

Design-Build Agreement (DBA)

for

010 MA 161 F0721 01C
010-C-NFA

Phoenix – Casa Grande Highway (I-10) SR 202L (Santan/South Mountain) to Gila River Bridge Design-Build Capacity Improvements

between



and

**Coffman Specialties, Inc./Fisher Sand
& Gravel Co. Joint Venture (CFJV)**

Dated as of: December 5, 2025

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Design-Build Agreement
Phoenix – Casa Grande Highway (I-10)
SR 202L (Santan/South Mountain) to Gila River Bridge

This Design-Build Agreement (DBA or Agreement) is entered into and effective as of December 5, 2025, by and between the Arizona Department of Transportation, a public agency of the State of Arizona (“ADOT”), and Coffman Specialties, Inc., a California corporation and Fisher Sand & Gravel Co., a North Dakota corporation, a Joint Venture (the Coffman Specialties, Inc./Fisher Sand & Gravel Co. Joint Venture) (Design-Builder) (ADOT and Design-Builder are collectively referred to herein as the “Parties”).

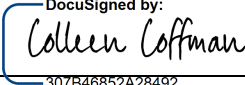
NOW, THEREFORE, in consideration of the sums to be paid by ADOT to Design-Builder, the Work to be performed by Design-Builder and the covenants and agreements set forth herein, the Parties hereby agree to this Agreement.

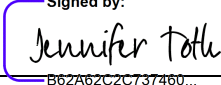
IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

Design-Builder

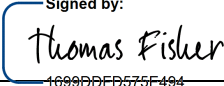
Arizona Department of Transportation

Coffman Specialties, Inc.

Signature:  307B46852A28492...
Print Name: Colleen Coffman
Title: President

Signature:  B62A62C2C737460...
Print Name: Jennifer Toth
Title: Director

Fisher Sand & Gravel Co.

Signature:  1699DDFD575E494...
Print Name: Thomas Fisher
Title: President

1 GENERAL**1.01 Introduction****(A) Purpose**

The Arizona Department of Transportation (ADOT) is undertaking the Phoenix-Casa Grande Highway (I-10), State Route (SR) 202L (Santan/South Mountain) to Gila River Bridge project, and commonly referred to as the I-10 Gila River Indian Community Project (Project) to improve the operational characteristics of I-10 and the associated traffic interchanges (TIs) through the Project limits and add capacity to meet future year 2040 traffic demands through a Design-Build Agreement (DBA). The Project is led by ADOT, in cooperation with the Gila River Indian Community (Community), and Maricopa Association of Governments (MAG). The Project is defined further in the Technical Provisions (TPs).

(B) Background

ADOT has been moving forward with development of the Wild Horse Pass Corridor, I-10 from SR 202L to SR 387 (of which the Project is a part), (the "Corridor"), for several years, using its own personnel; retaining consultants; and engaging with stakeholders such as the Community, MAG, Federal Highway Administration (FHWA), Bureau of Indian Affairs (BIA), Maricopa County, Pinal County, the City of Phoenix, other Governmental Entities, and the public. In general, the following developments have occurred:

(1) Environmental Process**(a) Corridor**

(i) The Draft Environmental Assessment (EA) for the Corridor was released for public review on August 19, 2022.

(ii) On February 21, 2024, the Community Tribal Council approved the Final EA (FEA) for the Corridor, for release where the FEA was posted to the Corridor website on February 26, 2024. The FEA was available for public review for 30 Days and the ADOT *Finding of No Significant Impact* (FONSI), signifying ADOT approval of the environmental assessment, was signed on March 28, 2024.

(iii) The BIA adopted the ADOT EA for the Corridor and concurrently posted the FEA on their website on February 29, 2024.

(iv) The acquisition of allotted lands for the Corridor proceeded when the BIA FONSI was signed on February 29, 2024.

(v) Archaeological testing and data recovery for the Corridor began in Spring 2024.

(b) I-10/Koli Road (Rd) TI

(i) The Draft EA for I-10/Koli Rd TI was released for public review in June 2025 and the ADOT FONSI was signed on October 15, 2025.

(ii) The acquisition of allotted lands for the I-10/Koli Rd TI will proceed after the BIA FONSI is signed which is anticipated in December 2025.

(2) Request For Qualifications Process

(a) ADOT issued a Request for Qualifications (as amended, the "RFQ") for the Project on February 14, 2024.

(b) In response to the RFQ, ADOT received two Statements of Qualifications (SOQs) by June 28, 2024 and subsequently short-listed two Proposers on July 25, 2024.

(3) Request for Proposals Process

(a) ADOT issued a Request for Proposal (as subsequently amended by addenda, the "RFP") to each of the short-listed entities on January 6, 2025 to design and construct the design-build Project.

(b) In response to the RFP, ADOT received two proposals for the Project (the "Proposal") by July 14, 2025.

(c) The Selection Official and the Proposal evaluation committee determined that Design-Builder was the Proposer that best met the selection criteria contained in the RFP and that the Proposal provided the best value to the State of Arizona.

(d) On September 4, 2025, the ADOT Alternative Delivery and Major Projects Division Director ratified the recommendation of the Selection Official and the RFP evaluation committee and authorized ADOT staff to negotiate the Contract Documents.

(e) The Director of ADOT has been authorized to enter into this DBA, and the Arizona State Transportation Board has included the Project in the current ADOT Five-Year Transportation Facilities Construction Program.

(C) DBA

This DBA and the other Contract Documents (defined in Section 1.03) collectively constitute a design-build agreement, as contemplated by the Arizona Revised Statutes (ARS) § 28-7703(2). This DBA shall be subject to available funding, and nothing in this DBA shall bind the State to expenditures in excess of funds appropriated or otherwise allotted for the purposes outlined in this DBA.

The Parties intend for this DBA to be a lump-sum design-build agreement obligating Design-Builder to perform all Work by the Contractual Deadlines specified herein for payment of the Contract Price, subject to certain exceptions set forth herein. Design-Builder hereby agrees to accept such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Contract Price.

NOW, THEREFORE, in consideration of the sums to be paid by ADOT to Design-Builder, the Work to be performed by Design-Builder, the foregoing premises, and the covenants and agreements set forth herein, the Parties hereby agree to this DBA.

1.02 Abbreviations, Acronyms, and Definitions

The meaning of various abbreviations, acronyms, and capitalized terms used in this DBA and the other Contract Documents are defined in Exhibit 1 (Abbreviations, Acronyms, and Definitions).

1.03 Contract Documents and Order of Precedence

All documents listed below are essential parts of the Contract Documents and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete contract.

In case of discrepancy or conflict, the order in which they govern shall be as follows:

(A) Supplemental Agreements;

(B) This DBA and all Exhibits except for Exhibit 2 (Proposal Commitments and Clarifications);

(C) Exhibit 2;

- (D) Approved Deviations and Interpretive Engineering Decisions to the Technical Provisions;
- (E) Technical Provisions and Technical Provision Attachments (TPAs);
- (F) Intentionally left blank;
- (G) Standards, manuals, guidelines, and other publications to the extent incorporated by reference into the Contract Documents; and
- (H) Release for Construction (RFC) Submittals developed in accordance with the Contract Documents, provided that Project Special Provisions contained in the RFC Submittals shall have precedence over Plans.

Where dimensions on the plans are given or can be computed from other given dimensions they shall govern over scaled dimensions.

Notwithstanding the order of precedence among Contract Documents set forth above, when Exhibit 2-2 (Proposal Commitments) expressly specifies that it is intended to supersede specific provisions in the Contract Documents, Exhibit 2-2 shall control over specific provisions of the Contract Documents. In addition, if Design-Builder's Proposal, including Design-Builder's Proposal Design, includes statements, offers, terms, concepts or designs that provide higher quality items than otherwise required by the other Contract Documents or offer to perform services or meet standards in addition to or better than those otherwise required, or otherwise contains terms or designs that are more advantageous to ADOT than the requirements of the other Contract Documents, then Design-Builder's obligations hereunder shall include compliance with all such statements, offers, terms, concepts, and designs, which shall have the priority over such other Contract Documents. Where there are differing provisions on the same subject matter within the same Contract Document or in Contract Documents with the same level in the order of precedence, the provisions that establish the higher quality, manner, or method of performing the Work or use more stringent standards shall prevail.

In the event of any conflict, ambiguity, or inconsistency among the Technical Provisions or the manuals, standards, or guidelines referenced in the Technical Provisions, the following order of precedence shall apply:

- (A) A term in the Technical Provisions that addresses a manner of performing Work specifically for the Project shall prevail over a general term that is not specific to the Project and appears in a standard;
- (B) A term in a manual, standard, or guideline referenced in any of the TP Sections shall prevail over a term in the manuals, standards, or guidelines identified in TP Section 100.16(A) (Applicable Standards);
- (C) Among the manuals, standards, or guidelines referenced in a particular TP Section, a term in a manuals, standards, or guidelines referenced in a subsection of that TP Section that addresses a specific type, aspect, or manner of performing the Work shall prevail over a term in a manuals, standards, or guidelines referenced in the "Manuals, Standards, and Guidelines" table in such TP Section;
- (D) Subject to the foregoing, when a specific part, article, section, or provision of a manual, standard, or guideline is referenced, the terms of the referenced part, article, section, or provision shall prevail over a general reference to a manual, standard, or guideline as a whole; and
- (E) Subject to the foregoing, a provision in a manual, standard, or guideline that establishes a higher-quality manner or method of performing the Work, or more stringent standards shall prevail.

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

Certain Reference Information Documents (RIDs), or portions thereof, are specifically referenced in the Contract Documents for the purpose of defining requirements of the Contract Documents. RIDs, or portions thereof, that are specifically referenced in the Contract Documents for the purpose of defining specific requirements, shall be deemed

incorporated into the Contract Documents only to the extent so referenced and with the same order of precedence as the applicable Contract Document.

1.04 Interpretation of the Contract Documents

(A) ADOT

In the Contract Documents, the word "Arizona Department of Transportation or ADOT" means ADOT personnel, including ADOT's consultants in fulfilling ADOT's responsibilities.

(B) Headings

Titles and headings are for convenience of reference, have no bearing on the interpretation of the Contract Documents, and under no circumstances are they or any of them to be treated or construed as part of this DBA.

(C) Section References

Section references in the Contract Documents that contain only the word "Section" followed by a number are references to sections within the document itself (e.g., Section 1 in this document refers to Section 1 of the DBA). References to sections in documents outside of the document itself will refer to that document (e.g., When referring to Section 1 within the Technical Provisions in the DBA, it will say "TP Section 1").

(D) Publication Date

When a publication is specified, it refers to the most recent date of issue, including interim publications, as of the Setting Date, unless a specific date or year of issue is provided.

(E) Number and Gender

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

(F) References to Agreements and Other Documents

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

(G) Meaning of Or Equal

In the Contract Documents, the words "or equal", referring to a product, material, or process, mean "equal as determined by ADOT."

(H) Indication

In the Contract Documents, the words "as indicated" or "indicated" mean "as indicated or indicated in the Contract Documents."

(I) Meaning of Including

In the Contract Documents, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an all-inclusive list.

(J) Mandatory Language

Unless otherwise stated, the words "shall", "must", "will", and other words commonly construed as indicative of a mandatory obligation are to be construed as imposing a mandatory requirement or obligation.

(K) Time Zone

Unless specified otherwise, references in the Contract Documents to time or hours shall be to Mountain Standard Time as observed in the State, which does not observe Daylight Saving Time.

(L) Written Notices and Direction from ADOT Authorized Representatives

Unless specified otherwise, written notices and direction from ADOT-Authorized Representatives can be in hard copy or electronic form.

(M) Meaning of Intentionally Left Blank

"Intentionally left blank" when used in the Contract Documents shall have no bearing on the interpretation of the terms and conditions within the Contract Documents.

(N) Meaning of Coordinate with the Community

Whenever the Contract Documents make references to coordination between the Design-Builder and the Community, such references shall be interpreted as Design-Builder coordination with the Community through ADOT.

(O) Meaning of Coordinate with the BIA

Whenever the Contract Documents make references to coordination between the Design-Builder and the BIA, such references shall be interpreted as Design-Builder coordination with the BIA through ADOT.

1.05 Omissions in the Contract Documents

If the Contract Documents omit minor details of any Work that are necessary to carry out the intent of the Contract Documents, it shall not relieve Design-Builder from performing such omitted Work. Instead, Design-Builder shall be deemed to have known or have had reason to know of such omission prior to the Effective Date, and shall perform such Work as if the details were fully and correctly described in the Contract Documents without entitlement to a Supplemental Agreement, except as specifically allowed under Section 8.

1.06 Reference Information Documents (RIDs)

ADOT has provided the RIDs to Design-Builder. Except as provided in Section 1.03:

(A) The RIDs are not mandatory or binding on Design-Builder;

(B) Design-Builder is not entitled to rely on the RIDs as presenting any design or engineering solutions or other direction, or as presenting any means or methods, for complying with the requirements of the Contract Documents, Governmental Approvals, Community Approvals, BIA Approvals, or Law;

(C) ADOT will not be liable for any causes of action, claims or Losses suffered by any Design-Builder-Related Entity by reason of any use of information contained in, or any action or forbearance in reliance on, the RIDs;

(D) ADOT has not verified the information in the RIDs, and does not represent or warrant that the information contained in the RIDs is free from error or that such information is in conformity with the requirements of the Contract Documents, NEPA Approval, Community Approvals, BIA Approvals, other Governmental Approvals, or Laws;

(E) ADOT makes no representations or warranties as to any surveys, data, reports or other information provided by ADOT or other Persons concerning surface conditions and subsurface conditions, including information relating to Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological, cultural and historic resources, unexploded ordnance, seismic conditions, and Threatened or Endangered Species, affecting the Work, the Site or surrounding locations;

- (F) Design-Builder shall have no right to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim based on any error in the RIDs;
- (G) Design-Builder certifies Reasonable Investigation has been conducted to verify or supplement the RIDs; and
- (H) If and to the extent any Design-Builder-Related Entity uses information in the RIDs, such use is entirely at Design-Builder's own risk and at its own discretion and Design-Builder, not ADOT, is responsible for the use of such information.

1.07 Regulatory Requirements

Design-Builder shall comply and require Design-Builder-Related Entities to comply with all applicable Federal Requirements, including those requirements set forth in Exhibit 3 (Federal Requirements). In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions, except for Supplemental Agreements.

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

For purposes of the foregoing paragraph, the term "Regulations" means:

- (A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- (B) 49 CFR Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation — Effectuation Of Title VI Of The Civil Rights Act Of 1964*); and
- (C) 28 CFR section 50.3 (*U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964*).

1.08 Licensing Requirements

Design-Builder, Design-Builder-Related Entities, including its Subcontractors, and all personnel must have the appropriate licenses, registration, and credentials in compliance with all applicable codes, rules, regulations, and laws.

ADOT does not intend to contract for, pay for, or receive any Professional Services that are in violation of any professional licensing or registration laws. By execution of this DBA, Design-Builder acknowledges that ADOT has no such intent.

1.09 Incorporation of Alternative Technical Concepts

If the Contract Documents incorporate any Alternative Technical Concept (ATC) in their entirety and either:

- (A) Design-Builder does not comply with one or more ADOT conditions of pre-approval for the ATC, or
- (B) Design-Builder does not obtain any required third-party approval(s) for the ATC, then Design-Builder shall comply with the requirements in the Contract Documents that would have applied in the absence of such ATC.

Such compliance shall be without an increase in the Contract Price, Contractual Deadline adjustment, or any other Claim or Supplemental Agreement.

1.10 ADOT Monetary Obligations

Every obligation of the State under this DBA is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. If funds are not allocated and available for the continuance of this DBA, this DBA may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

End Section

2 DESIGN-BUILDER OBLIGATIONS**2.01 Intent and Duration of the DBA**

The intent of the DBA is to provide for the design, construction, and completion of the Work to the satisfaction of ADOT. Design-Builder shall furnish experienced supervision and labor, and all materials, equipment, tools, transportation, and supplies required to complete the Work in accordance with the Plans, Project Special Provisions, terms, and conditions of the Contract Documents.

This DBA shall take effect on the Effective Date and shall remain in effect until the earlier to occur of: (a) Final Acceptance (D&C); or (b) the date that this DBA is terminated as provided herein.

(A) Covenant of Good Faith and Fair Dealing

This DBA imposes an obligation of good faith and fair dealing in its performance and enforcement.

Design-Builder and ADOT, with a positive commitment to honesty and integrity, agree to the following mutual duties:

- (1) Each will function within the laws and statutes applicable to their duties and responsibilities.
- (2) Each will avoid hindering the other's performance.
- (3) Each will proceed to fulfill its obligations diligently.
- (4) Each will cooperate in the common endeavor of the DBA.

2.02 Performance of the Work

As more fully described in the Contract Documents, Design-Builder shall perform the Work. The Work shall include the development, design, and construction of the Project, conforming to the Basic Configuration and otherwise complying with the requirements of the Contract Documents, except as otherwise approved by ADOT. All materials, services, and efforts necessary to achieve Substantial Completion and Final Acceptance (D&C) of the Project on or before the applicable Contractual Deadline shall be solely Design-Builder's responsibility, except as otherwise specifically provided in the Contract Documents. Design-Builder shall plan, schedule, and execute all aspects of the Work and shall coordinate its activities with all Persons who are directly impacted by the Work. Subject to the terms of Section 8, the cost of all Work, including such materials, services, and efforts as are necessary to complete the Work are included in the Contract Price.

2.03 Cooperation by Design-Builder**(A) With ADOT**

Design-Builder shall give the Work the constant attention necessary to facilitate the progress thereof and shall cooperate with and provide access to the Project at all times to ADOT, ADOT's Inspectors, the General Engineering Consultant (GEC), ADOT consultants, and other contractors in every way possible.

(B) With Other Contractors

ADOT reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the DBA.

Design-Builder shall, and shall cause Design-Builder-Related Entities to cooperate and coordinate the Work with each other as well as other contractors, regardless of whether the contractors work for ADOT or other Persons, whose projects or work may affect the Project or the Work.

It is ADOT's policy as to when separate contracts are awarded adjacent to the limits of any one project, each contractor shall conduct its work so as not to interfere with or hinder the progress of completion of the work being

performed by each of the parties involved. Design-Builder shall comply with the requirements in TP Section 105.09 (Cooperation Between Contractors).

Design-Builder shall assume all liability, financial or otherwise, in connection with this DBA and shall protect and hold harmless ADOT from any and all damages or claims that may arise because of inconvenience, delay or loss experienced by it or other contractors because of the presence and operations of other contractors working within the limits of the Project.

ADOT agrees to include in its contracts with other contractors entered into subsequent to the Effective Date, provisions similar to this Section 2.03(B), imposing a similar duty of cooperation among contractors.

2.04 Designation and Cooperation of Representatives

ADOT and Design-Builder shall each designate an individual or individuals with the authority to make decisions and bind the Parties on matters relating to the Contract Documents (for each Party, its respective "Authorized Representative"). Exhibit 4 (Initial Designation of Authorized Representatives) provides the Parties' initial Authorized Representative roles and designations. Either Party may change its initial Authorized Representative designation by a subsequent notification delivered to the other Party in accordance with Section 24.11.

Design-Builder's Authorized Representative(s) shall have on-site field and office authority to represent and act on behalf of Design-Builder. A Design-Builder Authorized Representative shall be present at the Site at all times while Work is in progress.

The Parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the design and construction of the Project and negotiate on behalf of each of the Parties, but who do not have authority to bind ADOT or Design-Builder.

Design-Builder shall cooperate with ADOT and all representatives of ADOT designated as described above.

2.05 Character of Workers

Design-Builder shall employ sufficient labor and provide sufficient equipment to complete the Work within the time required by the Contract Documents.

All workers shall have sufficient skill and experience to perform properly the Work assigned to them. Workers engaged in special Work or skilled Work shall have sufficient experience in such Work and in the operation of the equipment required to perform all Work properly and satisfactorily.

2.06 Sanitary, Health, and Safety Provisions

Design-Builder shall provide and maintain in a neat and sanitary condition such accommodations for the use of Design-Builder's employees as may be necessary to comply with the requirements and regulations of the Arizona State Department of Health Services, the Community, the BIA, or other Governmental Entity therein.

Attention is directed to federal, State, and local laws, rules and regulations concerning construction safety and health standards. Design-Builder shall not require any workers to Work in surroundings or under conditions which are unsanitary, hazardous or dangerous to their health or safety.

Occupational Safety and Health Standards shall apply at all times. Design-Builder shall have, in accordance with Occupational Safety and Health Administration (OSHA) requirements, *Safety Data Sheets* (SDS) available for all applicable materials stored or utilized on the Project. Should Design-Builder fail to follow OSHA regulations, ADOT may suspend the Work by written notice until compliance has been achieved. Any such failure to comply with OSHA regulations shall constitute waiver of any right to claim for such suspended work. If regulations are in conflict, the stricter regulation will apply.

2.07 Permits, Licenses, and Taxes

Design-Builder and its Subcontractors must procure all permits, licenses, Community Approvals, BIA Approvals, including a business license from the Gila River Indian Community; pay all charges, and fees; and give all notices necessary and incidental to the due and lawful prosecution of the Work.

Design-Builder shall pay, prior to delinquency, all applicable taxes. Design-Builder shall have no right to an increase to the Contract Price, a Contractual Deadline, or any other Claim due to its misinterpretation of Laws respecting taxes or incorrect assumptions regarding applicability of taxes.

2.08 Patented Devices, Materials, and Processes

If Design-Builder employs any design, device, material or process covered by letters of patent or copyright, Design-Builder shall provide for such use by suitable legal agreement with the patentee or owner.

Design-Builder and the Surety shall defend, indemnify, and hold harmless ADOT and any affected third party or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process or any trademark or copyright and shall indemnify ADOT and any affected third party or political subdivision for any costs, expenses and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

End Section

3 MANAGEMENT SYSTEMS AND OVERSIGHT

3.01 Submittal Review Time, Levels of Review, and Comment Resolution

(A) Review Time

(1) ADOT Review Time

Unless otherwise specified in the Contract Documents, whenever ADOT is entitled to review, comment on, or to approve or accept a Submittal, ADOT will have review durations in accordance with TP Section 113.03(C) (Submittal Review Periods). If ADOT determines that a Submittal is not complete, ADOT will notify Design-Builder of such determination. ADOT's review period for Design-Builder's re-submission of a Submittal shall be 10 Business Days for each re-submission, unless otherwise specified in TP Section 113.03(C) (Submittal Review Periods). The Parties shall agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals.

The amount of Design-Builder's Submittals to ADOT shall not exceed the number of Submittals per technical discipline stated in TP Section 113.03(C) (Submittal Review Periods). ADOT shall have no obligation to review any Submittals that exceed the maximum number specified for each technical discipline. Submittals are deemed to be concurrent to the extent the review time periods available to ADOT under this Section 3.01(A)(1) entirely or partially overlap. If ADOT agrees to consider Submittals in excess of the number of concurrent Submittals otherwise permitted under the Contract Documents, Design-Builder may establish by written notice to ADOT an order of priority for such Submittals and ADOT will attempt to comply with such order of priority.

(2) Community Review Time

Unless otherwise specified in the Contract Documents, whenever the Community is entitled to review, comment on, or to approve or accept a Submittal, the Community will have review durations in accordance with TP Section 113.03(C) (Submittal Review Periods). If ADOT determines that a Submittal is not complete, ADOT will notify Design-Builder of such determination. The Community's review period for Design-Builder's re-submission of a Submittal shall be 17 Business Days for each re-submission, unless otherwise specified in TP Section 113.03(C) (Submittal Review Periods). The Parties shall agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals.

The amount of Design-Builder's Submittals to the Community shall not exceed the number of Submittals per technical discipline stated in TP Section 113.03(C) (Submittal Review Periods). The Community shall have no obligation to review any Submittals that exceed the maximum number specified for each technical discipline. Submittals are deemed to be concurrent to the extent the review time periods available to the Community under this Section 3.01(A)(2) entirely or partially overlap. If the Community agrees to consider Submittals in excess of the number of concurrent Submittals otherwise permitted under the Contract Documents, Design-Builder may establish by written notice to ADOT an order of priority for such Submittals and the Community will attempt to comply with such order of priority.

(3) BIA Review Time

Unless otherwise specified in the Contract Documents, whenever the BIA is entitled to review, comment on, or to approve or accept a Submittal, the BIA will have review durations in accordance with TP Section 113.03(C) (Submittal Review Periods). If ADOT determines that a Submittal is not complete, ADOT will notify Design-Builder of such determination. The BIA's review period for Design-Builder's re-submission of a Submittal shall be 20 Business Days for each re-submission, unless otherwise specified in TP Section 113.03(C) (Submittal Review Periods). The Parties shall agree in good faith upon any necessary extensions of the review-comment-and-approval period to accommodate particularly complex or comprehensive Submittals.

