

1 **EXHIBIT 1**

2 **ABBREVIATIONS AND DEFINED TERMS**

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4 Unless otherwise specified, wherever the abbreviations or defined terms included in this

5 Exhibit 1 are used in the Agreement or the Technical Provisions, they shall have the

6 meanings set forth below.

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

<b>CQCM</b>	Construction Quality Control Manager
<b>CQMP</b>	Construction Quality Management Plan
<b>CR</b>	Construction Requirements
<b>CRM</b>	comment resolution meeting
<b>CRSP</b>	Colorado Rockfall Simulation Program
<b>CWA</b>	Clean Water Act
<b>D&amp;C</b>	Design and Construction
<b>DBE</b>	Disadvantaged Business Enterprise
<b>DEIS</b>	Draft Environmental Impact Statement
<b>DPDs</b>	Detailed Pricing Documents
<b>DPS</b>	Arizona Department of Public Safety
<b>DR</b>	Design Requirements
<b>DTM</b>	digital terrain model
<b>DTPA</b>	Diethylene Triamine Pentaacetic Acid
<b>EB</b>	Eastbound
<b>ECM</b>	Environmental Compliance Manager
<b>ECP</b>	environmental communications protocol
<b>EDMS</b>	Electronic Data Management System
<b>EMP</b>	Environmental Management Plan
<b>EPA</b>	United States Environmental Protection Agency
<b>ESA</b>	Environmental prior Assessment
<b>ESAL</b>	Equivalent Single-Axle Load
<b>°F</b>	Degrees Fahrenheit
<b>FEIS</b>	Final Environmental Impact Statement
<b>FEMA</b>	Federal Emergency Management Agency
<b>FHWA</b>	U.S. Department of Transportation, Federal Highway Administration
<b>fps</b>	feet per second
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GP</b>	General Provisions
<b>GPS</b>	Global Positioning System
<b>GRIC</b>	Gila River Indian Community
<b>HCRS</b>	Highway Condition Reporting System
<b>H:V</b>	Horizontal:Vertical
<b>HEC</b>	Hydraulic Engineering Circular
<b>HOV</b>	High-Occupancy Vehicle
<b>HVAC</b>	heating ventilation and air conditioning
<b>I-10</b>	Interstate 10

<b>ID</b>	Identification
<b>IQF</b>	Independent Quality Firm
<b>IRI</b>	international roughness index
<b>ISO</b>	International Standards Organization or International Organization for Standardization
<b>ITP</b>	Instructions to Proposers
<b>ITS</b>	Intelligent Transportation System
<b>ksi</b>	Kips per Square Inch
<b>L/DCR</b>	Location/Design Concept Report
<b>LAADCR</b>	Landscape Architecture & Aesthetics Design Concept Report
<b>LED</b>	Light-emitting Diode
<b>LiDAR</b>	Light Detection and Ranging
<b>In</b>	Lane
<b>LOS</b>	Level of Service
<b>LRFD</b>	Load and Resistance Factor Design
<b>m<sup>2</sup></b>	Square Meter
<b>MAG</b>	Maricopa Association of Governments
<b>MASH</b>	Manual for Assessing Safety Hardware
<b>mcd</b>	Millicandelas
<b>MDR</b>	Materials Design Report
<b>MIS</b>	Maintenance Information System
<b>MMP</b>	Maintenance Management Plan
<b>MOT</b>	Maintenance of Traffic
<b>mph</b>	Miles per Hour
<b>MQMP</b>	Maintenance Quality Management Plan
<b>MR</b>	Maintenance Requirements
<b>MS4</b>	Municipal Separate Storm Sewer System
<b>MSE</b>	mechanically stabilized earth
<b>MSMP</b>	Maintenance Safety Management Plan
<b>MUTCD</b>	Manual of Uniform Traffic Control Devices
<b>NAD</b>	North American Datum
<b>NAVD</b>	North American Vertical Datum
<b>NB</b>	Northbound
<b>NCHRP</b>	National Cooperative Highway Research Program
<b>NEC</b>	National Electrical Code
<b>NEMA</b>	National Electrical Manufacturers Association
<b>NEPA</b>	National Environmental Policy Act

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

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

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

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

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

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

16 **Adjustment Standards** means the standard specifications, standards of practice, and  
17 construction methods that a Utility Company customarily applies to facilities

1 (comparable to those being Adjusted on account of the Project) constructed by the  
2 Utility Company (or for the Utility Company by its contractors), at its own expense.  
3 Unless the context or applicable Utility Agreement requires otherwise, references in the  
4 Contract Documents to a Utility Company’s “applicable Adjustment Standards” refer to  
5 those that are in effect as of the Setting Date.

