2.58
Driller-Core, diamond, wagon, air track.....	\$ 16.94	3.12
Dumpman Spotter.....	\$ 14.99	3.16
Fence Builder.....	\$ 13.28	2.99
Flagger		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 12.35	1.59
Formsetter.....	\$ 16.09	3.97
General/Cleanup Laborer		
Coconino, Maricopa, Mohave, Pima, Yavapai & Yuma.....	\$ 14.54	3.49
Grade Setter (Pipeline).....	\$ 17.83	5.45
Guard Rail Installer.....	\$ 13.28	2.99
Landscape Laborer.....	\$ 11.39	
Landscape Sprinkler Installer.....	\$ 15.27	
Pipelayer.....	\$ 14.81	2.96
Powderman, Hydrasonic.....	\$ 16.39	2.58
OPERATOR: Power Equipment		
Asphalt Laydown Machine.....	\$ 21.19	6.05
Backhoe < 1 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.37	3.85
Backhoe < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Clamshell < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Concrete Pump (Truck Mounted with boom only)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 19.92	7.10
Crane (under 15 tons).....	\$ 21.35	7.36
Dragline (up to 10 cu yd)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59

Drilling Machine (including Water Wells).....\$ 20.58	5.65
Grade Checker Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 16.04	3.68
Hydrographic Seeder.....\$ 15.88	7.67
Mass Excavator.....\$ 20.97	4.28
Milling Machine/Rotomill....\$ 21.42	7.45
Motor Grader (Finish-any type power blade) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 21.92	4.66
Motor Grader (Rough) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 20.07	4.13
Oiler.....\$ 18.15	8.24
Power Sweeper.....\$ 16.76	4.44
Roller (all types Asphalt) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 18.27	3.99
Roller (excluding asphalt)..\$ 15.65	3.32
Scraper (pneumatic tired) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 17.69	3.45
Screed Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 17.54	3.72
Shovel < 10 cu yd Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 18.72	3.59
Skip Loader (all types <3 cu yd).....\$ 18.28	5.30
Skip Loader (all types 3 < 6 cu yd) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 18.64	4.86
Skip Loader (all types 6 < 10 cu yd).....\$ 20.15	4.52
Tractor (dozer, pusher - all) Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....\$ 17.26	2.65
PAINTER	
Coconino, Maricopa, Mohave, Pima, Pinal & Yuma..\$ 15.57	3.92
TRUCK DRIVER	
2 or 3 Axle Dump or Flatrack.....\$ 16.27	3.30
5 Axle Dump or Flatrack.....\$ 13.97	2.89
6 Axle Dump or Flatrack (< 16 cu yd).....\$ 17.79	6.42
Belly Dump.....\$ 14.67	
Oil Tanker Bootman.....\$ 22.03	
Self-Propelled Street Sweeper.....\$ 13.11	5.48
Water Truck 2500 < 3900 gallons.....\$ 18.14	4.55
Water Truck 3900 gallons and over.....\$ 15.92	3.33
Water Truck under 2500 gallons.....\$ 15.94	4.16

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and

the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

"

ATTACHMENT 3-b TO EXHIBIT 4
PREVAILING WAGE RATES AS OF AUGUST 4, 2020

"General Decision Number: AZ20200008 06/05/2020

Superseded General Decision Number: AZ20190008

State: Arizona

Construction Type: Highway

Counties: Coconino, Maricopa, Mohave, Pima, Pinal, Yavapai and Yuma Counties in Arizona.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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1	06/05/2020

CARP0408-005 07/01/2019

	Rates	Fringes
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* ENGI0428-001 06/01/2020		

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1.....	\$ 27.04	11.72
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Group 3.....	\$ 31.39	11.72
Group 4.....	\$ 32.42	11.72

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:

GROUP 1: A-frame boom truck, air compressor, Belcrete,

boring bridge and texture, brakeman, concrete mixer (skip type), conductor, conveyor, cross timing and pipe float, curing machine, dinky (under 20 tons), elevator hoist (Husky and similar), firemen, forklift, generator (all), handler, highline cableway signalman, hydrographic mulcher, joint inserter, jumbo finishing machine, Kolman belt loader, machine conveyor, multiple power concrete saw, pavement breaker, power grizzly, pressure grout machine, pump, self-propelled chip spreading machine, slurry seal machine (Moto paver driver), small self-propelled compactor (with blade-backfill, ditch operation), straw blower, tractor (wheel type), tripper, tugger (single drum), welding machine, winch truck

GROUP 2:

ALL COUNTIES INCLUDING MARICOPA: Aggregate Plant, Asphalt plant Mixer, Bee Gee, Boring Machine, Concrete Pump, Concrete Mechanical Tamping-Spreading Finishing Machine, Concrete Batch Plant, Concrete Mixer (paving & mobile), Elevating Grader (except as otherwise classified), Field Equipment Serviceman, Locomotive Engineer (including Dinky 20 tons & over), Moto-Paver, Oiler-Driver, Operating Engineer Rigger, Power Jumbo Form Setter, Road Oil Mixing Machine, Self-Propelled Compactor (with blade-grade operation), Slip Form (power driven lifting device for concrete forms), Soil Cement Road Mixing Machine, Pipe-Wrapping & Cleaning Machine (stationary or traveling), Surface Heater & Planer, Trenching Machine, Tugger (2 or more drums).

MARICOPA COUNTY ONLY: Backhoe < 1 cu yd, Motor Grader (rough), Scraper (pneumatic tired), Roller (all types asphalt), Screed, Skip Loader (all types 3<6 cu yd), Tractor (dozer, pusher-all).

GROUP 3:

ALL COUNTIES INCLUDING MARICOPA: Auto Grade Machine, Barge, Boring Machine (including Mole, Badger & similar type directional/horizontal), Crane (crawler & pneumatic 15>100 tons), Crawler type Tractor with boom attachment & slope bar, Derrick, Gradall, Heavy Duty Mechanic-Welder, Helicopter Hoist or Pilot, Highline Cableway, Mechanical Hoist, Mucking Machine, Overhead Crane, Pile Driver Engineer (portable, stationary or skid), Power Driven Ditch Lining or Ditch Trimming Machine, Remote Control Earth Moving Machine, Slip Form Paving Machine (including Gunnert, Zimmerman & similar types), Tower Crane or similar type.

MARICOPA COUNTY ONLY: Backhoe<10 cu yd, Clamshell < 10 cu yd, Concrete Pump (truck mounted with boom only), Dragline <10 cu yd, Grade Checker, Motor Grader (finish-any type power blade), Shovel < 10 cu yd.

GROUP 4: Backhoe 10 cu yd and over, Clamshell 10 cu yd and over, Crane (pneumatic or crawler 100 tons & over), Dragline 10 cu yd and over, Shovel 10 cu yd and over.

All Operators, Oilers, and Motor Crane Drivers on equipment with Booms, except concrete pumping truck booms, including Jibs, shall receive \$0.01 per hour per foot over 80 ft in addition to regular rate of pay

Premium pay for performing hazardous waste removal \$0.50 per hour over base rate.

IRON0075-004 08/01/2019

COCONINO, MARICOPA, MOHAVE, YAVAPAI & YUMA COUNTIES

	Rates	Fringes
Ironworker, Rebar.....	\$ 27.80	19.05

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson

Zone 2: 050 to 100 miles - Add \$4.00

Zone 3: 100 to 150 miles - Add \$5.00

Zone 4: 150 miles & over - Add \$6.50

* LAB01184-008 06/01/2020

	Rates	Fringes
Laborers:		
Group 1.....	\$ 20.93	6.06
Group 2.....	\$ 20.93	6.06
Group 3.....	\$ 21.63	6.06
Group 4.....	\$ 22.57	6.06
Group 5.....	\$ 23.43	6.06

LABORERS CLASSIFICATIONS:

GROUP 1: All Counties: Chipper, Rip Rap Stoneman. Pinal County Only: General/Cleanup Laborer. Maricopa County Only: Flagger.

GROUP 2: Asphalt Laborer (Shoveling-excluding Asphalt Raker or Ironer), Bander, Cement Mason Tender, Concrete Mucker, Cutting Torch Operator, Fine Grader, Guinea Chaser, Power Type Concrete Buggy

GROUP 3: Chain Saw, Concrete Small Tools, Concrete Vibrating Machine, Cribber & Shorer (except tunnel), Hydraulic Jacks and similar tools, Operator and Tender of Pneumatic and Electric Tools (not herein separately classified), Pipe Caulker and Back-Up Man-Pipeline, Pipe Wrapper, Pneumatic Gopher, Pre-Cast Manhole Erector, Rigger and Signal Man-Pipeline

GROUP 4: Air and Water Washout Nozzleman; Bio-Filter, Pressman, Installer, Operator; Scaffold Laborer; Chuck Tender; Concrete Cutting Torch; Gunite; Hand-Guided Trencher; Jackhammer and/or Pavement Breaker; Scaler (using boson's chair or safety belt); Tamper (mechanical all types).

GROUP 5: AC Dumpman, Asbestos Abatement, Asphalt Raker II, Drill Doctor/Air Tool Repairman, Hazardous Waste Removal, Lead Abatement, Lead Pipeman, Process Piping Installer, Scaler (Driller), Pest Technician/Weed Control, Scissor Lift, Hydro Mobile Scaffold Builder.

PAIN0086-001 04/01/2017

	Rates	Fringes
PAINTER		

PAINTER (Yavapai County
only), SAND BLASTER/WATER
BLASTER (all Counties).....\$ 19.58 6.40

ZONE PAY: More than 100 miles from Old Phoenix Courthouse
\$3.50 additional per hour.

SUAZ2009-001 04/20/2009

	Rates	Fringes
CEMENT MASON.....	\$ 19.28	3.99
ELECTRICIAN.....	\$ 22.84	6.48
IRONWORKER (Rebar)		
Pima County.....	\$ 23.17	14.83
Pinal County.....	\$ 20.27	8.35
LABORER		
Asphalt Raker.....	\$ 15.49	3.49
Compaction Tool Operator....	\$ 14.59	2.91
Concrete Worker.....	\$ 13.55	3.20
Concrete/Asphalt Saw.....	\$ 13.95	2.58
Driller-Core, diamond, wagon, air track.....	\$ 16.94	3.12
Dumpman Spotter.....	\$ 14.99	3.16
Fence Builder.....	\$ 13.28	2.99
Flagger		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 12.35	1.59
Formsetter.....	\$ 16.09	3.97
General/Cleanup Laborer		
Coconino, Maricopa, Mohave, Pima, Yavapai & Yuma.....	\$ 14.54	3.49
Grade Setter (Pipeline).....	\$ 17.83	5.45
Guard Rail Installer.....	\$ 13.28	2.99
Landscape Laborer.....	\$ 11.39	
Landscape Sprinkler Installer.....	\$ 15.27	
Pipelayer.....	\$ 14.81	2.96
Powderman, Hydrasonic.....	\$ 16.39	2.58
OPERATOR: Power Equipment		
Asphalt Laydown Machine.....	\$ 21.19	6.05
Backhoe < 1 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 17.37	3.85
Backhoe < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Clamshell < 10 cu yd		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Concrete Pump (Truck Mounted with boom only)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 19.92	7.10
Crane (under 15 tons).....	\$ 21.35	7.36
Dragline (up to 10 cu yd)		
Coconino, Mohave, Pima, Pinal, Yavapai & Yuma.....	\$ 18.72	3.59
Drilling Machine		

(including Water Wells).....\$ 20.58	5.65
Grade Checker	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 16.04	3.68
Hydrographic Seeder.....\$ 15.88	7.67
Mass Excavator.....\$ 20.97	4.28
Milling Machine/Rotomill....\$ 21.42	7.45
Motor Grader (Finish-any type power blade)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 21.92	4.66
Motor Grader (Rough)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 20.07	4.13
Oiler.....\$ 18.15	8.24
Power Sweeper.....\$ 16.76	4.44
Roller (all types Asphalt)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 18.27	3.99
Roller (excluding asphalt)..\$ 15.65	3.32
Scraper (pneumatic tired)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 17.69	3.45
Screed	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 17.54	3.72
Shovel < 10 cu yd	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 18.72	3.59
Skip Loader (all types <3 cu yd).....\$ 18.28	5.30
Skip Loader (all types 3 < 6 cu yd)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 18.64	4.86
Skip Loader (all types 6 < 10 cu yd).....\$ 20.15	4.52
Tractor (dozer, pusher - all)	
Coconino, Mohave, Pima,	
Pinal, Yavapai & Yuma.....\$ 17.26	2.65
PAINTER	
Coconino, Maricopa,	
Mohave, Pima, Pinal & Yuma..\$ 15.57	3.92
TRUCK DRIVER	
2 or 3 Axle Dump or	
Flatrack.....\$ 16.27	3.30
5 Axle Dump or Flatrack.....\$ 13.97	2.89
6 Axle Dump or Flatrack (< 16 cu yd).....\$ 17.79	6.42
Belly Dump.....\$ 14.67	
Oil Tanker Bootman.....\$ 22.03	
Self-Propelled Street	
Sweeper.....\$ 13.11	5.48
Water Truck 2500 < 3900 gallons.....\$ 18.14	4.55
Water Truck 3900 gallons and over.....\$ 15.92	3.33
Water Truck under 2500 gallons.....\$ 15.94	4.16

WELDERS - Receive rate prescribed for craft performing

operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average

rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

ATTACHMENT 4 TO EXHIBIT 4

EQUAL EMPLOYMENT OPPORTUNITY SPECIAL PROVISION 000---006

Standard Federal Equal Employment Opportunity

Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.

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

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

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

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

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the

contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral Process has impeded the contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the contractor's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and

employment related activities to ensure that the contractor's EEO policy and the contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

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

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

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

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

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

13. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

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

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

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

ATTACHMENT 5 TO EXHIBIT 4

AFFIRMATIVE ACTION SPECIAL PROVISION 000 --- 0004

Notice of Requirement for Affirmative Action to

Ensure Equal Employment Opportunity (Executive Order 11246)

1. General.

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

2. Goals.

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation

Goals for female participation

in each trade (per-cent)

in each trade (per-cent)

See Table 1

6.9%

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

3. Subcontracting.

The contractor shall provide written notification to the Department within ten Business Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award.

The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. Covered area.

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

5. Reports.

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

Table 1

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

ATTACHMENT 6 TO EXHIBIT 4

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

Note: Whenever in this Attachment 6 to Exhibit 4 references are made to:

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

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the

Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ATTACHMENT 7 TO EXHIBIT 4

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

Note: Whenever in this Attachment 7 to Exhibit 4 references are made to:

- (a) “contract,” such reference shall be construed to mean Agreement; and
- (b) “contractor,” such reference shall be construed to mean Developer.

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 — 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to - ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

ATTACHMENT 8 TO EXHIBIT 4

COMPLIANCE WITH FEDERAL IMMIGRATION LAWS

Part A – General

In accordance with Arizona Executive Order 2005-30, Developer and all Subcontractors shall comply with all State and federal laws applicable to immigration, including federal law and regulations relating to the immigration status of their employees who perform services under the Agreement.

Developer shall include the provisions of this Attachment 8 to Exhibit 4 in all Subcontracts. In addition, Developer shall: (1) require that all Subcontractors comply with the provisions of this Attachment 8 to Exhibit 4; (2) monitor such Subcontractors' compliance; and (3) assist ADOT in any compliance verification regarding any Subcontractor.

Part B – Compliance Requirements for A.R.S. § 41-4401, Government Procurement, E-Verify Requirement; Warranties

Developer warrants that Developer and all Subcontractors are and shall remain in compliance with:

- (1) All State and federal laws applicable to immigration, including federal law and regulations relating to the immigration status of their employees who perform services under the Agreement; and
- (2) ARS section 23-214, subsection A (which reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.").

Part C – Compliance Verification

In accordance with Arizona Executive Order 2005-30, ADOT shall retain the legal right to, and may at any time during the Work, inspect the papers of any employee of Developer or any Subcontractor who works under the Agreement to ensure compliance with the warranties set forth in Part B, above.

If ADOT requests from Developer evidence of such compliance, Developer shall complete and return to ADOT the State Contractor Employment Record Verification Form and Employee Verification Worksheet (which ADOT will provide to Developer) no later than 21 days from Developer's receipt of such request.

Listing of the compliance verification procedure described in this Part C shall not preclude ADOT from utilizing other means to determine compliance with the warranties set forth in Part B, above.

Part D— Sanctions for Non-Compliance

For purposes of this Part D, non-compliance refers to either Developer's or any Subcontractor's breach of the warranties set forth in Part B, above, or Developer's failure to comply with the compliance verification procedure described in Part C, above. Such non-compliance shall be deemed a material breach of the Agreement, subjecting Developer to the remedies set forth in this Part.

ADOT will reduce Developer's compensation under the Agreement for non-compliance as follows:

- (1) \$10,000 for Developer's and any Subcontractor's first instance of non-compliance;

- (2) \$10,000 for Developer's and any Subcontractor's subsequent non-compliance occurring more than two years after the Developer's or the Subcontractor's, as applicable, preceding non-compliance; and
- (3) \$50,000 for Developer's or any Subcontractor's subsequent non-compliance occurring less than two years after the Developer's or the Subcontractor's, as applicable, preceding non-compliance.