The amount of Design-Builder's Submittals to the BIA shall not exceed the number of Submittals per technical discipline stated in TP Section 113.03(C) (Submittal Review Periods). The BIA shall have no obligation to review any

Submittals that exceed the maximum number specified for each technical discipline. Submittals are deemed to be concurrent to the extent the review time periods available to the BIA under this Section 3.01(A)(3) entirely or partially overlap. If the BIA agrees to consider Submittals in excess of the number of concurrent Submittals otherwise permitted under the Contract Documents, Design-Builder may establish by written notice to ADOT an order of priority for such Submittals and the BIA will attempt to comply with such order of priority.

(B) Levels of Review

(1) Sole Discretion Approval (Level 1)

If a Submittal is one for which the Contract Documents state that approval or consent or acceptance is required from ADOT in its sole discretion, then ADOT's lack of approval, determination, decision, or other action within the applicable time period described in Section 3.01(A) shall be deemed disapproval. If approval is subject to the sole discretion of ADOT, then ADOT's decision shall be final, binding, and not subject to the Dispute Resolution Procedures and such decision shall not constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event, or other basis for an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim.

(2) Good Faith Discretion Approval (Level 2)

If a Submittal is one for which the Contract Documents state that approval or consent or acceptance is required from ADOT in its good faith discretion and ADOT delivers no approval, consent, determination, decision or other action within the applicable time period under Section 3.01(A), then Design-Builder may deliver to ADOT a written notice stating the date within which ADOT was to have decided or acted and that if ADOT does not decide or act within five Business Days after receipt of such notice, delay from and after lapse of the applicable time period under Section 3.01(A) may constitute ADOT-Caused Delay for which Design-Builder is entitled to submit a Relief Event Notice in accordance with Section 8.03(D)(1).

(3) Review and Comment (Level 3)

Whenever the Contract Documents provide that a Submittal or other matter is subject to ADOT's review, comment, review and comment, disapproval or similar action not entailing a prior approval, and ADOT delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.01(A), then Design-Builder may proceed thereafter at its election and risk, without prejudice to ADOT's rights to later object or disapprove. No such failure or delay by ADOT in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period under Section 3.01(A) shall constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event or other basis for an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim.

(4) Submit/Receive (Level 4)

Whenever the Contract Documents provide that Design-Builder is to deliver a Submittal to ADOT but express no requirement for ADOT review, comment, disapproval, prior approval or other ADOT action, then Design-Builder is under no obligation to provide ADOT any period of time to review the Submittal or obtain approval of it before proceeding with further Work contained in the particular Submittal. However, ADOT will have the right to at any time review, comment on, take exception to, object to, reject or disapprove the Submittal. No failure or delay by ADOT in delivering comments, exceptions, objections, rejections, or disapprovals with respect to the Submittal shall constitute an ADOT-Caused Delay, ADOT-Directed Change, Relief Event, or other basis for an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim.

(5) Community's Level of Review

Unless otherwise specified in the Contract Documents, whenever the Contract Documents provide that Design-Builder is to deliver a Submittal to ADOT and the Community, the "Level of Review" for such Submittal to the Community is the same as ADOT's "Level of Review". The Community's "rules" for Submittals are the same as ADOT's as specified in this Section 3.01(B). (e.g., If the Contract Documents indicate a level of review "Level 2" Submittal is

to be submitted to ADOT and the Community and the Community delivers no approval, consent, determination, decision or other action within the applicable time period under TP Section 113.03(C) (Submittal Review Periods), then Design-Builder may deliver to ADOT a written notice stating the date within which the Community was to have decided or acted and that if Community does not decide or act within five Business Days after receipt of such notice, delay from and after lapse of the applicable time period under TP Section 113.03(C) (Submittal Review Periods) may constitute Community Delay for which Design-Builder is entitled to submit a Relief Event Notice in accordance with Section 8.03(D)(1).

(C) Resolution of ADOT Comments

Design-Builder shall respond in writing to all of ADOT's comments, exceptions, disapprovals, and objections to a Submittal and make modifications to the Submittal as necessary to resolve all such comments, exceptions, disapprovals, and objections, in accordance with the review processes established in the Contract Documents. If Design-Builder does not resolve any comment, exception, disapproval or objection, Design-Builder shall follow the requirements in Section 14.

(D) Limitations on Design-Builder's Right to Rely

No review or Oversight by or on behalf of ADOT, including review and approval of the PMP, or lack of any such action by ADOT, shall constitute acceptance by ADOT of materials or Work, or waiver of any legal or equitable right under the Contract Documents. ADOT is entitled to complete and accurate Submittals, to remedies for unapproved Deviations, Nonconforming Work, and Design-Builder Defaults, and to identify and require additional Work to bring the Work and Project into compliance with requirements of the Contract Documents. Without regard to any such activity or failure to conduct any such activity by ADOT, Design-Builder shall, at all times, have an independent duty and obligation to fulfill the requirements of the Contract Documents.

3.02 Oversight, Inspection, and Testing

ADOT will have the right at all times to conduct Oversight to: (a) comply with FHWA or other applicable federal agency requirements, where applicable; and (b) verify Design-Builder's compliance with the Contract Documents, PMP, and any applicable Law. ADOT may designate any Person or Persons, including its consultants and independent auditors, to carry out any Oversight on ADOT's behalf. ADOT will conduct Oversight in concert with Design-Builder's safety procedures and manuals, and in a manner that does not unreasonably interfere with normal Project construction activity. The Independent Quality Firm (IQF) must perform oversight, inspection, and testing in accordance with the Contract Documents.

ADOT's Oversight rights shall include the following:

- (A) Monitoring and auditing Design-Builder, Design-Builder-Related Entities, and the Books and Records in accordance with the Contract Documents;
- (B) Conducting periodic reviews of Project documentation and files;
- (C) Conducting material tests, according to ADOT's test methods, a Governmental Entity's test methods, or a Utility Company's test methods, as determined by ADOT, to verify:
 - (1) Design-Builder's compliance with all testing frequencies and requirements, including performance and testing set forth in the Contract Documents and the approved PMP;
 - (2) The accuracy of the tests performed by or on behalf of Design-Builder pursuant to the approved Construction Quality Management Plan (CQMP); and
 - (3) Compliance of materials incorporated into the Project with the applicable requirements, conditions, and standards of the Contract Documents, Governmental Approvals, the PMP, and Law;

- (D) Confirming that inspections and audits were performed by or on behalf of Design-Builder pursuant to the approved Professional Services Quality Management Plan (PSQMP) and approved CQMP;
- (E) Reviewing and commenting on Submittals;
- (F) Reviewing records and conducting interviews as necessary to verify compliance with federal, State, and local laws and regulations;
- (G) Participating in meetings described in TP Section 108.13 (Meetings) to discuss design progress, construction progress, Design-Builder's quality control processes, audit activities, and other PMP issues;
- (H) Accompanying Design-Builder on Inspections, conducting its own inspections in addition to the Inspections, assessing Design-Builder's records of Inspections and Project conditions, and assessing the condition of Elements;
- (I) Attending and witnessing Design-Builder's other tests and inspections, including Intelligent Transportation System (ITS) and irrigation system start-up and acceptance tests and inspections;
- (J) Reviewing Design-Builder's certification of Record Drawings and surveys and Project Schedule; and
- (K) Investigating and monitoring Design-Builder's compliance with the Safety Management Plan.

ADOT will have the right to conduct formal reviews of every Design Document and Construction Document.

Nothing in the Contract Documents shall preclude, and Design-Builder shall not interfere with, any review, inspection, or oversight of Submittals or of Work that ADOT desires to conduct, or that the Community, the BIA, FHWA, Governmental Entity, or Utility Company may desire to conduct.

3.03 Interpretive Engineering Decisions

Design-Builder may apply in writing by using Exhibit 13 (Interpretive Engineering Decision Request Form) to ADOT for approval of an Interpretive Engineering Decision concerning the meaning, scope, interpretation, and application of the Technical Provisions (an "Interpretive Engineering Decision"). In response to Design-Builder's application for an Interpretive Engineering Decision, ADOT may issue a written approval of Design-Builder's proposed Interpretive Engineering Decision (if any), may issue its own Interpretive Engineering Decision, or may disapprove any Interpretive Engineering Decision Design-Builder proposes. No document, including any field directive, shall be valid, effective, or enforceable as an Interpretive Engineering Decision unless expressly identified as an "Interpretive Engineering Decision" and signed by ADOT's Authorized Representative in accordance with Exhibit 4-1 (ADOT Authorized Representatives).

Within 10 Business Days after Design-Builder applies for an Interpretive Engineering Decision, or such other time period as ADOT and Design-Builder may agree to at the time of such application, ADOT will provide its written determination including explanation of any disapproval of such application or any differing interpretation. If ADOT does not respond within such time period, the request shall be deemed disapproved. If Design-Builder disputes ADOT's disposition of the application, such dispute shall be subject to resolution in accordance with the Dispute Resolution Procedures.

Approved Interpretive Engineering Decisions shall constitute provisions of the Technical Provisions and shall not constitute an ADOT-Directed Change or entitle Design-Builder to an increase in the Contract Price, a Contractual Deadline adjustment, or other Claim. Subsequent ADOT written orders and directives that are issued in accordance with this DBA, and contrary to the Interpretive Engineering Decision, may constitute an ADOT-Directed Change.

3.04 Software Compatibility

Unless otherwise specifically stated in the Contract Documents, all software that Design-Builder uses for any aspect of the Project must be compatible with software used by ADOT and must comply with the software requirements

1 set forth in the Technical Provisions. Prior to using any software or version of software not then in use by ADOT or
2 compatible with software then in use by ADOT, Design-Builder shall obtain written approval from ADOT. In addition,
3 Design-Builder shall provide to ADOT staff, at Design-Builder's cost, working electronic copies of the software, any
4 necessary licenses for ADOT's use of the software required under Section 23.07(C), and any training reasonably
5 necessary to ensure that ADOT is able to use the same or compatible software as Design-Builder.

6 Design-Builder shall submit all documents, correspondence, and Submittals to ADOT through the ADOT Electronic
7 Document Management System (EDMS) in accordance with TP Section 113.03(A)(2)(b) (*Submission*).

8 **End Section**

4 DBA TIME**4.01 Time of Essence**

Time is of the essence in this DBA. Design-BUILDER shall complete the Work within the time periods set forth in this DBA. Except where this DBA expressly provides for an extension of time, the time limitations set forth in the Contract Documents for ADOT's and Design-BUILDER's performance of its covenants, conditions, and obligations are of the essence. Except as provided in this DBA, Design-BUILDER waives any right at law or in equity to tender or complete performance beyond the applicable time period, or to require ADOT to accept such performance; provided, however, that if Design-BUILDER does not complete performance within the applicable time period, Design-BUILDER shall remain responsible for completing the Project subject to ADOT's right to exercise any remedies available to it, including termination of this DBA.

4.02 Contractual Deadlines

Design-BUILDER shall perform the Work consistent with the Project Schedule so as to achieve the Contractual Deadlines specified in Exhibit 5 (Contractual Deadlines). Except as otherwise specifically provided in Section 8, ADOT will have no obligation to adjust a Contractual Deadline and Design-BUILDER shall not be relieved of its obligation to comply with the Project Schedule and to achieve the Contractual Deadlines specified in Exhibit 5 for any reason.

4.03 Notices to Proceed

Authorization allowing Design-BUILDER to proceed with the Work shall be provided through ADOT's issuance of Notice to Proceeds (NTPs). ADOT has no obligation to issue an NTP for Work under this DBA, and unless and until ADOT issues NTP 1, ADOT will have no liability to Design-BUILDER under this DBA except as provided otherwise under Section 8.03(C)(3) item (s). ADOT's liability under this DBA shall be limited to payment owing for Work authorized under NTPs actually issued.

(A) Issuance of NTP 1

Issuance of NTP 1 authorizes Design-BUILDER to do only the following listed in Table 4-1:

Table 4-1: NTP 1 Work

No.	Description	Reference
1.	Mobilize, including establishing the Project Office	<u>TP Section 926</u>
2.	Preparing all <u>PMP</u> volumes	<u>TP Section 110.02</u>
3.	Preparing the Project Schedule	<u>TP Section 108.12</u>
4.	Preparing the <u>Transportation Management Plan (TMP)</u>	<u>TP Section 701.02(A)</u>
5.	Preparing the <u>Environmental Management Plan (EMP)</u>	<u>TP Section 117.02(C)</u>
6.	Preparing the <u>Stormwater Pollution Prevention Plan (SWPPP)</u>	<u>TP Section 104.09(B)</u>
7.	Preparing the <u>Noxious and Invasive Species Control Plan</u>	<u>TP Section 800.02(B)</u>
8.	Preparing the <u>Segment Limits Map</u>	<u>TP Section 113.04(A)</u>
9.	Preparing the <u>Basis of Design Report</u>	<u>TP Section 100.17</u>
10.	Preparing the bulletin boards	<u>TP Section 100.18</u>

No.	Description	Reference
11.	Preparing the <u>Existing Conditions Site Documentation</u>	<u>TP Section 100.19(B)</u>
12.	Preparing the <u>Utility Coordination Plan</u>	<u>TP Section 119.02(C)(1)</u>
13.	Preparing the Drainage Inventory	<u>TP Section 500.02(A)(1)</u>
14.	Preparing the <u>ITS Inventory</u>	<u>TP Section 738.02(B)</u>
15.	Enter the Project Right-of-Way (ROW) to which ADOT has made access available to conduct surveys and site investigations, including geotechnical, Hazardous Materials, and Utilities investigations, provided that Design-Builder shall not conduct any ground-disturbing activities within or outside the Schematic ROW until ADOT has received and approved, as provided in the Technical Provisions, the <u>EMP</u> , and <u>SWPPP</u> . Ground disturbing Work shall not be performed until Design-Builder satisfies all conditions precedent in accordance with <u>Exhibit 6-2 (Conditions Precedent to Ground Disturbing Activities)</u> .	<u>TP Section 118</u> <u>Section 7.03</u>
16.	Commence negotiating Utility Agreements with Utility Companies	<u>TP Section 119</u>
17.	Commence acquisition of Temporary Work Areas	<u>TP Section 118</u>
18.	At Design-Builder's option, commence Design Work, provided that ADOT will not pay for or commence review of Design Documents until Design-Builder satisfies all conditions precedent in accordance with <u>Exhibit 6-1 (Conditions Precedent to ADOT Review of Design Documents)</u> .	<u>Section 6.02(C)</u>
19.	Preparing the Workforce Development Plan	<u>Section 5.11</u>

(B) Issuance of NTP - Koli

ADOT anticipates issuing NTP – Koli during the NTP – Koli Window. Issuance of NTP – Koli authorizes Design-Builder to perform final design (submitting RFC Submittals) and Construction Work and related activities pertaining to the I-10/Koli Rd TI, contingent upon satisfying all related conditions precedent as specified in Exhibit 6-1, Exhibit 6-2, Exhibit 6-3 (Conditions Precedent to Issuance of NTP 2), and Exhibit 6-4 (Conditions Precedent to Commencement of Construction Work).

(C) Issuance of NTP 2

ADOT may issue NTP 2, provided that Design-Builder has complied with and satisfied all conditions precedent to issuance of NTP 2 as specified in Exhibit 6-3. Issuance of NTP 2 authorizes Design-Builder to perform all Work and related activities pertaining to the Project.

4.04 Project Schedule

(A) General

Design-Builder shall undertake and complete the Work in accordance with the Project Schedule prepared in conformance with TP Section 108.12 (Schedules). The Parties shall use the Project Schedule for planning and monitoring the progress of the Work and as the basis for determining the amount of monthly progress payments to be included in the Draw Requests. The Project Schedule shall provide for payment of the Contract Price to be made solely on the basis of progress by Design-Builder.

(B) Float

All Float contained in the Project Schedule, as shown in the Preliminary Schedule or as generated thereafter in the Project Schedule, shall be a shared, jointly owned Project resource available to either Party or both Parties as needed to absorb delay caused by Relief Events or any other event. All Float and corresponding Controlling Work Items shall be shown as such in the Project Schedule on each affected schedule path. ADOT will have the right to examine the identification of (or failure to identify) Float and Controlling Work Items on the Project Schedule in determining whether to approve the Project Schedule. Once identified, Design-Builder shall monitor, account for, and maintain Float in accordance with Critical Path methodology and TP Section 108.12 (Schedules).

(C) Recovery Schedule

If at any time the Work on any Critical Path item is delayed for a period that exceeds the time set forth in TP Section 108.12(F) (Recovery Schedule) (including delays for which Design-Builder may be entitled to a Contractual Deadline adjustment under Section 8), or as otherwise provided in TP Section 108.12(F) (Recovery Schedule), Design-Builder shall prepare and submit to ADOT for review and approval a Recovery Schedule meeting the requirements set forth in TP Section 108.12(F) (Recovery Schedule). In addition, if Design-Builder fails to meet any Contractual Deadline, as may be adjusted in accordance with Section 8, then Design-Builder shall prepare a Recovery Schedule in accordance with TP Section 108.12(F) (Recovery Schedule) that demonstrates Design-Builder's proposed plan to achieve Substantial Completion and Final Acceptance (D&C) with as little additional delay as possible. Design-Builder shall submit the Recovery Schedule to ADOT for review and approval.

Except as otherwise provided in Section 8, all costs incurred by Design-Builder in preparing, implementing, and achieving the Recovery Schedule shall be borne by Design-Builder and Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim as a result thereof.

4.05 Substantial Completion**(A) General**

ADOT will issue a written Certificate of Substantial Completion on the date that all conditions precedent specified in Exhibit 6-5 (Conditions Precedent to Substantial Completion) have been met at all locations on the Project.

(B) Substantial Completion Process

The procedures for notification of Substantial Completion are as follows:

- (1) Design-Builder shall provide ADOT with not less than 35 Days prior notification of the date Design-Builder determines it will satisfy all conditions to Substantial Completion.
- (2) Design-Builder and ADOT will meet as needed for ADOT to determine whether Design-Builder will achieve Substantial Completion at the close of the 30-Day period that begins after ADOT's receipt of the above notification.
- (3) During such 30-Day period, ADOT will conduct an inspection of the completed Construction Work, a review of the applicable RFC Submittals and Construction Documents and such other investigation as may be necessary to evaluate whether Design-Builder is on schedule to achieve Substantial Completion. ADOT will provide all of its findings to be included in the Punch List.
- (4) Design-Builder shall provide ADOT a second notification when Design-Builder determines it has satisfied all conditions precedent to Substantial Completion, other than issuance by ADOT of a Certificate of Substantial Completion.
- (5) Within five Days after expiration of the 30-Day period and ADOT's receipt of the second notification, ADOT will either:

(a) Issue the Certificate of Substantial Completion; or

(b) Notify Design-Builder why the Project has not reached Substantial Completion.

(6) If ADOT and Design-Builder cannot agree as to the date of Substantial Completion, such dispute shall be resolved according to the Dispute Resolution Procedures.

(C) I-10/Wild Horse Pass Blvd/Sundust Rd TI

(1) General

ADOT will issue a written Certificate of Early Completion for the I-10/Wild Horse Pass Blvd/Sundust Rd TI Work on the date that all Work related to, or necessary for, the construction of the new bridge, ramps, crossroads, and retaining walls are complete and functional at the I-10/Wild Horse Pass Blvd/Sundust Rd TI, except for:

(a) Landscape and irrigation Work; and

(b) ITS Work.

(2) Early Completion Incentive

For each Day early that Design-Builder achieves early completion, measured by the number of Days prior to the Early Opening Deadline that ADOT issues the Certificate of Early Completion (inclusive of the date of issuance but not of the Early Opening Deadline), Design-Builder shall be entitled to an additional payment of \$5,000 per Day, up to \$500,000. Design-Builder shall receive such payment, if any, as a lump sum in the progress payment subsequent to the month in which ADOT issues the Certificate of Early Completion.

4.06 Acceptance

(A) Punch List

The schedule for preparation of the Punch List shall be consistent and coordinated with the inspections to verify that Design-Builder has achieved Substantial Completion.

Design-Builder shall prepare and maintain the Punch List. Design-Builder shall provide ADOT not less than five Days prior notice of the date when Design-Builder will commence Punch List field inspections and Punch List preparation. ADOT will participate in the development of the Punch List. Each Party shall have the right to add items to the Punch List, but neither shall remove any item added by the other Party without such other Party's express permission.

The Punch List shall solely consist of items of Work requiring correction or adjustment. The Punch List shall not contain any items of Work that Design-Builder has not started, or will commence or perform for the first time, regardless of whether Design-Builder contends that the item of Work does not need to be commenced to achieve the conditions to Substantial Completion. The Punch List shall not contain any Nonconforming Work for which a Non-Conformance Report (NCR) has been issued.

Design-Builder shall continue to Work on the Punch List items and diligently prosecute such Work to completion, consistent with the Contract Documents, within the time period to be set forth in the PMP and in any case within 90 Days after receipt of the Certificate of Substantial Completion.

Upon notice from the Design-Builder that the Work on the Punch List is complete, ADOT and the IQF will perform an inspection. If all Construction Work provided for and contemplated by the Contract Documents is found completed to ADOT's satisfaction, that inspection will constitute the Final Inspection.

If, however, the inspection discloses any Work, in whole or in part, as being unsatisfactory or not complete, ADOT will give Design-Builder written notice of the unsatisfactory or incomplete Work and Design-Builder shall immediately correct such Work.

(B) Landscape Establishment

Design-Builder shall meet, or cause to be met, the landscape establishment requirements, including plant watering, set forth in TP Section 800 (*Aesthetics, Landscape, and Irrigation*).

On or about 300 Days after issuance of Certification of Substantial Completion, Design-Builder and ADOT will jointly inspect plant materials installed as part of the landscaping Work. Not later than 20 Days after completing this inspection, Design-Builder shall prepare a Landscape Inspection Report that describes what (if any) of such installed plant materials:

(1) Died;

(2) Failed to establish a root system reasonably expected for plant materials of a similar type, nature, and maturity; and

(3) Failed to show a growth habit reasonably expected for plant materials of a similar type, nature, and maturity.

If any conditions described in items (1), (2), or (3) above has not occurred, Design-Builder shall state so in the Landscape Inspection Report. If the Landscape Inspection Report identifies any of the conditions described in item (1), (2), or (3) above, Design-Builder shall prepare a Landscape Restoration Plan that includes a copy of the Landscape Inspection Report and describes the actions Design-Builder will take to replace dead and underperforming plant materials, and to ensure the conditions described in said report do not reoccur. Not later than 20 Days after preparing the Landscape Inspection Report, Design-Builder shall submit the Landscape Restoration Plan to ADOT for approval.

Design-Builder shall complete all necessary replacement plantings no later than 30 Days after ADOT approves the Landscape Restoration Plan.

(C) Final Acceptance (D&C)

Design-Builder shall provide ADOT with 35 Days' notice of the date when Design-Builder expects to satisfy all of the conditions precedent specified in Exhibit 6-6 (*Conditions Precedent to Final Acceptance (D&C)*) other than issuance by ADOT of a Certificate of Final Acceptance (D&C). During the 30-Day period following receipt of such notification, Design-Builder and ADOT will meet and confer and exchange information as necessary to determine whether Design-Builder will satisfy the conditions to Final Acceptance (D&C) at the close of the 30-Day period.

ADOT will issue a Certificate of Final Acceptance (D&C) when all of the conditions precedent specified in Exhibit 6-6 have been satisfied, including, when applicable, the landscape establishment requirements established in Section 4.06(B).

ADOT will conduct an inspection of the Punch List items to the extent not previously completed, a review of the *Record Drawings*, and such other investigation as may be necessary to evaluate whether Design-Builder has satisfied the conditions to Final Acceptance (D&C).

Not later than five Days after expiration of such 30-Day period, ADOT will either:

(1) Issue a Certificate of Final Acceptance (D&C) for the Project; or

(2) Notify Design-Builder why Final Acceptance (D&C) has not been achieved.

If ADOT and Design-Builder cannot agree as to the date of Final Acceptance (D&C), such issue shall be considered a Dispute eligible for resolution according to the Dispute Resolution Procedures.

End Section

5 SUBCONTRACTING AND LABOR POLICIES**5.01 Non-Discrimination; Equal Employment Opportunity**

Design-Builder shall not, and shall cause Design-Builder-Related Entities not to, discriminate on the basis of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information in the performance of the Work under the Contract Documents.

Design-Builder shall comply, and shall cause Design-Builder-Related Entities to comply, with all applicable state and federal civil rights laws. Design-Builder and Design-Builder-Related Entities will not discriminate against any employee or applicant for employment because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Design-Builder will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Design-Builder shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

5.02 Intentionally Left Blank**5.03 Intentionally Left Blank****5.04 Subletting of Contracts****(A) General**

Design-Builder shall retain or cause to be retained only Subcontractors who are qualified, experienced, and capable in the performance of the portion of the Work assigned. Design-Builder shall ensure that each Subcontractor has at the time of execution of the corresponding Subcontract, and maintains at all times during performance of the assigned Work, all licenses required by applicable Laws, and all insurance required by the Contract Documents.