6 **Adjustments** means Utility Adjustments.

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

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

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

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

23 **ADOT-Caused Delay** means any of the following events, to the extent they result in a  
24 delay or interruption in performance of any material Developer obligation under the  
25 Agreement, and provided such events are beyond Developer’s control and are not due  
26 to any act, omission, negligence, recklessness, willful misconduct or breach or violation  
27 of contract, the requirements of the Contract Documents or Law by any Developer-  
28 Related Entity, and further provided that such events (or the effects of such events)  
29 could not have been avoided by the exercise of caution, due diligence or reasonable  
30 efforts by Developer:

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

33 (b) Failure of ADOT to issue NTP 2 within ten Business Days after the  
34 anticipated issuance date set forth in Section 7.1.4 of the Agreement;(c) ADOT-  
35 Directed Change

36 (d) Except for Retained Parcels, failure or inability of ADOT to make available to  
37 Developer any Project ROW parcel, including any ADOT Additional Property, within 180

1 after ADOT's receipt and approval of Developer's written request to commence a  
2 condemnation proceeding and a complete Condemnation Package, subject, however,  
3 to the exceptions and limitations set forth in Section 14.4.3 of the Agreement; provided  
4 that "make available" means that ADOT has (i) obtained an order for immediate  
5 possession, (ii) closed the acquisition of the parcel or (iii) otherwise obtained permanent  
6 right of entry through settlement, negotiation, the condemnation process or otherwise,  
7 which in each case may be subject to covenants, conditions, restrictions and limitations  
8 with which Developer must comply. For clarity, "make available" does not require  
9 commencement or completion of relocation or demolition;

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

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

19 (ii) ADOT has completed relocation, demolition and clearance, except  
20 Utility Adjustments;

21 (f) Failure of ADOT to provide responses to proposed schedules, plans,  
22 Design Documents, Acquisition Packages, Condemnation Packages, and other  
23 Submittals and matters submitted to ADOT after the Effective Date for which response  
24 is required under the Contract Documents as an express prerequisite to Developer's  
25 right to proceed or act, within the time periods (if any) indicated in the Contract  
26 Documents, or if no time period is indicated, within a reasonable time, taking into  
27 consideration (i) the nature, importance and complexity of the Submittal or matter,  
28 (ii) the number of Submittals or such other items which are then pending for ADOT's  
29 response, (iii) the completeness and accuracy of the Submittal or such other item, and  
30 (iv) Developer's performance and history of Nonconforming Work under the Contract  
31 Documents, following delivery of written notice from Developer requesting such action in  
32 accordance with the terms and requirements of the Contract Documents;

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

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

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

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

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

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

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

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

19 **ADOT-Directed Change** means:

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

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

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

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

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

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

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

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

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

15 **Affiliate** means:

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

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

20 (c) any Person for which 10 percent or more of the equity interest in such  
21 Person is held directly or indirectly, beneficially or of record by (i) Developer, (ii) any of  
22 the shareholders, members, partners or joint venture members of Developer, or (iii) any  
23 Affiliate of Developer under clause (b) of this definition.

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

27 **Affiliated** means having the status of an Affiliate.

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

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

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

- 1 **Airspace** means any and all real property, including the surface of the ground and  
2 submerged lands, within the vertical column extending above and below the surface  
3 boundaries or water surface, as applicable, of the Project ROW and not necessary or  
4 required for the Project or for developing, permitting, designing, constructing, installing,  
5 equipping, maintaining, repairing, reconstructing, restoring, rehabilitating, renewing, or  
6 replacing the Project or Developer's timely fulfillment of its obligations under the  
7 Contract Documents.
- 8 **Alternative Technical Concept** has the meaning set forth in Section 3 of the ITP.
- 9 **Annual Capital Asset Replacement Work Payment** means each of the annual capital  
10 asset replacement work payments set forth in the Capital Asset Replacement Work  
11 Breakdown (Exhibit 2-4.4).
- 12 **Annual Routine Maintenance Payment** means the annual routine maintenance  
13 payments set forth in the Routine Maintenance Breakdown (Exhibit 2-4.3).
- 14 **Application for Governmental Approvals** has the meaning set forth in Section DR  
15 420.2.6.3 of the Technical Provisions.
- 16 **Appraisal** has the meaning set forth in Section DR 470.3.5.1 of the Technical  
17 Provisions.
- 18 **Appraisal Review** has the meaning set forth in Section DR 420.2.6.3 of the Technical  
19 Provisions.
- 20 **Appraiser and Appraisal Reviewer** has the meaning set forth in Section  
21 GP 110.08.3.22 of the Technical Provisions.
- 22 **Appraiser's Parcel File** has the meaning set forth in Section DR 470.3.5.1 of the  
23 Technical Provisions.
- 24 **Approved Appraiser** means the appraiser who prepared the ADOT-approved  
25 Appraisal.
- 26 **Archaeological Documentation and Reporting** has the meaning as set forth in  
27 Section DR 420.3.2 of the Technical Provisions.
- 28 **Arizona 811** shall mean the field locator that performs all requirements as specified in  
29 A.R.S. §§ 40-360.21 through 40-360.29 for all underground facilities.
- 30 **As-Built Drainage Report** has the meaning set forth in Section DR 445.3.3 of the  
31 Technical Provisions.
- 32 **As-Built Geotechnical Engineer Report** has the meaning set forth in Section  
33 DR 416.3.6 of the Technical Provisions.