If either Developer or any Subcontractor is in non-compliance more than three times within a two-year period, then, in addition to the monetary sanctions set forth in this Part D, ADOT may apply other remedies available under the Contract Documents, including the following:

- (1) In the case of Developer, ADOT may (a) suspend the Work for cause in accordance with Section 17.2.1 of the Agreement, (b) declare a Developer Default under Section 18.1.1 of the Agreement, and (c) if such Developer Default is not cured within the applicable cure period, terminate the Agreement in accordance with Section 18.2.1 of the Agreement.
- (2) In the case of any Subcontractor, ADOT may (a) suspend the Subcontractor's Work for cause in accordance with Section 17.2.1 of the Agreement, and (b) require that Developer terminate the corresponding Subcontract, in which case the Subcontractor will be prohibited from participating in ADOT contracts for a minimum of one year after said termination (and, if applicable, the Subcontractor's prequalification status with ADOT will be revoked).

If ADOT exercises its right to terminate the Agreement or any Subcontract, as provided in this Part D, then after the minimum one-year suspension period, the terminated party may be considered eligible to participate in subsequent ADOT contracts, but only after successfully demonstrating, to the satisfaction of ADOT, that the party's hiring practices comply with the requirements specified herein. If considered eligible, the terminated party shall be required to apply or reapply, if applicable, for ADOT prequalification and be accepted prior to bidding on ADOT contracts. For purposes of considering suspension from participating in ADOT contracts: (1) non-compliance by a Subcontractor does not count as a violation by Developer, and (2) ADOT will count instances of non-compliance on other ADOT contracts.

Developer and Subcontractors may appeal suspensions from participating in ADOT contracts to the State Engineer. Appeals must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Appeals must be received by the State Engineer no later than seven days after ADOT's determination. The State Engineer will promptly consider appeals and notify the interested party of the State Engineer's findings and decision. The State Engineer's decision shall be considered administratively final.

Any delay resulting from a compliance verification or exercise of a remedy under this Attachment 8 is a non-excusable delay. Accordingly, Developer shall not be entitled to any compensation or extension of time for any delays or additional costs resulting from a compliance verification or exercise of a remedy.

An example of the minimum sanctions under this Part D is presented in the following table:

Non-compliance by			Minimum Reduction in Developer's Compensation
Developer	Subcontractor A	Subcontractor B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000*
* May, in addition, result in termination of the Subcontractor, prohibition from participating in ADOT contracts, and revocation of any ADOT prequalification that the Subcontractor may have obtained.			

ATTACHMENT 9 TO EXHIBIT 4

COMPLIANCE WITH CARGO PREFERENCE ACT

In accordance with FHWA's Memorandum dated December 11, 2015 on "Implementation of Cargo Preference Act Requirements in the Federal-aid Highway Program," Developer and all construction Subcontractors shall comply with the Cargo Preference Act of 1954 (46 U.S.C. §55305) and its implementing regulations (46 CFR Part 381). Without limiting the foregoing, Developer agrees:

a. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Agreement, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;

b. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to both ADOT (through Developer in the case of Subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and

c. To insert the substance of these provisions in all construction Subcontracts.

EXHIBIT 5

SUBCONTRACTOR REQUEST FORMS

The following forms are for reference only. Developer shall prepare the forms using Docusign, as directed by ADOT.

Exhibit 5-1 Professional Services Subcontractor Request Form

Exhibit 5-2 Construction Subcontractor Request Form

EXHIBIT 5-1

PROFESSIONAL SERVICES SUBCONTRACTOR REQUEST FORM

[See attached]

[SAMPLE ONLY]

ARIZONA DEPARTMENT OF TRANSPORTATION

PROFESSIONAL SERVICES SUBCONTRACTOR REQUEST FORM (SRF)

P3 Project – Design-Build

Subcontractor	_____	ADOT TRACS No.	_____
AZ UTRACS No.	_____	ADOT Project No.	010 MA 149 F0072 01C
Street Address	_____	Developer	_____
Telephone No.	_____	Telephone No.	_____
City, State, ZIP	_____	Developer Amount	\$ _____
Email Address (required)	_____	Estimated Subcontract Amount	\$ _____
Contact Name (printed)	_____		
Subcontractor Fed EIN No.	_____		
Lower tier to:	_____		

DBE: ☐ Yes (documentation may be required) ☐ No

Subcontractor Work Scope Items

\$ Amounts

(Provide description of Work)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

CERTIFICATION:

Developer certifies it shall provide an executed copy of the Subcontract authorized under this Subcontractor Request Form when required by Section 8.4.2.3 of the Agreement.

Authorized Developer Signature	Authorized Subcontractor Signature	Authorized Lower-Tier Signature

Title	Date	Title	Date	Title	Date

DBE Liaison Signature

Title _____ Date _____

FOR ADOT USE ONLY

Percent of total Professional Services Work subcontracted on the Project to date: _____ %

Total amount of Professional Services Work subcontracted on the Project to date. \$ _____

Subcontract(s) in Field Reports: ☐ Yes ☐ No

For Assistant State Engineer – Construction & Materials	Date	Field Reports	Date

EXHIBIT 5-2

CONSTRUCTION SUBCONTRACTOR REQUEST FORM

[See attached]

[SAMPLE ONLY]
ARIZONA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION SUBCONTRACTOR REQUEST FORM (SRF)

P3 Project – Design-Build

Subcontractor _____	ADOT TRACS No. _____	
AZ UTRACS No. _____	ADOT Project No. _____	010 MA 149 F0072 01C
Street Address _____	Developer _____	
City, State, ZIP _____	Telephone No. _____	
Telephone No. _____	Developer Amount _____	\$ _____
Email Address (required) _____	Estimated Subcontract Amount _____	\$ _____
Contact Name (printed) _____	Type of Work: _____	
Subcontractor R.O.C. No. & Class _____	☐ Construction Work	
Subcontractor Fed EIN No. _____		
Lower tier to: _____	a)	
Labor Compliance Name (printed) _____	I CERTIFY THAT I AM A BONA FIDE TRUCK OWNER/OPERATOR	
Labor Compliance Email (required) _____		
DBE: ☐ Yes (documentation may be required) ☐ No		

Subcontracted Bid Item Nos
(Check box and provide dollar amount for joint/partial Items)

Subcontracted Description of Work

_____	_____
☐ \$ _____	_____
☐ \$ _____	_____
☐ \$ _____	_____
☐ \$ _____	_____

CERTIFICATION

Developer certifies the following:

- A. Developer shall provide to ADOT an executed copy of the Subcontract authorized under this Subcontractor Request Form as and when required pursuant to Section 8.4.2.3 of the Agreement;
- B. Upon execution of the Subcontract authorized under this Subcontractor Request Form, Developer shall provide to Field Office and Field Reports (i) copies of the executed Subcontract containing the above bid items of Work, and (ii) a signed Certification with Regard to the Performance of Previous Contracts or Subcontracts Subject to the EEO Clause and Filing of Required Reports, April 1969;
- C. Before commencing work under the Subcontract authorized under this Subcontractor Request Form, Developer shall provide to the Subcontractor copies of the documents listed below.
 - 1. Contract Documents (Agreement and Technical Provisions);
 - 2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246, rev. April 15, 1981);
 - 3. Standard Federal Equal Employment Opportunity Construction Specifications (Executive Order 11246, rev. April 15, 1981);
 - 4. Form FHWA 1273 (rev. May 1, 2012);
 - 5. EEO Compliance Reports (rev. August 1, 2005);
 - 6. DBE Special Provisions (Exhibit 7 to the Agreement);
 - 7. OJT Special Provisions (Exhibit 8 to the Agreement); and
 - 8. Federal Prevailing Wage Rates (Attachment 3-a to Exhibit 4 to the Agreement) no. [AZ20210008].

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

FOR ADOT USE ONLY

Percent of Construction Work subcontracted on the Project to date: _____ %
Total amount of Construction Work subcontracted on the Project to date: \$ _____
Subcontract in Field Reports: ☐ Yes ☐ No

For Assistant State Engineer – Construction & Materials _____	Date _____	Field Reports _____	Date _____

EXHIBIT 6

DEVELOPER'S ANTICIPATED DRAW/CASH FLOW

010 MA 149 F007201C
PHOENIX-CASA GRANDE HIGHWAY (I-10)
1-17 (SPLIT) TO SR 202L (SANTAN)

Price Proposal Form M-2

Notice: This record contains confidential and/or proprietary information that is part of the deliberative process for procurement evaluation, negotiation, and execution of a public-private partnership agreement in accordance with A.R.S. §§28-7701 to 28-7711.

INSTRUCTIONS TO PROPOSERS

The following provides a worksheet to provide Price Information following the instructions stated in the RFP for Form M-2. Proposer must complete this Form M-2 as part of the Price Proposal.

DATE: (MM/DD/YYYY): 8/11/2020

PROPOSER'S NAME: Pulice-FNF-Flatiron Joint Venture

Form M-2:
CONTRACT PRICE DRAWS/CASH FLOW TABLE

Months after NTP1	Anticipated Draw / Cash Flow (FY20\$)	Developer's Cumulative Draw (Hard Coded)
A	B	C
1	\$ 6,900,000	\$ 6,900,000
2	\$ 5,421,132	\$ 12,321,132
3	\$ 13,466,615	\$ 25,787,747

4	\$	10,570,447	\$	36,358,194
5	\$	10,570,447	\$	46,928,641
6	\$	10,570,447	\$	57,499,087
7	\$	10,570,447	\$	68,069,534
8	\$	8,627,999	\$	76,697,533
9	\$	4,110,528	\$	80,808,061
10	\$	4,110,528	\$	84,918,589
11	\$	4,110,528	\$	89,029,117
12	\$	4,110,528	\$	93,139,645
13	\$	4,110,528	\$	97,250,173
14	\$	4,110,528	\$	101,360,701
15	\$	4,110,528	\$	105,471,229
16	\$	4,110,528	\$	109,581,757
17	\$	4,110,528	\$	113,692,285
18	\$	4,110,528	\$	117,802,813
19	\$	4,110,528	\$	121,913,341
20	\$	4,110,528	\$	126,023,868
21	\$	15,740,646	\$	141,764,515
22	\$	27,695,071	\$	169,459,586
23	\$	26,277,093	\$	195,736,679
24	\$	21,887,077	\$	217,623,756
25	\$	21,378,887	\$	239,002,643
26	\$	17,842,531	\$	256,845,174
27	\$	18,723,748	\$	275,568,922
28	\$	21,902,524	\$	297,471,446
29	\$	22,603,116	\$	320,074,562
30	\$	21,917,283	\$	341,991,844
31	\$	22,201,563	\$	364,193,407
32	\$	22,482,927	\$	386,676,333
33	\$	23,034,277	\$	409,710,611
34	\$	21,038,482	\$	430,749,093

35	\$	20,699,201	\$	451,448,294
36	\$	19,400,754	\$	470,849,048
37	\$	19,400,754	\$	490,249,802
38	\$	15,234,602	\$	505,484,404
39	\$	16,777,180	\$	522,261,584
40	\$	18,219,941	\$	540,481,526
41	\$	19,565,043	\$	560,046,568
42	\$	15,100,125	\$	575,146,693
43	\$	15,250,150	\$	590,396,843
44	\$	6,025,357	\$	596,422,200
45	\$	3,456,852	\$	599,879,052
46	\$	3,811,595	\$	603,690,647
47	\$	3,789,951	\$	607,480,598
48	\$	3,689,574	\$	611,170,172
49	\$	1,780,778	\$	612,950,950

EXHIBIT 7

ADOT'S DBE SPECIAL PROVISIONS

[See attached]

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DBE SPECIAL PROVISIONS

1.0 POLICY

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program and;
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 ASSURANCES OF COMPLIANCE AND NON-DISCRIMINATION

Any Developer, Subcontractor, Supplier, DBE firm, and Guarantor involved in the performance of work on a federal-aid agreement shall familiarize themselves with and comply with the terms and conditions of the United States Department of Transportation (USDOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), and these DBE Special Provisions.

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

3.0 DEFINITIONS AND FORMS

3.01 Definitions

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

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

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

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

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

- (1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.

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

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

- (G) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.
- (H) **Non-DBE:** Any firm that is not a DBE.
- (I) **Race-conscious:** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- (J) **Race-neutral:** A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- (K) **Small Business Concern (SBC):** A business that meets all of the following conditions:
- (1) Operates as a for-profit business registered to do business in Arizona;
 - (2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
 - (3) Is independently owned and operated;
 - (4) Is not dominant in its field on a national basis; and
 - (5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.
- (L) **Socially and Economically Disadvantaged Individuals:** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
- (1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

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

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

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

(vi) "Women;"

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

3.02 List of Forms

The following forms are referenced in and attached to these DBE Special Provisions or the Agreement. All forms are also available at www.azdot.gov/bec and from the BECO, 1801 W. Jefferson Street, Ste. 101, Mail Drop 154A, Phoenix, AZ 85007

Name of Form	Attachment to DBE Special Provisions
Construction DBE Intended Participation Affidavit Summary	Attachment A
Construction DBE Intended Participation Affidavit Individual	Attachment B
Professional Services DBE Intended Participation Summary	Attachment C
Professional Services DBE Intended Participation Individual	Attachment D

Professional Services Subcontractor Request Form	Exhibit 5-1 to the Agreement (not attached to DBE Special Provisions)
Construction Subcontractor Request Form	Exhibit 5-2 to the Agreement (not attached to DBE Special Provisions)
Bidder's/Proposers List of Subcontractors and Suppliers	Attachment E (electronic submittal)
DBE Monthly Utilization Progress Report	Attachment F
Monthly DBE Subcontractor Payment Form	Attachment G
Monthly Non-DBE Subcontractor Payment Form	Attachment H
DBE Certificate of Final Payments Construction and Professional Services	Attachment I
Summary of Final Payments for Construction	Attachment J
Summary of Final Payments for Professional Services	Attachment K
DBE Substitution or Termination Request	Attachment L

4.0 WORKING WITH DBES

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

Arizona Department of Transportation Business Engagement and Compliance Office
1801 W. Jefferson Street, Ste. 101, Mail Drop 154A, Phoenix, AZ 85007, Phone (602)
712 7761
FAX (602) 712-8429
Email: DeveloperCompliance@azdot.gov

5.0 APPLICABILITY

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

Developer shall meet the DBE Goals specified in the Agreement, or establish that it was unable

to meet the DBE Goals despite making Good Faith Efforts to do so. Developer is encouraged to obtain DBE participation above and beyond the DBE Goals.

6.0 CERTIFICATION AND REGISTRATION

6.01 DBE Certification

Certification as a DBE shall be predicated on:

1. The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
2. The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
3. The submission of any additional information that ADOT may require to determine the firm's eligibility to participate in the DBE program.
4. The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with ADOT at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at <http://www.azutracs.com>.

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

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT's projects. A list of DBE firms certified by the AZUCP is available on the Internet at <http://www.azutracs.com>. The list will indicate contact information and types of work for which each DBE firm is certified. ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that the DBE has the necessary licenses or registrations to perform the work.

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

6.02 SBC Registration and Utilization

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

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

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

7.0 DBE FINANCIAL INSTITUTIONS

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

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

8.0 TIME IS OF THE ESSENCE

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

9.0 COMPUTATION OF TIME

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

10.0 DBE GOALS

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

11.0 DBE PARTICIPATION ABOVE THE GOAL (RACE NEUTRAL PARTICIPATION)

Additional DBE participation above the DBE participation required to meet the DBE Goals is an important aspect of ADOT's DBE program. Developer is strongly encouraged to use additional DBEs above the DBE Goals in performing the Work in an effort to help ADOT meet its overall DBE goal and help ADOT meet the maximum feasible portion of its DBE goals through race neutral as outlined in 49 CFR Part 26. There are fewer administrative requirements on the part of Developer when using race neutral DBEs (DBEs not listed on the Construction DBE Intended

Participation Affidavit Summary to meet DBE contract goals). For example, if a DBE is not listed on the Construction DBE Intended Participation Affidavit Summary, Developer does not have to submit a Construction DBE Intended Participation Affidavit Individual form, Developer's Subcontract certification process follows the same process of any other Subcontract, and Developer does not have to replace the DBE if the DBE fails to perform. Therefore these DBEs are treated as any other Subcontractor on the Project but will count towards the overall DBE utilization. Until the Developer reaches commitment values that meet or exceed the calculated DBE goal, no DBE contractors are considered race-neutral, and until the Developer has DBE contracts sufficient to meet the goal, all DBE contracts are considered race-conscious.

12.0 DBE POST AWARD SUBMISSIONS

12.01 Final DBE Utilization Plan (After NTP 1)

Within 30 days after issuance of NTP 1, Developer shall revise and convert its Preliminary DBE Utilization Plan included in its Proposal into a more detailed, final DBE Utilization Plan and submit it to ADOT for approval in its good faith discretion, as more particularly set forth in Section 8.2.5 of the Agreement. The DBE Utilization Plan is a living document monitored monthly by ADOT.

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

12.02 DBE Commitment Affidavits (After NTP 1)

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

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

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

and subject to the following terms and conditions.