ADOT has engaged a number of consultants to assist and participate in the Project development stages, assist ADOT during the procurement process, and assist with the management and oversight of the Project. Unless authorized by ADOT, Design-Builder-Related Entities shall not retain ADOT's consultants specified in Exhibit 16 (ADOT Consultants).

If Design-Builder believes that a Subcontractor is unable to obtain a particular insurance policy because such policy is not commercially available or is cost prohibitive, Design-Builder shall propose, prior to submission of the applicable Subcontractor Request Form (SRF), an alternative policy to ADOT for the Subcontractor, which proposed alternative shall provide sufficient coverage for the Work to be performed by the Subcontractor, and ADOT shall determine in its good faith discretion whether to accept such substitute insurance coverage in place of any requirement specified in Exhibit 14 (Insurance Coverage Requirements).

(B) Subcontracting Requirements

Design-Builder shall comply with the following Subcontractor reporting requirements:

- (1) For each Subcontract (regardless of tier), Design-Builder shall submit to ADOT a completed applicable SRF, not later than seven Days before the Subcontractor commences work. SRFs can be found on ADOT's website:

<https://azdot.gov/business/engineering-and-construction/construction/contractor-information/forms-and-documents>

Design-Builder shall electronically access and submit the forms to ADOT, as required by ADOT.

(2) For each Subcontractor (regardless of tier) that performs Construction Work, Design-Builder shall submit to ADOT written notice of the Subcontractor's start date not later than 48 hours before the Subcontractor commences work or, for those Subcontractors identified in the Proposal and starting on or within 48 hours of the Effective Date, not later than 48 hours after the start date.

(3) Design-Builder shall submit to ADOT a copy of each executed Subcontract (regardless of tier) not later than 30 Days after the Subcontractor commences work.

The retention of Subcontractors by Design-Builder will not relieve Design-Builder of its responsibility hereunder or for the quality of the Work or materials provided by it. Design-Builder shall supervise and be fully responsible to ADOT for the acts, omissions, negligence, intentional misconduct, or breach of applicable Law, contract, Governmental Approval, Community Approval, or BIA Approval by any Design-Builder-Related Entity or by any member or employee of Design-Builder or any Design-Builder-Related Entity, as though Design-Builder directly employed all such individuals. No Subcontract entered into by Design-Builder will impose any obligation or liability upon ADOT to any such Subcontractor or any of its employees. Nothing in this DBA creates any contractual relationship between ADOT and any Subcontractor.

Design-Builder shall not sublet, sell, transfer, assign or otherwise dispose of the DBA or any portion thereof or of Design-Builder's right, title or interest therein without written consent of ADOT. No Subcontracts or transfer of DBA shall release Design-Builder of its liability under the DBA and bonds.

"Design-Builder's own organization" shall be construed to include only workers employed and paid directly by Design-Builder and equipment owned or rented by it, with or without operators. Such term does not include employees or equipment of a Subcontractor, assignee, or agent of Design-Builder.

A person who has been convicted of a violation of ARS § 34-252 is not eligible to enter into any contract either as a contractor, subcontractor or supplier, for a period of up to three years, from date of conviction, as determined by the court. A person means any individual, partnership, corporation, association or other entity formed for the purpose of doing business as contractor, subcontractor or supplier.

After award of the DBA, ADOT may also refuse to approve any entity as a Subcontractor, or Supplier for any of the reasons below:

(1) If a Person or any officer, director, employee, or agent of that person is convicted, in this State, or any other jurisdiction, of a crime involving any of the following elements or actions:

(a) Entering into any contract, combination, conspiracy, or other unlawful act in restraint of trade or commerce;

(b) Knowingly and willfully falsifying, concealing, or covering up a material fact by trick, scheme, or device;

(c) Making false, fictitious, or fraudulent statements or representations;

(d) Making or using a false writing or document knowing it to contain a false, fictitious, or fraudulent statement or entry;

(e) Misrepresentation or false statement on any application for bonding; or

(f) Misrepresentation or false statement on any application for prequalification.

(2) If ADOT makes a finding of any of the above or finds that the Design-Builder has been found to be non-responsible.

(3) If ADOT determines that the Design-Builder, Subcontractor, or Supplier has repeatedly or willfully failed to comply with federal or state immigration laws.

ADOT's consent to a Subcontract will be given only after ADOT receives a copy and determines that the SRF, Subcontract, purchase order, or lease agreement is evidenced in writing and that it contains all pertinent provisions and requirements of the DBA. The following data shall be submitted seven Days prior to the start of each Subcontractor's work.

- (1) A complete copy of each Subcontract.
- (2) Verification that all required federal provisions are attached to each Subcontract.
- (3) Subcontracts must show the total price subcontracted. The items of work, and quantities of each item subcontracted shall be shown. Unit prices or extended prices may be deleted.
- (4) Intentionally left blank.
- (5) Partial items shall be explained in detail and show the amount of each contract item being subcontracted.
- (6) Design-Builder shall certify to ADOT that all of its Subcontractors have all required registrations.
- (7) Verification that an alternative dispute resolution process to resolve payment and prompt payment disputes is included in each Subcontract. The alternative dispute resolution process shall include a means of prompt escalation beyond the Project level and provide the opportunity to hire a mediator.

Design-Builder's schedule shall allow seven Days for ADOT to review each Subcontract or SRF.

ADOT's approval shall in no way be construed to be an endorsement of the Subcontractor or its ability to complete the Work in a satisfactory manner.

If a Subcontractor begins Work on the DBA prior to Design-Builder submitting the required documentation and receiving consent from ADOT, Design-Builder shall be subject to Liquidated Damages in accordance with Section 15.03.

If a Subcontractor is found working on the Project without an approved SRF, Design-Builder shall immediately stop work on the Subcontract. Work shall not resume until all required documentation is submitted and approved by ADOT. Design-Builder shall not be entitled to an increase in the Contract Price, Contractual Deadline adjustment, or any other Claim because of the Design-Builder's failure to submit the required documentation.

Subcontractors performing contracting work subject to ARS § 32-1101 *et seq.* shall be duly licensed in accordance with those statutes. Subcontractors providing other services shall be licensed in accordance with the requirements of Arizona Law.

Each Subcontract shall:

- (1) Require the Subcontractor to carry out its scope of work in accordance with the Contract Documents, the Governmental Approvals, Community Approvals, BIA Approvals, and applicable Law;
- (2) Provide that ADOT is a third-party beneficiary of the Subcontract with the right to enforce all terms of the Subcontract for its own benefit;
- (3) Without cost to Design-Builder or ADOT, expressly permit assignment to ADOT or its successor, assign or designee of all Design-Builder's rights under the Subcontract, contingent only upon delivery of request from ADOT following termination of this DBA, allowing ADOT or its successor, assign or designee to assume the benefit of Design-Builder's rights, with liability only for those remaining obligations of Design-Builder accruing after the date of assumption,

such assignment to include the benefit of all Subcontractor warranties, indemnities, guarantees, and professional responsibility;

(4) Expressly state that any acceptance of assignment of the Subcontract to ADOT or its successor, assign or designee shall not operate to make the successor, assignee or designee responsible or liable for any breach of the Subcontract by Design-Builder or for any amounts due and owing under the Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to Design-Builder's breach);

(5) Not be assignable by the Subcontractor to any Person other than ADOT (or its successor, assignee or designee) without Design-Builder's prior consent;

(6) Expressly include a covenant, expressly stated to survive termination of the Subcontract, to promptly execute and deliver to ADOT a new contract between the Subcontractor and ADOT on the same terms and conditions as the Subcontract, in the event:

(a) The Subcontract is rejected by Design-Builder in bankruptcy or otherwise wrongfully terminated by Design-Builder; or

(b) ADOT delivers a request for such new contract following termination or expiration of this DBA;

Within each executed Subcontract, Design-Builder shall clearly and expressly identify where each of the above requirements are located.

Design-Builder shall not amend any Subcontract with respect to any of the foregoing matters without the prior consent of ADOT.

Design-Builder shall not enter into any Subcontracts with any Person then debarred or suspended from submitting bids by any agency of the State or the U.S. federal government.

5.05 Subcontracts with Affiliates

Design-Builder shall have the right to have Work and related services performed by Affiliates only in accordance with the following terms and conditions (in addition to all other general requirements for Subcontracts set forth in this DBA):

(A) Design-Builder shall execute a written Subcontract with the Affiliate;

(B) The Subcontract shall comply with all applicable provisions of this Section 5, and be in form and substance substantially similar to Subcontracts then being used by Design-Builder for similar Work or services with unaffiliated Subcontractors;

(C) The Subcontract shall set forth the scope of work and services and all the pricing, terms, and conditions respecting the scope of work and services;

(D) The pricing, scheduling, and other terms and conditions of the Subcontract shall be no less favorable to Design-Builder than those that Design-Builder could reasonably obtain in an arm's length, competitive transaction with a Subcontractor that is not an Affiliate. Design-Builder shall bear the burden of proving compliance with this paragraph; and

(E) No Affiliate shall be engaged to perform any Work or services that any Contract Documents or the PMP or any component part, plan or other documentation thereunder require to be performed by an independent party or a party that is not an Affiliate (such as IQF services).

Design-Builder shall make no payments to Affiliates for work or services in advance of provision of such work or services, except for reasonable mobilization payments or other payments consistent with arm's length, competitive

transactions of similar scope. ADOT shall not be liable to Design-Builder for any payments made in violation of this Section 5.05.

5.06 Subcontractor Payments

(A) Retention

If the DBA does not provide for retention, Design-Builder and each Subcontractor shall not withhold retention on any Subcontract. If the DBA provides for retention, Design-Builder and each Subcontractor shall not retain a higher percentage than ADOT may retain under the DBA.

(B) No Set-offs Arising from Other Contracts

If a Subcontractor is performing work on multiple contracts for the same Design-Builder or Subcontractor, Design-Builder or Subcontractor shall not withhold or reduce payment from its Subcontractors on the DBA because of disputes or claims on another contract.

(C) Partial Payment

Design-Builder and each Subcontractor shall make prompt partial payments to its Subcontractors within seven Days of receipt of payment from ADOT. Notwithstanding any provision of ARS § 28-6924, the parties may not agree otherwise.

(D) Final Payment

Design-Builder and each Subcontractor shall make prompt final payment to each of its Subcontractors. Design-Builder and Subcontractor shall pay all monies, including retention, due to its Subcontractor within seven Days of receipt of payment. Notwithstanding any provision of ARS § 28-6924, the parties may not agree otherwise.

(E) Payment Reporting and Sanctions

The requirements of this Section 5.06(E) apply to all Reportable Contracts.

Payment reporting for all Reportable Contracts shall be done through ADOT's web-based DBE System. The DBE System can be accessed from ADOT's BECO website (<https://adotdoors.dbesystem.com/>). No later than 15 Days after a Reportable Contract request is processed by ADOT, Design-Builder shall log into DBE system and enter or verify the name, contact information, and Subcontract amounts for Reportable Contracts on the Project.

Design-Builder shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the Project. In addition, Design-Builder shall require that all participants in any Reportable Contract electronically verify receipt of payment on the DBA by the last day of the month and Design-Builder shall actively monitor the DBE System to ensure that the verifications are input. Design-Builder shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

Design-Builder shall ensure that all Reportable Contract activity is reported to ADOT. This includes all lower-tier Reportable Contracts.

Design-Builder shall maintain records for each payment explaining the amount requested by the Subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

Design-Builder shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. If no payments are made to any Subcontractor, DBE or non DBE during a given month, Design-Builder shall enter the dollar value "0" for that month and clearly indicate that:

(1) No work was done;

- 1 (2) No invoices were submitted by the Subcontractor requiring payment during that month; or
- 2 (3) The Subcontractor's work was and remains deficient, incomplete or otherwise not in
- 3 compliance with the terms of the Contract Documents; or
- 4 (4) The Subcontractor failed to submit timely, complete and accurate invoices to receive payment
- 5 this month.

6 If Design-Builder does not pay the full amount of any invoice from a Subcontractor, Design-Builder shall note that

7 and provide the reasons in the comment section of the *Monthly Payment Audit* of the DBE System.

8 For each month that Design-Builder fails to submit timely and complete payment information, Design-Builder shall

9 be subject to Liquidated Damages in accordance with Section 15.03(B).

10 Design-Builder shall ensure that a copy of this Section 5.06(E) is included in every Reportable Contract of every tier.

11 **(F) Completion of Work**

12 A Subcontractor's work is satisfactorily completed when all the tasks called for in the Subcontract have been

13 accomplished, documented, and accepted by ADOT.

14 **(G) Disputes**

15 If there is a discrepancy between what is reported by Design-Builder in the DBE System and what the Subcontractor

16 indicates, an alert e-mail will automatically be sent to Design-Builder. The e-mail will be sent to the e-mail address

17 provided by Design-Builder in the DBE System. It is Design-Builder's responsibility to ensure that the e-mail address

18 in the DBE System is kept current.

19 Design-Builder shall provide a verifiable explanation of the discrepancy in the DBE System as early as practicable but

20 in no case later than seven Days after the date of the alert e-mail.

21 ADOT will determine whether Design-Builder has acted in good faith concerning any such explanations. ADOT

22 reserves the right to request and receive documents from Design-Builder and all Subcontractors of any tier, in order

23 to determine whether prompt payment requirements are met.

24 Design-Builder shall implement and use the dispute resolution process outlined in the Subcontract to resolve

25 payment disputes.

26 **(H) Noncompliance**

27 Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames

28 established above, will result in remedies, as ADOT deems appropriate, in accordance with Section 15.03(C).

29 **5.07 Labor Standards**

30 Design-Builder shall at all times comply, and require by Subcontract that all Subcontractors and Suppliers comply,

31 with all applicable federal and State labor, occupational safety, and health standards, rules, regulations, and federal

32 and State orders.

33 All individuals performing Work shall have the skill and experience and any licenses required to perform the Work

34 assigned to them.

35 If any individual employed by Design-Builder or any Subcontractor is not performing the Work in a proper, safe, and

36 skillful manner, or fails to perform effectively, then Design-Builder shall, or shall cause such Subcontractor to, remove

37 such individual, and such individual shall not be re-employed on the Work. If, after notice from ADOT and reasonable

38 opportunity to cure, such individual is not removed or if Design-Builder fails to ensure that skilled and experienced

39 personnel are furnished for the proper performance of the Work, then ADOT may:

(A) Require Design-Builder or the Subcontractor to remove such individual or replace such individual with properly skilled personnel; or

(B) Suspend the affected portion of the Work by delivery of notice of such suspension to Design-Builder.

Such suspension by ADOT pursuant to this Section 5.07 item (B) shall be considered a suspension for cause and shall in no way relieve Design-Builder of any obligation contained in the Contract Documents or entitle Design-Builder to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim hereunder.

5.08 Intentionally Left Blank

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5.10 Additional Requirements for Independent Quality Firm Subcontract(s)

Design-Builder shall directly subcontract all IQF services, described in TP Section 112 (Quality Management), to one or more IQF Subcontractors.

At no time shall any IQF Subcontractor be an Affiliate of Design-Builder or an Affiliate of a Subcontractor.

Unless Design-Builder first clearly demonstrates to ADOT that an IQF Subcontractor has committed a material default that has not been cured after a reasonable cure period, Design-Builder shall not terminate any Subcontract with an IQF Subcontractor, or permit or suffer any substitution or replacement of any IQF Subcontractor, unless so authorized in writing by ADOT in its sole discretion.

5.11 Workforce Development

Design-Builder shall support ADOT's corridor-wide commitment to creating economic opportunities for businesses and residents of the Gila River Indian Community. Design-Builder shall implement a Workforce Development Plan that identifies, manages, and reports the employment, training, purchasing, and subcontracting opportunities afforded to commercial enterprises on the Community and to Community members. The Workforce Development Plan must be consistent with all other requirements of this Section 5.

Not later than 30 Days after issuance of NTP 1, Design-Builder shall (i) revise and convert its Preliminary Workforce Development Plan, included in Design-Builder's Proposal, into a more detailed, final Workforce Development Plan, and (ii) submit it to ADOT for review and comment.

The final Workforce Development Plan must include:

(A) Updated description of the team/staff responsible for implementation and progress reporting on components of the Workforce Development Plan.

(B) Expanded description/itemization of economic opportunities that can be made available over the Project duration. Design-Builder shall include an updated schedule of anticipated opportunities for employment, job training, purchases, and subcontracting during design and construction phases. Include a table or diagram of an estimated schedule that illustrates projected Workforce Development opportunities in each phase of design and construction.

(C) Expanded descriptions of the outreach and community engagement activities that the Design-Builder will undertake to recruit and utilize businesses and residents in the Community. Include processes for timely communications, marketing, and outreach methods that Design-Builder will use and a process that Design-Builder will use to keep track of potential workers and subcontractors for the Project.

(D) Updated description/itemization of the efforts that the Design-Builder will undertake to recruit, train, and upgrade the highway design and construction workforce, such as job fairs and symposiums, on-the-job training programs, mentor/protégé, work study, etc., and the time intervals at which these measures will be employed. Include an updated approach to Design-Builder's understanding and

integration of the Indian Preference in Employment provisions. Include a summary of any written compliance plans submitted to the Tribal Employment Office in accordance with Section 5.12.

(E) Updated description/itemization of the efforts that the Design-Builder will undertake to increase the capacity of small, disadvantaged businesses, including any Community-based businesses, to participate on ADOT projects, such as business technical and financial assistance, support services, mentor/protégé relationships, and certification assistance. Include any innovative methods for involving new and emerging firms on the Project and identifying firms that might potentially be certified as Disadvantaged Business Enterprise or classified as a Small Business Concern on ADOT's Transportation Business Portal, azutracs.azdot.gov. Discuss how these efforts will flow through tiers of subcontractors on the Project.

(F) A draft sample of the Workforce Development Monthly Progress Report which outlines the major components of the Workforce Development Plan and how the Design-Builder will report progress towards each objective.

Design-Builder shall maintain and update the Workforce Development Plan on a regular basis. ADOT will review the current Workforce Development Plan at least once quarterly to evaluate whether Design-Builder has satisfied the commitments therein.

5.12 Indian Preference in Employment

A majority of the Project is located on Community Land, which subjects Design-Builder to the laws and regulations of the Gila River Indian Community when working on Community Land. Design-Builder shall make themselves aware of any labor requirements, taxes, fees, licenses, permits or conditions that may be imposed by the Gila River Indian Community on Work performed in the area.

On other projects in this area, the utilization of Native Americans has developed a reservoir of capable, trained workers. Design-Builder shall contact the office of Tribal Labor Relations listed below for assistance in hiring such workers. Design-Builder shall give preference in hiring in as many workers indigenous to the area as it can properly utilize in the processing of the Work. Design-Builder shall provide ADOT upon request, workforce projections identifying the type of crafts and trades that it expects to utilize, the approximate date that it expects to start Work, and the name of one of its employees to be its contact.

The tribal contact office for labor relations is identified as follows:

Tribal Employment Rights Office (TERO)
192 South Skill Center Road, Suite 208, Sacaton, AZ 85247
(520) 562-3590

Design-Builder shall and shall cause Design-Builder-Related Entities to comply with labor and employment provisions as set forth under Title 12 of the Gila River Indian Community Code. All employers operating within the exterior boundaries of the Community shall promote Indian employment opportunities and give a hiring preference to individual Indians for all open employment positions and may recruit and hire workers from whatever sources are available to them to achieve the preference hiring goals. All construction contractors and subcontractors shall submit a written compliance plan to the Tribal Employment Rights Office (TERO) indicating how the employer will comply with the Indian preference requirements of this title prior to start of work within the Community. Concurrently with submitting to the TERO, Design-Builder shall submit a copy of such written compliance plan(s), including subcontractor written compliance plan(s) to ADOT.

End Section

6 PAYMENT**6.01 Contract Price****(A) General**

As full compensation for the Work and all related obligations to be performed by Design-Builder under the Contract Documents, ADOT will pay to Design-Builder the lump sum "Contract Price." The Contract Price as used herein shall mean the lump sum amount of \$409,785,000 and a \$1,000,000 allowance for ADOT-Directed Maintenance Work, subject to adjustment from time to time.

ADOT will bear all costs associated with Utility Adjustments of existing Utilities, new Utility services that service the permanent ADOT signals, lighting, and ITS for the Project, and permanent Utility services that are owned, operated or maintained by the Community or its Tribal partnerships. These Utilities include San Carlos Irrigation Project, Gila River Indian Community Utility Authority (GRICUA), Gila River Indian Community Department of Public Works (GRIC DPW), Pima-Maricopa Irrigation Project, Gila River Indian Irrigation and Drainage District, Gila River Farms, and Gila River Telecommunications Inc.

The commitment above by ADOT does not apply to Utility JPA Work.

(B) Scope of Payment

The payment includes:

- (1) Furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the Work under the Contract Documents;
- (2) All design efforts, equipment, materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to Design-Builder's performance of its obligations under the Contract Documents, including all Work, equipment, materials, labor, and services provided by Subcontractors and intellectual property rights necessary to perform the Work;
- (3) Performance of each and every portion of the Work;
- (4) The cost of obtaining all Governmental Approvals, Community Approvals, and BIA Approvals (except those previously obtained by ADOT) related to the Work;
- (5) All costs of compliance with and maintenance of the Governmental Approvals, Community Approvals, BIA Approvals, and compliance with Laws related to the Work, except to the extent compliance with or maintenance of Governmental Approvals, Community Approvals, or BIA Approvals is the responsibility of Utility Companies;
- (6) Payment of any taxes, duties, permit, and other fees or royalties imposed with respect to the Work and any equipment, materials, labor or services included therein; and
- (7) Compensation for all risks and contingencies assigned to or assumed by Design-Builder under the Contract Documents, including:
 - (a) Except as expressly permitted under this DBA, Loss or damage arising from the nature of the Work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the Work until the acceptance by ADOT, and for all risks of every description connected with the prosecution of the Work;
 - (b) All expenses incurred in consequence of the suspension or discontinuance of the Work as provided in the DBA;

(c) Loss of anticipated profits in any case; and

(d) All anticipatory incentives for the Work including but not limited to quality and smoothness for AC and PCCP.

Neither the payment of any estimate nor of any retained percentage shall relieve Design-Builder of any obligation to correct any Nonconforming Work.

6.02 Invoicing

(A) Mobilization Payment

Design-Builder shall be entitled to payment for mobilization in an amount equal to the lesser of: (i) the bid item price for mobilization established in Exhibit 2-3.1 (Contract Price Breakdown) or (ii) 5% of the Contract Price (other than mobilization). This mobilization amount is fixed and not subject to adjustment by any Relief Event, Claim, or Supplemental Agreement, and shall be paid in installments as follows:

(1) The first payment for mobilization shall be in an amount not to exceed 10% of the total payment for mobilization, payable as part of the first Draw Request following issuance of NTP 1;

(2) The second payment for mobilization shall be in an amount not to exceed 10% of the total payment for mobilization, payable as part of the second Draw Request following issuance of NTP 1;

(3) The third payment for mobilization shall be in an amount not to exceed 30% of the total payment for mobilization, payable as part of the first Draw Request following issuance of NTP 2;

(4) The fourth payment for mobilization shall be in an amount not to exceed 25% of the total payment for mobilization, payable as part of the first Draw Request after 5% of the Contract Price is earned on items other than mobilization; and

(5) The fifth payment for mobilization shall be in the remaining amount of the total payment for mobilization, payable as part of the first Draw Request after 10% of the Contract Price is earned on items other than mobilization.

Design-Builder shall not include multiple installments for mobilization payment in the same Draw Request.

(B) Bond and Insurance Premiums

ADOT will pay Design-Builder as part of the first Draw Request following NTP 1 the portion of the Contract Price allocable to bond and insurance premiums incurred as of the date of such Draw Request and as established in Exhibit 2-3.1.

(C) NTP 1 Work

ADOT will pay Design-Builder for Work authorized by NTP 1 not more often than monthly, based on approved Draw Requests, as follows:

(1) For each item that is a Submittal under "Base NTP 1 Work Effort" in Exhibit 2-3.1, other than Design Documents, (i) 50% of the amount shown for that Submittal in Exhibit 2-3.1 with the next Draw Request after ADOT receives a complete draft of the Submittal, unless ADOT determines the draft is inadequate, and (ii) the remaining payment with the next Draw Request after ADOT approves the final Submittal;

(2) For Design Work, monthly according to a Draw Request for progress made; and

- (3) For all other items, monthly according to actual documented costs incurred and included in a Draw Request, with any balance of the bid item total remaining at issuance of NTP 2 payable in the next Draw Request thereafter.