1 **As-Built Load Rating Report** has the meaning set forth in Section CR 455.3.6 of the  
2 Technical Provisions.

3 **As-Built Schedule** has the meaning set forth in Section GP 110.06.2.12 of the  
4 Technical Provisions.

5 **Asset Condition Score** means the score for the condition of an Element following an  
6 Inspection, as more particularly described in Section MR 400.6 of the Technical  
7 Provisions. Asset Condition Score includes the Baseline Asset Condition Score  
8 established.

9 **Asset Condition Score Table** means the table for setting forth Asset Condition Scores  
10 for all Elements of all Audible Sections, as more particularly described in TP Section  
11 MR 400.6.1.”

12 **Asset Condition Scoring** means the process for determining Asset Condition Scores,  
13 as more particularly described in TP Section MR 400.6.

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

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

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

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

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

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

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

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

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

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

- 11 (a) any upgrading which is required by the Project;
- 12 (b) replacement devices or materials that are of equivalent standards  
13 although not identical;
- 14 (c) replacement of devices or materials no longer regularly manufactured  
15 with an equivalent or next higher grade or size;
- 16 (d) any upgrading required by applicable Law;
- 17 (e) replacement devices or materials that are used for reasons of economy  
18 (e.g., non-stocked items may be uneconomical to purchase);
- 19 (f) any upgrading required by the Utility Company’s written “standards”  
20 meeting the requirements described in Section DR 430 of the Technical Provisions; or
- 21 (g) any discretionary decision by a Utility Company that is contemplated  
22 within a particular standard described in clause (f) above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 Change of Control of Developer if such shareholder, member, partner or joint venture  
2 member possesses the power to direct or control or cause the direction or control of the  
3 management of Developer. Notwithstanding the foregoing, the following shall not  
4 constitute a Change of Control:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 **Controlling Work Item** means a work activity in which any delay in its completion will  
2 result in a delay in a Completion Deadline.
- 3 **Critical Path** means each critical path on the Project Schedule, which ends on the  
4 Substantial Completion Deadline or the Final Acceptance Deadline, as applicable (i.e.  
5 the term shall apply only following consumption of all available Float in the schedule for  
6 Substantial Completion or Final Acceptance, as applicable). The lower case term  
7 "critical path" means the activities and durations associated with the longest chain(s) of  
8 logically connected activities through the Project Schedule with the least amount of  
9 positive slack or the greatest amount of negative slack.
- 10 **CRM Notes** has the meaning set forth in Section GP 110.10.2.1.5 of the Technical  
11 Provisions.
- 12 **Curative Document** has the meaning set forth in Section DR 470.3.6 of the Technical  
13 Provisions.
- 14 **D&C Guaranty** has the meaning set forth in Section 10.4 of the Agreement.
- 15 **D&C Payment Bond** means the bond required in accordance with Section 10.1.3 of the  
16 Agreement.
- 17 **D&C Performance Bond** means the bond required in accordance with Section 10.1.2  
18 of the Agreement.
- 19 **D&C Period** or **Construction Period** means the period of the Term from the Effective  
20 Date up to the Substantial Completion Date.
- 21 **D&C Period Noncompliance Event Table** means the Noncompliance Event Table, set  
22 forth in Exhibit 15-1, that identifies the Noncompliance Events and corresponding cure  
23 periods, if any, that apply during the D&C Period. The D&C Period Noncompliance  
24 Event Table is subject to change in accordance with Section 17.1.2 of the Agreement.
- 25 **D&C Price** means the lump sum price for D&C Work set forth in Section 13.1.1 of the  
26 Agreement, as it may be modified from time to time in accordance with the express  
27 provisions of the Agreement.
- 28 **D&C Work** means all Design Work and Construction Work, including all efforts  
29 necessary or appropriate to achieve Final Acceptance and maintenance of the Project  
30 during the D&C Period in accordance with the Technical Provisions.
- 31 **Day** or **day** means calendar day.
- 32 **DBE Goals** has the meaning set forth in Section 9.2.1 of the Agreement.