1. All forms must be accurate and complete in every detail and must be signed by an officer of Developer. Percentages and dollar amounts must be accurate, listed to two decimal places, and not rounded up or down.
2. A separate DBE Intended Participation Affidavit must be submitted for each DBE used to meet the DBE Goals. Developer shall indicate each DBE's name, address, a description of the work the DBE will perform, proposed Subcontract amount and the NAICS code applicable to the kind of work the firm would perform on the Project. A list of certified DBEs with their respective NAICS code can be located on the DBE Directory at AZ UTRACS website <http://www.azutracs.com>. All partial items must be explained. If not, the DBE will be considered to be responsible for the entire item. The intended DBE must complete and sign the form, as specified therein, to confirm its participation.
3. Developer must determine DBE credit in accordance with Section 16.0 of these DBE Special Provisions, entitled "Crediting DBE Participation Toward Meeting Goal."
4. Only those DBE firms certified by the Arizona Unified Certification Program (AZUCP) will be considered for DBE credit. It shall be Developer's responsibility to ascertain the certification status of designated DBEs to be used on the Project and to encourage any out-of-state DBEs to become certified in Arizona.
5. All DBE commitment amounts must be finalized between the DBE and Developer prior to submittal of DBE Intended Participation Affidavits. Developer is not permitted to inflate DBE awards or overstate DBE award amounts on a DBE Intended Participation Affidavit with the knowledge that the DBE will actually perform a small portion of the Work. Reduction of DBE commitment amounts after submittal of the DBE Intended Participation Affidavit and resolution of ADOT's comments thereon, whether occurring prior to or after the DBE firm starts Work on the Project, without good cause, may be grounds for ADOT declaring that Developer has failed to make Good Faith Efforts, and Developer may be subject to remedies for such failure as outlined in Section 15.01 "Continuing Good Faith Efforts" of these DBE Special Provisions. Scheduling conflicts are not evidence of good cause as this should have been considered prior to submittal of DBE Intended Participation Affidavits. Since Developer is required to use ADOT-approved DBEs submitted on DBE Intended Participation Affidavit forms to meet DBE Goals, Developer is responsible for ensuring DBEs are available and ready to perform when needed on the Project prior to submission of DBE Intended Participation Affidavits.
6. Developer bears the risk of late submission or late delivery by the postal service or a delivery service. Late submittal of DBE Intended Participation Affidavits may result in denial of DBE credit.

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

12.03 DBE Subcontractor Request Forms

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

Professional Services or Construction Subcontractor Request Forms, executed Subcontracts and all required documents outlined on the forms, must be submitted to ADOT for Committed DBEs, 15 days prior to start of work. Developer shall submit all other types of Subcontracts pursuant to Section 8.4.2.3 of the Agreement.

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

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

Within 15 days after a DBE Subcontractor/Supplier request is processed by ADOT pursuant to Section 12.03 of these DBE Special Provisions, and before the DBE begins work on the Project, Developer shall log into ADOT's web-based DBE System (<https://adot.dbesystem.com>) and enter and/or verify that the following information, at a minimum, is uploaded into the system. Such entry and verification of information is required in order to register commitments made through the DBE Intended Participation Affidavits, and to track DBE utilization for each DBE Goal, Subcontractor payments and prompt pay requirements:

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

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

12.05 Bidders/Proposers List and AZUTRACS Registration

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information through a Bidders/Proposers List when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at <http://www.azutracs.com/> a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Developer must also maintain Bidders/Proposers Lists throughout the Project for every firm quoting, bidding or expressing an interest in providing subcontract services for the Project. Developer must submit Bidders/Proposers List with the required information every month for all new firms that quote, bid or express interest in Subcontracts with Monthly DBE Utilization Progress Reports as outlined in Section 18.02.2 of these DBE Special Provisions.

Along with submitting Bidders/Proposers List monthly, Developer shall ensure that all Subcontractors are registered as a vendor in AZUTRACS and provide an AZUTRACS Number for each Subcontractor on the list submitted each month.

To determine if a Subcontractor is registered as a vendor, search by firm name at: <https://utracs.azdot.gov/>. If the firm is listed at the bottom of the page in the Search Results, it is registered as a vendor. If it is not listed, the firm shall register by going to this website <https://utracs.azdot.gov/>.

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

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

13.0 DBE LIAISONS AND COMPLIANCE OVERSIGHT COMMITTEE

13.01 DBE Liaisons

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

Developer shall establish a DBE program administration process that will ensure nondiscrimination in the award and administration of contracts and subcontracts and shall

eliminate barriers to the participation of DBEs and small businesses on the Project. Developer's DBE/OJT Outreach and Compliance Manager shall be responsible for the management and implementation of Developer's DBE Utilization Plan and shall report to Developer's Project Manager. This individual shall serve as Developer's DBE liaison with ADOT for the Project. The name of this designated DBE liaison shall be included on all DBE Intended Participation Affidavit Summary forms.

13.02 Compliance Oversight Committee

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

14.0 DBE COMPLIANCE RECORDS

Developer shall keep documents and records pertaining to DBE outreach, participation, procurements, utilization, payments, Good Faith Efforts and other compliance activities for five years after Substantial Completion. These records and documents shall be subject to ADOT's rights of inspection, copying and audit set forth in Sections 22.4 and 22.5 of the Agreement.

15.0 CONTINUING GOOD FAITH EFFORTS AND CONTRACT PERFORMANCE

15.01 Continuing Good Faith Efforts

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

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

2. Conducting market research to identify small business Subcontractors and Suppliers and soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the relevant Work. This may include attending pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of notices of sources sought and/or requests for proposals at reasonable locations, including Developer's website, written notices or emails to all DBEs listed in ADOT's directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the Project. Developer shall solicit this interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the Subcontract. Developer shall determine with certainty if DBEs are interested by taking appropriate steps to follow-up initial solicitations.
3. Selecting portions of the relevant Work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Project work items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation, even when Developer might otherwise prefer to perform these Work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
4. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the Project in a timely manner to assist them in responding to a solicitation with their offer for the Subcontract.
5. Negotiating in good faith with interested DBEs. It is Developer's responsibility to make a portion of the relevant Work available to the DBE Subcontractors and Suppliers, and to select those portions of relevant Work or material needs consistent with the available DBE Subcontractors and Suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the relevant Work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform such Work.

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

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

other bids or quotes, is subject to Section 14.0 of these DBE Special Provisions.

6. Avoiding rejection of the DBE because its quotation for the relevant Work was not the lowest received. However, nothing in this paragraph shall be construed to require Developer to accept unreasonable quotes in order to satisfy DBE Goals. Developer must submit to ADOT copies of each DBE and non-DBE Subcontractor quote submitted to Developer when a non-DBE Subcontractor was selected over a DBE for a Subcontract. ADOT shall have the right to review whether DBE prices were substantially higher and contact the DBEs listed on a Developer's solicitation to inquire as to whether they were contacted by Developer.
7. Substantiating rejection of DBEs as being unqualified with sound reasons based on a thorough investigation of their capabilities. Developer's or a DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in Developer's efforts to meet the DBE Goals.
8. Making efforts to assist interested DBEs such as formal or informal mentoring, assistance with obtaining bonding, lines of credit, or insurance as required by the Agreement or Developer.
9. Making efforts to assist interested DBEs in obtaining necessary equipment supplies, materials, or related assistance or services.
10. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
11. Making efforts to identify firms that might potentially be certified as DBEs and assisting those firms with DBE certification and opportunities to submit bids or proposals to participate as Subcontractors, truckers, Suppliers and other service providers on the Project.
12. Making efforts to recruit and utilize non-engineering design and construction related DBE firms such as graphic design and printing, marketing, outreach, training, employment services and catering companies to help meet DBE Goals.

If ADOT determines at any time during the term of the Agreement, at its sole discretion, that Developer's DBE utilization and Good Faith Efforts to meet the DBE goals during performance of the Work are not consistent with its commitment to meet DBE Goals or make Good Faith Efforts to meet the DBE Goals as indicated in its Proposal, outlined in its DBE Utilization Plan or monthly reports required pursuant to Section 18.01 of these DBE Special Provisions, ADOT may require that Developer submit, in writing, Good Faith Effort documentation and a corrective action plan to ADOT outlining how it plans to meet DBE Goals. Developer shall have 14 days

to submit this information to ADOT. Failure to respond shall result in progress payment being withheld until the requested information is provided to ADOT.

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

15.02 Contract Performance

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

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

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

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

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

16.0 CREDITING DBE PARTICIPATION TOWARD MEETING GOAL

16.01 General Requirements

Only the value of the Work actually performed by the DBE in an area of Work for which it is certified before the Subcontract execution date or, if applicable, Subcontract amendment execution date in each NAICS code applicable to such Work can be credited toward DBE participation. ADOT will give credit toward the DBE Goals only after the DBE has been paid for the Work performed.

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

equipment the DBE Subcontractor purchases or leases from Developer or its Affiliates.

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

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

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

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

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

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

With the exception of bond premiums, all Work must be attributed to specific bid/work items. Where Work applies to several items, the DBE subcontracting arrangement must specify unit price and amount attributable to each bid/work item. DBE credit for any individual item of Work by the DBE shall be the amount to be paid to the DBE for which it performs a CUF, as more particularly provided in Section 16.05 of these Special Provisions.

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

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

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

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

the requirements of the higher-tier DBE Subcontract.

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

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

16.02 Effect of Loss of DBE Eligibility

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

16.03 DBE Certification Status

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

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

16.04 Police Officers

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

16.05 Commercially Useful Function

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

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

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

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

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

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

When a DBE is presumed not to be performing a CUF as provided above, the DBE or Developer may present evidence to rebut this presumption. ADOT will determine if the firm is not performing a CUF given the type of work involved and based on normal industry practices. Decisions on CUF matters are subject to review by the FHWA, but are not administratively appealable to USDOT. In order to obtain this review, the affected party must contact ADOT in writing to request a review within seven days after ADOT delivers written notice of its decision. The request must be accompanied with any documentation to support the affected party's case. ADOT will transmit the request for review with any supporting documentation to the FHWA.

16.06 Trucking

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

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Project, and there cannot be a contrived arrangement for the purpose of meeting the DBE Goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Project on every day that credit is to be given for trucking.
3. Developer will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

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

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

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

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

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

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

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

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

16.07 Materials and Supplies

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

A manufacturer is defined as a firm that operates or maintains a factory or establishment that

produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement.

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

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

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

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

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

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

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

16.08 Effect of Agreement Changes

The base figure used to compute the percentage of actual dollars paid to DBEs shall be adjusted in accordance with Section 8.2.8 of the Agreement on account of any Supplemental Agreements or Directive Letters that increase or decrease the Work in which DBE participation has been committed or is intended. Developer shall reflect the revised total dollar values in DBE Monthly Utilization Progress Reports and in the ADOT DBE System as part of Developer payment reporting.

If as a result of a Supplemental Agreement or Directive Letter, the scope or quantity of work

being done by a DBE Subcontractor is decreased, Developer shall exercise Good Faith Efforts to obtain additional DBE participation so that the resulting DBE participation will equal or exceed the DBE Goals.

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

17.0 JOINT CHECKS

17.01 Requirements

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

1. The DBE Subcontractor must be independent from Developer and the Supplier, and must perform a CUF. The DBE Subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE Subcontractor may not be utilized as an extra participant in a transaction, contract, or subcontract in order to obtain the appearance of DBE participation.
2. Developer, the DBE Subcontractor, and the material Supplier must establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBEs do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE Subcontractor's normal capacity.
4. There may not be any exclusive arrangement between Developer and the DBE in the use of joint checks that may bring into question whether the DBE is independent of Developer.
5. The arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the Supplier.
6. Developer and the payor of the joint check may not establish or control establishing the terms of the agreement between the DBE Subcontractor and the Supplier.
7. The DBE must have the right and obligation to receive the check from the payor and to deliver the check to the Supplier.
8. Developer cannot require the DBE Subcontractor to use a specific Supplier, and Developer may not participate in the negotiation of unit

prices between the DBE Subcontractor and the Supplier.

17.02 Procedure and Compliance

1. ADOT must approve in writing the agreement for the use of joint checks in writing before any joint checks are issued. Developer shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to ADOT.
2. After obtaining authorization for the use of joint checks, Developer, the DBE and the Supplier must retain documentation to allow for efficient monitoring of the joint check agreement.
3. Developer shall submit to ADOT copies of canceled checks with the payment information for the period in which the joint check was issued or shall make such copies available for review at the time of the onsite CUF review. Developer shall promptly report to ADOT any change from the approved joint check arrangement, and shall require the DBE and Supplier to likewise report to ADOT.

18.0 DBE UTILIZATION REPORTING

18.01 DBE System Payment Reporting

ADOT is required to collect DBE and non-DBE participation data for all Federal-aid contracts to measure DBE goal attainment and as a mechanism to monitor and track prompt payment to Subcontractors. Developer is notified that such record keeping is also required by ADOT for tracking and reporting DBE participation to USDOT. Accordingly, Developer shall submit monthly reports to ADOT of all payments made to DBE and non-DBE Subcontractors as set forth in Section 12.6.1 of the Agreement.

18.02 Project Schedule & DBE Utilization Progress Reports

18.02.1 Project Schedule

Developer shall submit to ADOT a Schedule Narrative with each monthly Project Baseline Schedule Update, as required in Section 12.2.3.2 of the Agreement and Section 108.04.02.06 of the Technical Provisions. The Schedule Narrative shall include a log of applicable DBE participation activities in the Project Schedule for which Developer intends to claim credit for attaining the DBE Goals. The log shall include the proposed start/finish dates, durations, and dollar values of the DBE participation activities.

18.02.2 DBE Monthly Utilization Progress Reports

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

- Progress on various components of the DBE Utilization Plan;

- Current month and year-to-date summary of DBE Subcontract awards compared to total Subcontract awards;
- Progress toward the DBE Goals;
- Summary of work items not yet completed or subcontracted which are targeted for DBE utilization in the coming month and quarter;
- Bidders/Proposers List of firms who quoted or bid on Subcontracts during the previous month (using <https://utracs.azdot.gov/>);
- A separate DBE Intended Affidavit Summary for each of (a) Professional Services and (b) Construction for all DBEs authorized under Sections 12.02 and 12.03 of these DBE Special Provisions to work on the Project during the previous month;
- Non-DBE Subcontract awards for Professional Services and Construction Subcontractors, including Small Business Concerns (SBCs);
- Amounts earned by and paid to all Professional Services and Construction DBEs and non-DBEs the previous month (using Monthly Subcontractor Payment Forms);
- Certification of Final DBE Payment, as and when required under Section 18.02.3 of these DBE Special Provisions; and
- Issues encountered and/or resolved pertaining to DBEs working on the Project that could impact Developer's ability to meet the DBE Goals.

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

18.02.3 Certification of Final DBE Payments

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

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

18.02.4 Annual and Final DBE Utilization Reports

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

components of its DBE Utilization Plan.

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

18.02.5 Report Review and Sanctions

As indicated in Section 13.02 of these DBE Special Provisions, ADOT will convene an interdisciplinary Compliance Oversight Committee that will meet with Developer monthly to review and verify information contained in submitted monthly, annual and final reports to monitor and oversee Developer's DBE compliance and progress towards meeting the DBE Goals.

19.0 DBE TERMINATION/SUBSTITUTION

19.01 General Requirements

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

19.02 Developer Notice of Termination/Substitution

Developer shall notify ADOT in writing if any Work assigned to or projected to be performed by a Committed DBE will not be performed by the Committed DBE within 24 hours from any sign of any reason for potential DBE termination/substitution, or as soon as this information is known. Developer shall contact ADOT promptly at the first sign of any reason for cause of a Committed DBE termination/substitution.

Developer shall not terminate or permit or suffer termination of a Committed DBE without ADOT's written approval. Developer shall not complete or allow or suffer completion of the Work contracted to the Committed DBE with its own forces or with a non-DBE firm. Before submitting a formal request to ADOT for DBE termination/substitution, Developer shall give, or cause the party to the Subcontract with the Committed DBE to give, a written notice to the Committed DBE Subcontractor with a copy to ADOT of its intent to terminate and/or substitute the Committed DBE and identifying the reason for the action. The notice shall allow the

Committed DBE a minimum of five days to respond to the notice advising Developer or the contracting party and ADOT of the Committed DBE's position. ADOT will consider both Developer's request and the DBE firm's response and explanation before approving Developer's termination and substitution request.

19.03 Developer Request for Termination/Substitution

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

1. The date Developer determined the Committed DBE to be unwilling, unable or ineligible to perform;
2. A brief statement of facts describing and citing specific actions or inaction by the Committed DBE giving rise to Developer's assertion that the Committed DBE is unwilling, unable, or ineligible to perform;
3. A brief statement of the Committed DBE's capacity and ability to perform the Work as determined by the subcontracting party;
4. A brief statement of facts regarding actions taken by Developer, that Developer believes constitute Good Faith Efforts toward enabling the Committed DBE to perform;
5. The total dollar amount currently paid for Work performed by the Committed DBE;
6. The total dollar amount remaining to be paid to the Committed DBE for Work completed, but for which the Committed DBE has not received payment, and with which Developer has no dispute;
7. The total dollar amount remaining to be paid to the Committed DBE for Work completed, but for which the Committed DBE has not received payment, and over which Developer has no dispute; and
8. The projected date that Developer will require a substitution or replacement DBE to commence Work, if the request is approved.

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

19.04 Good Cause

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

1. Fails or refuses to execute a written Subcontract;
2. Fails or refuses to perform the Work of its Subcontract in a way consistent with normal industry practices and standards; provided, however, that good cause does not exist if the failure or refusal of the Committed DBE to perform such Work results from the bad faith, failure to pay, material breach or discriminatory action of Developer or the subcontracting party;
3. Fails or refuses to meet Developer's reasonable, nondiscriminatory bond requirements;
4. Is the subject of a voluntary or involuntary petition in bankruptcy, becomes insolvent, or exhibits credit unworthiness;
5. Is ineligible to work on public works contracts because of suspension and debarment proceedings pursuant to federal or state law;
6. It is not a responsible contractor;
7. Voluntarily withdraws from the Subcontract and provides to ADOT written notice of its withdrawal;
8. Is ineligible to receive DBE credit for the type of Work required;
9. A DBE owner dies or becomes disabled with the result that it is unable to complete its Work on the Subcontract; or
10. Other documented good cause that ADOT determines compels the termination and/or substitution of the Committed DBE.