Any Design Work that Design-Builder performs prior to satisfaction of the conditions precedent established in Section 4.03(A) and Exhibit 6-1 shall be at Design-Builder's risk, and ADOT will have no obligation to pay for or review any Design Work prior to satisfaction of such conditions precedent.

(D) Design

Design-Builder shall prepare a Design Work Breakdown that breaks down the Design Work price specified on Exhibit 2-3.1 by design segments (as identified on the Segment Limits Map), by each design Submittal that Design-Builder intends to submit, and the associated dollar value. Design-Builder shall submit the Design Work Breakdown to ADOT concurrent with the Segment Limits Map Submittal.

ADOT will pay Design-Builder for Design Work based on the values specified in the Design Work Breakdown and the percentages specified in Table 6-1:

Table 6-1: Design Work Payment Percentages

No.	Description	Percentage
1.	Design-Builder's submission of a <u>Preliminary Design Submittal</u>	40%
2.	ADOT's review of the <u>Preliminary Design Submittal</u>	20%
3.	Design-Builder's submission of a <u>Final Design Submittal</u>	20%
4.	ADOT's review of the <u>Final Design Submittal</u>	10%
5.	ADOT's approval of the <u>RFC Submittal</u>	10%

(E) Draw Request Content

Each draft Draw Request and Draw Request must be in the form required by ADOT and include the following items:

- (1) Draw Request cover sheet:
 - (a) Project number and title;
 - (b) Draw Request number (numbered consecutively starting with "1");
 - (c) Total amount paid to Design-Builder as of the date on which the Draw Request is submitted; and
 - (d) Authorized signature, title of signer, and date of signature;
- (2) An updated Narrative as described in TP Section 108.12(E) (Narrative) and Monthly Progress Schedule as described in TP Section 108.12(D) (Monthly Progress Schedule);*
- (3) Certification by Design-Builder as specified in Section 6.02(G)(4), that all Work that is the subject of the Draw Request fully complies with the requirements of the Contract Documents subject to any exceptions identified in the certification;
- (4) Draw Request data sheet(s), IQF quantity reports, and other supporting documents, as required by ADOT to support and substantiate the amount requested;

- 1 (5) Intentionally left blank;
- 2 (6) Intentionally left blank;
- 3 (7) The amount of Design-Builder's cumulative draw in comparison to Design-Builder's
- 4 anticipated draw contained in Exhibit 2-3.2 (*Design-Builder's Anticipated Contract Price*
- 5 *Draw/Cash Flow*). Design-Builder shall state if the Draw Request will cause Design-Builder to
- 6 exceed Design-Builder's anticipated draw contained in Exhibit 2-3.2, and, if so, provide a
- 7 revised schedule of anticipated draws through Final Acceptance (D&C);
- 8 (8) If the Draw Request includes Utility Adjustment Work, a summary narrative of the Utility
- 9 Adjustment Work performed during the applicable month, and for Utility Adjustment Work
- 10 performed by a Utility Company, invoices and records showing that Design-Builder has paid
- 11 the Utility Company for such Utility Adjustment Work;
- 12 (9) Information showing all amounts for which ADOT is withholding payment, including
- 13 withholding for Nonconforming Work and any other basis for withholding payment under the
- 14 Contract Documents, and the amount of payment withheld;
- 15 (10) Summary of progress payment requested for executed Supplemental Agreements broken
- 16 down by Professional Services and Construction Work;
- 17 (11) Workforce Development Monthly Progress Report in a format reasonably satisfactory to ADOT
- 18 as required in Section 5.11;
- 19 (12) Steel Indexation Adjustment (SIA) Package, if applicable; and
- 20 (13) Such other items as ADOT reasonably requests.

21 * Not required for Draw Requests during NTP 1 Period.

22 **(F) Draft Draw Request**

23 On or about the 22nd Day of each month following the issuance of NTP 1 and continuing through the Draw Request

24 for the Final Payment, Design-Builder shall submit a draft Draw Request for the prior monthly period to ADOT.

25 At each *Progress Meeting*, Design-Builder's and ADOT's Authorized Representatives shall ascertain the progress of

26 the Work and verify the quantities for any unit priced Work. Design-Builder's and ADOT's Authorized Representatives

27 shall review the draft Draw Request reflecting the value of Work completed during the cycle period leading up to

28 the draft Draw Request submission. Design-Builder's and ADOT's Authorized Representatives shall determine and

29 calculate the value of Work completed:

- 30 (1) As provided in Section 6.02(C) for NTP 1 Work;
- 31 (2) Based on quantities and unit prices for unit priced Work;
- 32 (3) Based on time and materials for Force Account Work in accordance with Exhibit 10 (*Extra*
- 33 *Work Costs and Delay Costs Specifications*); and
- 34 (4) For all other Work, based on the percentage completion of Project Schedule activities and the
- 35 approved values distributed to such activities in the Project Schedule.

36 **(G) Draw Request**

37 Design-Builder shall prepare each Draw Request based on the associated approved draft Draw Request. Draw

38 Requests must not include any amounts not approved by ADOT in the monthly progress meeting reviewing such

39 draft Draw Request. Not later than seven Days after each monthly progress meeting, Design-Builder shall submit an

40 electronic copy of a Draw Request to ADOT for the Work performed under the Contract Documents during the

preceding monthly period, in a form acceptable to ADOT and meeting all the requirements specified herein, except as otherwise approved by ADOT.

ADOT may elect, at its sole discretion, to withhold payment in whole or in part for Work considered to be Nonconforming Work in accordance with Section 7.04(C). ADOT may withhold such payment until such Nonconforming Work is replaced, accepted, or until such time as a corresponding Nonconforming Work Report is closed.

ADOT may elect to withhold 2% of each approved Draw Request until approval of the Monthly Progress Schedule as described in TP Section 108.12(D) (Monthly Progress Schedule). Design-Builder may include any previously withheld amounts in the Draw Request for the month in which the Monthly Progress Schedule receives approval.

If Design-Builder fails to provide an acceptable Recovery Schedule as required in Section 4.04(C) and in TP Section 108.12(F) (Recovery Schedule), then, in addition to any other rights and remedies in favor of ADOT arising out of such failure, ADOT will have the right to withhold 10% of the Draw Request until such time as Design-Builder has prepared and ADOT has approved such Recovery Schedule. Payment of any such amounts withheld by ADOT shall be due from ADOT to Design-Builder not later than the Contractor Cycle Key Date first occurring after the date ADOT approves the corresponding Recovery Schedule. Any failure or delay in Design-Builder's submittal or ADOT's approval of a Recovery Schedule shall not entitle Design-Builder to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim under the Contract Documents.

(1) ADOT-Directed Maintenance Payment

The Contract Price includes an allowance in the amount of \$1,000,000.00 for ADOT-Directed Maintenance Work specified in Section 7.05(B).

ADOT will pay Design-Builder for ADOT-Directed Maintenance based on Design-Builder's progress in undertaking such additional Maintenance During Construction. Design-Builder shall keep detailed records of the quantities for unit priced additional Maintenance During Construction and shall submit supporting documentation of such quantities with its corresponding monthly Draw Requests.

(2) Utility Adjustment Work Payment

When ADOT is signatory on the agreement, Design-Builder shall not be entitled to payment from ADOT or liable for payment to Utility Company for Utility Adjustment Work performed by a Utility Company. Utility Adjustment Work performed by Design-Builder shall be paid in the same manner as Construction Work.

(3) ADOT Funding

Design-Builder acknowledges that ADOT will obtain funding for portions of the Work from various sources and agrees to segregate billings for all such Work in a format reasonably requested by ADOT and with detail and information as reasonably requested by ADOT.

(4) Certification

Each Draw Request shall include a certificate signed and sealed by the Professional Services Quality Manager (PSQM) that the Design Work complies with the requirements of the Contract Documents. Each Draw Request must also include a certificate signed and sealed by the Construction Independent Quality Manager (CIQM) that the Construction Work complies with the requirements of the Contract Documents.

The certificates must be in a form acceptable to ADOT, certifying that:

- (a) Except as specifically noted in the certification, all Work that is the subject of the Draw Request, including that of Professional Services firms, Subcontractors, and Suppliers, has been checked or inspected by the PSQM, with respect to Professional Services, and the CIQM, with respect to the Construction Work;

- (b) Except as specifically noted in the certification, all Work that is the subject of the Draw Request conforms to the requirements of the Contract Documents;
- (c) All of the measures and procedures provided in the PSQMP and the CQMP are functioning properly and are being followed;
- (d) The Professional Services percentages and construction percentages stated are accurate; and
- (e) All quantities for which payment is requested on a unit price basis are accurate.

6.03 Payment by ADOT

Not later than seven Days after ADOT receives the Draw Request, ADOT will:

- (A) Review the Draw Request for consistency with the draft Draw Request prepared at the most recent monthly progress meeting;
- (B) Review the Draw Request for conformity with all requirements of the Contract Documents; and
- (C) Notify Design-Builder of the amount approved for payment and specify the reason for disapproval of any remaining invoiced amounts.

Design-Builder may include such disapproved amounts in the next month's draft Draw Request after correction of the deficiencies noted by ADOT.

No later than the Contractor Cycle Key Date first occurring after the seven Day period described in this Section 6.03, ADOT will pay Design-Builder the amount of the Draw Request approved for payment less any amounts that ADOT is otherwise entitled to withhold or deduct.

For Work authorized by NTP 2, ADOT will not have any obligation to pay Design-Builder any amount that:

- (A) Would result in payment for any activity in excess of the value of the completed percentage of such activity (for non-unit priced Work);
- (B) Was not approved during the monthly progress meeting review of the draft Draw Request for such month; or
- (C) Would result in aggregate payments in excess of the overall completion percentage for the Project multiplied by the Contract Price (for non-unit priced Work).

The acceptance of Work for purposes of payment of a Draw Request does not constitute final acceptance of the Work.

Should any Nonconforming Work or material be discovered prior to the Final Acceptance (D&C), ADOT will deduct monies from subsequent Draw Request to provide for correction of the defective Work. Payment for such defective Work will not be allowed until the Defect has been remedied.

6.04 Partial Payment for Material on Hand

ADOT will not pay Design-Builder for materials not yet incorporated in the Work unless all of the following conditions are met:

- (A) Material must be:
- (1) Delivered to the Site; or

- (2) Delivered to Design-Builder and promptly stored by Design-Builder in bonded storage at a location approved by ADOT; or stored at a Supplier's fabrication site, which must be a bonded commercial location approved by ADOT;
- (B) If such materials are stored at any site not approved by ADOT, Design-Builder shall accept responsibility for and pay all personal and property taxes that may be levied against ADOT by any state or subdivision thereof on account of such storage of such material;
- (C) IQF has certified that the quantity of materials is correct and accurate;
- (D) IQF has certified that the materials contain no Defects and comply with the requirements of the Contract Documents;
- (E) Design-Builder shall submit certified bills for such materials with the Draw Request, as a condition to payment for such materials. ADOT will allow only such portion of the amount represented by these bills as is consistent with the reasonable cost of such materials; and
- (F) All such materials that comply with the requirements of the Contract Documents shall be and become the property of ADOT. Design-Builder at its own cost shall promptly execute, acknowledge, and deliver to ADOT proper bills of sale or other instruments in writing in a form acceptable to ADOT conveying and assuring to ADOT title to such material included in any Draw Request, free and clear of all Liens. Design-Builder, at its own cost, shall conspicuously mark such material as the property of ADOT, shall not permit such materials to become commingled with non-ADOT-owned property or with materials that do not conform with the Contract Documents, and shall take such other steps, if any, as ADOT may require or regard as necessary to vest title to such material in ADOT free and clear of Liens.

No partial payment will be made for living or perishable plant materials until they are planted.

6.05 Final Payment

(A) General

Final Payment for all Work will be made as follows.

Design-Builder shall prepare an Application for Final Payment showing the proposed total amount due to Design-Builder as of the date of Final Acceptance (D&C), including any amounts owing from Supplemental Agreements. The Application for Final Payment must include:

- (1) A list all outstanding Relief Event Notices and Relief Requests, stating the amount at issue associated with each such Relief Event Notice and Relief Request;
- (2) Information addressing the status of all existing or threatened claims and stop notices of Subcontractors, Suppliers, laborers, Utility Companies, and/or other third parties against Design-Builder, ADOT, or the Project;
- (3) Such other documentation as ADOT may reasonably require;
- (4) The release described in Section 6.05(B), executed by Design-Builder; and
- (5) Record Drawings have been accepted by ADOT.

35 Days prior to the date on which Design-Builder expects to satisfy all of the conditions precedent specified in Exhibit 6-6, Design-Builder shall submit the Application for Final Payment to ADOT.

Prior applications and payments shall be subject to correction in the Application for Final Payment. Relief Event Notices and Relief Requests filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Section 8.

Final payment will be made in accordance with ADOT's final statement of the total amount earned by Design-Builder.

(B) Release

Design-Builder shall execute a release that (i) releases ADOT from any and all Claims of Design-Builder arising from the Work, and (ii) releases and waives any claims against the Indemnified Parties, excluding only those matters identified in any Relief Event Notices and Relief Requests that have been timely delivered and are listed as outstanding in the Application for Final Payment. The release shall be accompanied by a sworn affidavit from Design-Builder certifying that:

- (1) All Work complies with the Contract Documents;
- (2) Design-Builder has resolved any claims made by Subcontractors, Suppliers, Utility Companies, laborers, or other third parties against Design-Builder, ADOT or the Project (except those listed by Design-Builder in accordance with Section 6.05(A) item (2);
- (3) Design-Builder has no reason to believe that any Person has a valid claim against Design-Builder, ADOT or the Project that has not been communicated in writing by Design-Builder to ADOT as of the date of the certificate; and
- (4) All guarantees, warranties, the Payment Bond, and the Performance Bond are in full force and effect.

6.06 Fuel Cost Adjustment

(A) General

Beginning at issuance of NTP 1, ADOT will adjust payment for those items that are indicated as "Eligible for Fuel Cost Adjustment" in Exhibit 2-3.1 in each Draw Request up or down as appropriate for cost fluctuations in diesel fuel as determined in accordance with this Section 6.06.

The bituminous price adjustment specified in Section 6.07 and the steel indexation adjustment specified in Section 6.10 are not eligible for the fuel cost adjustment and Design-Builder shall not include such adjustment(s) when calculating the monthly fuel cost adjustment.

A fuel cost adjustment will be made when fluctuations in the price of diesel fuel, in excess of 15%, occur throughout the D&C Period. ADOT will not provide such adjustments for fluctuations in the price of diesel fuel of 15% or less.

No adjustments will be made for fluctuations in the price of fuels other than diesel.

(B) Measurement

The base index price of fuel will be determined by ADOT from the selling prices of diesel fuel published by Oil Price Information Service (OPIS). The base index price to be used will be the price for "Diesel fuel No. 2, Ultra Low Sulfur, PAD 5, City of Phoenix Rack". The reported average value for the Phoenix area will be used.

The base index price for each month will be the arithmetic average of the selling price for diesel fuel, as specified above, shown in the last four reports received prior to the last Wednesday of the month.

This price will be effective as of the last Wednesday of each month, and will be posted on ADOT's website, at <https://azdot.gov/business/contracts-and-specifications/bituminous-and-fuel-price-adjustment>, on or shortly after the last Wednesday of the month.

This price may also be obtained from Contracts and Specifications Services at (602) 712-7221.

This price as of the Setting Date will be deemed to be the "initial cost" for diesel fuel on the Project.

The current index price for diesel fuel in subsequent months will be the base index price, determined as specified above, for the current month. For example; an adjustment for diesel fuel used in May, if applicable, will be based on the "current index price" for May as posted on the last Wednesday of May. The amount of adjustment per gallon will be the net difference between the "initial cost," adjusted by 15%, and the current index price. The monthly adjustment in the Draw Request will be determined by ADOT and included in the payment estimate as a fuel adjustment. For fluctuations in excess of 15%, fuel cost adjustments will only be made for current price index increases greater than 1.15 times the "initial cost" or for decreases less than 0.85 times the "initial cost." No calculation will be made for fluctuations in the current index price of 15% or less when compared to the "initial cost."

The number of gallons of diesel fuel used per month will be considered to equal 1.5% of the dollar amount of Work reported by Design-Builder for each month. Such dollar amount will not include revenue accrued in the previous month for bituminous material cost fluctuations or diesel fuel price adjustments.

A monthly adjustment, if applicable, will be made on this quantity, as shown below:

$$S = \frac{0.015(Q)}{IC} \times (CP - AC)$$

Where: S = Monetary amount of the adjustment (plus or minus) in dollars
Q = Dollar amount of work completed for the month
CP = Current index price in dollars per gallon
AC = Adjusted "initial cost" (1.15 or 0.85 times IC) in dollars per gallon
IC = "Initial cost" as determined above, dollars per gallon

If adjustments are made in the contract quantities, Design-Builder shall accept any fuel adjustment as full compensation for increases or decreases in the price of fuel regardless of the amounts of overrun or underrun.

The value calculated above (plus or minus) will be adjusted to include sales tax and other taxes as applicable.

No additional compensation will be made for any additional charges, costs, expenses, etc., which Design-Builder may have incurred since the time of bidding and which may be the result of any fluctuation in the base index price of diesel fuel.

No adjustments will be made for Work performed after Substantial Completion has been achieved.

(C) Payment

Price adjustments will be shown on the draft Draw Request but will not be included in the total cost of Work for determination of progress or for extension of Contract Time.

6.07 Bituminous Price Adjustment

(A) General

The term "bituminous material" as used herein shall include asphalt binder, and emulsified asphalt.

ADOT will adjust monthly Draw Requests as appropriate for market fluctuations in the price of bituminous material.

A price for bituminous material will be determined monthly by ADOT based on the selling prices published by the Asphalt Weekly Monitor, a publication of Poten & Partners, Inc. The price will be the arithmetic average of the high and low selling prices for bituminous material shown in the previous four reports for the Arizona/Utah and Southern California regions.

This value will be effective as of the last Wednesday of each month and will be posted on the ADOT Contracts and Specifications Group website, on or shortly after the last Wednesday of each month.

The "initial cost" (IC) for bituminous material on the Project will be as the month of the Setting Date.

(B) Measurement

The IQF must track and document quantities measured by the ton of bituminous material, incorporated into the Work, as described in this Section 6.07(B) and include such reports in the monthly Draw Request as described in Section 6.02(E).

The IC will be compared with the "current price" (CP) for the appropriate current month. The CP will be as posted on ADOT's website on the last Wednesday of each month, and will be used to adjust costs for bituminous material incorporated into the Project during the following month (for example; bituminous material used in May will be adjusted, as specified herein, based on the CP for May as posted on the last Wednesday of April). Any difference in price between these two values will be applied to the quantity of eligible bituminous material incorporated into the Work.

Determination of the eligible quantities of bituminous material for adjustment will be based on quantity reports furnished by the IQF, except as described herein.

The tons of emulsified products to which the adjustment will be applicable will be the tons of the emulsified asphalt prior to dilution.

Adjustments in compensation for emulsified asphalts will be made at 60% of either the increase or decrease of IC. For emulsified asphalts containing polymer, adjustments in compensation will be made at 66% of either the increase or decrease.

The tons of bituminous material incorporated into the Work to which an adjustment will be applicable is as follows:

(1) For mixes without reclaimed asphalt pavement (RAP), the adjustment will be equal to 5% of the quantity, measured in tons, of asphaltic concrete placed, regardless of the actual percentage of bituminous material incorporated into the mix.

(2) For mixes with RAP, the adjustment will be equal to 4% of the quantity, measured in tons, of asphaltic concrete placed, regardless of the actual percentage of bituminous material incorporated into the mix.

(C) Payment

The tons of bituminous materials which are paid for on the basis of the IQF's reports of the tracked and documented quantities of the tons which have been incorporated into the Work.

When RAP is used in asphaltic concrete, only the tons of virgin asphalt binder will be subject to a bituminous material price adjustment. RAP binder will not be subject to a price adjustment.

Adjustment in the price of eligible quantities of bituminous materials will be made in the monthly Draw Request that includes the IQF's reports of bituminous material.

6.08 Payment for Extra Work Costs and Delay Costs

Except as provided otherwise in this DBA, as applicable and subject to the requirements of Section 8, ADOT will compensate Design-Builder as an increase to the Contract Price for Extra Work Costs directly attributable to the occurrence of a Relief Event and Delay Costs directly attributable to a Relief Event Delay, provided that Design-Builder shall not be entitled to Delay Costs unless the Relief Event Delay meets the requirements for a Contractual Deadline extension hereunder. Design-Builder shall not be entitled to an increase in the Contract Price for any extra work or delays other than as specifically provided hereunder for Extra Work Costs and Delay Costs.

ADOT will compensate Design-Builder for amounts due for Extra Work Costs and Delay Costs: (a) to the extent permitted by Law, as a lump sum payment; (b) as progress payments invoiced as Work is completed; or (c) through any combination of the above, as determined by ADOT in its sole discretion but subject to Section 6.07.

ADOT will provide Design-Builder with notice of the method chosen for paying Design-Builder for the Extra Work Costs and Delay Costs owed.

Following receipt of complete and conforming Relief Event Claim documentation pursuant to Section 8.03(D), if ADOT chooses to compensate Extra Work Costs or Delay Costs, as applicable, owed under this Section 6.07:

(A) As a lump sum payment other than a negotiated fixed price, then payment of all undisputed amounts will be due and owing not later than Contractor Cycle Key Date first occurring after ADOT's execution of a Supplemental Agreement, as applicable;

(B) As a lump sum payment that is a negotiated fixed price, then payment(s) of all undisputed amounts will be due and owing not later than Contractor Cycle Key Date first occurring after ADOT receives from Design-Builder all documentation required pursuant to the negotiated fixed price terms necessary to receive scheduled payments under the negotiated fixed price terms with respect to such Extra Work Costs or Delay Costs, as applicable; and

(C) As progress payments invoiced as Work is completed, then payment of all undisputed amounts will be due and owing not later than Contractor Cycle Key Date first occurring after each date ADOT receives from Design-Builder an invoice, not more often than monthly, of such Extra Work Costs or Delay Costs incurred, as applicable, for such Work during the previous month, which invoice shall be itemized as in accordance with Section 8.03(D)(2) and by the components of Extra Work Costs or Delay Costs, as applicable, allowable under Exhibit 10.

(D) Relief Events for item (C)(8) of the definition of Force Majeure Event or if ADOT and Design-Builder cannot agree come to agreement, then ADOT will pay for the associated work by force account in accordance with Exhibit 10.

If any portion of the Extra Work Costs and Delay Costs consist of costs of design or construction not then performed, then ADOT will have no obligation to make advance payments and shall have the right to pay such portion in monthly progress payments in accordance with this Section 6 and ADOT's standard practices and procedures for paying its contractors and applicable Laws.

6.09 Design-Builder Right to Stop Work

Design-Builder shall have the right to stop Work if ADOT fails to make an undisputed payment due hereunder (including failure due to non-appropriation); provided, however, that Design-Builder may only stop Work if ADOT does not make such undisputed payment due hereunder within 15 Business Days after ADOT's receipt of notice from Design-Builder that payment has not been received and that Design-Builder will stop Work. Any such work stoppage shall be considered a Suspension for Convenience under Section 8.02(D) and shall be considered an ADOT-Directed Change. Design-Builder shall not have the right to terminate this DBA for default as the result of any failure by ADOT to make an undisputed payment due hereunder; provided, however, that if ADOT's nonpayment continues for more than 90 Days after ADOT's receipt of notice of nonpayment from Design-Builder, upon notice from Design-Builder to ADOT, the nonpayment may be deemed a Termination for Convenience pursuant to Section 22. Upon such termination, the Parties' rights and obligations shall be as set forth in Section 22.

6.10 Steel Indexation Adjustment

(A) General

The term "structural steel" as used in this Section 6.10 shall mean the structural steel used for the SR 347/Queen Creek Rd direct-connect ramp.

Beginning at issuance of NTP 1 and continuing until Design-Builder has purchased all structural steel, Design-Builder shall comply with the requirements in this Section 6.10 to determine "Steel Indexation Adjustment" (SIA) for structural steel, to be included with each draft Draw Request, and for ADOT's consideration at each *Progress Meeting* and to ultimately be included in the Draw Request, if applicable.

No SIA for structural steel will be made for other areas of the Project.

(B) Procedures for Adjustment

(1) Initial Cost Establishment

ADOT has established the "Initial Cost" (IC) of \$109.82 for structural steel using the *Engineering News Record (ENR) 20-City Average: Hot-Rolled Carbon-Steel Plate, 12-gauge of \$ / CWT* for the United States as of October 2025.