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

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

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

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

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

13 (a) a hazard, nuisance or other risk to public or worker health or safety,  
14 including the health and safety of those traveling on the Project;

15 (b) a structural deterioration of the affected Element or any other part of the  
16 Project;

17 (c) damage to a third party’s property or equipment;

18 (d) damage to the Environment;

19 (e) failure of the affected Element or any other part of the Project to meet a  
20 requirement of the Contract Documents; or

21 (f) failure of an Element to meet the Target for a measurement record as set  
22 forth in the columns headed “Target” and “Measurement Record” in the Maintenance  
23 Table.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **Developer-Acquired Parcel** means any real property (which term is inclusive of all  
33 estates, easements, leases, and other interests in real property, permanent or

1 temporary) in the Project ROW or for Replacement Utility Property Interests for which  
2 Developer is to perform ROW Services as specified in the Contract Documents, but  
3 excluding Developer's Temporary Work Areas.

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

5 **Developer-Designated ROW** means any permanent interest in real property (which  
6 term is inclusive of all estates and interests in real property), improvements and fixtures  
7 outside of the Schematic ROW that Developer determines is necessary or advisable to  
8 be acquired for the Project. The term specifically includes (a) any easements required  
9 for drainage for the Project, (b) Temporary Construction Easements to the extent  
10 located outside of the Schematic ROW and outside of ADOT Additional Property, and  
11 (c) any air space, surface rights and subsurface rights within the Developer-Designated  
12 ROW. The term specifically excludes (1) Replacement Utility Property Interests,  
13 (2) Developer's Temporary Work Areas, and (3) any property within the GRIC lands.

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

17 **Developer-Related Entity** means:

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

26 **Developer Release of Hazardous Materials** means:

- 27 (a) Release(s) of Hazardous Material, or the exacerbation of any such  
28 release(s), attributable to the culpable actions, culpable omissions, negligence,  
29 intentional misconduct, or breach of applicable Law or contract by any Developer-  
30 Related Entity;
- 31 (b) Release(s) of Hazardous Materials arranged to be brought onto the Site or  
32 elsewhere by any Developer-Related Entity, regardless of cause; or

1 (c) use, containment, storage, management, handling, transport and disposal  
2 of any Hazardous Materials by any Developer-Related Entity in violation of the  
3 requirements of the Contract Documents or any applicable Law or Governmental  
4 Approval.

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

7 **Developer's Temporary Work Areas** means areas in which Developer carries out on a  
8 temporary basis Project-specific activities in connection with the Work not within the  
9 Project ROW boundaries identified in the NEPA Approval, such as construction work  
10 sites, field office locations, staging areas, storage areas, lay-down areas, earth work  
11 material borrow sites, and other locations for the convenience of Developer.  
12 Developer's Temporary Work Areas do not include Temporary Construction Easements.

13 **Deviation** means:

14 (a) any proposed or actual change, deviation, modification, alteration or  
15 exception from the Technical Provisions; or

16 (b) a change in the Work or other requirements of the Contract Documents issued  
17 under Section 15.2.8 of the Agreement. Such Deviations include "Design  
18 Exceptions" and "Design Waivers."

19 **Differing Site Conditions** means:

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

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

27 The term Differing Site Conditions shall specifically exclude:

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

33 (ii) changes in surface topography;

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

- 1 (iv) Utility facilities;
- 2 (v) Hazardous Materials, including contaminated groundwater;
- 3 (vi) acquisition of real property for drainage purposes; and
- 4 (vii) any conditions which constitute or are caused by a Force Majeure Event.

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

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

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

10 **Discriminatory Maintenance Change** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **ENR Construction Cost Index** means the 12-month “Construction Cost Index”  
26 published by Engineering News-Record, Two Penn Plaza, 9th Floor, New York, NY  
27 10121.

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

30 (a) the NEPA Approval;

31 (b) other approvals and permits required under NEPA; and

32 (c) any revision, modification, supplement or amendment of the foregoing  
33 approvals and permits.

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

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

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

16 (b) Air, soil, surface and subsurface strata, stream sediments, surface water,  
17 and groundwater;

18 (c) Releases of Hazardous Materials;

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

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

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

24 (g) Notification, documentation, and record keeping requirements relating to  
25 the foregoing.