19.05 Good Faith Effort for DBE Termination/Substitution

The termination of a DBE with ADOT's approval shall not relieve Developer of its obligations under these Special Provisions. If ADOT approves the termination of a Committed DBE, Developer shall make Good Faith Efforts as identified in Section 15.01 of these DBE Special Provisions and 49 CFR Part 26, Appendix A to find another DBE Subcontractor to substitute for the original DBE. Developer shall direct the Good Faith Efforts, at finding another DBE to perform at least the same amount of Work under as the Committed DBE that was terminated, to the extent needed to meet the DBE Goals. Developer shall provide documentation of such Good Faith Efforts to ADOT within seven days after ADOT delivers a request therefor.

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

ADOT will not credit the unpaid portion of the terminated Committed DBE's Subcontract toward the DBE Goals. If ADOT has eliminated items of Work subcontracted to a Committed DBE,

then Developer shall still make Good Faith Efforts to replace the Committed DBE with another DBE for the extent necessary to meet the DBE Goals. ADOT will review the quality, thoroughness, and intensity of those efforts.

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

In addition to the remedies provided under the Contract Documents, ADOT may assess penalties or sanctions if Developer fails to comply with the DBE requirements.

20.0 SUMMARY OF CERTIFICATION OF FINAL DBE PAYMENTS

In anticipation of final payment for Construction Work, Developer shall submit to ADOT a Summary Certification of Final DBE Payments. Developer shall submit such Summary for the Professional Services and Construction components of the Work not later than 60 days prior to Substantial Completion. The form shall include a list of all DBEs that worked on the applicable Professional Services or Construction Work, dollar amounts committed, Subcontract amount and total amount paid. Developer shall acknowledge that by the act of filing the forms, the information is supplied to obtain payment regarding the Project as a federal-aid contract.

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

21.0 SUSPECTED DBE FRAUD

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

ATTACHMENTS TO EXHIBIT 7

DBE SPECIAL PROVISIONS – FORMS

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

ATTACHMENT A TO EXHIBIT 7

CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT SUMMARY

To be completed by Developer/Contractor

ADOT Project/TRACS No.: _____

Developer/Contractor: _____

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

DBE Information: (Attached additional sheets as necessary.)

AZUTRACS Vendor Registration #	Name of DBE Firm	Scope of Work	Total Minimum Contract Amount	Adjustments	Total Amount Toward DBE Goal
(1) Total Dollar Value of Commitments					
(2) Contract Bid Total Percent of Contract Bid (Divide Line 1 by Line 2)					\$

(DBE Liaison Officer)

(Signature & Date)

(Project Manager)

(Signature & Date)

BECO Form 106DBM

ATTACHMENT B TO EXHIBIT 7

CONSTRUCTION DBE INTENDED PARTICIPATION AFFIDAVIT INDIVIDUAL

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
Design Build
CONSTRUCTION DBE INTENDED PARTICIPATION
AFFIDAVIT
(Submit one per DBE)

To be completed by the DBE firm or supplier
 ADOT Project/TRACS # _____
 AZ UTRACS Registration # _____
 Name of DBE Firm _____

Type of DBE Operation: (Please check one box)
☐ Trucker
☐ Broker(Fees/Commission)
☐ Regular Dealer (60% DBE credit)
☐ Manufacturer

Directions:

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

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

COMPLETE THIS PORTION IF SCOPE OF WORK IS BID BY UNIT PRICE OR HOURLY RATE (Trucking, Hauling, Uniformed Officers, Etc.)					
NAICS Code	Scope of Work	Applicable Licenses (if any)	Unit/Hourly Estimate	Unit/Hourly Price	Total Minimum Contract Amount
					\$ -
					\$ -
					\$ -
					\$ -
Total					\$ -

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

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

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

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

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

Unit Price Bid \$ _____ Fees/Commissions Portion of Bid \$ _____ or _____ %

3. The undersigned will sublet and/or award \$ _____ of work bid to a non-DBE firm.

4. The undersigned will sublet and/or award \$ _____ of work to another certified DBE firm.

Confirmation of Participation

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

I, _____ confirm that _____
 (Authorized DBE firm officer, print name and title) (Name of DBE firm)

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

ATTACHMENT C TO EXHIBIT 7

**PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT
SUMMARY**

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
Design Build
PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT
SUMMARY

To be completed by Developer or Consultant

Consultant	Project/Tracs No:
Project Description	

Directions:

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

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

Total \$ Amount toward DBE Goal
(1) Total contract/Task Order Amount**
(2) Total % of DBE Commitment
(3) Contract DBE Goal

\$

Developer/Project Manager _____ Signature _____

DBE Liaison Officer _____ Signature _____

BECO Form 206DBM

ATTACHMENT D TO EXHIBIT 7

**PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT
INDIVIDUAL**

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
Design Build
PROFESSIONAL SERVICES DBE INTENDED PARTICIPATION AFFIDAVIT
INDIVIDUAL

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

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

Directions:

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

Type of Service to be Provided	NAICS Code	BTR License (if applicable)	Total \$ Amount Awarded to DBE Firm**	\$ Amount subcontracted to another DBE firm**	\$ Amount subcontracted to Non DBE Firm**	\$ Amount performed by the DBE firm	% of work performed by the DBE firm (CUF)***
						\$	
Total \$ Amount toward DBE Goal						\$	

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

Substitute Certification:

I Certify That:

1. *My firm has made an arrangement/agreement with the above named Consultant/Subconsultant to do work listed above for the proposed Project.*
2. *My firm agrees to the proposed DBE commitment above and agrees to perform the services in accordance with the DBE provisions of the contract.*
3. ****My firm will complete 100% of the work listed above or intends to subcontract ____% of the work to another DBE firm and/or ____% to another non-DBE firm.*

Name of DBE or non-DBE firm: _____

Note: *If percentage of work subcontracted out is greater than 70% of the DBE's work amount, the DBE will be deemed to be not performing a commercially useful function and the DBE's participation will NOT be counted toward the DBE Goals.*

4. *If I subcontract any work to a non-certified DBE firm, I must inform the Consultant because the work will NOT count toward the DBE goal and it will LOWER commitment if a proposed certified DBE is unable or unwilling to perform the work or any part of the intended work.*
5. *I understand that failure to comply with the information shown on this form will be considered grounds for contract sanctions and other remedies.*
6. *I declare under penalty of perjury in the second degree, and any other applicable state or federal laws that the statements made on this document are true and complete to the best of my knowledge.*

DBE Owner _____ **Signature**

DBE Liaison Officer _____ **Signature**

BECO Form 205DBM

ATTACHMENT E TO EXHIBIT 7

BIDDER'S LIST OF SUBCONTRACTORS AND SUPPLIERS

[See attached]

BECO Form DB104C (Rev 01-29-15)

ATTACHMENT F TO EXHIBIT 7

DBE MONTHLY UTILIZATION PROGRESS REPORT

[See attached]

Arizona Department of Transportation
DESIGN BUILD
DBE Monthly Utilization Progress Reports
(Due by 15th day of each month)

Contract/Agreement # _____ **Project** _____

Developer _____ **Month** _____ **Year** ____ **Date Submitted** _____

1. **OUTREACH & RECRUITMENT:** Description of DBE and small business bid-specific marketing, recruitment, outreach and community engagement efforts made during the month aimed at professional services and construction firms. Also include description of efforts Developer/Subconsultants/Subcontractors made to recruit and utilize non-engineering design and construction related DBE firms this month.
2. **DBE BUSINESS CAPACITY BUILDING:** Description of DBE capacity-building assistance provided to DBEs this month, such as help with record-keeping and compliance, bonding, financing, access to supplies and other capabilities.
3. **DBE TECHNICAL ASSISTANCE:** Description of specific technical assistance measures that Developer undertook this month to help DBEs and small businesses such as training workshops, technical and financial assistance, support services, mentor/protégé relationships, recruiting and encouraging potential DBEs to get certified, etc.
4. **DBE PROCUREMENTS/AWARDS:** List actual number and total dollar amounts of DBE Subcontracts successfully awarded during the month.
5. **DISCREPANCIES/GOOD FAITH EFFORTS:** If actual dollar amounts of DBE Subcontracts successfully awarded for the month is less than the month's projected awards, explain why and list Good Faith Efforts that will be made, during what time period, to make up the shortfall amount.
6. **DBE PROCUREMENT PROJECTIONS:** List number, scope of work and total dollar amounts of DBE Subcontracts projected for the coming month and quarter.
7. **PROMPT PAY ISSUES:** Description of any Subcontractor prompt payment issues encountered during the month.
8. **DBE SUBSTITUTION/REPLACEMENT:** Description of any DBE substitution/replacement requests made during the month.
9. **OTHER ISSUES:** Description of any other issues encountered and/or resolved pertaining to DBEs working on the Project that could impact Developer's ability to meet the DBE Goals.
10. **DEVIATIONS/REVISIONS TO DBE UTILIZATION PLAN:** List any deviation from or revisions needed to Developer's approved DBE Utilization Plan.
11. **PROGRESS TOWARDS MEETING DBE GOALS/COMMITMENTS:**

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

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

Total Cumulative Professional Services Payment to Developer \$ _____

Current DBE Professional Services DBE Utilization _____ %

Total Construction Current Monthly DBE Payment Amount \$ _____

(from current Month's Construction DBE
Subconsultant/Subcontractor Payment Form)

Total Cumulative Construction DBE Payment Amount to Date \$ _____

(from Previous Months' DBE Construction DBE Subconsultant/
Subcontractor Payment Forms)

Total Cumulative Construction Payment to Developer \$ _____

Current DBE Construction DBE Utilization _____ %

REQUIRED ATTACHMENTS

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

Developer Project Manager Name _____

Developer Project Manager Signature _____

Developer DBE Liaison Name _____

Developer DBE Liaison Signature _____

ATTACHMENT G TO EXHIBIT 7

MONTHLY DBE SUBCONTRACTOR PAYMENT FORM

[See attached]

Arizona Department of Transportation

DESIGN BUILD

Monthly DBE Subcontractor Payment Form

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

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

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

_____ PROFESSIONAL SERVICES _____ CONSTRUCTION

Name of Subcontractor	Original Subcontract Award Amount	Payment Date	Current Month Payment Amount	Cumulative Payment to Date	Is this a Final Payment?
Monthly Total Payments to DBEs					
Cumulative Total Paid DBEs to Date					

DBE Liaison Name

Signature

Date

Developer Project Manager Name

Signature

Date

ATTACHMENT H TO EXHIBIT 7

MONTHLY NON-DBE SUBCONTRACTOR PAYMENT FORM

[See attached]

Arizona Department of Transportation

DESIGN BUILD

Monthly Non-DBE Subcontractor Payment Form

Developer _____ Payment Reporting Period: (From: _____ To: _____) ADOT Payment Date: _____
Committed DBE Goal: _____% Actual DBE % to Date: _____%

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

Name of Subcontractor	Original Subcontract Award Amount	Payment Date	Current Month Payment Amount	Cumulative Payment to Date	SBC? Check if Yes	Is this a Final Payment?
Monthly Total Payments to Non-DBE Subcontractors						
Cumulative Total Paid Non-DBEs Subcontractors to Date						

____PROFESSIONAL SERVICES ____CONSTRUCTION

DBE Liaison Name

Signature

Date

Developer Project Manager Name

Signature

Date

ATTACHMENT I TO EXHIBIT 7

**DBE CERTIFICATE OF FINAL PAYMENTS
CONSTRUCTION AND PROFESSIONAL SERVICES**

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
DESIGN BUILD
DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION OF FINAL PAYMENTS
CONSTRUCTION AND PROFESSIONAL SERVICES
(Submit one form for each DBE involved in the Project)

DEVELOPER/SUBCONSULTANT/SUBCONTRACTOR CERTIFICATION

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

DBE FIRM AZ UTRACS Vendor Registration # _____ ☐ Construction ☐ Professional Services
Name of DBE Firm _____ was paid the amount of \$ _____.
DBE Work Start Date _____ DBE Work End Date: _____

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

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

Check One: ☐ Developer ☐ Subcontractor/Subconsultant
Company Name: _____
Name: _____
Title: _____
Signature: _____ **Date:** _____

DBE FIRM CERTIFICATION

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

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

Check One: ☐ Sub/Supplier/Manufacturer ☐ Lower-tier Sub/Supplier/Manufacturer
DBE Firm Name: _____
Name: _____
Title: _____
Signature: _____ **Date:** _____

ATTACHMENT J TO EXHIBIT 7

SUMMARY OF FINAL PAYMENTS FOR CONSTRUCTION

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
Design Build

<u>SUMMARY OF FINAL PAYMENTS</u> CONSTRUCTION	
Developer Name:	Project Number:
Name of DBE Liaison:	Date Submitted:

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

BECO Form 115DBM

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					

Developer/Project Manager Signature: _____

Date: _____

DBE Liaison Officer Signature: _____

Date: _____

BECO Form 115DBM

ATTACHMENT K TO EXHIBIT 7

SUMMARY OF FINAL PAYMENTS FOR PROFESSIONAL SERVICES

[See attached]

ARIZONA DEPARTMENT OF TRANSPORTATION
Design Build

<u>SUMMARY OF FINAL PAYMENTS</u> PROFESSIONAL SERVICES					
Developer Name:			Project Number:		
Name of DBE Liaison:			Date Submitted:		
	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

BECO

Form

215DBM

ARIZONA DEPARTMENT OF TRANSPORTATION

Design Build

	DBE Firm Name	AZ UTRACS Vendor Number	Scope of Work	DBE Affidavit Amount *if applicable	Final Amount Paid From Certification of DBE Final Payment Form
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					
21.					

Developer/Project Manager Signature: _____

Date: _____

DBE Liaison Officer Signature: _____

Date: _____

BECO Form 215DBM

ATTACHMENT L TO EXHIBIT 7

DBE SUBSTITUTION OR TERMINATION REQUEST

[See attached]



ARIZONA DEPARTMENT OF TRANSPORTATION
Design Build

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBSTITUTION OR
TERMINATION REQUEST

☐ PROFESSIONAL SERVICES

☐ CONSTRUCTION

Contract Number (TRACS):

Developer/Contractor Name:

Requester Name:

Phone Number:

Email:

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

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

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

Subcontract Amount: \$

Amount of Subcontract Remaining: \$

DBE Work Scope of Work Items:

Indicate the cause for DBE termination/substitution:

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

Proposed Replacement DBE Subcontractor Name:

*if applicable Proposed Replacement Subcontract Amount: \$

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

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

Developer/Prime Contractor Signature

Date

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

Date

FOR BECO USE ONLY Request is: Approved ☐ Not Approved ☐ BECP Representative: _____ Signature: _____ Date: _____

EXHIBIT 8

ADOT's OJT SPECIAL PROVISIONS

923-1 Description:

Developer shall provide On-The-Job training (OJT) aimed at moving minorities, women, and disadvantaged trainees into journeymen in various types of construction trades or job classifications in accordance with 23 CFR Part 230, Part 230.111 and Part 230, Appendix B.

It is the intention of these Special Provisions that training be provided in the construction classifications/crafts rather than for office support positions. Some off-site training is permissible as long as the training is an integral part of an approved training program and does not comprise of a significant part of the overall training.

923-1.01 General:

Training and upgrading of minorities and women toward journeyman status is the primary objective of these Special Provisions. Accordingly, Developer shall make every effort to enroll minority, women, and disadvantaged trainees (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. Developer will be responsible for demonstrating the steps that it has taken in pursuance thereof, prior to a determination as to whether Developer is in compliance with these Special Provisions. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

The OJT Goal on this Project is provided in Section 8.3.1 of the Agreement.

Developer shall provide training and see that all trainees are afforded opportunities to participate in as much training as is practically possible to provide. Due to turnover and attrition of trainees in any one trainee slot, it is expected that continuous trainee replacements may be necessary during the contract work period.

Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. Trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. The ratio of apprentices and OJT Trainees to journeymen shall not be greater than permitted by the terms of the approved training program being utilized.

It is normally expected that a trainee will begin training on the Project as soon as feasible after start of work utilizing the skill involved and remain on the Project as long as training opportunities exist in the assigned work classification or until the trainee has completed

the training program. It is not required that all trainees be on the Project for the entire length of the contract.

No employee shall be employed as a trainee in a classification in which they have successfully completed a training course leading to journeyman status, or in which they have been employed as a journeyman. The contractor shall satisfy this requirement by including appropriate questions in the employment application or by other suitable means. Developer shall maintain documentation that shows the employee's work and training history.

923-1.02 Subcontractor OJT Trainees:

Developer may, at its discretion, utilize approved Subcontractors on the Project to meet its OJT Goal on the Project. In the event that Developer subcontracts a portion of the Work, Developer shall determine how many, if any, of the trainees are to be trained by the Subcontractor. However, Developer shall retain the primary responsibility for meeting the training requirements outlined in this Special Provision. Developer shall ensure that these Special Provisions are made applicable to such Subcontract.

The Subcontractor's OJT Trainee(s) must be employed by the Subcontractor and be enrolled in an approved training program.

923-1.03 Definitions:

Banking-Carryover Hours:

OJT hours completed by a trainee that exceeds the amount of required hours on the Project and are eligible to be credited to a future project. Banked-Carryover hours will only be credited when the same trainee that completed the excess hours is used on the future project.