<https://enrcostdata.com/metal-product>

(2) Steel Indexation Adjustment Determination

(a) General

ADOT will determine the "Periodic Index Value" (PIV) for each Design-Builder provided Supplier provided structural steel invoice by determining the *ENR 20-City Average: Hot-Rolled Carbon-Steel Plate, 12-gauge of \$ / CWT* for the United States as of the date of such structural steel invoice(s).

(b) No Steel Indexation Adjustment

The monthly adjustment in the Draw Request will be determined by ADOT and included in the payment estimate as a steel indexation adjustment. For fluctuations in excess of 5%, structural steel cost adjustments will only be made for PIV increases greater than 1.05 times the IC or for decreases less than 0.95 times the IC. No calculation will be made for fluctuations in the PIV of 5% or less when compared to the IC.

(c) Negative Steel Indexation Adjustment

If the PIV is less than 95% of the IC, ADOT will calculate the SIA as follows:

$$SIA = [PIV - (0.95 \times IC)] \times PQ$$

Where:

IC = Initial Cost (\$/CWT)

PIV = Periodic Index Value (\$/CWT)

PQ = Periodic Quantity (CWT)

SIA = Steel Indexation Adjustment (\$)

For the avoidance of doubt, a ratio of PIV to IC of 0.94 would result in a negative 1% SIA.

(d) Positive Steel Indexation Adjustment

If the PIV is greater than 105% of the IC, ADOT will calculate the SIA as follows:

$$SIA = [PIV - (1.05 \times IC)] \times PQ$$

Where:

IC = Initial Cost (\$/CWT)

PIV = Periodic Index Value (\$/CWT)

PQ = Periodic Quantity (CWT)

SIA = Steel Indexation Adjustment (\$)

For the avoidance of doubt, a ratio of PIV to IC of 1.06 would result in a positive 1% SIA.

(3) Steel Indexation Adjustment Package

For each month that Design-Builder plans to invoice for structural steel ordered, Design-Builder shall prepare a SIA Package that includes the following:

(a) Cover sheet:

- (i) "Steel Indexation Information"
- (ii) Project number and title;
- (iii) Associated Draw Request number;
- (iv) Authorized signature, printed name of signer, title of signer, and date of signature;
- (v) CIQM signature, printed name of signer, title of signer, and date of signature

(b) An appendix that includes:

- (i) True and complete copies of all structural steel orders that includes the Project name, date of the order, location of where the structural steel is to be used, and the quantity;
- (ii) True and complete copies of all structural steel invoices from the Supplier(s) that includes the Project name, date of the invoice, location of where the structural steel is to be used, the quantity, and the price;
- (iii) IQF has certified that the quantity of materials is correct and accurate;
- (iv) IQF has certified that the materials contain no Defects and comply with the requirements of the Contract Documents; and
- (v) A copy of the *ENR 20-City Average: Hot-Rolled Carbon-Steel Plate, 12-gauge of \$Y / CWT* for the United States as of the date of each structural steel invoice by the Supplier(s);

Design-Builder shall include the SIA Package with each draft Draw Request.

(C) Payment

ADOT will base the SIA amount on the quantities provided for the draft Draw Request period. ADOT will provide the SIA, if applicable, to Design-Builder to include in the Draw Request. Design-Builder shall show the SIA amount on the Draw Request, but it shall not be included in the total cost of Work for determination of progress or for extension of Contract Time.

(D) Record Keeping Requirements

Design-Builder shall retain records pertinent to SIAs including true and complete copies of material orders, deliveries, invoices, contracts and other such documents, in each case, as is necessary to demonstrate that the quantities for which SIAs are sought are actual and necessary for the Work. Supporting documentation shall be available for review at each *Progress Meeting* or upon request by ADOT.

End Section

7 DESIGN AND CONSTRUCTION**7.01 General****(A) Site Conditions**

Design-BUILDER shall bear the risk of any incorrect or incomplete review in its Reasonable Investigation of the Site and surrounding locations. Unless otherwise specified in the Contract Documents, Design-BUILDER shall bear the risk of any incorrect or incomplete information resulting from preliminary engineering activities conducted by Design-BUILDER, ADOT, or any other Person.

Design-BUILDER shall bear the risk of changes in surface topography, variations in subsurface moisture content, and variations in groundwater levels.

The provisions of this Section 7.01(A) do not apply to, and shall not adversely affect, the specific relief available to Design-BUILDER under Section 8.

(B) Performance, Design, and Construction Standards

Design-BUILDER shall furnish all aspects of the Design Work, Design Documents, and Construction Work in accordance with:

- (1) The requirements, terms, and conditions established in the Contract Documents;
- (2) The Project Schedule;
- (3) All Laws;
- (4) The requirements, terms, and conditions set forth in all Governmental Approvals;
- (5) The requirements, terms, and conditions set forth in all Community Approvals;
- (6) The requirements, terms, and conditions set forth in all BIA Approvals;
- (7) The ADOT-approved PMP and all component plans prepared or to be prepared thereunder;
- (8) The Safety Management Plan; and
- (9) All other applicable safety, environmental, and other requirements, taking into account the Project ROW limits and other constraints affecting the Project.

Design-BUILDER shall perform all Professional Services Work and Construction Work on the Project within the boundaries of the Project ROW.

Design-BUILDER also shall construct the Project and Utility Adjustments in accordance with the approved RFC Submittals, and the Construction Documents, and must be of good quality material, free from Defects.

The Project design and construction will be subject to certification pursuant to the procedures contained in the ADOT-approved Quality Management Plan (QMP).

(C) Use of Prohibited Products

Design-BUILDER shall not commit any of the following actions:

- (1) Deliver, install, or include any prohibited product under the Contract Documents;
- (2) Propose to deliver, install, or include any prohibited product under the Contract Document; and
- (3) Enter into a new contract to procure or obtain any prohibited product.

For the purpose of this Section 7.01(C), "Prohibited Product" is defined as any telecommunication or video surveillance equipment, systems, or services produced by:

- (1) Huawei Technologies Company.
- (2) ZTE Corporation.
- (3) Hytera Communications Corporation.
- (4) Hangzhou Hikivision Digital Technology Company.
- (5) Dahua Technology Company.
- (6) Any subsidiary or affiliate of the entities mentioned in this Section 7.01(C).

Design-Builder shall identify the known subsidiaries and affiliates of the aforementioned from the following website:

https://umd.servicenow.com/itsupport?id=kb_article_view&sysparm_article=KB0014132&sys_kb_id=28015b70db_e0e3849382f1a51d96193f

7.02 Design

(A) Design Implementation and Submittals

Design-Builder, through the qualified and licensed design professionals identified in Exhibit 2-10 (Key Personnel), TP Section 110.03 (Personnel Requirements), and Design-Builder's PMP, shall prepare Design Documents in accordance with the Contract Documents. Design-Builder shall cause the Engineers of Record, as applicable, for the Project to sign and seal all RFC Submittals.

Design-Builder shall construct the Project in accordance with the approved RFC Submittals and the Construction Documents.

(B) Design-Builder Responsibility for Design

Design-Builder agrees that it has full responsibility for the design of the Project and that Design-Builder will furnish the design of the Project, notwithstanding that aspects of the Schematic Design have been provided to Design-Builder as a preliminary basis for Design-Builder's design. Design-Builder specifically acknowledges and agrees that:

- (1) Design-Builder is not entitled to rely on:
 - (a) The Schematic Design except as specified otherwise in Section 7.02(C)(2); or
 - (b) Any other documents or information provided by ADOT, except to the extent specifically permitted in the Contract Documents;
- (2) Design-Builder is responsible for correcting any errors in the Schematic Design through the design or construction process;
- (3) The Technical Provisions take precedence over the Schematic Design, and that the Schematic Design may contain information that is not consistent with the Technical Provisions;
- (4) Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim arising from errors in the Schematic Design or any inconsistencies between the Technical Provisions and the Schematic Design, except only for the right to a Supplemental Agreement with respect to Necessary Design Adjustment as set forth in Section 11.03, and subject to the requirements and limitations of Section 8; and
- (5) Design-Builder's warranties and indemnities hereunder cover errors in the Project even though they may arise from or be related to errors in the Schematic Design.

(C) Schematic Design**(1) General**

Design-Builder shall design the Project, notwithstanding that aspects of the Schematic Design have been provided to Design-Builder as a preliminary basis for Design-Builder's design. Design-Builder is not entitled to rely on the Schematic Design except as specified otherwise in Section 7.02(C)(2).

(2) Changes to Schematic Design and Schematic ROW

The requirements and constraints established in the Contract Documents, Governmental Approvals, Community Approvals, and BIA Approvals as well as Site conditions, will impact Design-Builder's ability to revise the concepts contained in the Schematic Design. Design-Builder, however, may modify the Schematic Design without ADOT's prior written approval if the proposed modification:

- (a) Complies with the requirements of the Technical Provisions;
- (b) Requires no revision, modification or amendment to the NEPA Approval, as determined in accordance with TP Section 117 (Environmental);
- (c) Does not constitute: an AASHTO *Controlling Design Criteria* variance, ADOT *Roadway Design Guidelines* variance, or require adjustment to the *Change of Access Report*; and
- (d) Does not deviate from the design concepts included in the Proposal.

Design-Builder may rely on the Schematic ROW limits, as shown on the Schematic Design, and acknowledges that it is feasible to design and develop the Basic Configuration within said Schematic ROW limits. Changes to the Schematic ROW are not allowed.

Design-Builder acknowledges that the Schematic Design is preliminary and subject to refinement through the Final Design process, and that Design-Builder is not entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim in connection with changes in the Schematic Design, except as provided for Necessary Design Adjustment to the extent allowed under Section 11.03.

7.03 Ground Disturbing Activities

Unless otherwise specified in the Contract Documents, Design-Builder shall not commence or permit commencement of ground disturbing activities until all of the conditions precedent specified in Exhibit 6-2 (Conditions Precedent to Ground Disturbing Activities) have been satisfied.

7.04 Construction**(A) Conditions to Commencement of Construction**

Unless otherwise specified in the Contract Documents, Design-Builder shall not commence or permit commencement of construction of any portion of the Project until ADOT issues NTP 2 and all of the conditions precedent specified in Exhibit 6-4 have been satisfied.

(B) Existing Improvements**(1) General Improvements**

Design-Builder shall inspect the condition of items identified in TP Section 100.19 (Documentation of the Site), and shall repair, replace, or construct repairs or replacements of all such items that are no longer fit for use. Design-Builder shall be responsible for the cost of such repair or replacement if Design-Builder's design requires or will require repair or replacement of such items. ADOT may request that Design-Builder repair or replace other items

through one or more ADOT-Directed Changes. Design-Builder's entitlement to an increase in the Contract Price and Contractual Deadline adjustment, if any, for such Work shall be as set forth in Section 8.

(2) ITS Improvements

Design-Builder shall repair, reconstruct, or replace existing ITS improvements where Design-Builder's design or construction requires repair, reconstruction or replacement, and Design-Builder shall be responsible for the cost thereof. ADOT anticipates it will require Design-Builder to construct certain additional ITS improvements identified in the ITS Inventory, following the process described in TP Section 738.02(B) (ITS Inventory), as one or more ADOT-Directed Changes. Accordingly, except for repair, reconstruction or replacement of existing ITS improvements required by Design-Builder's Project design or construction, Design-Builder shall not commence, or permit commencement of, construction of ITS improvements identified by Design-Builder in the ITS Inventory until ADOT issues a corresponding Supplemental Agreement or Directive Letter therefor pursuant to Section 8. Design-Builder's entitlement to an increase in the Contract Price and Contractual Deadline adjustment, if any, for such Work shall be as set forth in Section 8.02.

(C) Conformity with Plans and Project Special Provisions

All Work performed and all materials furnished shall be in reasonably close conformity to the lines, grades, cross-sections, dimensions and material requirements, within tolerances shown on the Plans or indicated in the Project Special Provisions. ADOT will determine the limits of reasonably close conformity in each individual case and ADOT's judgment shall be in its good faith discretion. Where specific provisions regarding QC standards are set forth elsewhere in the Contract Documents, they shall be controlling.

ADOT's failure to discover or reject materials or Work not in accordance with the Contract Documents during the progress of Work shall not be considered an acceptance of the Work or materials, or a waiver of Defects. Neither the failure to properly perform inspections, tests or approvals required by the Contract Documents nor the activities or duties to ADOT in the administration of this DBA shall relieve the Design-Builder from its obligation to perform the Work in strict accordance with the Contract Documents.

In the event ADOT finds the materials furnished and Work performed or the finished product in which the materials used are not within reasonably close conformity with the Contract Documents but that reasonably acceptable Work meeting the design purpose has been produced, ADOT will determine the conditions under which the Work will be accepted and allowed to remain in place, unless there are other provisions in the Contract Documents that provide for this determination. Where this determination is made by ADOT, rather than Contract Document provisions, ADOT will document the basis of acceptance through written direction. The modification will provide for an appropriate adjustment in the Contract Price for such Work or materials as necessary to support this determination.

In the event ADOT finds the materials furnished, Work performed, or the finished product in which the materials are used, or the Work performed are not in reasonably close conformity with the Contract Documents and have resulted in Work which is not reasonably acceptable, the Work or materials shall be considered Nonconforming Work and shall be removed and replaced or otherwise corrected by the Design-Builder as approved by ADOT at no additional cost to ADOT.

Design-Builder shall bear all the costs of providing the burden of proof that the Nonconforming Work is reasonable and adequately addresses the design purpose. Design-Builder shall bear all risk for all Nonconforming Work until it is replaced or accepted.

ADOT may impose conditions for acceptance of the Nonconforming Work. Design-Builder shall bear all costs for fulfilling such conditions.

The decisions whether the product satisfies the design purpose, whether the Nonconforming Work is reasonably acceptable, and the conditions for acceptance, are within the sole discretion of ADOT.

(D) Unacceptable Materials

Material not conforming to the requirements of the Contract Documents, whether in place or not, will be rejected and Design-Builder shall promptly remove such material from the Site, unless otherwise directed by ADOT. No rejected material, the Defects of which have been corrected, shall be returned to the Site until such time as approval for its use has been given by ADOT.

(E) Methods and Equipment

All equipment which is proposed to be used on the Work must be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of Work. Equipment used on any portion of the Project must be such that no damage to the roadway, adjacent property or other highways will result from its use.

When the construction methods and types of equipment to be used by Design-Builder in accomplishing the Construction Work are not set forth in the Contract Documents, Design-Builder may use any methods or equipment that it demonstrates to the satisfaction of ADOT will accomplish the Work in conformity with the requirements of the Contract Documents.

When the Contract Documents specifies that the Construction Work be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by ADOT in writing. If Design-Builder desires to use a method or type of equipment other than those specified in the Contract Documents, it may request authority from ADOT to do so. The request must be in writing and must include a full description of the method and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that Design-Builder shall be fully responsible for producing Construction Work in conformity with the Contract Documents requirements. If after trial use of the substituted methods or equipment, ADOT determines that the Construction Work produced does not meet Contract Document requirements, Design-Builder shall discontinue the use of the substitute method or equipment and shall complete the remaining Construction Work with the specified methods and equipment. Design-Builder shall either remove the deficient Work or replace it with work of specified quality or take such other corrective action as ADOT may direct.

7.05 Maintenance During Construction**(A) General**

Commencing upon issuance of NTP 2 and continuing thereafter during the Work, Design-Builder shall be responsible for (i) maintenance of the existing facilities throughout the Project ROW to the extent set forth in TP Section 105.15 (Maintenance During Construction), and (ii) maintenance of all improvements Design-Builder constructs for the Project; provided, however, that Design-Builder's maintenance responsibility for portions of such improvements owned by third parties shall extend until the control of and maintenance responsibility for such portions are officially transferred to the respective third parties but in no event beyond Final Acceptance (D&C).

(B) ADOT-Directed Maintenance

ADOT may determine that Maintenance During Construction in addition to that described in TP Section 105.15 (Maintenance During Construction) is required during the Work for the portions of the Project ROW being used by the traveling public. If ADOT orders any such additional Maintenance During Construction, Design-Builder will be paid in accordance with Section 6.02(G)(1). Design-Builder shall repair any damage caused by its own operations and activities without the right to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim.

End Section

8 CHANGES TO THE CONTRACT DOCUMENTS

8.01 General

ADOT reserves the right to revise the DBA at any time. Such revisions shall neither invalidate the DBA nor release the Surety. Design-Builder shall not proceed with Work for which a revision to the DBA may be required without prior written direction from ADOT. Once written direction is received, Design-Builder shall proceed with such direction promptly, whether ADOT considers that the DBA has been revised or not. If the change to the Work does not conform to Section 8.03(C), the altered work shall be considered as included in Contract Price and Design-Builder shall not be entitled to an increase in the Contract Price, Contractual Deadline adjustment, or other Claim.

ADOT may, at any time and from time to time, without notice to any Surety, authorize or require, pursuant to a Supplemental Agreement, changes in the Work (including reductions in the scope of the Work) or in terms and conditions of the Technical Provisions (including changes in the standards applicable to the Work).

ADOT's changes to the Work will be documented through issuance of an ADOT-Directed Change. No document, including any field directive, comment to a Submittal, correspondence discussing the DBA or the Work, or otherwise, shall be valid, effective, or enforceable as an ADOT-Directed Change or a Supplemental Agreement unless expressly identified as such and signed by ADOT for ADOT-Directed Changes and Supplemental Agreements.

ADOT may in its sole discretion issue a Supplemental Agreement and the Design-Builder has executed the Supplemental Agreement that amends this DBA if there is no effect on the Design-Builder's costs or schedule. Such discretion will be limited to changes required by a legal authority (without regard to ADOT's discretion) and administrative changes necessary for ADOT's proper administration of this DBA.

Any requests by Design-Builder that a revision to the DBA is necessary and justified shall consider the fact that Design-Builder is responsible for design development, detailed design, and the preparation of the Plans and Project Special Provisions for the Project based on general criteria in the Contract Documents. Thus, if the cause(s) or reason(s) for the requested revision were foreseeable through Reasonable Investigation when the Proposals were being prepared, then Design-Builder's request for a revision to the DBA will not be approved and Design-Builder will not be entitled to an increase in the Contract Price, Contractual Deadline adjustment, or other Claim associated with such a request. Whenever the words notice, notification, request or notify are used in Section 8, such notice or request shall be provided in accordance with the requirements of Section 8.03 and Exhibit 10.

Design-Builder shall not make any change in the Basic Configuration of the Project, except as approved by ADOT in its sole discretion and authorized by a Supplemental Agreement in accordance with this Section 8.

8.02 ADOT Initiated Change Process

(A) Directive Letters

ADOT may at any time issue a Directive Letter to Design-Builder for any disagreement regarding the scope of the Work or whether Design-Builder has performed the Work in accordance with the requirements of the Contract Documents.

Design-Builder shall proceed promptly as directed in the Directive Letter, including by commencing any Work described therein within the time specified in the Directive Letter.

If the Directive Letter states that the Work is within Design-Builder's original scope of Work set forth in the Contract Documents or is necessary to comply with the requirements of the Contract Documents, Design-Builder shall proceed with the Work as directed, but shall have the right to assert that an ADOT-Directed Change has occurred. In such situation, Design-Builder shall comply with and be subject to the procedures under Section 8.03 for Relief Event Claims and the remainder of Section 8.

The fact that a Directive Letter was issued by ADOT will not be considered evidence that an ADOT-Directed Change occurred.

(B) Request for Change Proposal

If ADOT desires to evaluate whether to initiate a change to the DBA, then ADOT may issue a Request for Change Proposal. The Request for Change Proposal must set forth the nature, extent, and details of the proposed change. ADOT may, in its sole discretion, determine whether to implement the potential change after consideration of Design-Builder's response.

Within five Business Days after Design-Builder receives a Request for Change Proposal, or such longer period to which the Parties may mutually agree, ADOT and Design-Builder shall consult to define the proposed scope of the change. Within five Business Days after the initial consultation, or such longer period to which the Parties may mutually agree, ADOT and Design-Builder shall consult concerning the estimated financial, schedule, and other impacts.

If ADOT decides, in its sole discretion, to proceed with response to a Request for Change Proposal, then ADOT will issue an ADOT-Directed Change and ADOT and Design-Builder shall exercise good faith efforts to negotiate a mutually acceptable Supplemental Agreement.

(C) ADOT-Directed Changes

Throughout the duration of the DBA, ADOT may revise the DBA through a Supplemental Agreement.

ADOT may deliver a written notice (ADOT-Directed Change) to Design-Builder that may adjust the Contract Price or Contractual Deadline. Design-Builder shall comply with and be subject to the procedures under Section 8.03 for Relief Event Claims and the remainder of Section 8.

ADOT will be entitled to 100% of the estimated net cost savings, if any, attributable to any reductive ADOT-Directed Change. Such net cost savings shall include the net reduction, if any, in labor, material, equipment, and overhead and profit costs associated with the ADOT-Directed Change.

ADOT will be entitled to 100% of the effect of the proposed ADOT-Directed Change on shortening the Project Schedule and Contractual Deadlines. The time savings must be realized by subtracting the number of Critical Path days saved from the number of days remaining until the Substantial Completion Deadline in effect the day before the corresponding Supplemental Agreement is executed. The resulting number of days remaining shall become the Substantial Completion Deadline in the corresponding Supplemental Agreement.

(D) Suspensions for Convenience

ADOT may, at any time and for any reason, order Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that ADOT deems appropriate for the convenience of ADOT. Design-Builder shall promptly comply with any such suspension order. Design-Builder shall promptly recommence the Work upon receipt of notice from ADOT directing Design-Builder to resume Work. Any such suspension for convenience shall be considered an ADOT-Directed Change or an ADOT-Caused Delay.

8.03 Design-Builder Requested Change**(A) Deviations**

Design-Builder may apply for ADOT approval of Deviations from applicable Technical Provisions regarding the design or construction of the Project that have no impact on the cost or time to perform the Work. Any such Deviation Request must only request an adjustment that is of equal or better quality than the original Technical Provisions or Design-Builder's Proposal commitments, unless ADOT agrees otherwise, which decision shall be in ADOT's sole discretion.

The Deviation approval process is as follows:

- (1) Design-Builder shall prepare a written Deviation Request that identifies the section of the Technical Provisions from which Design-Builder seeks the Deviation, the current language of the section of the Technical Provisions, Design-Builder's proposed new language, and other information sufficient for ADOT to evaluate the Deviation Request.
- (2) ADOT will consider, in its sole discretion, but have no obligation to approve, any such Deviation Request. Design-Builder shall bear the burden of establishing that the Deviation Request meets the standard of care applicable in this DBA, is approved by the Community, the BIA, the applicable Governmental Entity, or the applicable Utility Company, achieves ADOT's applicable safety standards and criteria, and satisfies the purpose or intent of the applicable Technical Provision(s).
- (3) No Deviation Request shall be deemed approved or be effective unless and until stated expressly in writing signed by ADOT. If approved and signed by ADOT, a Supplemental Agreement is not required.
- (4) ADOT's lack of issuance of an approval for any Deviation Request within 10 Business Days after ADOT's receipt of such Deviation Request shall be deemed as a disapproval.
- (5) ADOT's denial or disapproval of a Deviation Request shall be final and not subject to the Dispute Resolution Procedures.
- (6) The approval of a Deviation Request by ADOT shall not relieve Design-Builder of its obligations with respect to any other component of the Contract Documents, and shall not operate as a waiver by ADOT of the right to seek relief from Design-Builder, including by asserting a Claim against Design-Builder, for any failure of Design-Builder's design or construction to comply with any other requirement of the Contract Documents. Design-Builder shall be responsible for ensuring that any Deviation does not affect Design-Builder's ability to comply with any other requirement of the Contract Documents. Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim arising out of Design-Builder's inability to comply with any other provision of the Contract Documents due to an approved Deviation Request.

(B) Change Request

If a proposed Deviation would reduce Design-Builder's cost of performing the Work or result in time savings, Design-Builder shall submit the request as a Change Request in accordance with this Section 8.03(B). Any cost and time savings shall be allocated between ADOT and Design-Builder as provided in this Section 8.03(B).

ADOT, in its sole discretion, may accept or reject any Change Request proposed by Design-Builder. If ADOT accepts such Change Request, Design-Builder shall implement such change in accordance with the executed Supplemental Agreement. No acceptance of a Change Request by ADOT shall be deemed to take effect unless documented in a written Supplemental Agreement signed by ADOT. No such Supplemental Agreement shall constitute an ADOT-Directed Change regardless of its title, designation, or wording.

Design-Builder shall solely bear the risk of any increase in the costs of the Work or other costs, and for any additional risks, resulting from a Change Request accepted by ADOT. Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim for delays or other impacts resulting from a Change Request accepted by ADOT, except where explicitly approved by ADOT.