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

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

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

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

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

- 1 (v) The Comprehensive Environmental Response, Compensation, and  
2 Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- 3 (vi) The Solid Waste Disposal Act, as amended by the Resource Conservation  
4 and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- 5 (vii) The Emergency Planning and Community Right to Know Act of 1986 (42  
6 U.S.C. §§ 11001 *et seq.*), as amended;
- 7 (viii) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- 8 (ix) The Federal Water Pollution Control Act, as amended by the Clean Water  
9 Act (33 U.S.C. §§ 1251 *et seq.*);
- 10 (x) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et*  
11 *seq.*), as amended;
- 12 (xi) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as  
13 amended;
- 14 (xii) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*),  
15 as amended;
- 16 (xiii) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;
- 17 (xiv) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136  
18 *et seq.*), as amended;
- 19 (xv) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as  
20 amended;
- 21 (xvi) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§  
22 7401 *et seq.*), as amended;
- 23 (xvii) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- 24 (xviii) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- 25 (xix) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as  
26 amended;
- 27 (xx) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as  
28 amended;
- 29 (xxi) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as  
30 amended;
- 31 (xxii) General (A.R.S. §49- 101 to 191);

- 1 (xxiii) Water Quality Control (A.R.S. §49-201 to 391);
- 2 (xxiv) Air Quality (A.R.S. §49-401 to 581);
- 3 (xxv) Solid Waste Management (A.R.S. §49-701 to 881);
- 4 (xxvi) Hazardous Waste Disposal (A.R.S. §49 -901 to 971);
- 5 (xxvii) Underground Storage Tank Regulation (A.R.S. §49-1001 to 1091);
- 6 (xxviii) Light Pollution (A.R.S. §49-1101);
- 7 (xxix) Water Infrastructure Finance Program (A.R.S. §49-1201 to 1221); and
- 8 (xxx) Natural Gas Facilities (A.R.S. §49-1301).

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

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

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

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

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

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

31 **Equity Member** means: (a) each entity with a direct equity interest in Developer  
32 (whether as a member, partner, joint venture member or otherwise); and (b) each entity  
33 with an indirect interest in Developer through one or more intermediaries.

1 Notwithstanding the foregoing, if Developer is a publicly traded company, shareholders  
2 with less than a 10% interest in Developer shall not be considered Equity Members.

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

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

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

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

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

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

15 **Extra Work** means any Work in the nature of additional work, altered work or deleted  
16 work which is directly attributable to occurrence of a Relief Event and absent the Relief  
17 Event would not be required by the Contract Documents. The term “Extra Work” does  
18 not include Relief Event Delay.

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

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

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

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

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

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

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

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

7 **Final Design Submittal** has the meaning set forth in Section GP 110.10.2.2.4 of the  
8 Technical Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (c) any drilling fluids, produced waters and other wastes associated with the  
2 exploration, development or production of crude oil, natural gas or geothermal  
3 resources;
- 4 (d) any flammable substances or explosives;
- 5 (e) any radioactive materials;
- 6 (f) any asbestos or asbestos-containing materials;
- 7 (g) any lead and lead-based paint;
- 8 (h) any radon or radon gas;
- 9 (i) any methane gas or similar gaseous materials;
- 10 (j) any urea formaldehyde foam insulation;
- 11 (k) electrical equipment which contains any oil or dielectric fluid containing  
12 regulated levels of polychlorinated biphenyls;
- 13 (l) pesticides;
- 14 (m) any other chemical, material or substance, exposure to which is  
15 prohibited, limited or regulated by any Governmental Entity or which may or could pose  
16 a hazard to the health and safety of the owners, operators, users or any Persons in the  
17 vicinity of the Project or to the indoor or outdoor environment; and
- 18 (n) soil, or surface water or ground water, contaminated with Hazardous  
19 Materials as defined above.

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

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

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

1 **Highway Condition Reporting System** means ADOT’s web-based central server,  
2 which functions as a multi-agency information sharing system for planned Lane  
3 Closures, special events, incidents and other traffic restriction advisories for the State’s  
4 highway network, including key arterials in the Phoenix metropolitan area. Information  
5 entered in the Highway Condition Reporting System is used to populate the public  
6 website ([www.az511.gov](http://www.az511.gov)) and the 511 phone system.

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **Initial Design Submittal** has the meaning set forth in Section GP 110.10.2.2.3 of the  
15 Technical Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **Irrigation Systems Design** has the meaning set forth in Section 110.08.3.20 of the  
30 Technical Provisions.

31 **Issue Resolution Ladder** shall have the meaning set forth in Section 22.2.3.1 of the  
32 Agreement.

33 **ITS Certifications** shall have the meaning set forth in Section CR 466.3.3 of the  
34 Technical Provisions.

35 **ITS Inventory** shall have the meaning set forth in Section DR 466.2.3 of the Technical  
36 Provisions.

1 **ITS Master Plan** shall have the meaning set forth in Section DR 466.3.2 of the  
2 Technical Provisions.