Business Engagement and Compliance Office (BECO):

BECO is responsible for oversight of the OJT program, which targets under-represented segments of the U.S. workforce, including minorities, women and disadvantaged individuals. BECO assesses OJT hour goals on contracts and monitors them to ensure that trainees receive the required number of training hours.

Classification/Craft

Type of occupational category, trade, or job being done by a trainee on a federal-aid funded highway construction project.

Disadvantaged Persons:

A person who meets one of the following:

- (1) Receives, or is a member of a family and/or household, which receives cash payments under a Federal, State, or local income-based public assistance program;
- (2) Is a member of a family and/or household that receives (or has been determined within the 6-month period prior to registration for the program involved to be eligible to receive) Food Stamps/EBT card under the Food Stamp Act of 1977;
- (3) Is a foster child on behalf of whom State or local government payments are made;
- (4) Does not have a high school diploma or GED; or
- (5) Is from a family whose total annual household income is below the federal poverty limits.

Journeyman:

A person who is capable of performing all the duties within a given job classification or craft.

OJT Trainee:

A person who is:

- (1) A minority, woman, or disadvantaged individual enrolled in an approved training program; or
- (2) Any other individual enrolled in an approved training program, whose training hours are approved by ADOT, and can be credited toward the OJT contract goals.

Show Cause Notice:

A written notification from ADOT to the contractor based on a determination of non-compliance with the requirements of these Special Provisions. The notice informs Developer of the specific basis for the determination and provides the opportunity for Developer to present an explanation why it was unable to meet the training goal.

923-1.04 OJT Training Programs:

The minimum length and type of training for each classification will be established in the training program selected by Developer and approved by ADOT and FHWA. ADOT and FHWA will approve a program if it is reasonably calculated to meet equal employment opportunity obligations and qualifies the average trainee for journeyman status in the

classification concerned by the end of the training period as defined in the training program.

The Department recognizes the following OJT Training programs:

- (A) OJT Programs approved by FHWA or the Department of Labor (DOL) prior to the start of the trainee commencing work.
- (B) Registered union or other approved apprenticeship programs registered with the Bureau of Apprenticeship, U.S. DOL, Employment and Training Administration, Bureau of Apprenticeship and Training or the Arizona Apprenticeship Office, Arizona Department of Economic Security programs recognized by the Bureau.

Approval of a training program other than those specified above to be used for the Work must be approved by ADOT and FHWA prior to the trainee commencing work on the classification covered by the program. If Developer intends to submit a training program for approval prior to the start of the Work, it must submit the program as soon as possible after notification of contract award as approval of a training program may take up to four weeks. Several FHWA approved training program templates for specified classifications are available on the BECO website.

Developer shall furnish each trainee with a copy of the Training Program the trainee is enrolled in, and other documentation related to the training program. Developer shall provide training that develops the skills outlined in the training program. Multiple OJT training programs can be used on the Project.

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

The trainee will be paid the appropriate trainee Davis-Bacon wage rates for training classifications/crafts on federally-funded projects. Developer shall compensate trainees not less than the rate outlined in the approved training program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

Developer shall provide for the maintenance of records and furnish/submit required information and reports documenting its performance under these Special Provisions. Such records shall be available at reasonable times and places for inspection or review by ADOT and FHWA.

923-1.05 DBE/OJT Compliance Manager:

Developer's DBE/OJT Compliance Manager shall be responsible for monitoring and administering Developer's OJT Program and monitoring the trainees' progress. The DBE/OJT Compliance Manager shall serve as the point of contact for ADOT regarding information, documentation, and conflict resolution relating to the Developer's OJT program.

923-2 Online Resources:

OJT System Website:

<https://adot.dbesystem.com>

BECO Website:

<https://azdot.gov/business/business-engagement-and-compliance>

923-3 Requirements:

923-3.01 Documentation:

Documentation related to OJT training can be found on the Department's BECO website. Developer shall complete and submit the following information to the Department:

(A) OJT Commitment/Schedule:

Developer shall submit the completed OJT Commitment/Schedule through the Department's online OJT System no later than 30 days prior to the start of Construction Work. The OJT Commitment/Schedule shall include the Project information, Project training plan information, Project training schedule, and Developer's signature of acknowledgement.

If the monthly training hours commitment, as shown on the OJT Commitment/Schedule changes, or is projected to change, during the progression of the Project a supplemental OJT Commitment/Schedule shall be submitted in the online OJT System. The supplemental OJT Commitment/Schedule shall be submitted within 5 Business Days of a change.

If the OJT Commitment/Schedule or the supplemental OJT Commitment/Schedule shows less than the OJT Goal for the Project, Developer shall submit to ADOT Good Faith Effort documentation, as described below in Subsection 923-3.01(C), that demonstrates reasons why Developer cannot meet the OJT Goal.

(B) OJT Enrollment and Progression:

(1) OJT Enrollment:

OJT Enrollment information shall be submitted through ADOT's online OJT System by Developer at least 5 Business Days prior to a trainee's start date. OJT Enrollment information shall be completed and includes the trainee's name and address, employment

status, gender and ethnicity, training program (s), classification/craft, and whether banked hours are being requested from a previous project.

BECO will review the OJT Enrollment information within 5 Business Days, and if approved, hours will be retroactively credited to the date the OJT Enrollment information is received by BECO.

To receive OJT credit, apprentice's current apprentice certificate or proof of registration from a union or approved apprenticeship program shall be uploaded into LCPtracker by Developer within 5 Business Days of the apprentice's start date, in addition to completing the OJT enrollment information in the online OJT System.

If the Arizona Apprenticeship Office Representative's signature is missing from the apprentice certificate, Developer shall also upload the apprentice's US Department of Labor, Office of Apprenticeship Certificate to LCPtracker. Developer shall not receive training credit or reimbursement until the certificate is uploaded.

(2) Progression of Training and Change of Status:

Progression of Training-Level Up and Change of Status shall be submitted through ADOT's online OJT System each time a trainee advances, progresses to another training level or milestone in his/her training program, or has a change of job classification. Hours will be retroactively credited to the date the information is received.

Hours that exceed the maximum indicated in the program for a certain level will not be credited. Once a level is completed, the trainee should be moved to the next level towards journeyman status.

(C) Good Faith Efforts

Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, proactive and continuous results-oriented measures (23 CFR 230.409(g)(4)). Good Faith Efforts may include, but are not limited to:

- (1) Solicitation of existing employees to gain referrals for minority, women, and disadvantaged persons;
- (2) Upgrading minority, women, and unskilled workers into the skilled classifications when possible;
- (3) Accepting applications at the Site, at Developer's office or online;
- (4) Review and follow up on previously received applications from minority, women, and disadvantaged persons;
- (5) Documentation of efforts to achieve diversity on federal-aid projects and the contractor's workforce in general;

- (6) Contact the ADOT BECO OJT Supportive Services Program to inquire about potential trainee candidates from ADOT-sponsored Pre-Apprentice programs.
- (7) Contact construction recruitment organizations throughout Arizona;
- (8) Review of the construction-specific recruitment publications in Arizona;
- (9) Publish a recruitment notification in local newspapers and other sources.

923-3.02 Training Program Completion:

Once the trainee completes the required number of levels and hours of training for the same classification or craft, or completes an approved training program, the trainee is considered to have completed the training program it is enrolled under. Developer shall not receive OJT credit for hours exceeding the maximum number of training hours required for completion of the selected training program.

Once a trainee completes a specific training level for a classification or craft, Developer shall not be permitted to submit that trainee for enrollment or reimbursement at that same level within the same classification or craft, however, the same trainee can be enrolled in a different classification or craft.

Developer shall provide documentation showing the type and length of training satisfactorily completed to each trainee and ADOT upon successful completion of a training program.

For an apprenticeship program, the Apprenticeship office will issue a certificate of completion in said craft, a DOL certificate, and a journeyman's card.

923-3.03 Banking-Carryover Hours:

At the completion of the Project, Developer may submit a Banking-Carryover Hours request in ADOT's online OJT System, to carryover training hours for a specific trainee on the Project to be used on a future project. Banked hours that are carried over to a project may lower the required number of training hours Developer is required to complete on that project. The trainee shall be placed on a subsequent project with the intent that the trainee is progressing towards completion of a training program. Banked hours cannot be transferred to other trainees.

Trainee hours working on multiple projects at the same time can be accumulated to be counted as banked hours to be used on a single future project by the same trainee.

923-3.04 OJT Project Completion and Banked Hours Request:

OJT Project Completion and Banked Hours shall be submitted through ADOT's online OJT System within 60 business days of completion of training.

923-4 Method of Measurement:

OJT training hours will be measured by the hour to the nearest half hour.

Measurement of hours towards the training goal will be made as the OJT trainee completes hours on the Project. Hours are considered complete if the trainee performs hours on the Project, is OJT enrolled, and provides required training by the program.

No measurement for payment will be made for trainee hours in which OJT enrollment information has not been received and approved by ADOT.

923-5 No Reimbursement for Trainee/Apprentice Hours:

Developer shall not be entitled to reimbursement or other payment for training provided to a trainee/apprentice in accordance with an approved training program.

923-6 Monitoring and Compliance Mechanisms:

(A) Monthly Reporting

Developer shall report monthly hours for each trainee in the online OJT System by the 15th of the month following the month of training hours completed.

(B) Monitoring

ADOT will conduct periodic reviews of trainee hours and monitor Developer's progress towards meeting the OJT Goal on the Project.

(C) Site Visits:

ADOT may conduct periodic monitoring site visits to the worksite to review OJT Program compliance, during working hours on the Project. ADOT will notify the DBE/OJT Compliance Manager at least 24 hours prior to a site visit if the DBE/OJT Compliance Manager is required to be at the site visit. The site reviews may include, among other activities, interview of trainees, Developer, and its employees. Developer shall cooperate in the review and make its employees available. Developer's DBE/OJT Compliance Manager shall be reasonably available to meet with ADOT staff as well as be available to respond to periodic emails and phone calls from ADOT to check on the progress of OJT Trainees. ADOT will make efforts to ensure minimal disruption to the work and coordinate site visit times with other ADOT divisions, as applicable (for example, Davis-Bacon interviews).

(D) Compliance Determination:

Compliance will be determined at the end of the Project by ADOT's evaluation of:

- (1) Developer's use of trainees in conformance with the approved training program;
- (2) The number of trainees and hours completed on the Project as reported on the OJT Project Completion in ADOT's online OJT System; or
- (3) Any Good Faith Effort documentation submitted by Developer throughout the life of the Project as to why the OJT Goal was not met.
- (4) Whether the trainees used in the Project were a minority, woman or disadvantaged individual

If at the conclusion of the Project, Developer shows evidence of a lack of Good Faith Effort with the compliance requirements identified above, ADOT will issue a Show Cause Notice outlining any findings of non-compliance.

Developer may submit a written response to ADOT providing any additional evidence that it made Good Faith Efforts to meet the OJT Goal within 30 Business Days of receiving a Show Cause Notice.

If Developer fails to submit a written response to the Show Cause Notice within the specified period or the written response to the Show Cause Notice does not cause ADOT to change its findings of non-compliance, ADOT will issue its Final Notice of non-compliance to Developer regarding the non-compliance.

If a Final Notice of non-compliance is issued, Developer shall be liable for liquidated damages as specified in Section 19.5.2 of the Agreement.

EXHIBIT 9

KEY PERSONNEL

Key Personnel	Job Description/ Relevant Years of Experience
Project Manager Jan Bohn, PE	This individual will be responsible for the overall design, construction, quality, and contract administration for the design and construction of the Project. This individual will be required to be Collocated full time for the duration of the Project. Relevant experience: • 20 years on complex highway infrastructure projects. • 10 years managing the design and construction of major urban freeway systems. • 5 years of major design-build project management of major urban freeway systems.
Construction Manager Steve Campbell	This individual will be assigned to the Project full time and will be required to be Collocated for the duration of the Project. Relevant experience: • 15 years on complex highway infrastructure projects. • 10 years managing the construction of major urban freeway systems. • 5 years of major design-build construction management of major urban freeways.
Design Manager Daniel Heller, PE	This individual will be responsible for coordinating the individual design disciplines and will be responsible for ensuring that the overall Project design is completed and design criteria and requirements are met. This individual will be assigned full time to the Project and must be employed by the Lead Engineering Firm, and, in the Developer entity, under the direct supervision of the Project Manager. This individual will be Collocated full-time while design is ongoing and until construction is at least 70% complete, whichever is later, and thereafter as needed. This individual will be responsible for design quality management and shall be the Engineer of Record who will have primary responsibility for design work under the Contract. This individual must be a registered professional engineer in the State. Relevant experience: • 15 years on complex highway infrastructure projects. • 10 years managing the design of major urban freeways. • 5 years of design-build design management of major urban freeways.

Key Personnel	Job Description/ Relevant Years of Experience
Maintenance of Traffic Manager Michael Washkowiak, PE	This individual will be assigned to the Project full time and Collocated for the duration of the Project and will oversee MOT functions during construction. The individual will be responsible for evaluating the Developer's sequencing, designs, traffic plans, staffing, safety, and other functions that relate to MOT during construction. This individual must be at the Site or on-call during major construction work that requires the closing of one of more lanes of travel for more than four hours, with the exception of certain work that will occur during approved overnight hours. This individual must be a registered Professional Engineer and a Professional Traffic Operations Engineer in the State. Relevant experience: • 15 years of experience on complex highway infrastructure projects • 10 years managing the design of MOT solutions • 5 years of major design-build project experience
Quality Manager Lyle Gehlert, PE	This individual will be responsible for establishing and supervising Developer's quality assurance and quality control program for the design and construction of the Project. This individual will work directly for the Developer under the direct supervision of an executive officer above the level of, and under a line of authority independent of, the Project Manager. This individual will be assigned to the Project full time and will be required to be Collocated for the duration of the Project. This individual must not be assigned any other duties or responsibilities on this Project or any other projects. This individual shall have the authority to stop design or construction Work at any time and in the individual's sole discretion. This individual must be a registered Professional Engineer in the State. Relevant experience: • 15 years on complex highway infrastructure projects. • 5 years coordinating and managing quality programs on major freeway projects. • 5 years of major design-build management of major urban freeways.

Key Personnel	Job Description/ Relevant Years of Experience
Safety Manager Thomas Mastrocinque	This individual will be responsible for establishing and supervising Developer's safety program and implementing and coordinating the TMP per 23 C.F.R. § 630.1012 for the Project. This individual will work directly for the Developer and report directly to the Project Manager. This individual will be assigned to the Project full time and will be required to be Collocated during the construction phase of the Project. This individual must be familiar with FHWA work zone safety regulations and OSHA and must have at least ten years of experience with roadway work zone safety. Relevant experience: • 15 years on complex highway infrastructure projects. • 5 years coordinating safety programs on major freeway projects. • 5 years of major design-build construction management of major urban freeways.
Public Relations Manager Brock Barnhart	This individual will be responsible for supporting ADOT's effort to involve the community in the Project and will oversee public communications, which entails notifying the public of such critical matters as traffic delays, detours, planned closures, construction progress, and other relevant information to keep the public fully apprised of how the Project impacts the community. This individual will work directly for the Developer and report to the Project Manager. This individual will be assigned to the Project full time and is required to be Collocated full-time for the duration of the Project. Relevant experience: • 10 years working on communications or community relations programs. • 5 years coordinating public outreach programs on major urban freeway projects. • 5 years of community relations experience on major design-build construction project along major urban freeways.

Key Personnel	Job Description/ Relevant Years of Experience
Utility Adjustment Coordinator Frank E. Henderson, PE	This individual will be responsible for coordinating the utility adjustment and relocation requirements for the Developer and leading the efforts to resolve any utility conflicts that may arise during design and construction. This individual will work directly for the Developer and report to the Construction Manager. This individual will be assigned to the Project full time and will be required to be Collocated full-time for the duration of the Project. Relevant experience: • 10 years on complex highway infrastructure projects. • 5 years coordinating design and construction of utility adjustments and relocations for major urban freeway projects.
Environmental Compliance Manager David Webb	This individual will be responsible for coordinating the environmental permitting requirements for the Developer and ensuring that issues are resolved before and during construction work. This individual will work directly for the Developer and report to the Construction Manager. This individual will be assigned to the Project full time and will be required to be Collocated for the duration of the Project. Relevant experience: • 10 years on complex highway infrastructure projects. • 5 years managing environmental compliance activities and permitting for major urban freeway projects.
DBE/OJT Outreach and Compliance Manager Rochelle Moore	This individual will be assigned to the project full time for the duration of the Project and will coordinate with ADOT's General Engineering Consultant DBE/OJT Compliance Specialist, Project Federal Compliance Committee, and ADOT's Business Engagement & Compliance Office to help ensure project goals are met. This individual will be responsible for DBE/OJT, EEO and small business recruitment, outreach, management, monitoring, oversight, and reporting. Relevant experience: • Must have strong knowledge and understanding of the federal DBE, OJT, and EEO program requirements. • 5 years of experience managing DBE, OJT, or EEO programs.

EXHIBIT 10
FORM OF GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the ARIZONA DEPARTMENT OF TRANSPORTATION, an agency of the State of Arizona ("ADOT").

RECITALS

A. [_____] as developer ("Developer"), and ADOT are parties to that certain Design-Build Agreement (the "Agreement") pursuant to which Developer has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the Contract Documents.