To the extent a Change Request accepted by ADOT results in a net cost savings to Design-Builder, ADOT will be entitled to 50% of such savings. Such net cost savings shall include the net reduction, if any, in labor, material, equipment, and overhead and profit costs associated with the Change Request. To the extent a Change Request results in Critical Path time savings, ADOT shall be entitled to 50% of such time savings, calculated in the manner

described in Section 8.02(C), except that 50% of the Days saved shall be subtracted from the Substantial Completion Deadline.

(C) Design-Builder Relief Events

(1) General

Design-Builder shall perform the Work as more fully described in the Contract Documents; however, Design-Builder shall be entitled to the relief and protection provided under this Section 8 only if the occurrence of a Relief Event and the effects of such occurrence:

- (a) Are beyond the reasonable control of Design-Builder-Related Entities;
- (b) Are not due to any act, omission, negligence, recklessness, willful misconduct, fault, breach of contract, or breach of the requirements of the Contract Documents or a violation of Law, Governmental Approval, Community Approval, or BIA Approval of or by any of the Design-Builder-Related Entities; and
- (c) Could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Design-Builder-Related Entities.

Design-Builder shall take all steps reasonably necessary to mitigate the consequences of any Relief Event.

(2) Re-sequencing and Re-scheduling of Work

Design-Builder shall not be entitled to an increase in the Contract Price, Contractual Deadline adjustment, or other Claim or relief for impacts that could have been avoided through re-sequencing and re-scheduling of the Work or other work-around measures. However, Design-Builder shall not be required to implement such mitigation measures where the cost thereof would exceed the Extra Work Costs and Delay Costs if the mitigation measures were not implemented. Design-Builder bears the burden of showing that the cost of implementing mitigation measures would exceed the Extra Work Costs or Delay Costs.

Whenever a Relief Event occurs and Design-Builder submits an original or supplemental Relief Event Notice for Extra Work Costs or Delay Costs, Design-Builder shall concurrently submit to ADOT an analysis of potential re-sequencing, re-scheduling, and other work-around measures and a comparison of the estimated costs to the estimated savings in the Extra Work Costs or Delay Costs that would result.

Design-Builder shall cooperate with ADOT to identify the re-sequencing, re-scheduling, and other work-around measures that will maximize mitigation of costs to ADOT, taking into account the cost of the potential re-sequencing, re-scheduling, and other work-around measures.

ADOT will compensate Design-Builder for the reasonable costs of re-sequencing, re-scheduling, and other work-around measures authorized in writing by ADOT pursuant to this Section 8.03(C)(2), in the same manner it compensates for Extra Work Costs and Delay Costs under Section 6.07.

(3) Items Eligible for Design-Builder Requested Relief Events

The following items are eligible for Design-Builder requests for relief:

- (a) ADOT's failure to perform or observe any of its covenants under the Contract Documents;
- (b) ADOT-Directed Change;
- (c) Safety Compliance Order;
- (d) ADOT-Caused Delay;

- 1 (e) Utility Company Delay;
- 2 (f) Governmental Entity Delay;
- 3 (g) Inaccurate Utility Information;
- 4 (i) Design-Builder shall not be entitled to an increase in the Contract Price, a
- 5 Contractual Deadline adjustment, or any other Claim due to Inaccurate
- 6 Utility Information that affects or concerns work in, on, or under Temporary
- 7 Work Areas or otherwise outside the Schematic ROW;
- 8 (h) Differing Site Conditions;
- 9 (i) In order for a DBA adjustment to be warranted, Design-Builder shall submit
- 10 as evidence, any soils investigation report used by it in the preparation of
- 11 the Project design. If such a report does not exist, is incomplete or has been
- 12 done in manner that does not satisfy ADOT standards of thoroughness as
- 13 applied to projects of a similar nature; a DBA adjustment shall not be
- 14 granted. For the purposes of Section 8, ADOT-furnished reports as specified
- 15 in the Contract Documents may be considered for determination that there
- 16 exists a sufficient basis for an adjustment;
- 17 (ii) Design-Builder shall not be entitled to an increase in the Contract Price, a
- 18 Contractual Deadline adjustment, or any other Claim for Differing Site
- 19 Conditions in, on or under Temporary Work Areas or otherwise outside the
- 20 Schematic ROW; and
- 21 (iii) Design-Builder shall not be entitled to an increase in the Contract Price, a
- 22 Contractual Deadline adjustment, or any other Claim for Differing Site
- 23 Conditions under the existing I-10 mainline asphalt pavement section.
- 24 (i) Change in Law;
- 25 (j) Discovery at, near or on the Project ROW, of any Threatened or Endangered Species;
- 26 (k) Discovery on or under the Project ROW, of any archeological, paleontological or
- 27 cultural resources, excluding any such resources at the Known Cultural Resource
- 28 Sites;
- 29 (l) Issuance of a temporary restraining order, preliminary injunction or other form of
- 30 interlocutory relief by a court of competent jurisdiction that prohibits prosecution of
- 31 any portion of the Work, except if based on the negligent, reckless, intentional or
- 32 wrongful act or omission of Design-Builder;
- 33 (m) Force Majeure Event;
- 34 (n) Issuance of a rule, order or directive from the U.S. Department of Homeland Security
- 35 or comparable State agency regarding specific security threats to the Project or the
- 36 region in which the Project is located or which the Project serves, to the extent such
- 37 rule, order or directive requires specific changes in Design-Builder's normal design or
- 38 construction procedures to comply;
- 39 (o) Discovery of any Hazardous Materials within the Schematic ROW (including Releases
- 40 of Hazardous Material by ADOT), excluding Design-Builder Releases of Hazardous
- 41 Materials and Known or Suspected Hazardous Materials;

- (p) Any sudden spill of Hazardous Material by ADOT or a third party who is not acting in the capacity of a Design-Builder-Related Entity, which:
- (i) Occurs after the Setting Date;
 - (ii) Is required to be reported to a Governmental Entity; and
 - (iii) Renders use of the roadway or construction area within the Project ROW unsafe or potentially unsafe absent assessment, containment or remediation;
- (q) Procedural change orders;
- (r) Any Necessary Design Adjustment;
- (s) Delay in issuance of NTP 1;
- (t) Delay in issuance of NTP - Koli beyond the NTP – Koli Window;
- (u) Community Delay; and
- (v) BIA Delay.

If Design-Builder contends that an ADOT-Directed Change has occurred and ADOT has either not issued (i) a Supplemental Agreement therefor or (ii) a Directive Letter, then, if Design-Builder seeks to assert that a Relief Event has occurred, Design-Builder shall comply with and be subject to the procedures under Section 8 for Relief Events, and shall not have the right to initiate the Dispute Resolution Procedures until permitted by Section 14.

(D) Process

Design-Builder shall comply with the notification and submission requirements in Sections 8.03(D)(1) and 8.03(D)(2).

(1) Relief Event Notice

Not later than five Business Days after Design-Builder believes that an occurrence on the Project will necessitate a Relief Event, Design-Builder shall notify ADOT. Notification can be either written or verbal, but shall be made to the applicable ADOT Authorized Representative.

If within 15 Business Days of notifying ADOT in accordance with this Section 8.03(D)(1), the identified issue has not been resolved, Design-Builder shall submit a written Relief Event Notice in the format of Exhibit 9 (Relief Event Notification Form) to ADOT. This 15 Business Day deadline may be extended via mutual written agreement between ADOT and Design-Builder. ADOT and Design-Builder must make good faith effort to resolve the issue identified in the Relief Event Notice through the partnering process.

Not later than 45 Days following the Starting Date of Relief Event, Design-Builder shall be deemed to have waived and released the portion of any Claim or right to relief for any adverse effect attributable or related to the Relief Event accruing between the 45-Day deadline and the date Design-Builder submits a written Relief Event Notice. Design-Builder shall have the opportunity to submit supplemental information throughout the Claim process.

(2) Relief Request

Within 90 Days of submission of the Relief Event Notice, Design-Builder shall submit a written Relief Request containing the information required by Section 8.03(D)(2). Such 90 Days may be extended via mutual written agreement between ADOT and Design-Builder.

The Relief Request must include the following information, to the maximum extent the information is available:

- (a) Full details of the Relief Event, including its nature, the date and time of its occurrence, its estimated duration, affected locations, and items of Work affected;

- (b) Identification of the substance of any material communications between ADOT and Design-Builder, if any, relating to the Relief Event. The communications identified include oral communications, but only as it relates to communications with an ADOT Authorized Representative. Include the name of Design-Builder personnel making such oral communications;
- (c) Identification of the specific provisions of the Contract Documents that Design-Builder claims entitles Design-Builder to the relief sought, and a complete, detailed statement that explains the reasons why the provisions entitle Design-Builder to that relief. Design-Builder shall additionally include any documents or other materials that Design-Builder contends support entitlement to the relief sought. If Design-Builder seeks relief for ADOT's alleged breach of the Contract Documents, then Design-Builder shall identify the specific provisions of the Contract Documents that ADOT allegedly breached and the actions constituting the breach;
- (d) Where Design-Builder makes a request for a Contractual Deadline adjustment, a Time Impact Analysis of the Project Schedule that:
- (i) Identifies Controlling Work Items and Critical Path (with Activity Durations, Predecessor, and Successor Activities and resources, including Total Float), and illustrates the effect of schedule changes or disruptions on the Contractual Deadlines; and
 - (ii) Complies with the requirements of TP Section 108.12(G) (*Time Impact Analysis*);
- (e) A detailed, itemized estimate of all amounts claimed for Extra Work Costs and Delay Costs to the extent such amounts are eligible for compensation under Section 8.03(C) for the Relief Event in question. All such amounts must comply with Exhibit 10 and be broken down in terms of the eligible direct costs for labor (including, as applicable, hourly wage rates, fringe benefits rates, and burden), materials, equipment, third party fees and charges, extra insurance, and performance and payment security (e.g., bonds and letters of credit), as applicable, and other direct costs, including expenses and profit, and any other cost category or categories ADOT specifies;
- (f) Only if Design-Builder makes a request for a Contractual Deadline adjustment, and if requested by ADOT, Design-Builder shall provide a detailed, itemized estimate of all acceleration costs associated with meeting the non-adjusted Contractual Deadlines, as well as any additional costs permitted hereunder. If Design-Builder reasonably believes that it is not feasible to recover to the non-adjusted Contractual Deadlines, or that the costs associated with such a recovery are prohibitive, then Design-Builder shall so state and provide a supporting analysis;
- (g) The effect of the Relief Event on Design-Builder's ability to perform any of its obligations under this DBA, including details of the relevant obligations, the effect on each such obligation, and the likely duration of that effect; and
- (h) An explanation of the measures that Design-Builder has previously taken to prevent, and proposes to undertake to mitigate, the costs, delay, and other consequences of the Relief Event.

Design-Builder may be entitled to an extension of applicable Contractual Deadlines by the period that the end of the Critical Path extends beyond the original Contractual Deadline due to any Relief Event Delay that Design-Builder cannot reasonably avoid through mitigation as required under Section 8. Design-Builder's entitlement to any Contractual Deadline adjustment under the Contract Documents is subject to Design-Builder demonstrating that the

Project Schedule in the absence of the Relief Event contained a reasonable amount of time to complete the Work that is the subject of the Relief Event.

The foregoing extension of applicable Contractual Deadlines shall be the exclusive remedy for the existence or occurrence of a Relief Event under Section 8.03(C)(3) item (o) relating to or affecting Temporary Work Areas, and Design-Builder shall not be entitled to Delay Costs, Extra Work Costs, or any other Claim arising therefrom.

As an alternative to the Contractual Deadline adjustment(s) to which Design-Builder is otherwise entitled under this Section 8.03(D)(2), ADOT may in its sole discretion, pay Design-Builder acceleration costs. In such cases, ADOT's election to pay acceleration costs in lieu of Contractual Deadline adjustment(s) shall be established in the applicable Supplemental Agreement.

Design-Builder shall not be excused from timely payment of monetary obligations under this DBA due to the occurrence of a Relief Event. Design-Builder shall not be excused from compliance with the Contract Documents or applicable Laws due to the occurrence of a Relief Event, except temporary inability to comply due solely and directly to the Relief Event.

Design-Builder shall be entitled to rely upon the occurrence of a Relief Event as a defense against a Design-Builder Default where the occurrence of the Relief Event causes such Design-Builder Default; provided, however, that this defense shall not apply if actions or omissions by a Design-Builder-Related Entity other than the Relief Event, but occurring at or around the same time, result in a Design-Builder Default.

Refer to Sections 15 and 16 regarding the effect of a Relief Event on Default, the accrual of Noncompliance Events and Noncompliance Points and assessment of Noncompliance Charges for Noncompliance Events.

Refer to Section 15 regarding the effect of a Relief Event on Liquidated Damages for Lane Closures.

If for any reason Design-Builder fails to deliver the written Relief Request in accordance with Section 8.03(D)(2), Design-Builder shall be deemed to have waived and released any and all Claim or right to relief for any effect attributable or related to such Relief Event; provided, however, that if Design-Builder submits a Relief Request within 90 Days of the Starting Date of Relief Event and ADOT responds as provided in Section 8.03(D)(3) that Design-Builder's Relief Request is not complete, Design-Builder shall have until the later of 30 Days after receipt of ADOT's notice pursuant to Section 8.03(D)(2).

(3) ADOT Review

ADOT will evaluate the information presented in the Relief Request and provide a written response to Design-Builder not later than 45 Days after ADOT's receipt of the Relief Request.

If ADOT finds the Claim or any part thereof to be valid, or if the Claim or any part thereof is deemed to be valid as a result of completion of the Dispute Resolution Procedures, ADOT will:

- (a) Deliver to Design-Builder notice authorizing such partial or whole Claim;
- (b) Pay such Claim to the extent deemed valid; and
- (c) Grant a commensurate Contractual Deadline adjustment, if applicable, as provided for in the Contract Documents.

(4) Final Determination

If the Supplemental Agreement is to provide for an adjustment in the Contract Price or a Contractual Deadline adjustment, such adjustments will be determined in accordance with Sections 8.02(C) and 8.03(C) and Exhibit 10. No payment for a Supplemental Agreement will be made until receipt of complete and conforming Relief Event Claim

- 1 documentation. If ADOT and Design-Builder are unable to reach resolution, then the partnering process is initiated.
- 2 All escalations associated with Relief Events are initiated at Issue Resolution Ladder “Level 2”. See Section 14.

3 **End Section**

9 GOVERNMENTAL, COMMUNITY, AND BIA APPROVALS**9.01 Responsibility for Governmental, Community, and BIA Approvals****(A) General**

Design-Builder hereby assumes responsibility for, and shall obtain:

- (1) All Governmental Approvals, Community Approvals, and BIA Approvals, other than the ADOT-Provided Approvals, required in connection with the Proposal Design or the Final Design, the Project, the Project ROW, Temporary Work Areas, the Work or a Relief Event; and
- (2) All reevaluations, amendments, and supplements of the NEPA Approval required in connection with the Proposal Design or the Final Design, the Project, the Project ROW, Temporary Work Areas, the Work or a Relief Event.

Design-Builder shall deliver to ADOT true and complete copies of all new or amended Governmental Approvals and any Design-Builder obtained Community Approval and BIA Approval as specified in the Contract Documents, including reevaluations, amendments, and supplements of the NEPA Approval in accordance with TP Section 117 (Environmental).

(B) ADOT-Provided Approvals**(1) NEPA Approval****(a) General**

ADOT obtained the NEPA Approval for the Corridor and the portion for the Project is based on the Schematic Design. Design-Builder acknowledges that it received and is familiar with the NEPA Approval and supporting documentation, as contained in the RIDs.

(b) Environmental Compliance Obligations

Except as provided otherwise below, ADOT delegates to Design-Builder all ADOT obligations, commitments, and responsibilities under all Environmental Approvals and Design-Builder shall, at its sole cost and expense:

- (i) Comply with all Environmental Laws;
- (ii) Comply with all conditions and requirements imposed by all Environmental Approvals;
- (iii) Perform all commitments and mitigation measures set forth in all Environmental Approvals; and
- (iv) Undertake all actions required by, or necessary to maintain in full force and effect, all Environmental Approvals.

ADOT retains sole responsibility for payment and performance of the environmental obligations, commitments, and responsibilities expressly identified as not delegated to Design-Builder in the Design-Builder's environmental commitments set forth in TPA 117-1 (Environmental Commitments).

Design-Builder acknowledges that TPA 117-1 (Environmental Commitments) may not contain an all-inclusive or accurate list of all environmental obligations, commitments, and responsibilities that apply to the Project. ADOT does not warrant or represent the completeness or accuracy of the Project environmental commitment requirements in TPA 117-1 (Environmental Commitments), which is made available to Design-Builder as a convenience in preparing the EMP. Design-Builder is solely responsible for the completeness and accuracy of the EMP, including the correction of any errors or omissions in TPA 117-1 (Environmental Commitments). Neither incompleteness nor inaccuracy of the Project environmental commitment requirements set forth in TPA 117-1

(*Environmental Commitments*) shall alter or limit the scope of Design-Builder's environmental compliance obligations in the Contract Documents or shall entitle Design-Builder to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim.

(2) All Other ADOT-Provided Approvals

All other Governmental Approvals that ADOT is responsible for acquiring are specified in TP Section 117.03(A) (*ADOT-Provided Approvals*).

9.02 Pre-Submission to ADOT

(A) Governmental Approvals

Prior to submitting any application for a Governmental Approval (or any proposed reevaluation, amendment, supplement, modification, renewal, extension or waiver of a Governmental Approval, or provision thereof) to a Governmental Entity, Design-Builder shall submit the same, together with any supporting studies, analyses, and data, to ADOT for appropriate action, if any, in accordance with TP Section 117.03 (*Governmental Approvals, Community Approvals, and BIA Approvals*). ADOT assumes no duty, obligation or liability regarding completeness or correctness of any such application, regardless of ADOT's approval, review, and comment, or ADOT's lack of approval, review, and comment. Traffic control related Submittals are excluded from this pre-submission requirement.

(B) Community Approvals

Design-Builder shall submit any application for a Community Approval (or any proposed reevaluation, amendment, supplement, modification, renewal, extension or waiver of a Community Approval, or provision thereof), together with any supporting studies, analyses, and data, to ADOT for appropriate action, if any, in accordance with TP Section 117.03 (*Governmental Approvals, Community Approvals, and BIA Approvals*). ADOT assumes no duty, obligation or liability regarding completeness or correctness of any such application, regardless of ADOT's approval, review, and comment, or ADOT's lack of approval, review, and comment.

(C) BIA Approvals

Design-Builder shall submit any application for a BIA Approval (or any proposed reevaluation, amendment, supplement, modification, renewal, extension or waiver of a BIA Approval, or provision thereof), together with any supporting studies, analyses, and data, to ADOT for appropriate action, if any, in accordance with TP Section 117.03 (*Governmental Approvals, Community Approvals, and BIA Approvals*). ADOT assumes no duty, obligation or liability regarding completeness or correctness of any such application, regardless of ADOT's approval, review, and comment, or ADOT's lack of approval, review, and comment.

9.03 Impact of Design-Builder's Design

Design-Builder shall be responsible for all necessary actions, and Design-Builder shall bear all risk of delay and all risk of increased cost, attributable to, resulting from or arising out of:

(A) Any differences between the Final Design for any portion of the Project and the Schematic Design or Design-Builder's Proposal Design, including differences due to any ATC established in Exhibit 2-1, but excluding any differences due to an ADOT-Directed Change; or

(B) Differences between the construction means and methods (including temporary works) Design-Builder chooses for any portion of the Project and those set forth, referred to or contemplated in the NEPA Approval, excluding any differences due to an ADOT-Directed Change.

If Design-Builder is unable to obtain and comply with any new Governmental Approval, Community Approval, BIA Approval, or with all necessary modifications, renewals, and extensions of the NEPA Approval or other existing Governmental Approvals, Community Approvals, or BIA Approvals, then Design-Builder shall be obligated to design

and construct the Project based on the Schematic Design (with changes as necessary to comply with the Technical Provisions) and the construction means and methods (including temporary works) set forth, referred to or contemplated in the NEPA Approval, or such other design or means and methods for which Design-Builder is able to obtain Governmental Approvals, Community Approvals, or BIA Approvals, and that comply with the Contract Documents. None of the foregoing circumstances described in this Section 9.03 shall: (a) constitute a Relief Event or other basis for an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim; or (b) result in any representation or warranty by ADOT as to the feasibility, accuracy or completeness of, or absence of errors in, the Schematic Design.

9.04 Impact of Temporary Work Areas

If Design-Builder proposes to acquire any Temporary Work Areas or pursues any other modification of or deviation from any Governmental Approvals, Community Approvals, or BIA Approvals including the NEPA Approval, Design-Builder shall first comply with, and obtain any consent or waiver from ADOT pursuant to existing agreements between ADOT, the Community, BIA, and other Governmental Entities.

9.05 Governmental Approvals, Community Approvals, or BIA Approvals Applied for or Issued in ADOT's Name

(A) Governmental Approvals Applied for or Issued in ADOT's Name

Certain Governmental Entities may require that Governmental Approvals be applied for or issued in ADOT's name, or that ADOT directly coordinate with such Governmental Entity in connection with obtaining the Governmental Approvals. In such event, Design-Builder shall, at its expense, provide all necessary support and efforts to apply for and obtain the Governmental Approvals in ADOT's name. Such support by Design-Builder shall include conducting necessary field investigations, preparing mitigation analyses and studies and plans, preparing surveys, and preparing any required reports, applications, and other documents in the form approved by ADOT. Such support also may include joint coordination and joint discussions and attendance at meetings with the applicable Governmental Entity. Refer to TP Section 117.03(B)(1) (*Governmental Approvals Applied for or Issued in ADOT's Name*) for more specific provisions on applications for Governmental Approvals filed in ADOT's name.

(B) Community Approvals Applied for or Issued in ADOT's Name

The Community may require that Community Approvals be applied for or issued in ADOT's name, or that ADOT directly coordinate with the Community in connection with obtaining the Community Approval. In such event, Design-Builder shall, at its expense, provide all necessary support and efforts to apply for and obtain the Community Approval in ADOT's name. Such support by Design-Builder shall include conducting necessary field investigations, preparing mitigation analyses and studies and plans, preparing surveys, and preparing any required reports, applications, and other documents in the form approved by ADOT. Such support also may include joint coordination and joint discussions and attendance at meetings with the Community. Refer to TP Section 117.03(B)(2) (*Community Approvals Applied for or Issued in ADOT's Name*) for more specific provisions on applications for Community Approvals filed in ADOT's name.

(C) BIA Approvals Applied for or Issued in ADOT's Name

The BIA may require that BIA Approvals be applied for or issued in ADOT's name, or that ADOT directly coordinate with the BIA in connection with obtaining the BIA Approval. In such event, Design-Builder shall, at its expense, provide all necessary support and efforts to apply for and obtain the BIA Approval in ADOT's name. Such support by Design-Builder shall include conducting necessary field investigations, preparing mitigation analyses and studies and plans, preparing surveys, and preparing any required reports, applications, and other documents in the form approved by ADOT. Such support also may include joint coordination and joint discussions and attendance at meetings with the BIA. Refer to TP Section 117.03(B)(3) (*BIA Approvals Applied for or Issued in ADOT's Name*) for more specific provisions on applications for BIA Approvals filed in ADOT's name.

9.06 Impact of Temporary Work Areas

Design-Builder shall be solely responsible for compliance with all applicable Laws in relation to Temporary Work Areas and for obtaining any Environmental Approval or other Governmental Approval required in connection with Temporary Work Areas.

9.07 Failure of Governmental Entities to Cooperate**(A) Notice to ADOT**

Design-Builder shall use diligent efforts to obtain the cooperation of each Governmental Entity as necessary for Work under the jurisdiction of each Governmental Entity. Design-Builder shall immediately notify ADOT if Design-Builder becomes aware of any failure or refusal of a Governmental Entity to cooperate that, if it continues, could lead to a Governmental Entity Delay, including if:

- (1) Design-Builder is unable (or anticipates that it will be unable), after diligent efforts, to obtain approval from a Governmental Entity of a Governmental Approval within a reasonable time;
- (2) Design-Builder reasonably believes for any other reason that any Governmental Entity will not undertake or permit Work under the jurisdiction of each Governmental Entity in a manner consistent with the timely completion of the Project or in accordance with Law, the Governmental Approvals, or the Contract Documents;
- (3) Design-Builder becomes aware that any Governmental Entity is not cooperating in a timely manner to provide agreed-upon or necessary work, reviews, or approvals; or
- (4) Any other dispute arises between Design-Builder and a Governmental Entity with respect to the Project, despite Design-Builder's diligent efforts to obtain such Governmental Entity's cooperation or otherwise resolve such dispute.

Such notice does not relieve Design-Builder of its obligation to continue to use diligent efforts to pursue the Governmental Entity's cooperation. Design-Builder shall provide ADOT with such information as ADOT requests regarding the Governmental Entity's failure to cooperate and the effect of any resulting delay on the Project Schedule.