3 **ITS Master Plan Update** shall have the meaning set forth in Section DR 466.3.2 of the  
4 Technical Provisions.

5 **ITS Testing Documentation** shall have the meaning set forth in Section CR 466.3.2 of  
6 the Technical Provisions.

7 **ITS Training Material** shall have the meaning set forth in Section CR 466.3.6 of the  
8 Technical Provisions.

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

14 **Key Professional Services Firm** means:

15 (a) the Independent Quality Firm, and

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

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

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

22 (b) the Lead Subcontract;

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

25 (d) all Maintenance Services Subcontracts; and

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

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

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

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

4 **Known or Suspected Hazardous Materials** means:

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

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

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

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

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

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

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

31 **Law** means: (a) any law, statute, code, regulation, ordinance, rule or common law; (b)  
32 any binding judgment (other than regarding a Claim or Dispute); (c) any binding judicial  
33 or administrative order or decree (other than regarding a Claim or Dispute); (d) any  
34 written directive, guideline, policy requirement or other governmental restriction  
35 (including those resulting from the initiative or referendum process, but excluding those  
36 by ADOT within the scope of its administration of the Contract Documents); or (e) any  
37 similar form of decision of or determination by, or any written interpretation or

1 administration of any of the foregoing by, any Governmental Entity, in each case which  
2 is applicable to or has an impact on the Project or the Work, whether taking effect  
3 before or after the Effective Date, including Environmental Laws. “Laws”, however,  
4 excludes Governmental Approvals.

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

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

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

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

14 **Legal Description** means a ROW parcel’s legal description meeting the requirements  
15 of Section 470.3.1 of the Technical Provisions.

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

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

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

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

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

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

32 **Loss** or **Losses** means any loss, damage, injury, liability, obligation, cost, response  
33 cost, expense (including attorneys’, accountants’ and expert witnesses’ fees and  
34 expenses (including those incurred in connection with the enforcement of any indemnity  
35 or other provision of the Agreement)), fee, charge, judgment, penalty, fine or third party

1 claims. Losses include injury to or death of persons, damage or loss of property, and  
2 harm or damage to natural resources.

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

5 **Maintenance Bonds** means, collectively, the Maintenance Performance Bond and  
6 Maintenance Payment Bond.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **Maintenance Services** means any and all management, administration, maintenance,  
13 repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and  
14 replacement, including Routine Maintenance, Capital Asset Replacement Work and  
15 Handback Work, to be performed by Developer in connection with the Project after  
16 Substantial Completion.

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

20 **Maintenance Services During Construction** means any and all management,  
21 administration, maintenance, repair, preservation, modification, reconstruction,  
22 rehabilitation, restoration, renewal and replacement to be performed by Developer in  
23 connection with the Project prior to Substantial Completion.

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

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

31 (a) at least 50% of the aggregate value of the Maintenance Services during  
32 the Maintenance Period (excluding Capital Asset Replacement Work and Handback  
33 Requirements Work); or

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

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

1 **Maintenance Services** means any and all management, administration, maintenance,  
2 repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and  
3 replacement, including Routine Maintenance, Capital Asset Replacement Work and  
4 Handback Requirements Work, to be performed by Developer. Maintenance Services  
5 includes both Maintenance Services During Construction and Maintenance Services  
6 After Substantial Completion.

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

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

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

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

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

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

19 **Mockups** has the meaning set forth in Section CR 450.3.1.1 of the Technical  
20 Provisions.

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

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

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

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

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

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

1 **Necessary Schematic ROW Change** means real property (which term is inclusive of  
2 all permanent estates and interests in real property), improvements and fixtures located  
3 outside the Schematic ROW that must be permanently acquired in order for Developer  
4 to deliver the Basic Configuration and satisfy the requirements of the Contract  
5 Documents. A Necessary Schematic ROW Change arises only where indicated in  
6 Section 14.4.1.1 of the Agreement.

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

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

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

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

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

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

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

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

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

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

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

32 **Non-Discriminatory Maintenance Change** means any alteration or change (including  
33 addition) to provisions in the Technical Provisions and Safety Standards that relate to  
34 the Maintenance Services and are of general application to Comparable Facilities.  
35 Such alterations or changes include revisions to manuals, publications and guidelines,

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

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

10 **Notice of Determination** has the meaning set forth in Section 17.2.1.3 of the  
11 Agreement.

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

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

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

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

23 **Noxious and Invasive Species Control Plan** has the meaning set forth in Section DR  
24 450.2.5 of the Technical Provisions.

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

27 **NTP 1** means a written notice issued by ADOT to Developer authorizing Developer to  
28 proceed with the portion of the Work described in Section 7.1.3 of the Agreement.