B. To induce ADOT to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. Developer is a [STATE], [Form of Organization]. The Guarantor is a _____. The execution of the Agreement by ADOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, ADOT would not have entered into the Agreement with Developer. Therefore, in consideration of ADOT's execution of the Agreement and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.** Guarantor guarantees to ADOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of Developer arising out of, in connection with, under or related to the Work under the Contract Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against Developer. If any payment made by Developer or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the

complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the Contract Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting Developer, Guarantor or their respective assets, and (b) the existence of any claim or set-off which Developer has or Guarantor may have against ADOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of Developer and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not Developer is joined therein. ADOT may maintain successive actions for other defaults of Guarantor. ADOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that ADOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Developer. Guarantor hereby waives the right to require ADOT to proceed against Developer, to exercise any right or remedy under any of the Contract Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between Developer and ADOT or their respective successors and assigns, with respect to any of the Contract Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the Contract Documents or any modification thereof; (iii) any release of Developer from any liability with respect to any of the Contract Documents; or (iv) any release or subordination of any collateral then held by ADOT as security for the performance by Developer of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the Contract Documents or the pursuit by ADOT of any remedies which ADOT either now has or may hereafter have with respect thereto under any of the Contract Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the Developer under the Agreement. Accordingly, in the event that the Developer's obligations are changed by any modification, agreement or stipulation between Developer and ADOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4 Liability of Guarantor.

a. ADOT may enforce this Guaranty upon the occurrence of a breach by Developer of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between ADOT and Developer with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. ADOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of Developer, if and as permitted by the Agreement, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of ADOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that ADOT may have against any such security, as ADOT in its sole discretion may determine, and (vi) exercise any other rights available to it under the Contract Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them:

(i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Contract Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto;

(ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Contract Documents or any agreement or instrument executed pursuant thereto; (iii) ADOT's consent to the change, reorganization or termination of the corporate structure or existence of Developer; (iv) any defenses, set-offs or counterclaims that Developer may allege or assert against ADOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5 Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require ADOT to proceed against Developer or any other Person or to proceed against or exhaust any security held by ADOT at any time or to pursue any right or remedy under any of the Contract Documents or any other remedy in ADOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, Developer or any other Person or the failure of ADOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by ADOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against Developer by the operation of law or otherwise; (e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of Developer under any of the Contract Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto; (f) any defense based upon any act or omission of ADOT which directly or indirectly results in or aids the discharge or release of Developer, Guarantor or any security given or held by ADOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6 Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against Developer that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of ADOT against Developer, or any other security or collateral that ADOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of Developer or any shareholders,

partners, members, or joint venturers of Developer to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as Developer shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Developer or any shareholders, partners, members, or joint venturers of Developer to Guarantor without the prior written consent of ADOT. Any payment by Developer or any shareholders, partners, members, or joint venturers of Developer to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for ADOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. ADOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Developer.

b. If ADOT forecloses on any real property collateral pledged by Developer:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) ADOT may collect from Guarantor even if ADOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Developer.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations are secured by real property.

8. Cumulative Rights. All rights, powers and remedies of ADOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to ADOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of _____ and *[select whichever is applicable]* [is qualified to do business and is in good standing under the laws of the State of Arizona] [is not engaged in the conduct of business in the State of Arizona and therefore *has not* qualified to do business in the State of Arizona];

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or by-laws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Contract Documents or referred to therein, the financial status of Developer and the ability of Developer to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Contract Documents and is fully informed of the remedies ADOT may pursue, with or without notice to Developer or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of Developer and will keep itself fully informed as to all aspects of the financial condition of Developer, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of ADOT to disclose any matter, fact or thing relating to the business, operations or conditions of Developer now known or hereafter known by ADOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to

the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. Governing Law. The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Arizona applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Arizona with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Maricopa County, Arizona.

11. Entire Document. This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by ADOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone, addressed as follows:

If to ADOT: Arizona Department of Transportation
7130 West Fairview Street
Chandler, AZ 85226
Attn: Amy Ritz
Telephone: (602) 708-0267
E-mail: aritz@azdot.gov

With copies to: Office of the Arizona Attorney General
Transportation Section
2005 North Central Avenue
Phoenix, Arizona 85004
Telephone: (602) 542-1680

E-mail: transportation@azag.gov
Facsimile: (602) 542-3646

If to Guarantor: _____
Attention: _____
Telephone : _____
Email: _____
Facsimile: _____

Either Guarantor or ADOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the email address of the addressee is confirmed. Notwithstanding the foregoing, notices sent by facsimile after 4:00 p.m. Mountain Standard Time and all other notices received after 5:00 p.m. shall be deemed received on the first Business Day following delivery (that is, in order for a fax to be deemed received on the same day, at least the first page of the fax must have been received before 4:00 p.m.).

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and ADOT, but is not assignable by Guarantor without the prior written consent of ADOT, which consent may be granted or withheld in ADOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by ADOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy: Post-Petition Interest: Reinstatement of Guaranty.

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Developer or by any defense which Developer may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. ADOT is not obligated to file any claim relating to the Guaranteed Obligations if Developer becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of ADOT so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and ADOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve Developer of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay ADOT, or allow the claim of ADOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to ADOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by ADOT in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. Joint and Several Liability. If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to Developer and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. Defenses. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all rights and defenses available to Developer under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of Developer and any other defense to formation of the Agreement, and (c) defenses available to Developer under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 11

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance

At all times during the period from the commencement of Construction Work until Substantial Completion, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance as specified below.

- (a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, subsidence, and terrorism; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.
- (b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery, and equipment to be incorporated into the Project that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage or in the course of inland transit on land to the Site, (ii) unless covered by commercial general liability insurance pursuant to Section 2 of this Exhibit 11, all ADOT existing property and improvements that are within the construction work zone and are or will be affected by the Construction Work, provided, however, that the policy may include a sublimit of not less than \$5,000,000 per occurrence for the ADOT existing property; and (iii) valuable papers and restoration of data, plans and drawings.
- (c) The policy shall provide coverage per occurrence of not less than \$200,000,000 of the covered property loss without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than \$5,000,000 per occurrence and in the aggregate; (ii) for existing property improvements, not less than \$5,000,000 per occurrence; (iii) for building ordinance compliance and increased replacement cost due to any change in applicable codes or other Laws, not less than \$10,000,000 per occurrence; (iv) for professional fees, not less than \$1,000,000 per occurrence; (v) for demolition and debris removal, not less than \$25,000,000 per occurrence or 25% of the amount of physical loss or damage to the insured property, whichever is less; and (vi) for goods in storage or in the course of inland transit, not less than \$5,000,000 per occurrence.
- (d) Developer and ADOT shall be the named insureds on the policy. If ADOT is not a named insured on the policy, ADOT shall be named as an additional insured on the policy, as its interests may appear. Developer also may, but is not obligated to, include other Subcontractors as named insured as their respective interests appear and subject to Sections 10.1.7 and 10.1.8 of the Agreement.
- (e) To the extent commercially available, the policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion, (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery, (iii) plans,

blueprints and specifications, (iv) physical damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials, using form LEG 3 or equivalent, (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission, (vi) demolition and debris removal coverage, (vii) the increased replacement cost due to any change in applicable codes or other Laws, (viii) expense to reduce loss, and (ix) building ordinance compliance, with the building ordinance exclusion deleted.

- (f) The policy shall provide a deductible or self-insured retention not exceeding \$2,000,000 per occurrence; provided, however, for the perils of windstorm, flood and earthquake, the deductible may be expressed as a percentage of the policy limit not to exceed 5% of the applicable sublimit.
- (g) Any loss covered by applicable insurance is to be adjusted with a claims adjuster approved by ADOT, agreement of which shall not be unreasonably withheld, and payable to the State of Arizona, Arizona Department of Transportation Risk Management, attention Litigation and Claims Unit, as its interests may appear. Developer shall pay each Subcontractor a proportionate share of any insurance monies received by Developer. Each further Subcontract shall require each Subcontractor to make payments to its subcontractors in a similar manner.

2. Commercial General Liability Insurance During the Work

At all times during the Work, Developer shall procure and keep in force, or cause to be procured and kept in force, in its own name, commercial general liability insurance as specified below.

- (a) The policy shall be in form reasonably acceptable to ADOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.
- (b) The policy shall insure against the legal liability of the insureds named in Section 2(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:
 - (i) Contractual liability;
 - (ii) Premises/operations;
 - (iii) Independent contractors;
 - (iv) Products and completed operations coverage with an extended reporting period until expiration of the statute of repose set forth at Arizona Revised Statutes, Section 12-552 (with acknowledgement that the Project constitutes the premises and not a product). Developer may satisfy the products and completed operations coverage by annually renewing its corporate general liability policy until the expiration of the statute of repose;
 - (v) Broad form property damage, providing the same or equivalent coverage as ISO form CG 00 01 10 93 provides;
 - (vi) Hazards commonly referred to as "XCU", including explosion, collapse, and underground property damage;

- (vii) Fellow employee coverage for supervisory personnel;
 - (viii) Incidental medical malpractice;
 - (ix) No exclusion for work performed within 50 feet of a railroad;
 - (x) No exclusion for claims arising from Professional Services except for CG 22 80 or its equivalent;
 - (xi) Broad named insured endorsement; and
 - (xii) Hired/non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 3 of this Exhibit 11.
- (c) The policy shall have limits of not less than \$10,000,000 per occurrence/\$20,000,000 aggregate with the aggregate applicable either specifically for this Project or on a per project basis. Developer may satisfy the project specific or per project aggregate requirement via an ISO form CG 25 03 endorsement to a corporate commercial general liability policy. Such limits shall be shared by all insureds and additional insured parties. Excess limits may be combined with primary limits to meet the requirements of this paragraph so long as the excess policies are follow form policies.
- (d) ADOT and the Indemnified Parties shall be named as additional insureds, using ISO form CG 20 10 04 13 and ISO form CG 20 37 04 13 or their equivalent, subject to the provisions of Section 10.1.7 and 10.1.8 of the Agreement.
- (e) The Policy shall contain a waiver of subrogation in favor of ADOT and the Indemnified Parties, using ISO form CG 24 04 05 09 endorsement or its equivalent, except as described in Section 10.1.9 of the Agreement.
- (f) The policy shall provide that the insurance afforded the Developer shall be primary and that any insurance carried by ADOT, its agents, officials, employees or the State of Arizona shall be excess and non-contributory insurance, as provided by A.R.S. § 41-621 (E), via ISO for CG 20 01 04 13 or its equivalent.
- (g) The policy shall provide a deductible or self-insured retention not to exceed \$2,000,000 per occurrence.

3. Automobile Liability Insurance

At all times during the performance of the Work, Developer shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below.

- (a) Each policy shall cover accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.
- (b) Developer shall be the named insured under its automobile liability policy. ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds using ISO form CA 20 48 04 99 or its equivalent and subject to the provisions of Section 10.1.7 and 10.1.8 of the Agreement.
- (c) The Policy shall contain a waiver of subrogation in favor of ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions,

- universities, officers, officials, agents, and employees, using ISO form CG 24 04 05 09 endorsement or its equivalent except as described in Section 10.1.9 of the Agreement.
- (d) Developer's policy shall have a limit per policy period of not less than \$1,000,000 combined single limit.
 - (e) Each policy shall provide a deductible (but not self-insured retention) not exceeding \$2,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

4. Pollution Liability Insurance

Developer shall procure and maintain, or cause to be procured and maintained, contractor's pollution liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Developer, its agents, representatives, employees or subcontractors.

- (a) Developer's pollution liability policy shall cover losses caused by pollution conditions that arise from the operations of Developer in the performance of its obligations under the Contract Documents, such covered losses to include:
 - (i) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - (ii) Medical monitoring;
 - (iii) Property damage including physical injury to or destruction of tangible property, including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
 - (iv) Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
 - (v) Non-owned disposal site coverage for specified sites (by endorsement) if Developer is disposing of waste(s); and
 - (vi) Loss, clean-up costs and related legal expense because of a pollution condition arising from the named insured's goods, products, or waste during the course of transportation by a carrier to or from: (1) a job site where contracting services are being performed; or (2) a covered location, including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay.
- (b) Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided that such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of covered operations.
- (c) The policy must include coverage for pollution losses arising out of completed operations.
- (d) The policy shall be written on an occurrence basis with no sunset clause.
- (e) Developer shall maintain limits no less than \$10,000,000 per occurrence/\$10,000,000 aggregate.
- (f) The policy shall provide a deductible or self-insured retention not exceeding \$2,000,000 per occurrence.

- (g) The policy shall be endorsed as required hereunder to include ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds.
- (h) The policy shall contain a waiver of subrogation endorsement, as required hereunder, in favor of ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from Work performed by or on behalf of the Developer.

5. Umbrella Liability Insurance

Developer shall procure, or cause to be procured and maintained, umbrella/excess liability insurance on a following form basis, including coverage for all named and additional insureds, as follows:

- (a) Limits of \$50,000,000 per occurrence/aggregate with limits reinstating annually, except for the aggregate limit for completed operations, which shall be a single aggregate but need not be project-specific, and applying over the commercial general liability, automobile liability (if any), and employer's liability insurance policies required above.
- (b) The insurance shall be maintained above the CGL policy and in accordance with Section 2(b)(iv) of this Exhibit 11.

6. Professional Liability Insurance

- (a) For the Lead Engineering Firm and its Professional Services Subcontractors, commencing on the date of issuance of NTP 2 with a retroactive date to the date that Professional Services are first rendered respecting the Project and until the conclusion of all Professional Services, Developer shall procure and keep in force, or shall cause the Lead Engineering Firm to procure and keep in force, professional liability insurance as specified in subparagraphs (i) through (v) below.
 - (i) The insurance policy shall provide coverage of liability of the Lead Engineering Firm and all Subcontractors at all tiers under the Lead Engineering Firm performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services for the Project, including for bodily injury or property damage.
 - (ii) The insurance policy shall have a limit of not less than \$30,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.
 - (iii) The insurance policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per claim.
 - (iv) The insurance policy shall be project-specific.
 - (v) The insurance policy shall specifically include an extended reporting period expiring no sooner than the earlier of (A) eight years after the Substantial Completion Date or (B) ten years after issuance of NTP 2.
- (b) Other Professional Services. In addition, Developer shall cause each other Subcontractor that provides Professional Services for the Project, as applicable, and not

insured pursuant to Section 6(a) above, including the Independent Quality Firm, to procure and keep in force professional liability insurance, covering its Professional Services practice, of not less than \$2,000,000 per claim and in the aggregate per annual policy period.

- (i) Each policy shall insure against liability, including for bodily injury or property damage, arising out of any negligent act, error or omission in the performance of Professional Services in connection with the installation, construction, reconstruction, replacement or other capital improvement.
- (ii) The aggregate limit shall reinstate annually.
- (iii) The insurance policy shall include a commercially reasonable deductible.
- (iv) Each such professional liability policy shall be kept in force until the earlier of (A) eight years after the insured's Professional Services in connection with the installation, construction, reconstruction, replacement or other capital improvement, have concluded, or (B) ten years after issuance of NTP 2.
- (v) The date of inception of coverage in all cases must precede the effective date of the applicable Subcontract.
- (vi) Developer and each other Subcontractor that provides Professional Services for the Project under this Section 6(b) may satisfy their professional liability insurance requirements by annually renewing their corporate program professional liability policy, which need not provide project-specific limits.

7. Workers' Compensation Insurance

At all times when Work is being performed by any employee of Developer or any Subcontractor, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Developer and/or the Subcontractors, whichever is the applicable employer, shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

- (a) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work;
- (b) A voluntary compensation endorsement;
- (c) An alternative employer endorsement;
- (d) An endorsement extending coverage to all states operations on an "if any" basis; and
- (e) Coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as may be appropriate and required.

8. Employer's Liability Insurance

Developer shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

- (a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Developer and all Subcontractors working on or about the Site or otherwise engaged in the Work.

- (b) Developer and/or the Subcontractor, whichever is the applicable employer, shall be the named insured.
- (c) The policy shall have a limit of not less than \$1,000,000 each accident, \$1,000,000 disease - employee and \$1,000,000 disease – policy.
- (d) The policy shall contain a waiver of subrogation endorsement, as required hereunder, in favor of ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Developer.

9. Subcontractors' Insurance

- (a) Developer shall cause each Subcontractor to provide commercial general liability insurance that complies with Article 10 of the Agreement, with limits of at least \$1,000,000 per occurrence/\$2,000,000 aggregate. For any Subcontractor undertaking work with an estimated contract value of \$5,000,000 or more, the commercial general liability limits shall be supplemented with an umbrella/excess liability insurance policy with a minimum limit of \$5,000,000, on a following-form basis, unless the Subcontractor is specifically covered by Developer-provided liability insurance. Developer shall cause each such Subcontractor that provides such insurance to include ADOT and each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such commercial general liability insurance shall be Project-specific or renewed annually using Developer's corporate program. A Subcontractor may satisfy the project specific requirement via ISO form CG 25 03 and CG 20 37 endorsements to a corporate commercial general liability policy.
- (b) Developer shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business or commercial automobile liability insurance meeting the requirements as specified below.
 - (i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.
 - (ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.
 - (iii) Each policy shall have a combined single limit per policy period of not less than \$1,000,000.
 - (iv) Each policy shall include ADOT and each of the Indemnified Parties as additional insureds.
- (c) At all times when Work is being performed by any employee of a Subcontractor, Developer shall cause the Subcontractor to procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

- (i) An endorsement extending the policy to cover the liability of the insureds under the Federal Employer's Liability Act only if performing railroad related work;
 - (ii) A voluntary compensation endorsement;
 - (iii) An alternative employer endorsement;
 - (iv) An endorsement extending coverage to all states operations on an "if any" basis; and
 - (v) Coverage for United States Longshore and Harbor Workers Act and Jones Act claims, as appropriate and required.
- (d) Developer shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.
 - (i) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of the Subcontractor working on or about any Site or otherwise engaged in the Work.
 - (ii) The Subcontractor shall be the named insured.
 - (iii) The policy shall have a limit of not less than \$1,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 11 stipulates may be similarly included.
- (e) ADOT shall have the right to contact the Subcontractors directly to verify the above coverages, if Developer does not provide verification of such Subcontractor coverage as and when required under Section 10.1.5 of the Agreement.