(B) Request for ADOT Assistance**(1) Request**

Concurrent with the notice described in Section 9.07(A), Design-Builder may request ADOT's support to obtain the Governmental Entity's cooperation or resolve the dispute. As part of the request, Design-Builder shall provide evidence to ADOT that the following "conditions to assistance" have been satisfied:

- (a) The subject Governmental Approval is required;
- (b) The time for completion of the Work under the jurisdiction of each Governmental Entity in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, including scheduling sufficient time for Governmental Entity reviews of Design-Builder's submittals;
- (c) Design-Builder's position in the dispute is otherwise reasonable;
- (d) Design-Builder has made diligent efforts to obtain the Governmental Entity's cooperation; and
- (e) The Governmental Entity is not cooperating.

Conditions (a) and (b) above may be disregarded if the dispute concerns Work under the jurisdiction of a Governmental Entity that is already completed.

If ADOT objects in writing to a request for support, Design-Builder may address the reasons for the objections and re-submit the request; but where the objection is because Design-Builder has not yet made diligent efforts to obtain the Governmental Entity's cooperation, Design-Builder shall first make such diligent efforts and may not re-submit such request for at least 10 Days after the objection by ADOT.

Resubmittals will not be accepted unless all of ADOT's objections have been addressed. This process shall be followed until Design-Builder succeeds in obtaining the Governmental Entity's cooperation or in otherwise resolving the dispute or until ADOT determines, based on evidence Design-Builder presents, that the conditions to assistance have been satisfied. Design-Builder shall have the right to submit a dispute concerning the reasonableness of ADOT's determination for resolution under the Dispute Resolution Procedures.

(2) Assistance by ADOT

Following ADOT's receipt of satisfactory evidence, ADOT will take reasonable measures to assist as may be requested by Design-Builder to obtain the cooperation of the Governmental Entity or resolve the dispute. However, ADOT will have no obligation to exercise any remedy available to it under applicable Law or existing contract. Design-Builder shall use diligent efforts to exhaust the process in Section 9.07(B)(1) prior to requesting relief as specified in Section 8.

(3) Conditions and Requirements

Any assistance ADOT provides shall not relieve Design-Builder of its responsibility for satisfactory compliance with its obligations respecting Work under the jurisdiction of each Governmental Entity and timely completion thereof, except as otherwise expressly set forth herein.

9.08 Failure of Community to Respond

Design-Builder shall immediately notify ADOT if Design-Builder becomes aware of any failure or refusal of the Community to respond as required for the Project and reasonably believes said failure or refusal could lead to a Community Delay and shall provide ADOT with the evidence of its diligent efforts to cooperate with the Community through ADOT and that sufficient time for Community to respond was incorporated into the Project Schedule. For the purposes of this Section 9.08, the Community's failure or refusal to respond could lead to a Community Delay in the following instances:

(1) Design-Builder, through ADOT, is unable (or anticipates that it will be unable), after diligent efforts, to obtain approval from the Community of a Community Approval within a reasonable time, provided, however, the following conditions are satisfied:

(a) The subject Community Approval is required;

(b) The time for completion of the Work under the jurisdiction of the Community in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, including scheduling sufficient time for Community reviews of Design-Builder Submittals for Community Approval;

(c) Design-Builder's position in the dispute with ADOT is otherwise reasonable; and

(d) The Community is not responding.

(2) Design-Builder reasonably believes for any other reason that the Community will not permit Work under the jurisdiction of the Community in a manner consistent with the timely completion of the Project or in accordance with Community Approvals or the Contract Documents; or

- (3) Design-Builder notifies ADOT of the Community's failure to provide comments or approvals on designated Submittals in accordance with Section 3.01(A)(2).

Such notice does not relieve Design-Builder of its obligation to continue to use diligent efforts, made through ADOT, to pursue the Community's response through ADOT. Design-Builder shall provide ADOT with such information as ADOT requests regarding the Community's failure to respond and the effect of any resulting delay on the Project Schedule.

9.09 Failure of BIA to Respond

Design-Builder shall immediately notify ADOT if Design-Builder becomes aware of any failure or refusal of the BIA to respond as required for the Project and reasonably believes said failure or refusal could lead to a BIA Delay and shall provide ADOT with the evidence of its diligent efforts to cooperate with the BIA through ADOT and that sufficient time for BIA to respond was incorporated into the Project Schedule. For the purposes of this Section 9.09, the BIA's failure or refusal to respond could lead to a BIA Delay in the following instances:

- (1) Design-Builder, through ADOT, is unable (or anticipates that it will be unable), after diligent efforts, to obtain approval from the BIA of a BIA Approval within a reasonable time, provided, however, the following conditions are satisfied:

- (a) The subject BIA Approval is required;
- (b) The time for completion of the Work under the jurisdiction of the BIA in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, including scheduling sufficient time for BIA reviews of Design-Builder Submittals for BIA Approval;
- (c) Design-Builder's position in the dispute with ADOT is otherwise reasonable; and
- (d) The BIA is not responding.

- (2) Design-Builder reasonably believes for any other reason that the BIA will not permit Work under the jurisdiction of the BIA in a manner consistent with the timely completion of the Project or in accordance with BIA Approvals or the Contract Documents; or

- (3) Design-Builder notifies ADOT of the BIA's failure to provide comments or approvals on designated Submittals in accordance with Section 3.01(A)(3).

Such notice does not relieve Design-Builder of its obligation to continue to use diligent efforts, made through ADOT, to pursue the BIA's response through ADOT. Design-Builder shall provide ADOT with such information as ADOT requests regarding the BIA's failure to respond and the effect of any resulting delay on the Project Schedule.

End Section

10 RESOURCE COMPLIANCE**10.01 Archaeological Features**

Although ADOT will make every effort prior to construction to identify all cultural resources in the Schematic ROW, previously unidentified archaeological materials could be found during the construction of the Project. When archaeological, historical, or paleontological features are encountered or discovered during any activity related to the construction of the Project, Design-Builder shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features and notify ADOT.

ADOT will direct how to protect the features. Design-Builder shall not resume Work at that location until it is so directed by ADOT. In the event of a suspension of Work pursuant to this clause, Design-Builder shall refer to the provisions of Section 8.

The attention of Design-Builder is directed to ARS Title 41, Article 4, Archaeological Discoveries, § 41-841, *et seq.*, which make it a felony, punishable by a fine and imprisonment, to knowingly investigate on State land, in or on prehistoric ruins, ancient burial grounds, fossilized footprints, hieroglyphics, and all other archaeological features of Arizona without permits from the Arizona State Museum.

16 U.S.C 470ee(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa-mm) specifies that no person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public (federal) lands or Indian lands unless such activity is pursuant to a permit issued under Section 4 of the Act. Violations of this act are considered a felony and are punishable by fine and imprisonment.

10.02 Historic Preservation

Although ADOT will make every effort prior to construction to identify all items that require historic preservation in the Schematic ROW, previously unidentified human remains, funerary objects, or artifacts may be found during the construction of the Project. When human remains or funerary objects are encountered or discovered during any activity related to the construction of the Project, Design-Builder shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those items and notify ADOT.

ADOT will direct how to protect the items. Design-Builder shall not resume Work at that location until it is so directed by ADOT. In the event of a suspension of Work pursuant to the clause, Design-Builder shall refer to the provisions of Section 8.

The attention of Design-Builder is directed to ARS Title 41, Chapter 4.2, Historic Preservation, § 41-861 *et seq.*, which makes it a felony to intentionally possess, sell or transfer any human remain, funerary object or other artifact.

End Section

11 RIGHT-OF-WAY AND USE OF ADOT PROPERTY**11.01 Project ROW**

The Project ROW consists of the Schematic ROW as further defined in this Section 11:

ADOT will not obtain additional Community Land or obtain a right of entry to perform the Work on additional Community Land for the Project, other than the Schematic ROW.

11.02 Schematic ROW**(A) General**

ADOT will be responsible for securing the Schematic ROW. See TPA 118-1 (*Acquisition and Relocation Status Report*) for status of Schematic ROW parcels.

(B) Schematic ROW Access Process**(1) Physical Possession****(a) General**

ADOT will notify Design-Builder of the availability of Schematic ROW within five Business Days after the later of:

(i) the date ADOT issues NTP 1; or

(ii) The date ADOT obtains possession of such Schematic ROW.

For clarification purposes only, ADOT obtains possession of the New ROW only after the BIA/Community provides ADOT with a *Grant of Easement* and after ADOT pays the immediate possession bond and satisfies the conditions, if any, required under the *Grant of Easement*. Design-Builder shall be responsible for being informed of and complying with any access restrictions which may be included in any documents granting possession of any Schematic ROW.

ADOT will promptly notify Design-Builder in writing upon obtaining knowledge of any anticipated delay in the dates for acquisition of any Schematic ROW. In such event, Design-Builder shall immediately determine whether the delay impacts the Critical Path and, if so, shall seek to mitigate and avoid such delay through re-sequencing, reallocation or other alternative construction methods or otherwise, to the extent possible, and which, in the case of a Relief Event, shall be subject to Section 8.

ADOT will not and cannot exercise its power of eminent domain on Community Land under any circumstance.

(b) Existing ROW

The Existing ROW shown on the Schematic Design is available to Design-Builder after issuance of NTP 1, contingent upon any conditions precedent as specified in the Contract Documents.

(c) New ROW

ADOT is in the process of obtaining possession of New ROW by obtaining consent from the Gila River Indian Tribal Council and the issuance of a *Grant of Easement* from the BIA.

(d) ADOT-Provided Community Right of Entry Permits

ADOT is in the process of securing Community Right of Entry Permits to construct the crossroads for the I-10/Wild Horse Pass Blvd/Sundust Rd TI tie-ins and as described in TP Section 118.04 (*Encroachment Permits*).

(2) Access

To the extent that Design-Builder has not been provided with access to portions of the Schematic ROW on or prior to the date provided in TPA 118-1 (*Acquisition and Relocation Status Report*), Design-Builder shall work around such Schematic ROW and minimize delay to the completion of the Project. Subject to all other conditions to such relief, Design-Builder may be entitled to Extra Work Costs, Delay Costs, and a Contractual Deadline adjustment due to a delay described in clause (A) of the definition of ADOT-Caused Delay.

11.03 Necessary Design Adjustment**(A) Criteria**

A Necessary Design Adjustment shall arise only where all the following criteria are satisfied:

- (1) Design-Builder establishes with clear and convincing evidence that it is not physically possible to deliver the Basic Configuration within the Schematic ROW through commercially reasonable design modifications; and
- (2) A Necessary Design Adjustment excludes areas outside the Schematic ROW for Temporary Work Areas.

(B) Contractual Deadline Adjustment Requirements

Design-Builder shall be entitled to a Contractual Deadline adjustment only if:

- (1) Design-Builder notifies ADOT not later than 90 Days after issuance of NTP 1 by Relief Event Notice (and thereafter follows the Relief Event process set forth in Section 8) of the Necessary Design Adjustment, including a reasonable identification of the ROW required to deliver the Basic Configuration;
- (2) Intentionally left blank; and
- (3) The delay affects the Critical Path.

(C) Delay Costs and Contractual Deadline Adjustment Amount

The percentage of Contractual Deadline adjustment to which Design-Builder shall be entitled, however, shall vary based on when Design-Builder delivers to ADOT the appropriate Relief Event Notice, as follows:

- (1) 100% if Design-Builder notifies ADOT not later than 180 Days after issuance of NTP 1 (including the Day of issuance of NTP 1); or
- (2) No compensation for Contractual Deadline adjustment if Design-Builder notifies ADOT on or after the 181st Day after issuance of NTP 1 (including the Day of issuance of NTP 1).

ADOT may propose engineering solutions for the Work that ADOT determines is necessary as a result of the Necessary Design Adjustment. ADOT will bear Extra Work Costs for the Design-Builder to perform the Work for any Necessary Design Adjustments. Design-Builder shall not be entitled to Delay Costs as a result thereof. Reduction in Work of the Schematic Design may result in ADOT issuing the Design-Builder a reductive ADOT-Directed Change as specified in Section 8.02(C).

11.04 Design-Builder ROW Services**(A) Intentionally Left Blank****(B) Temporary Work Areas**

Design-Builder shall acquire, or cause to be acquired, all Temporary Work Areas in its own name. Design-Builder shall comply with all applicable Governmental Approvals and Laws in acquiring, maintaining, and disposing of any Temporary Work Areas. ADOT will have no obligations or liabilities with respect to the acquisition, maintenance or disposition of Temporary Work Areas. Design-Builder shall cause the lease, license, or other agreement by which Design-Builder acquires a property right or interest in a Temporary Work Area to contain the granting party's express acknowledgment that ADOT shall have no liability with respect thereto. Design-Builder shall promptly deliver a copy of such documentation to ADOT.

Design-Builder shall be responsible for and shall directly pay all costs and expenses in connection with acquiring, renting, using, maintaining, insuring, and disposing of Temporary Work Areas that Design-Builder determines necessary or desirable for its convenience in constructing the Project. Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim due to such costs and expenses.

(C) Intentionally Left Blank**(D) Intentionally Left Blank****11.05 Hazardous Materials**

Prior to construction, ADOT will make a reasonable effort to locate, identify, and remove potentially Hazardous Materials or contaminated materials, including underground storage tanks, within the Schematic ROW. Despite these efforts, some of these materials may still be found during the construction of the Project. During construction operations, should material be encountered which Design-Builder believes to be hazardous or contaminated, Design-Builder shall immediately do each of the following:

(A) Stop work and remove all workers within the contaminated area. For life threatening situations, Design-Builder shall follow the procedures in their Safety Management Plan.

(B) Barricade the area and provide traffic control, if necessary, to prohibit unauthorized entry.

(C) Notify ADOT.

Design-Builder shall not resume Work in the area suspected to contain Hazardous Materials or contaminated materials until approved by ADOT.

ADOT will determine the extent and nature of the hazardous or contaminated area and specify a clean-up plan, if necessary. Once ADOT determines the limits of the area affected by the contaminated materials, Work may then be resumed for the remaining areas of the Project where contamination is determined not to present a significant hazard.

ADOT will determine if Design-Builder or Design-Builder's Subcontractor has the qualifications to perform the Work specified in the clean-up plan. ADOT will review the qualifications of Design-Builder or Design-Builder's Subcontractor and approve or disapprove the proposed entity to perform the Work specified in the clean-up plan. ADOT will execute a Supplemental Agreement to cover the additional Work, in accordance with Section 8.

(A) Hazardous Materials Management Generally

- (1) Without limiting ADOT's role or responsibilities set forth in this Section 11, and except as provided otherwise below, Design-Builder shall undertake Hazardous Materials Management of all Hazardous Materials and Recognized Environmental Conditions, including contaminated

groundwater, in accordance with applicable Law, Governmental Approvals, the Hazardous Materials Management Plan, and all applicable provisions of the Contract Documents.

(2) Design-Builder shall have the following duties to avoid or mitigate adverse financial and schedule impacts of Hazardous Materials and Recognized Environmental Conditions:

(a) Design-Builder shall adopt design and construction techniques for the Project that avoid the need for Hazardous Materials Management.

(b) If, having met its obligation under this Section 11.05(A) item (2)(a), Design-Builder is unable to avoid Hazardous Materials or Recognized Environmental Conditions, Design-Builder shall incorporate design modifications and construction techniques to minimize costs of Hazardous Materials Management, including minimization of ADOT's long-term costs for Hazardous Materials Management.

(c) Where Hazardous Materials Management is unavoidable or is required by applicable Law, Design-Builder shall utilize appropriately trained and licensed personnel to conduct the Hazardous Materials Management activities.

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

(4) If, within a reasonable time after discovery of Hazardous Materials or Recognized Environmental Conditions, taking into consideration the nature and extent of the contamination, the type and extent of action required, and the potential impact upon Design-Builder's schedule to perform the Work, Design-Builder has not undertaken the Hazardous Materials Management required of it under this Section 11.05(A) item (1), ADOT may provide Design-Builder with written notice that ADOT will undertake the Hazardous Materials Management itself. ADOT thereafter may undertake the Hazardous Materials Management actions it deems necessary and appropriate. Without limiting ADOT's role or responsibilities set forth in this Section 11.05(A) item (6), Design-Builder shall reimburse to ADOT the reasonable costs, including ADOT's Recoverable Costs, that ADOT incurs in carrying out such Hazardous Materials Management actions on a current basis within 10 Days of request therefor. ADOT will have no liability or responsibility to Design-Builder arising out of ADOT's Hazardous Materials Management actions and such actions shall, in no event, constitute the basis of a Relief Event, or other Claim, or otherwise entitle Design-Builder to an increase in the Contract Price or adjustment of a Contractual Deadline.

(5) If Design-Builder notifies ADOT that Design-Builder desires to preserve claims against other potentially responsible parties, then ADOT will undertake all commercially reasonable efforts to preserve such claims consistent with either the *National Oil and Hazardous Substances Pollution Contingency Plan*, 40 CFR § 300, or comparable State regulations and standards.

(6) As between Design-Builder and ADOT, ADOT will be considered the sole generator and arranger under 40 CFR Part 262 and will sign manifests for the off-site disposal of Hazardous Materials other than for:

- 1 (a) Design-BUILDER Release of Hazardous Materials;
- 2 (b) Hazardous Materials that migrate from points of origin located outside the
- 3 boundaries of the Project ROW where the source of such Hazardous Materials is a
- 4 Design-BUILDER-Related Entity in the course of performing Work;
- 5 (c) Hazardous Materials that Design-BUILDER handles and disposes of negligently;
- 6 (d) Hazardous Materials for which Design-BUILDER is or becomes a generator under
- 7 applicable Law or Governmental Approvals; or
- 8 (e) Hazardous Materials present in or on Temporary Work Areas.

9 Notwithstanding the foregoing, ADOT may elect, by written notice to Design-BUILDER, to have

10 another responsible party (instead of ADOT, and other than a Design-BUILDER-Related Entity)

11 assume generator and arranger status and liability, or sign manifests, for which ADOT is

12 otherwise responsible under this Section 11.05(A) item (6).

- 13 (7) To the extent permitted by applicable Law, as between ADOT and Design-BUILDER, ADOT will
- 14 take and assume sole responsibility and liability for third-party claims, causes of action, and
- 15 Losses arising out of or resulting from the off-site disposal of Hazardous Materials for which
- 16 ADOT is the generator pursuant to this Section 11.05(A) items (6) and (7), specifically excluding
- 17 liability for off-site disposal that ADOT elects to have a responsible party assume as provided
- 18 in this Section 11.05(A) item (6).

- 19 (8) Design-BUILDER shall not be required to engage in Hazardous Materials Management with
- 20 respect to Release of Hazardous Materials onto the Project or Project ROW at any time where
- 21 such Release of Hazardous Materials is from a vehicle operating or located within the Project
- 22 ROW or from such vehicle's cargo, unless it is from a vehicle of or operated by a Design-
- 23 BUILDER-Related Entity or from such vehicle's cargo in the course of performing Work. Without
- 24 limiting the foregoing, if it is necessary to dispose of Project material because it becomes
- 25 contaminated by such a Release of Hazardous Materials (other than by a Design-BUILDER-
- 26 Related Entity in the course of performing Work or from such vehicle's cargo), Design-BUILDER
- 27 shall not be responsible for such disposal. For purposes hereof, "vehicle" has the meaning set
- 28 forth in ARS § 28-101, and also means railroad train and aircraft.

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

- 35 (10) As between Design-BUILDER and ADOT, Design-BUILDER shall be considered the sole generator
- 36 and arranger and shall sign manifests for:

- 37 (a) Each Design-BUILDER Release of Hazardous Materials;
- 38 (b) Hazardous Materials that migrate from points of origin located outside the
- 39 boundaries of the Project ROW where the source of such Hazardous Materials is a
- 40 Design-BUILDER-Related Entity in the course of performing Work;
- 41 (c) Hazardous Materials that Design-BUILDER handles and disposes of negligently;
- 42 (d) Hazardous Materials for which Design-BUILDER is or becomes a generator under
- 43 applicable Law or Governmental Approvals; and

(e) Hazardous Materials present in or on Temporary Work Areas.

The foregoing shall not preclude or limit any rights or remedies that Design-Builder may have against any Governmental Entity or any other third parties, including existing or prior owners, lessees, licensees, and occupants of any parcel of land that is or becomes part of the Project ROW, excluding, however, the State, ADOT, and their respective agents. To the extent permitted by applicable Law, Design-Builder shall indemnify, save, protect, and defend ADOT from claims, demands, causes of action, and Losses arising out of or resulting from the off-site disposal of such Hazardous Materials for which Design-Builder is considered the generator or arranger pursuant to this Section 11.05. The foregoing indemnity shall survive the expiration or termination of this DBA.

(11) In the event that Design-Builder has a good faith and bona fide claim against a third party arising from Releases of Hazardous Materials by such third party who is not a Design-Builder-Related Entity, ADOT may, in its sole discretion, and upon receipt of a written request from Design-Builder, assign and subrogate its rights of recovery to Design-Builder, as such may exist.

(B) Demolition and Hazardous Materials Management of the Schematic ROW

Except for bridge and retaining structures, ADOT will perform Hazardous Materials Management of the Schematic ROW prior to making available any parcel within the Schematic ROW to Design-Builder. Design-Builder shall be responsible for Hazardous Materials Management on each parcel of Schematic ROW once such parcel is made available for Design-Builder's access and use for the Project. Design-Builder's responsibility to perform Hazardous Materials Management on Schematic ROW parcels shall not affect Design-Builder's rights under the definition of Relief Event.

Except for bridge and retaining structures and as otherwise provided in TPA 118-1 (Acquisition and Relocation Status Report), ADOT will perform clearance and demolition to prepare the parcels in the Schematic ROW for Design-Builder's use during the Project.

Design-Builder shall be responsible for the clearance and demolition of bridge and retaining structures in the Schematic ROW and shall perform all Hazardous Materials Management necessary for such clearance and demolition. Design-Builder shall not be entitled to an increase to the Contract Price, Contractual Deadline adjustment, or any other Claim due to the presence of Hazardous Materials in bridge and retaining structures.

11.06 Encroachment Permits

(A) General

The provisions of this Section 11.06 and TP Section 118.04 (Encroachment Permits) shall govern such third-party applications.

(B) State Owned ROW

ADOT encroachment permits are required for any work by a third party within the State owned ROW. Third parties may apply to ADOT for encroachment permits and other agreements and approvals to install new facilities that would cross or longitudinally occupy the Project ROW (those portions in State owned ROW), or to modify, upgrade, relocate or expand existing Utilities within the Project ROW (those portions in State owned ROW) for reasons other than to accommodate the Project.

(C) Community Land

A Community/BIA *Grant of Easement* or Utility Easement is required for any work by a third party within Community Land. For any Community/BIA *Grant of Easement* or Utility Easement that overlaps a *Grant of Easement*, such third party must also obtain an ADOT encroachment permit. Third parties may apply to ADOT for encroachment permits and other agreements and approvals to install new facilities that would cross or longitudinally occupy the Project

1 ROW (those portions on the Community Land), or to modify, upgrade, relocate or expand existing Utilities within
2 the Project ROW (those portions on the Community Land) for reasons other than to accommodate the Project;
3 provided, however, such third parties possess the requisite Community/BIA *Grant of Easement* or Utility Easement.
4 A Maricopa County Department of Transportation (MCDOT) encroachment permit and a BIA encroachment permit
5 is required for certain portions of the Work on Community Land as more specifically specified in TP Section 118.04
6 (*Encroachment Permits*).

7 **11.07 Use of Designated ADOT Property**

8 ADOT does not have any property that it owns that is available for use for Temporary Work Areas.

9 **End Section**

12 UTILITY ADJUSTMENTS**12.01 Design-Builder's Responsibility****(A) General**

Design-Builder shall coordinate all Utility Adjustments necessary for the timely design and construction of the Project in accordance with the Contract Documents. All Utility Adjustment Work performed by Design-Builder or a Utility Company shall comply with the Contract Documents. Design-Builder shall coordinate, monitor, and otherwise undertake the necessary efforts to verify that Utility Companies are performing Utility Adjustment Work in accordance with the Project Schedule, in coordination with the Work, and in compliance with the standards of design and construction and other applicable requirements specified in the Contract Documents. However, regardless of the arrangements made with the Utility Companies and except as otherwise provided in Section 12.07, Design-Builder shall continue to be the responsible party to ADOT for timely performance of all Utility Adjustment Work in accordance with the Project Schedule.