29 **NTP 2** means a written notice issued by ADOT to Developer pursuant to Section 7.1.4  
30 of the Agreement authorizing Developer to proceed with design and construction of the  
31 Project, except construction or other ground-disturbing activities in the Center Segment.

32 **NTP 3** means a written notice issued by ADOT to Developer pursuant to Section 7.1.6  
33 of the Agreement authorizing Developer to proceed with construction and other ground-  
34 disturbing activities of the Center Segment.

- 1 **NTP 3 Window** means the period of time commencing July 11, 2018, inclusive, and  
2 ending September 10, 2018, inclusive.
- 3 **OJT Goals** has the meaning set forth in Section 9.3.1 of the Agreement.
- 4 **OJT Monthly Progress Report** has the meaning set forth in Section 7.0 of the OJT  
5 Special Provisions.
- 6 **OJT Schedule** has the meaning set forth in Section 7.0 of the OJT Special Provisions.
- 7 **OJT Special Provisions** means ADOT's provisions regarding on-the-job training for the  
8 Project set forth in Exhibit 8 to the Agreement.
- 9 **OJT Trainee Status Report** has the meaning set forth in Section 7.0 of the OJT  
10 Special Provisions.
- 11 **OJT Trainee** means (a) a minority, female, veteran or economically disadvantaged  
12 individual enrolled in either a State of Arizona registered apprenticeship program or a  
13 Developer/Subcontractor OJT program that has been approved by ADOT and FHWA  
14 and (b) any other individual ADOT approves for enrollment in such an apprenticeship or  
15 OJT program and for credit toward the OJT Goals in accordance with Section 9.0 of the  
16 OJT Special Provisions.
- 17 **OJT Utilization Plan** means Developer's ADOT-approved plan for meeting the OJT  
18 Goals, described in Section 9.3 of the Agreement.
- 19 **Open Book Basis** means providing ADOT all underlying assumptions and data,  
20 documents and information associated with pricing or compensation (whether of  
21 Developer or ADOT) or adjustments thereto, including assumptions as to costs of the  
22 Work, Extra Work Costs, Delay Costs, schedule, composition of equipment spreads,  
23 equipment rates (including rental rates), labor rates and benefits, productivity,  
24 estimating factors, design and productivity allowance, contingency and indirect costs,  
25 risk pricing, discount rates, interest rates, inflation and deflation rates, insurance rates,  
26 bonding rates, letter of credit fees, overhead, profit and other items reasonably required  
27 by ADOT to satisfy itself as to the validity or reasonableness of the amount.
- 28 **Original Documents** has the meaning set forth in Section DR 470.2.3 of the Technical  
29 Provisions.
- 30 **Original Issued Title Policy** has the meaning set forth in Section DR 470.4.3 of the  
31 Technical Provisions.
- 32 **Original Letter of Acceptance** has the meaning set forth in Section DR 420.2.6.2 of  
33 the Technical Provisions.
- 34 **Original Recorded Instruments of Conveyance** has the meaning set forth in  
35 Section DR 470.4.3 of the Technical Provisions.

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

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

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

11 **Partnering Meetings** shall have the meaning set forth in Section 22.1.1.1 of the  
12 Agreement.

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

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

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

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

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

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

26 **Permitted Closure** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 **Preliminary Project Baseline Schedule** means the time-scaled, Critical Path network  
27 that depicts Project sections, Project milestones, and subordinate activities and their  
28 respective durations, sequencing, and interrelationships that represent Developer's  
29 Work plan for designing, constructing, and completing the Project, attached as  
30 Exhibit 2-2 to the Agreement.

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

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

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

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

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

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

- 18 (a) design and engineering;
- 19 (b) Utility Adjustment design;
- 20 (c) environmental permitting and compliance;
- 21 (d) public involvement;
- 22 (e) ROW Services; and
- 23 (f) surveying.

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

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

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

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

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

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

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

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

21 **Project Management Plan** means the document containing the ADOT-approved  
22 component parts, plans and documentation described in Section GP 110.04 of the  
23 Technical Provisions.

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

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

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

34 (a) within the lines delineating the outside boundaries of the Project set forth  
35 in the Schematic ROW, as such boundaries may be adjusted from time to time in  
36 accordance with the Contract Documents (including adjustments for ADOT Additional

1 Properties, Developer-Designated ROW and avoided parcels or partial parcels, in whole  
2 or in part); or

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

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

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

13 (ii) Replacement Utility Property Interests; and

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

16 **Project ROW Quality Control Specialist** has the meaning set forth in Section GP  
17 110.08.3.8 of the Technical Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **Ramp Meter Analysis** shall have the meaning set forth in Section DR 466.3.3.5 of the  
9 Technical Provisions.