EXHIBIT 12

CONTRACT MODIFICATION REQUEST FORM

[See attached]



ALTERNATIVE DELIVERY

CONTRACT MODIFICATION REQUEST

P3 ☐

Design-Build ☐

Request #

Page 1 of 1

Developer:	Project No.:	TRACS No.:	Date:
Project Manager:	Design Firm:	Initiator:	
Request Change (What): FANFA Rough order of magnitude\$ _____\$ _____			
Reason/Justification (Why): 			
General Supplemental Agreement Types: <i>If Other, please explain:</i>		List Technical Managers:	
ADOT Recommendation:			

Concept Recommended	Yes ☐	No ☐	_____	Date: _____
Attachment	Yes ☐	No ☐	Senior/Resident Engineer	
Concept Recommended	Yes ☐	No ☐	_____	Date: _____
Attachment	Yes ☐	No ☐	Construction Manager	
Concept Recommended	Yes ☐	No ☐	_____	Date: _____
Attachment	Yes ☐	No ☐	Sr. Deputy State Engineer, Operations State Engineer's Office	

Concept Recommended	Yes ☐	No ☐	☐ Eligible for Federal Reimbursement	Yes ☐	No ☐
_____				Date: _____	
FHWA					

EXHIBIT 13

EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

This Exhibit 13 sets forth the methods for calculating Extra Work Costs and Delay Costs owing from ADOT to Developer under the Agreement. Extra Work Costs and Delay Costs shall be calculated separately where applicable.

1. EXTRA WORK COSTS

At the sole discretion of ADOT, Extra Work Costs shall be determined on either a negotiated lump sum basis as described in Section 1.1 or force account basis as described in Section 1.2. Extra Work Costs shall not include Delay Costs; Delay Costs shall be calculated separately as provided in Section 2 of this Exhibit 13, and shall not be eligible for additional markup as Extra Work Costs.

1.1. Negotiated Lump Sum

1.1.1. When Extra Work Costs are determined on a lump sum basis, such Extra Work Costs shall be negotiated based on:

- (a) Estimated costs of labor;
- (b) Estimated costs of material;
- (c) Estimated costs of equipment;
- (d) Actual fees and charges (e.g., permit fees, plan check fees, review fees and charges) of Governmental Entities in connection with Governmental Approvals required to perform the Extra Work;
- (e) Extra insurance costs and extra costs of bonds and letters of credit; and
- (f) Other estimated direct costs.

1.1.2. Negotiated lump sum Extra Work Costs shall also include a 15% markup for Developer indirect costs, field office overhead, and profit. Where the Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the Subcontractor's indirect costs, field office overhead, and profit. The negotiated lump sum shall not include any home office overhead of Developer or Subcontractors.

1.1.3. Where Extra Work is performed by Subcontractors, Developer may only include a supplemental markup of five percent of the Subcontractor's costs as Extra Work Costs. Developer's five percent markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the Extra Work. ADOT will apply such 5% markup to the Subcontractor's Extra Work Costs less the Subcontractor's 15% markup for overhead and profit.

1.1.4. The price of a negotiated lump sum for Extra Work Costs shall be based on the original allocations of pricing to comparable activities, materials, and equipment, as indicated in Exhibit 2-4 (Pricing Tables) and other sources of Developer's Proposal pricing information (such as the Detailed Pricing Documents or DPDs), whenever possible. Price negotiations for lump sum Extra Work Costs shall be on an Open Book Basis.

1.1.5. In pricing any negotiated lump sum for Extra Work Costs, Developer shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption from such sales or use taxes under applicable Law.

1.2. Force Account Basis

When Extra Work Costs are determined on a force account basis, ADOT will pay Developer for the direct costs of labor, materials and equipment used, and fees and charges of Governmental Entities in connection with Governmental Approvals required, to perform the Extra Work, plus markup for labor burden costs, indirect costs, overhead and profit, as set forth in and as limited by this Section 1.2.

1.2.1. Labor

1.2.1.1. Extra Work Costs for force account Extra Work shall include the cost of labor for workers, both for Professional Services and other than Professional Services, used in the actual and direct performance of the force account Extra Work and labor costs directly attributable to pursuing and obtaining Governmental Approvals, if any, required to perform the force account Extra Work. For Extra Work other than Professional Services, workers include foremen and classifications below foremen actually engaged in the performance of the Extra Work or in direct charge of specific operations included in the force account Extra Work. For Extra Work consisting of Professional Services, workers include only the staff directly engaged in the performance of the Extra Work. Costs, salaries, or any expenses associated with Project superintendence or management personnel or on-Site clerical staff, except as provided in Section 1.2.5 below, are not allowable labor costs under this Section 1.2.1. In no case shall an officer or director of Developer, an Affiliate or any Subcontractor, nor those persons who own more than one percent of Developer, an Affiliate or any Subcontractor, be considered Project superintendence personnel, workers or foremen under this Section 1.2.1.

1.2.1.2. For workers who are allowable to include in labor costs in accordance with Section 1.2.1.1 above, the force account Extra Work cost of labor, whether the employer is Developer, an Affiliate, or a Subcontractor, will be the sum of the following.

Work other than Professional Services:

(a) Regular Pay

Regular pay (RP), which will be determined as follows:

$$RP = (WR + FR) \times 1.5$$

Where:

WR = hourly wage as determined by payroll records;

FR = fringe benefit rate as determined by payroll records; and

1.5 = the labor multiplier providing for a 35 percent labor burden rate and 15 percent markup for indirect costs, overhead, and profit. ADOT views the burden for labor as the total of all indirect labor costs necessary for a worker to perform the work that the worker is hired to perform. Therefore, such burden includes Social Security and Medicare Tax, Worker's Compensation (that is, insurance the employer must purchase), State and federal unemployment insurance, training, paid holidays, use of vehicles, PPE (personal protective equipment), office, office furniture, equipment, supplies, etc.

(b) Overtime Pay

Overtime Pay shall apply as provided by applicable Law. When allowable labor costs include Overtime Pay, such Overtime Pay shall be calculated as follows:

Overtime pay (OT), which is determined as follows:
$$OT = [(WR \times 1.5) + FR] \times 1.5$$

Where:

WR, FR, and 1.5 are as provided in Section 1.2.1.2(a) above.

Professional Services:

(c) Regular Pay

Regular pay (RP), which will be determined as follows:

$$RP = WR \times 2.5$$

Where:

WR = hourly wage as determined by payroll records;
2.5 = a labor surcharge of 150% of actual unburdened wages constituting full compensation for indirect costs, overhead, and profit. The labor surcharge compensates Developer for all indirect labor costs necessary for a worker to perform the work that the worker is hired to perform. Such burden includes Social Security and Medicare Tax, Worker's Compensation (that is, insurance the employer must purchase), other taxes, State and federal unemployment insurance, fringe benefits, training, paid holidays, use of vehicles, PPE (personal protective equipment), office, office furniture, equipment, supplies, etc.

(d) Overtime Pay

Overtime Pay shall only apply where required by applicable Law. When allowable labor costs include Overtime Pay, such Overtime Pay shall be calculated as follows:

Overtime pay (OT), which is determined as follows:
$$OT = (WR \times 2.5) + (WR \times 0.5)$$

Where:

WR and 2.5 are as provided in Section 1.2.1.2(c) above.

The Overtime Pay rate shall not apply to workers exempt from the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., whether or not a worker's employer elects to pay overtime wages that exceed WR for hours worked in excess of 40 hours per week.

All Labor Categories (Professional Services and non-Professional Services):

(a) Provision of Information

Developer shall provide to ADOT the hourly wage rates and fringe benefit rates, as applicable, before the start of the force account Extra Work as part of Developer's Relief Request, Final Documentation of Relief Event, or response to Request for Change Proposal, as applicable, required under Sections 13.1.3, 13.1.5, and 14.1.3 of the Agreement, respectively. ADOT may verify the hourly wage rates and fringe benefit rates by comparing such rates to actual payroll records or signed timesheets of Developer, Affiliates or Subcontractors, as applicable.

(b) Subsistence and Travel Allowance

The actual subsistence and travel allowances paid to the workers as required by collective bargaining agreements or as approved by ADOT shall be allowable for reimbursement. Rates for subsistence and travel allowances, including rates for lodging, meals, and mileage, shall not exceed the rates in effect in ADOT's Policies and Procedures "FIN-6.02 Travel Authorization Policy" at the time the force account Extra Work is performed. Developer shall not markup, and ADOT will not pay any markup on, travel or subsistence allowances.

1.2.2. Materials

1.2.2.1. ADOT-Furnished Materials

ADOT reserves the right to furnish any materials it deems appropriate for use in force account Extra Work, and Developer shall have no claims for any costs, overhead or profit on the materials provided by ADOT, or lost profits due to ADOT furnishing the materials.

1.2.2.2. Developer-Furnished Materials

Developer may include in Extra Work Costs materials furnished by Developer only if the materials meet the requirements of the Contract Documents, are necessary to perform, and are actually used to perform, the force account Extra Work. The reimbursable cost of those materials will be the actual invoice cost to the purchaser of such materials — whether the purchaser is Developer, an Affiliate, or a Subcontractor — from the Supplier thereof, including actual freight and express charges, except as the following are applicable:

(a) Discounts and Rebates

If a cash, trade or other discount or rebate is offered or available to the purchaser, the discount or rebate shall be credited to ADOT even if the discount or rebate is not taken by the purchaser.

(b) Non-direct Purchases

If materials are procured by the purchaser by any method that is not a direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual Supplier as determined by ADOT plus the actual costs, if any, incurred in the handling of the materials.

(c) Purchaser-supplied Materials

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the lower of: (i) the price the purchaser paid for similar materials furnished from that source and used to perform other work; or (ii) the current wholesale price for those materials delivered to the Site.

(d) Excessive Costs

If the cost of the materials is, in the opinion of ADOT, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities delivered to the Site, less any discounts or rebates as provided in Section 1.2.2.2(a) above.

(e) Evidence of Cost

ADOT will pay Developer for materials only after the materials invoice is submitted by Developer to ADOT along with any documentary backup for the cost of the materials, less any discounts as provided Section 1.2.2.2(a) above.

1.2.3. Equipment Rental

1.2.3.1. General Equipment Rental Provisions

Force account Extra Work Costs for the use of equipment owned by Developer, an Affiliate or a Subcontractor shall be determined at the rental rates listed for that equipment in the current edition and appropriate volume of the Rental Rate Blue Book (RRBB) as published by EquipmentWatch®, which is in effect on the date on which the force account Extra Work is performed, modified in accordance with the formula below, and regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Developer or any Subcontractor. The hourly equipment rental rate (HERR) in such circumstances will be determined in accordance with the following formula (which does not include operators):

$$\text{HERR} = (F \times \{[1.15 \times R] / 176\}) + \text{HOC}$$

Where:

F = ADOT adjustment factor to R as follows: 0.933;

R = the then current monthly rate as published in the then current RRBB;

and

HOC = hourly operation cost;

provided, however, that the following provisions (a) through (k) shall apply.

- (a) Developer shall not charge for those pieces of equipment with a rental rate of \$5.00 per hour or less as listed in the RRBB.
- (b) An overhead and profit adjustment of 15 percent of the rates provided in the RRBB is included in the above formula.

- (c) If ADOT concurs that it is necessary to use equipment owned by Developer, an Affiliate or a Subcontractor that is not listed in the RRBB, ADOT will establish a suitable rental rate for that equipment. Developer may furnish any cost data which might assist ADOT in the establishment of the rental rate. If the rental rate established by ADOT is \$5.00 per hour or less, the provisions of Section 1.2.3.1(a) above shall apply.
- (d) The hourly operating cost (HOC) as provided above shall include the major costs of equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable parts, up to one necessary attachment per piece of equipment, maintenance, depreciation, storage, and insurance.
- (e) When multiple attachments are necessary or included for a piece of equipment, only the attachment having the highest rate will be included for the purpose of calculating force account Extra Work Costs, provided that the attachment has been approved by ADOT as being necessary to the force account Extra Work.
- (f) The cost of labor for operators of rented equipment shall be determined as provided in Section 1.2.1 above ("Labor").
- (g) For costs of equipment to be eligible for inclusion in force account Extra Work Costs, the equipment must be in good working condition and suitable for the purpose for which the equipment is to be used. Developer shall handle and use the equipment to provide normal output or normal production. All equipment is subject to approval by ADOT. Equipment that is not in good working order or that is not of proper size for efficient performance of the force account Extra Work may be rejected by ADOT. Rental time shall apply to eligible equipment used for force account Extra Work to establish or calculate the Extra Work Costs related thereto or resulting therefrom until such time as ADOT directs that the use of such equipment be discontinued or until completion of the relevant work.
- (h) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit must be powered by a unit of at least the minimum rating recommended by the manufacturer.
- (i) Extra Work Costs shall not include the costs of small tools. Individual pieces of equipment or tools not listed in the RRBB and having a replacement value of \$400 or less, regardless of whether consumed by use, shall be considered to be small tools, ineligible to be included in force account Extra Work Costs.
- (j) Rental time will not be allowed while equipment is inoperative due to breakdowns.
- (k) For each piece of equipment to be used to perform force account Extra Work, whether owned by Developer, an Affiliate or a Subcontractor (and, therefore, covered by this Section 1.2.3.1) or rented (and covered by Section 1.2.3.3 below), equipment use hours shall be recorded and charged to the nearest one-half hour and Developer shall provide ADOT with the following additional information: the manufacturer's name; equipment type; year of manufacture; model number; type of fuel used; horsepower rating; attachments required, together with their size or capacity; and any other information necessary to determine the Extra Work Costs.

1.2.3.2. Stand-By Time

Force Account Extra Work Costs for equipment owned by Developer, an Affiliate or a Subcontractor that is in operational condition and is standing by with ADOT's approval for participation in the Force Account Extra Work shall be determined in accordance with the following stand-by rate (SBR) formula:

$$\text{SBR} = F \times (R / 176) \times 0.5$$

Where "F" and "R" are as provided in Section 1.2.3.1.

Stand-by hours will be limited to not more than eight hours in a 24-hour day or 40 hours in a week. No hours will be allowed or included and force account Extra Work Costs shall not be paid for equipment that is inoperable. No hours shall be allowed or included and Extra Work Costs shall not be paid for equipment that is not operating because the force account Extra Work has been suspended by Developer. Developer shall request ADOT's approval for stand-by time no less than 48 hours prior to commencement of such stand-by time.

1.2.3.3. Outside Rented Equipment

In cases where a piece of equipment to be used for force account Extra Work is rented or leased by Developer from a third party (not an Affiliate or Subcontractor) exclusively for such force account Extra Work, the Extra Work Costs shall be determined in accordance with the following formula:

$$(\text{Rental Invoice} \times 1.10) + \text{HOC}$$

The above formula includes a 10 percent mark-up of the rental invoice for all overhead and incidental costs of furnishing the equipment.

1.2.3.4. Moving of Equipment

(a) The rental time (including for owned equipment) to be included in calculating Extra Work Costs for needed equipment shall be the time the equipment is in operation on the force account Extra Work being performed, and, in addition, shall include no more than the time required to move the equipment to the location of the force account Extra Work and return the equipment to the original location, or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work either before or after the force account Extra Work. Loading and transporting costs will be included in force account Extra Work Costs, in lieu of moving time, when the equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of force account Extra Work costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work.

(b) For use of equipment moved from one location on the Site to another location on the Site exclusively for the force account Extra Work, the cost of transferring and/or moving the equipment to the site of the force account Extra Work and returning it the original location may be included in the Extra Work Costs as specified in this Section 1.2.3.4.

(c) For use of equipment moved from a location not on the Site to a location on the Site, the original location of the equipment to be hauled to the Site shall be subject to ADOT's prior approval for the purpose of determining allowable force account Extra Work Costs.

(d) Where the move of the equipment is made by common carrier, the force account Extra Work Costs to be included will be the invoiced amount paid for the freight plus 15 percent of such amount to cover profit, overhead, and indirect costs. If Developer hauls the equipment with its own forces, costs will be included in the force account Extra Work Costs for hauling the unit plus the driver's wages and the cost of loading and unloading the equipment.

(e) For the purposes of determining Extra Work costs, the maximum rental period for the day that the equipment is moved to the location on the Site where the force account Extra Work is performed and the day that the use of the equipment is discontinued for force account Extra Work shall be the actual time that the equipment is in operation on the force account Extra Work.

1.2.4. Fees and Charges of Governmental Entities

Extra Work Costs for force account Extra Work shall include fees and charges paid to Governmental Entities for Governmental Approvals required to perform the force account Extra Work. Developer shall not markup, and ADOT will not pay any markup on, such fees and charges.

1.2.5. Superintendence

Developer shall not include any part of the salary or expense of anyone connected with Developer's forces (including Affiliates and Subcontractors, as applicable) above the grade of foreman and/or having general supervision of the force account Extra Work (including both Professional Services and non-Professional Services) in the Extra Work Costs covering labor items as specified above (see Section 1.2.1), except when Developer's organization, including its Equity Members, is entirely occupied with force account Extra Work, in which case the salaries of the superintendent may be included in the Extra Work Costs for labor items specified above when the nature of the force account Extra Work is such that their services in the nature of superintendent are required.

1.2.6. Compensation

Developer shall accept ADOT's payment of the Extra Work Costs as set forth above as payment in full for all Extra Work done on a force account basis. In addition, ADOT will pay Developer an amount equal to 65 percent of the force account Extra Work Costs compensation as calculated above times the applicable sales tax rate to cover sales tax. Accordingly, the amount for sales tax shall be calculated as follows:

Reimbursable amount = ((Total force account Extra Work Costs) x .65) x Sales Tax Rate

ADOT shall not pay any other or additional amount for or on account of sales tax with respect to the force account Extra Work or the Extra Work Costs related thereto or resulting therefrom.

1.2.7. Statements

1.2.7.1. Receipted invoices for all materials used and transportation charges must accompany and support all of Developer's statements submitted in support of force account Extra

Work Costs. If materials used on the force account Extra Work are not specifically purchased for such force account Extra Work but are taken from Developer's stock, then, instead of invoices, the statements must contain or be accompanied by an affidavit of Developer certifying that such materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to Developer. For transportation costs of materials taken from Developer's stock, Developer shall include certified payroll records. All such costs for materials from Developer's stock shall be subject to ADOT's approval.

1.2.7.2 Developer shall submit for approval, and shall ensure that Subcontractors submit for approval, an equipment list for all equipment to be used during the performance of the force account Extra Work no less than 72 hours prior to the start of any force account Extra Work.

1.2.7.3 Developer shall submit payrolls broken down by day and other cost data documents for all force account Extra Work within 30 days after completion of such force account Extra Work. ADOT will not make any payment prior to that time. All invoiced work must have documentation for payment. ADOT will not make any payment for Extra Work performed on a force account basis until Developer has furnished duplicate itemized statements of the Extra Work Costs of such force account Extra Work detailing the following:

- (a) Name, classification, date, daily hours, total hours, rate, nature of work performed (Professional Services/non-Professional Services), and amount for each foreman and laborer or other labor classification;
- (b) For Professional Services, a description or narrative of the work performed;
- (c) Designation, dates, daily hours, total hours, rental rate (as calculated in accordance with Section 1.2.3.1 for owned equipment, and Section 1.2.3.3 for outside rented equipment), and amount for each unit of equipment;
- (d) Quantities of materials, prices, and amounts; and
- (e) Transportation charges on materials, FOB the jobsite.

1.2.8. Force Account Extra Work by Affiliates

1.2.8.1 The direct costs of an Affiliate's labor, materials, and equipment used in performing force account Extra Work shall be limited in accordance with Section 8.7 of the Agreement.

1.2.8.2 If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Developer, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

1.2.9. Force Account Extra Work by Subcontractors

When force account Extra Work is performed by Subcontractors, Developer is permitted, and Extra Work Costs may include, a supplemental markup of five percent of the Subcontractor's costs. This markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the

force account Extra Work. ADOT will apply such 5 % markup to the Subcontractor's force account Extra Work Costs less the Subcontractor's allowable markups for overhead and profit.

1.2.10. Bonds

If, in connection with the Relief Event resulting in Extra Work, ADOT requires an increase in the amount of the Performance Bond or Payment Bond, then ADOT will pay an additional amount equal to the lesser of (a) the incremental increase in the cost of such Bond(s) attributable thereto, or (b) 0.5 percent of the total amount otherwise calculated as the force account Extra Work Costs.

1.2.11. Non-Allowable Charges

If Developer performs Extra Work on a force account basis, then ADOT will only compensate Developer for what is stated in the above provisions of this Section 1.2 ("Force Account"). However, and for purposes of clarity, in no case will Developer be reimbursed or paid for, and Extra Work Costs shall not include, the following items:

- (a) Profit in excess of that provided in this Section 1.2;
- (b) Loss of profit or lost opportunity to earn profit;
- (c) Home office overhead;
- (d) Consequential damages, including loss of bonding capacity, loss of bidding opportunities, or insolvency;
- (e) Indirect costs or expenses of any nature;
- (f) Attorneys' fees, claims preparation expenses, or costs of litigation; and
- (g) Interest.

2. DELAY COSTS

Delay Costs shall include only the following, are subject to the limitations set forth below, and shall be determined as provided below. Developer shall not be entitled to any additional costs for delays to the Work other than those provided below:

2.1. Direct Cost of Idle Labor

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.2.1 above ("Labor"), except that the formula for Regular Pay in Section 1.2.1 shall be adjusted as follows:

Regular Pay

Regular pay (RP), which will be determined as follows:

$$RP = (WR + FR) \times 1.35$$

Where:

WR = hourly wage as determined by payroll records;
FR = fringe benefit rate as determined by payroll records; and
1.35 = the labor multiplier providing for a 35 percent labor burden rate.

Delay Costs shall not include overtime pay.

2.2. Direct Cost of Idle Equipment

Compensation for the direct cost of the actual idle time of equipment used in the performance of Extra Work will be determined in the same manner as determinations are made for force account Extra Work Costs for stand-by equipment, as provided in Section 1.2.3.2 above (“Stand-By Time”) and subject to the following:

- (a) The Delay Costs will be determined for the actual normal working time during which the delay condition exists, but in no case will exceed eight hours in any 24-hour day or 40 hours in a week; and
- (b) The Delay Costs will be determined for the calendar days, excluding Saturdays, Sundays, and Holidays, during the existence of the delay, except that, when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.2.3.2 above, Delay Costs shall not include equipment rental costs for such equipment. For purposes of clarity, Developer shall not be entitled to Extra Work Costs for both the rental of equipment under Section 1.2.3.2 and Delay Costs for the same equipment for the same time period.

If ADOT determines that idle equipment should not remain on the Site during a delay, then ADOT will pay the actual, reasonable costs, without markup, to: (i) demobilize the equipment during the delay period; and (ii) remobilize the equipment at the end of the delay period. Compensation for idle equipment will not be paid while the subject equipment is demobilized from the Site during a delay period.

2.3. Markup for Subcontractor Direct Costs of Idle Labor and Equipment

In the case of a Relief Event Delay, Delay Costs shall include a markup of five percent of the direct costs of a Subcontractor’s idle labor and equipment determined in accordance with Sections 2.1 above (“Direct Costs of Idle Labor”) and 2.2 above (“Direct Costs of Idle Equipment”). This markup shall constitute full compensation for all labor-related and equipment-related indirect costs, expenses, and profit related to such Relief Event Delay.

2.4. Where Delay is to Non-Controlling Work Item

Developer shall not be entitled to Delay Costs for delay to work that is not a Controlling Work Item.

2.5. Overhead

An additional amount for each eligible day of Delay Costs (“D” in the formula below) will be added as Delay Costs as compensation for all other items for which a specific amount is not provided, including profit and all overhead. Such additional cost shall be determined as follows:

$$D = (A \times C) / B$$

Where:

A = Original Lump Sum Contract Amount on the Effective Date

B = 1400

C = 10%

D = Amount per Day

EXHIBIT 14

NONCOMPLIANCE EVENT TABLE

EXHIBIT 14

NONCOMPLIANCE EVENT TABLE

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
Reporting & Complying Activities						
14-01	General	Governmental Approval	Deliver to ADOT prior to beginning construction on the applicable Work any executed copy of a Governmental Approval that Developer obtained as required by the Agreement.	6	7 Days	B
14-02	General	Governmental Approval	Submit any application for a Governmental Approval to ADOT for approval or review and comment prior to submitting to any Governmental Entity as required by the Agreement.	3	7 Days	A
14-03	General	Meetings	Provide notice to ADOT in advance of meetings with Governmental Entities and Utility Companies.	4	2 Days	B
14-04	General	Meetings	Meeting Minutes shall be submitted and approved per the Agreement and TPs for all meetings.	2	2 Days	A
14-05	General	Noncompliance Event Database and Notification	Maintain the Noncompliance database in accordance with Section 16.2.1 of the Agreement. Noncompliance includes the failure to enter a Noncompliance Event into the database or report a Noncompliance Event to ADOT.	6	5 Days	A
14-06	General	Respond to ADOT's comments to Submittals	Developer to provide a justification to ADOT why Developer believes modifications to a Submittal are not required in response to ADOT's comment, exception, disapproval, or objection to such Submittal, within 30 days of Developer's receipt of such comment, exception, disapproval, or objection.	4	7 Days	A
14-07	Project Administration	Responsiveness	Developer shall respond to ADOT management calls within 1 hour.	1	4 Hours	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
14-08	General	ADOT Facilities	Comply with the requirements of Section 112.02 of the Technical Provisions regarding office facilities and equipment.	3	7 Days	A
14-09	General	ADOT Notification of monthly payments	Provide ADOT with notification of monthly payments to Subcontractors in accordance with <u>Section 12.6.1</u> of the Agreement.	6	30 Days	B
14-10	General	Public Information	Restore the App or Developer Website to service in less than 12 hours after it goes down.	6	6 Hours	A
14-11	General	Public Information	Provide correct information when carrying out Public Information work, except where the provision of incorrect information is due to events beyond Developer's control.	3	1 Day	B
14-12	General	Public Information	Comply with Proposal Commitments concerning Public Information, subject to <u>Section 19.4.7</u> of the Agreement.	6	15 Days	A
Contract Activities						
14-13	Contracting and Labor Practices	Subcontracts	Submit to ADOT a completed Subcontractor Request Form (SRF) not later than seven days before the Subcontractor commences work.	3	3 Days	B
14-14	Contracting and Labor Practices	Subcontracts	Submit to ADOT a copy of each executed Subcontract not later than 60 days after the Subcontractor commences work.	2	30 Days	A
Project Management Activities						
14-15	Project Management Plan	Audit	Carry out internal audits at the times prescribed in the Project Management Plan in accordance with the Agreement and the TPs.	3	7 Days	A
14-16	Project Management Plan	Construction Quality Management	Document the Construction Quality Management work effort in accordance with the Agreement and the TPs	3	10 Days	A
14-17	Project Management Plan	Quality Management	Establish, maintain, and comply with the requirements of the Professional Services Quality Management Plan in accordance with the Agreement and the TPs.	6	7 Days	A

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
Environmental Activities						
14-18	Environmental Compliance	Environmental Management Plan	Maintain and update the complete Environmental Management Plan as required by Section 119.02.03 of the Technical Provisions.	6	7 Days	A
14-19	Environmental Compliance	Environmental Approvals	Except for provisions concerning the SWPPP, follow the Environmental Management Plan or any of its constituent parts for any Work activity as required by Section 119.02.03 of the Technical Provisions.	9	1 Day	B
14-20	Environmental Compliance	Stormwater	Comply with Section 800.02.07 of the Technical Provisions regarding SWPPP measures.	6	7 Days	B
14-21	Environmental Compliance	Property Access	Maintain access to all businesses within and adjacent to the Project ROW at all times, as required by Section 700.06.04.03 of the Technical Provisions.	6	4 Hours	A
14-22	Environmental Compliance	Public Meetings	Organize public meetings and/or hearings as required by the TPs.	6	30 Days	A
Utilities Activities						
14-23	Utility Adjustments	Maintain service	Maintain utility services fully operational in accordance with the TPs.	6	4 Hours	A
14-24	Utility Adjustments	Record keeping	Maintain accurate records of Utility Adjustment Work and provide copies to ADOT in accordance with the TPs.	6	7 Days	A
14-25	Utility Adjustments	Utility Information	Prepare and submit to ADOT the Utility Report in accordance with of Section 107.15.05.03 of the Technical Provisions.	6	15 Days	A
14-26	Utility Adjustments	Encroachment Permits	Complete each Utility Adjustment within the time period of any encroachment permit(s) obtained for such Utility Adjustment and one extension thereof. For clarity, the second extension of any encroachment permit(s) (and each extension thereafter) for the same Utility Adjustment shall constitute this noncompliance event.	6	N/A	B
14-27	Utility Adjustments	SRP Utility Adjustment Work	Provide proof to ADOT that Developer has paid SRP for SRP Utility Adjustment Work performed by SRP in accordance with Section 12.2.3.4 of the Agreement.	3	5 Days	A
Design and Construction Activities						

Item No.	Item	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
14-28	Design and Construction	Land Surveys	Comply with the land survey requirements of Section 925 of the Technical Provisions.	6	7 Days	A
14-29	Design and Construction	Punch list	Prepare, maintain, and deliver a Punch List, or a modification thereto, to ADOT and ADOT's Authorized Representative(s), all as required by <u>Section 6.6.2</u> of the Agreement.	6	30 Days	A
14-30	Design and Construction	Punch List	Complete all Punch List items within 90 days after receipt of the Certificate of Substantial Completion.	9	10 Days	B
14-31	Design and Construction	Testing	Provide test results or reports as required by <u>Section 3.8</u> of the Agreement.	6	7 Days	A
14-32	Design and Construction	Traffic Management	Comply with Maintenance of Traffic requirements set forth in Section 700.06 of the Technical Provisions.	6	4 Hours	B
14-33	Design and Construction	Traffic Management	Remove a Lane Closure that is not a Permitted Closure, subject to <u>Sections 19.2.6</u> and <u>19.4.7</u> of the Agreement.	9	1 Hour	B
14-34	Design and Construction	Traffic Management	Remedy any ITS disruption within the deadlines set forth in Section 700.06.03.07 of the Technical Provisions.	9	4 Hours	B
14-35	Design and Construction	Construction	Comply with environmental monitoring requirements by having an environmental monitor in place, as required by Section 119.02 of the Technical Provisions, before commencing work in an area that requires environmental monitoring.	9	1 Day	B
14-36	Design and Construction	Maintenance During Construction	Comply with the Repair Response times for Maintenance During Construction specified in TP Attachment 105-1.	6	Equal to the time Specified for "Repair Response"	A

EXHIBIT 15

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

ADOT Authorized Representative(s)

All Matters:

- Amy Ritz
- Robert Samour (Project Director)

Design:

- Steve Mishler

Construction:

- Julie Gadsby

Developer's Authorized Representative(s)

All Matters:

- Jan Bohn
- Steve Campbell

Design:

- James Murphy

Construction:

- Steve Campbell

EXHIBIT 16

[NOT USED]

EXHIBIT 17

Issue Resolution Ladder Forms

Issue Resolution Routing Form - Broadway Curve

Resident Engineer/ Design Lead Level

Project Name				Page ____ / ____
Meeting Date	mm/dd/yyyy / /	TRACS #		
ADOT Unit		Developer		
Technical Areas Involved				
Describe additional or alternate solutions considered.				
What are the names of persons assisting with resolution at this level?				
Are there additional comments or recommendations?				
Returned to Resident Engineer level for second attempt resolve on mm/dd/yyyy				
Describe the final resolution agreement.				
Issue resolved at this level? ☐ Yes ☐ No / /				
If resolved, written feedback of the resolution was transmitted to team members and persons affected by this issue on mm/dd/yyyy / / by				

ADOT Project, Design or Construction Manager Date
(Signature Required)

Developer Representative Date
(Signature Required)

ADOT Project, Design or Construction Manager(Print/Type)

Developer Representative
(Print/Type)

Include this form in the Issue Escalation Binder.

Visit azdot.gov/Partnering for a fillable electronic version of this form.



16-040

Issue Resolution Routing Form - Broadway Curve

State Engineer Level

Project Name				Page ____ / ____
Meeting Date	mm/dd/yyyy / /	TRACS #		
ADOT Unit		Developer		
Technical Areas Involved				
Describe additional or alternate solutions considered.				
What are the names of persons assisting with resolution at this level?				
Are there additional comments or recommendations?				
Returned to Resident Engineer level for second attempt resolve on mm/dd/yyyy				
Describe the final resolution agreement.				
Issue resolved at this level? ☐ Yes ☐ No If no, follow DBA Section 21.2.3				
If resolved, written feedback of the resolution was transmitted to team members and persons affected by this issue on mm/dd/yyyy / / by				

ADOT Project, Design or Construction Manager Date
(Signature Required)

Developer Representative Date
(Signature Required)

ADOT Project, Design or Construction Manager(Print/Type)

Developer Representative
(Print/Type)

Include this form in the Issue Escalation Binder.

Visit azdot.gov/Partnering for a fillable electronic version of this form.



16-040

Issue Resolution Routing Form - Broadway Curve

Project Manager, Design Manager, Construction Manager Level

Project Name				Page ____ / ____
Meeting Date	mm/dd/yyyy / /	TRACS #		
ADOT Unit		Developer		
Technical Areas Involved				
Describe additional or alternate solutions considered.				
What are the names of persons assisting with resolution at this level?				
Are there additional comments or recommendations?				
Returned to Resident Engineer level for second attempt resolve on mm/dd/yyyy				
Describe the final resolution agreement.				
Issue resolved at this level? ☐ Yes ☐ No / /				
If resolved, written feedback of the resolution was transmitted to team members and persons affected by this issue on mm/dd/yyyy / / by				

ADOT Project, Design or Construction Manager Date
(Signature Required)

Developer Representative Date
(Signature Required)

ADOT Project, Design or Construction Manager(Print/Type)

Developer Representative
(Print/Type)

Include this form in the Issue Escalation Binder.

Visit azdot.gov/Partnering for a fillable electronic version of this form.



16-040