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

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

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

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

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

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

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

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

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

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

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

30 **Record Drawings** means construction drawings and related documentation revised to  
31 show significant changes made during the construction process; usually based on

1 marked-up RFC Documents furnished by Developer; also known as as-built plans, and  
2 more fully described in Section GP 110.10.2.3.4 of the Technical Provisions.

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

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

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

14 **Release for Construction Submittal** has the meaning set forth in  
15 Section GP 110.10.2.2.5 of the Technical Provisions.

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

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

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

28 (b) ADOT-Directed Change;

29 (c) Non-Discriminatory Maintenance Change;

30 (d) Safety Compliance Orders;

31 (e) ADOT-Caused Delay;

32 (f) Force Majeure Event;

33 (g) Utility Company Delay;

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

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

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

10 (q) Any Necessary Schematic ROW Change; or

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

12 **Relief Event Delay** means a delay to a Controlling Work Item, after consumption of all  
13 Float available pursuant to Section 7.3.2 of the Agreement, as a direct result of a Relief  
14 Event that could not be avoided by Developer; provided, however, that such delay  
15 excludes delay due to loss, damage or destruction described in Section 11.3.7 of the  
16 Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **Specifications** has the meaning set forth in Section GP 110.10.2.2.2 of the Technical  
2 Provisions.

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

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

7 **State** means the State of Arizona.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Tangible Net Worth** means the difference between (the sum of paid-in capital stock  
28 plus preferred stock plus retained earnings) less (the sum of treasury stock plus minority  
29 interest plus intangible assets e.g., goodwill, patents, licenses), all determined in  
30 accordance with Generally Accepted Accounting Principles and as interpreted by the  
31 Securities and Exchange Commission in connection with financial statements filed  
32 pursuant to the Securities Exchange Act of 1934.

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

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

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

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

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

18 **Termination by Court Ruling** means any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 **Transportation Management Plan** means the plan prepared by Developer for the  
29 management of traffic during construction, as more particularly described in 23 CFR  
30 630 Subpart J and Section DR 462.2.3 of the Technical Provisions.

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

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

3 **Uncured Noncompliance Points** means Noncompliance Points assessed on account  
4 of breaches or failures that remain uncured. Uncured Noncompliance Points also  
5 includes Noncompliance Points assessed for breaches or failures that have no  
6 applicable cure period as identified in the applicable Noncompliance Event Table.

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

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

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

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

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

- 21 (a) storm water facilities providing drainage for the Project ROW;
- 22 (b) street lights and traffic signals;
- 23 (c) ITS and IVHS facilities; and
- 24 (d) water wells held for private use. The necessary appurtenances to each  
25 utility facility shall be considered part of such utility.

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

29 **Utility Adjustment** means each relocation (temporary or permanent), abandonment,  
30 Protection in Place, removal (of previously abandoned Utilities as well as of newly  
31 abandoned Utilities), replacement, reinstallation, and/or modification of existing Utilities  
32 necessary to accommodate construction, operation, maintenance and/or use of the  
33 Project; provided, however, that the term “**Utility Adjustment**” shall not refer to any of  
34 the work associated with facilities owned by any railroad. For any Utility crossing the  
35 Project ROW, the Utility Adjustment Work for each crossing of the Project ROW by that

1 Utility shall be considered a separate Utility Adjustment. For any Utility installed  
2 longitudinally within the Project ROW, the Utility Adjustment Work for each continuous  
3 segment of that Utility located within the Project ROW shall be considered a separate  
4 Utility Adjustment.

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

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

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

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

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

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

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

- 1                   (i)     Developer presents to the Utility Company a proposed Utility  
2 Agreement that includes such material terms, schedule and conditions and a complete  
3 design package for the Utility Agreement;
- 4                   (ii)     ADOT receives satisfactory evidence that Developer satisfied the  
5 “conditions to assistance” set forth in Section 5.10.7.2(a) of the Agreement, and
- 6                   (iii)    ADOT receives Developer’s request for ADOT’s assistance as  
7 described in Section 5.10.7.2(b) of the Agreement; or
- 8                   (c)     A Utility Company’s failure to timely perform its obligations under the  
9 applicable, executed Utility Agreement, provided that the schedule in the applicable  
10 Utility Agreement sets forth reasonable timelines for the Utility Company to perform its  
11 obligations, as determined by ADOT in its good faith discretion.  
12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Written Recommendation to Facilitate the Displacee’s Move** has the meaning set  
20 forth in Section DR 470.4.2 of the Technical Provisions.

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

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

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

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

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

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

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

35 [END OF EXHIBIT 1]