(B) Utility Services

Design-Builder shall provide all Utility service facilities (both on the Site and off the Site) required to carry out the Work. The Utility service facilities include those needed for power, gas, communications, water, irrigation, sewage, and drainage in accordance with TP Section 119.03(F) (Utility Service Connections). Except for incremental additional costs directly attributable to a Relief Event, or where otherwise provided, Design-Builder is responsible for all costs of such Utility service facilities, including costs of design and construction (both on the Site and off the Site), Governmental Approvals, Community Approvals, BIA Approvals, connection fees, testing, inspection, certification, and Utility service/usage fees and charges required to perform the Work; provided, however, that Design-Builder shall not be required to pay:

(1) Electricity costs for the normal operation of roadway lighting, ITS, irrigation, and traffic signals, or

(2) The cost of water for irrigation, except as provided below in item (3).

Notwithstanding the foregoing, Design-Builder shall pay for:

(1) The costs of Utility service/usage fees and charges associated with the Work;

(2) The costs of Utility service facilities and Utility service/usage fees and charges at any of Design-Builder's Temporary Work Areas or Project Office locations (as described in TP Section 926 (Project Office and Facilities)) and;

(3) Water used to water plants in the Design Builder's nursery for the Project.

Design-Builder shall also provide any temporary service connections as may be needed during construction in accordance with TP Section 119.03(F) (Utility Service Connections). Design-Builder shall be responsible for the cost of all temporary Utilities needed for the Project, including all permits, Utility service deposits and turn-off, turn-on service fees for all temporary Utility services needed for the Project.

12.02 Utility Memoranda of Understanding; Utility Agreements

In performing the Utility Adjustments, Design-Builder shall comply with TP Section 119 (Utilities).

Except as provided in TP Section 119 (Utilities), for all Utility Adjustments, Design-Builder is responsible for preparing and negotiating instruction-specific, construction-detailed Utility Agreements with all Utility Companies, regardless of whether the Utility Companies are identified in the Technical Provisions or RIDs. Unidentified Utilities are subject to relief as set forth in Section 8. Utility Agreements must comply with TP Section 119.02(E)(2) (Utility Agreements). Not later than 60 Days prior to the time identified in the Project Schedule that the such Utility Adjustment is to occur, Design-Builder shall submit Utility Agreements to ADOT for execution.

ADOT agrees to cooperate, at its own cost, as reasonably requested by Design-Builder in pursuing Utility Agreements, including attendance at negotiation sessions and review of Utility Agreements. Design-Builder shall keep ADOT informed of the status of any such negotiations. ADOT will enter into Utility Agreements wherein the Utility Company performs the Utility Adjustment Work. Design-Builder shall enter into Utility Agreements wherein the Design-Builder performs the Utility Adjustment Work. Design-Builder shall deliver to ADOT, not later than 10 Days after execution, a true and complete copy of each Utility Agreement entered into by Design-Builder.

Whether the Utility Agreement is between the Utility Company and ADOT or between the Utility Company and Design-Builder, Design-Builder shall prepare an encroachment permit application package on behalf of the Utility Company for ADOT approval. Each Utility Adjustment in the Schematic ROW must have an approved encroachment permit per location.

ADOT shall not be a party to Utility Agreements to which Design-Builder is a party, and Design-Builder shall cause each Utility Agreement to expressly provide that ADOT will have no liability under the Utility Agreement to which Design-Builder is a party.

ADOT has prepared preliminary prior rights determinations for known Utilities for the Project and is indicated in TPA 119-1 (Prior Rights Document Index). If a Utility Company has proper Prior Rights Documentation in connection with a Utility Adjustment, or otherwise claims that it has Prior Rights Documentation concerning real property affected by a Utility Adjustment, then Design-Builder shall follow the process set forth in TP Section 119.02(E)(1) (Prior Rights Determination) and TP Section 119.02(E)(2) (Utility Agreements). In accordance with TP Section 119.02(E)(2) (Utility Agreements), ADOT will enter into a separate Utility Agreement between ADOT and the Utility Company solely for the purpose of acknowledging the Utility Company's Prior Rights Documentation.

A specific Utility Easement Inside Community Land, must be in place prior to such Utility Adjustment is performed. Utility Companies, including those Community owned Utilities, that do not have an existing Utility Easement Inside Community Land for Utility Adjustment Work must obtain a Utility Easement Inside Community Land from BIA prior to performing the Utility Adjustment Work.

Design-Builder shall verify that the Utility Adjustment Work is completed in accordance with the Contract Documents, regardless of the nature or provisions of the Utility Agreements and regardless of whether Design-Builder or its Subcontractors, or the Utility Company or its contractors, performs the Utility Adjustment Work. In the event that the Utility Company is not complying with Utility Agreement requirements and that the Utility Company's performance may result in Critical Path impacts and attendant additional costs, Design-Builder shall comply with the notification requirements in Section 12.06(A).

If a conflict occurs between the terms of a Utility Agreement and those of the Contract Documents, the terms that establish the higher quality, manner or method of performing Utility Adjustment Work, or use more stringent standards, shall prevail between Design-Builder and ADOT. If the foregoing criteria are not met by the conflicting Utility Agreement or otherwise not relevant to the terms at issue, then the Contract Documents shall prevail, unless expressly provided otherwise in the Contract Documents.

12.03 Changes After Utility Adjustments

If Design-Builder changes its design or construction after a Utility Adjustment has been commenced or completed, and the change in design or construction results in the need for additional Utility Adjustment Work, then such additional Utility Adjustment Work must remain within the existing Utility Easement inside Community Land from BIA, and Design-Builder shall be responsible for the cost of design and construction of the additional Utility Adjustment Work. Design-Builder shall not be entitled to an increase in the Contract Price, Contractual Deadline adjustment, or any other Claim arising from such additional Utility Adjustment Work. In such an event, ADOT will seek a reductive ADOT-Directed Change as established in Section 8.02(C).

12.04 FHWA Utility Requirements

Each Utility Agreement shall include the requirement for the Utility Company to meet the Buy America requirements (as specified in 23 U.S.C. 313, 23 CFR § 635.410 and Exhibit 2-7 (Buy America Certification)), except to the extent such requirements establish an exemption for the particular Utility Adjustment. Each such Utility Agreement shall require a definitive statement to be provided by Design-Builder, the Utility Company or contractor performing any relocation work about the origin of all products permanently incorporated into the Project and covered under the Buy America requirements.

12.05 Intentionally Left Blank**12.06 Failure of Utility Companies to Cooperate****(A) Notification**

Design-Builder shall use diligent efforts to obtain the cooperation of each Utility Company as necessary for Utility Adjustments. Design-Builder shall immediately notify ADOT if Design-Builder becomes aware of any Utility Company's failure or refusal to cooperate and Design-Builder reasonably believes that if said failure or refusal were to continue, it could result in a Utility Company Delay, including if:

- (1) Design-Builder is unable (or anticipates that it will be unable), after diligent efforts, to reach agreement with a Utility Company on a necessary Utility Agreement within a reasonable time;
- (2) Design-Builder reasonably believes for any other reason that any Utility Company will not undertake or permit a Utility Adjustment in a manner consistent with the timely completion of the Project or in accordance with Law, the Governmental Approvals, Community Approvals, BIA Approvals, or the Contract Documents;
- (3) Design-Builder becomes aware that any Utility Company is not cooperating in a timely manner to provide agreed-upon or necessary work, reviews, or approvals;
- (4) Any other dispute arises between Design-Builder and a Utility Company with respect to the Project, despite Design-Builder's diligent efforts to obtain such Utility Company's cooperation or otherwise resolve such dispute;
- (5) Design-Builder's notice may include a request that ADOT assist in resolving the dispute or in otherwise obtaining the Utility Company's timely cooperation. Design-Builder shall provide ADOT with such information as ADOT requests regarding the Utility Company's failure to cooperate and the effect of any resulting delay on the Project Schedule. After delivering to ADOT any notice or request for assistance, Design-Builder shall continue to use diligent efforts to pursue the Utility Company's cooperation; or
- (6) Design-Builder becomes aware that any Utility Company fails to obtain Utility Easement Inside Community Land for Utility Adjustment Work within 365 Days as of the date agreed upon in the Utility Agreement.

(B) ADOT Assistance

If Design-Builder requests ADOT's assistance pursuant to Section 12.06(A), then, subject to Section 12.06(C), the following provisions shall apply:

- (1) Design-Builder shall provide evidence reasonably satisfactory to ADOT that:
 - (a) The subject Utility Adjustment is necessary;
 - (b) The time for completion of the Utility Adjustment in the Project Schedule was, in its inception, a reasonable amount of time for completion of such work, including

scheduling sufficient time for Utility Company reviews of Design-Builder's design submittals;

(c) Design-Builder has made diligent efforts to obtain the Utility Company's cooperation; and

(d) The Utility Company is not cooperating as evidenced by any circumstance described in Section 12.06(A) (the foregoing items (1)(a) through (1)(d) are referred to herein as the "conditions to assistance").

(2) Following ADOT's receipt of satisfactory evidence, ADOT will take reasonable measures to assist Design-Builder in obtaining the cooperation of the Utility Company or resolving the dispute; provided, however, that ADOT will have no obligation to exercise any remedy available to it under applicable Law or existing contract, unless ADOT elects to do so.

(3) If ADOT holds contractual or property rights that might be used to enable the Utility Company's obligation to cooperate, and if ADOT elects not to exercise those rights, and if such rights are assignable, then ADOT may assign those rights to Design-Builder upon Design-Builder's request; provided, however, that such assignment shall be without any representation or warranty as to the enforceability or effect of such rights.

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

(C) ADOT's Obligation for Assistance

If ADOT objects in writing to a request for assistance made pursuant to Section 12.06(A) based on Design-Builder's failure to satisfy the conditions to assistance described in Section 12.06(B), then Design-Builder shall take such action as Design-Builder deems advisable during the 10 Days following receipt of ADOT's objection to obtain the Utility Company's cooperation and shall then have the right to submit another request for assistance on the same subject matter. Resubmittals will not be accepted unless all of ADOT's objections have been addressed. This process shall be followed until Design-Builder succeeds in obtaining the Utility Company's cooperation or in otherwise resolving the dispute or until ADOT determines, based on evidence Design-Builder presents, that the conditions to assistance have been satisfied. Design-Builder shall have the right to submit a dispute concerning the reasonableness of ADOT's determination for resolution under the Dispute Resolution Procedures in Section 14.

12.07 Assignment of Rights Against Utility Companies

In the event that Design-Builder is damaged by the wrongful actions or inactions of a Utility Company within the Project ROW, upon receipt of a Relief Event Notice from Design-Builder in accordance with Section 8.03(D)(1), ADOT may assign to Design-Builder ADOT's rights of recovery, as such may exist, under any existing agreement between ADOT and a Utility Company, including any Utility Company permits, Utility relocation agreements, or other agreements.

12.08 Conditions Precedent to Utility Adjustment Work

Design-Builder shall not commence construction of a Utility Adjustment included in the Construction Work until ADOT issues NTP 2, all of the conditions set forth in Section 7.03 that are applicable to the Utility Adjustment (reading such provisions as if they referred to the Utility Adjustment) have been satisfied, and the following additional requirements have been satisfied:

(A) Except as otherwise provided in Section 12.02, the Utility Adjustment is covered by an executed Utility Agreement;

1 (B) Design-Builder has submitted to ADOT the Submittals described in TP Section 119.05 (Submittals)
2 concerning the Utility Adjustment; and

3 (C) Design-Builder has obtained ADOT review and approval of any other matters respecting the Utility
4 Adjustment that are required under any applicable federal requirements.

5 The foregoing shall not prevent a Utility Company from commencing a Utility Adjustment that the Utility Company
6 is self-performing prior to ADOT's issuance of NTP 2, provided that the Utility Company has obtained all necessary
7 approvals to commence such work.

8 **12.09 Intentionally Left Blank**

9 **End Section**

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2 **End Section**

14 PARTNERING AND DISPUTE RESOLUTION**14.01 Partnering****(A) General Provisions**

For the mutual benefit of the Parties, ADOT and Design-Builder shall establish a partnering relationship to complete the Project effectively. The purpose of the partnering relationship is to establish and maintain effective communication between the Parties to cooperatively identify and resolve critical Project-related issues. Effective communication with the Community and the BIA is equally important; however, all Design-Builder communication with the Community and the BIA must go through ADOT. Design-Builder shall not have direct contact with the Community or the BIA, unless authorized by ADOT. Neither the partnering relationship itself, nor discussions between the Parties addressed at the initial partnering workshop, refresher partnering meetings or the construction closeout partnering meeting (collectively "Partnering Meetings"), shall modify the terms and conditions of this DBA.

In implementing and managing the partnering relationship required under this Section 14.01, ADOT and Design-Builder shall:

- (1) Use early and regular communication;
- (2) Establish and maintain a relationship of shared trust, equity, and commitment;
- (3) Identify, quantify, and support attainment of mutual goals;
- (4) Develop strategies for using risk-management tools and concepts;
- (5) Implement timely communication and decision making;
- (6) Resolve potential problems at the lowest level of responsible management to avoid negative impacts and Disputes, including by developing a process for the escalation of field-level issues, such as by using the Issue Resolution Ladder informally as disputes arise to resolve them before they materialize into Claims and Disputes;
- (7) Develop a plan for periodic joint evaluation based on mutually agreed goals;
- (8) Hold Partnering Meetings, as set forth in Section 14.01(B), to preserve the partnering relationship and its benefits; and
- (9) Establish periodic joint evaluations of the partnering process and attainment of mutual goals.

(B) Partnering Meeting Schedule and Participants

The Parties will mutually agree on a facilitator to facilitate Partnering Meetings.

The Parties shall schedule and conduct Partnering Meetings as follows:

- (1) The design partnering meeting not later than three months after issuance of NTP 1;
- (2) The construction partnering meeting not later than three months after issuance of NTP 2;
- (3) Executive partnering meetings as mutually agreed by the Parties; and
- (4) The construction closeout meeting no later than 30 Days after ADOT has issued the Certificate of Substantial Completion.

The Parties shall conduct Partnering Meetings at ADOT's offices or at such other locations as the Parties mutually agree.

Key Personnel and executives from both Parties with knowledge relevant to the matters to be discussed must attend Partnering Meetings.

(C) Partnering Team and Partnering Charter

ADOT and Design-Builder shall establish a partnering team for the Project, which team shall consist of Project-level contributors and decision-makers from ADOT, Design-Builder, and, if applicable, stakeholder organizations. Each Party shall identify its respective members of the partnering team prior to the initial partnering meeting and all members of the partnering team must attend the initial partnering meeting.

The partnering team shall create during the initial partnering meeting a partnering charter that includes:

- (1) Mutual goals (e.g., core goals that may also include Project-specific goals and individual goals that are jointly supported by both Parties);
- (2) A partnering team commitment statement signed by every member of the partnering team;
- (3) A plan for both Parties to maintain the partnering relationship; and
- (4) A plan and schedule to conduct partnering evaluation surveys that measure the progress of mutual goals and key short-term issues as they arise in connection with the Project.

The members of the partnering team shall:

- (1) Identify the appropriate persons in each Party's organization who shall fill the roles of reviewers for the Issue Resolution Ladder described in Section 14.02(B);
- (2) Identify the documentation, in addition to that specifically required by this DBA, that the Parties desire for review of a Dispute at each level of the Issue Resolution Ladder described in Section 14.02(B);
- (3) Participate in a partnering evaluation survey in accordance with the schedule determined during the initial partnering meeting;
- (4) Jointly review the results of the partnering evaluation survey; and
- (5) Document lessons learned regarding the Work.

While the provisions of this Section 14.01 are not part of the Dispute Resolution Procedures contemplated under this DBA, the Parties shall exhaust the use of the partnering relationship when addressing potential Disputes and prior to proceeding to the Dispute Resolution Procedures set forth in Section 14.02.

(D) Confidentiality

Subject to the requirements of the Arizona Public Records Act or other applicable Law, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be kept in confidence and used only for the purpose of facilitating resolution of potential Disputes via the partnering process, and shall not be utilized or revealed to others, except to officials and agents of the Parties who are authorized to act on the subject matter. However, the Parties understand that such documents may be subsequently discoverable and admissible in mediation, arbitration or court proceedings, subject to the rules of procedure therein.

(E) Cost Responsibility

The costs of the facilitator, the site, and food for Partnering Meetings shall be shared equally by ADOT and Design-Builder. All other costs associated with the partnering process shall be borne separately by the Party that incurs the costs.

Design-Builder shall initially pay the full costs of the facilitator, the site, and food for Partnering Meetings. ADOT will reimburse 50% of the qualifying costs through a Supplemental Agreement.

14.02 Dispute Resolution Procedures

(A) General

The Parties agree that:

- (1) Any dispute that has fully complied with the notice and information requirements set forth elsewhere in this DBA so as to constitute a Dispute and is explicitly made eligible for resolution hereunder, and which is not resolved by partnering, per Section 14.01, shall be resolved pursuant to the multi-step Dispute Resolution Procedures described in this Section 14.02;
- (2) The Party bringing a Dispute shall bear the burden of proving the same, subject to any provisions of this DBA expressly assigning the burden of proof; and
- (3) The Issue Resolution Ladder and mediation processes are administrative procedures and remedies, and the failure of Design-Builder to comply with either or both of such processes in all material respects as to any Dispute or Claim shall constitute a failure to diligently pursue and exhaust such administrative procedures and remedies, and there shall be no further administrative remedy.

(B) Issue Resolution Ladder

As a condition to the right to bring a Dispute to mediation, arbitration or litigation, the Party bringing the Dispute shall first attempt to resolve the Dispute directly with other Party using the Issue Resolution Ladder. The Issue Resolution Ladder is the process for elevating Disputes from the Project's field level to various levels of review, up to the Parties' executive management, if necessary, with defined time limits for each level of review. The goal of the Issue Resolution Ladder is to resolve each Dispute as close to the field level as possible while recognizing the requirement to elevate the Dispute to the next level of review before the Dispute impacts cost or schedule.

(1) Issue Resolution Ladder Process

The Issue Resolution Ladder Process is as follows:

- (a) The Issue Resolution Ladder must consist of three levels of review and corresponding time periods to review as specified in Table 14-1.

Table 14-1: Issue Resolution Ladder Levels of Review

Level of Review	Design-Builder Reviewer	ADOT Reviewer	Time Limit
3	Executive Officer	Senior Deputy State Engineer	30 Days, or any lesser period mutually approved
2	Project Manager	GEC Design Manager, Construction Manager, or Project Manager (as applicable)	14 Days, or any lesser period mutually approved
1	Project Level	GEC Technical Lead/GEC Resident Engineer	7 Days, or any lesser period mutually approved

- (b) Except as provided in TP Section 113.03 (Submittal Review Process), to the extent not previously provided in a Relief Request, prior to commencing the Issue Resolution

Ladder, Design-Builder shall provide all information required for a Relief Request, as specified in Section 8.03(D).

- (c) Provided that the Party seeking to invoke the Issue Resolution Ladder has complied in full, with all requisite notice, all documentation required in Exhibit 12-1 (Design Issue Escalation Documentation Binder) or Exhibit 12-2 (Construction Issue Escalation Documentation Binder), as applicable, and all other information requirements set forth in this DBA before a dispute is eligible for consideration using the Issue Resolution Ladder, the Parties shall meet and commence the Issue Resolution Ladder within 20 Days following the invoking Party's complete written request. The Parties must use the *Issue Resolution Routing Form* to document the Issue Resolution Ladder process that is located at the following location:

<https://na2.docusign.net/Member/PowerFormSigning.aspx?PowerFormId=5e3f8ff7-80cb-4476-986d-9af2c087c817&env=na2&acct=16cf90aa-704f-4878-8605-8092c01593d4&v=2>

- (d) The partnering team as set forth in Section 14.01(C) shall identify the individuals from ADOT's and Design-Builder's respective organizations filling the roles of reviewers in the Issue Resolution Ladder.

- (e) If reviewers at any level of the Issue Resolution Ladder cannot resolve a Dispute within the applicable time period set forth in this Section 14.02(B)(1), then they may mutually elect to continue efforts to resolve the Dispute at their level, provided that either reviewer shall have the unilateral right after the applicable time period to elevate the Dispute to the next level of review in the Issue Resolution Ladder.

(2) Issue Resolution Ladder Outcome

If ADOT and Design-Builder succeed in resolving a Dispute using the Issue Resolution Ladder, the Parties shall memorialize the resolution in writing, including execution of any Supplemental Agreement as appropriate, and perform their respective obligations in accordance therewith. A Dispute shall only be considered resolved when the Parties have executed a Supplemental Agreement memorializing the resolution. If the Parties agree to the essential terms of a resolution at any of the levels of the Issue Resolution Ladder, the Parties shall have an additional 60 Days to execute a Supplemental Agreement. If the Parties are unable to execute a Supplemental Agreement within 60 Days after the date of agreement to the essential terms thereof, the Dispute shall not be considered resolved and shall be eligible to proceed to the next level of the Issue Resolution Ladder, or to mediation and all subsequent procedures if all levels of the Issue Resolution Ladder have been completed.

Not later than 15 Day after receipt of the decision of the State Engineer, Design-Builder shall either accept or reject such decision in writing. If Design-Builder does not reject the State Engineer's decision within 15 Days, Design-Builder shall be deemed to have accepted the decision, the dispute will be considered withdrawn from the administrative process, and there will be no further administrative remedy.

If Design-Builder rejects the decision of State Engineer, there will be no further automatic review of the dispute.

The decision of the State Engineer in relation to Design-Builder's claim shall be final unless Design-Builder commences arbitration or litigation.

If the Parties do not resolve the Dispute using the Issue Resolution Ladder, then either Party shall have the right, after conclusion of the Issue Resolution Ladder, to bring the Dispute to mandatory mediation, as described in Section 14.02(C).

(C) Mandatory Mediation

Only upon completion of the requirements of Sections 14.02(B) shall either Party have the right to initiate mandatory mediation proceedings for the unresolved Dispute. Mandatory mediation is a condition precedent to bringing the Dispute to arbitration or litigation.

(1) Mediation Process

The mediation process is as follows:

- (a) The Party bringing the Dispute to mediation shall do so by serving the other Party with a written notice to initiate mediation proceedings. Such notice must be delivered within 60 Days following the conclusion, without resolution, of the Issue Resolution Ladder in accordance with the process described in Section 14.02(B). Failure to provide such notice to initiate mediation proceedings within this time period shall constitute a waiver of any further right to pursue the Dispute and all related issues thereunder, including any relief associated therewith. Either Party may, in its sole discretion, grant an extension of the 60-Day period; provided, however, that no such extension may be in excess of 30 additional Days beyond the original 60-Day period.
- (b) Within 10 Business Days after providing the written notice specified in Section 14.02(C)(1) item (a), the Parties shall mutually select a qualified individual to serve as mediator. The mediator shall have at least 10 years of experience serving as a mediator, shall have at least five years of experience mediating design or construction disputes, as applicable based on the nature of the Dispute, and preferably shall be an attorney at law.
- (c) If the Parties are unable to agree upon an individual to serve as mediator, then the Parties shall enlist the assistance of a nationally-recognized mediation service to select a mediator. All mediators must meet the foregoing qualifications.
- (d) The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 Days after the mediator is appointed, or at such other date and time as may be set by the mediator or agreed to by the Parties. Each Party shall have the right to present to the mediator such materials and documentation as it may deem relevant to the Dispute, and each Party shall provide to the mediator such further materials, documentation, and information as the mediator may reasonably request. The Parties shall meet within three Days after appointment of the mediator and determine whether and to what extent the Parties will share the materials submitted to the mediator with each other. The Parties may enlist the mediator to assist in determining a process for the sharing, if any, of the materials submitted to the mediator.
- (e) Each Party shall bring to the mediation a representative with authority to mediate and settle the Dispute, and such representative shall actively participate in the mediation process. Each Party may bring to the mediation such other persons as it chooses; provided, however, that neither Party shall be represented at the mediation by legal counsel unless both Parties consent thereto in advance of the mediation.
- (f) Each Party shall make good faith efforts to resolve the Dispute through mediation.
- (g) Design-Builder and ADOT will share equally the expenses of the mediation. Each Party shall bear its own costs of preparing for and participating in the mediation.

(2) Mediation Outcome

If the Parties do not resolve the Dispute during mediation, the Dispute may proceed to either arbitration in accordance with Section 14.02(E) or litigation in accordance with Section 14.02(F), as applicable. If a party elects to proceed to arbitration it must initiate the arbitration within 30 Days following the conclusion of mediation.

(D) Evidentiary Impact of Issue Resolution Ladder or Mediation

The Issue Resolution Ladder process and mediation process shall be considered settlement negotiations for the purpose of all state and federal rules that protect disclosures made during settlement negotiations from discovery or use in evidence; provided, however, that any settlement executed by the Parties shall not be considered confidential and may be disclosed.

Evidence of anything said, or of any admission made, in the course of the Issue Resolution Ladder process or mediation is without prejudice and is not admissible in evidence for any purpose, including impeachment, and disclosure of such evidence shall not be compelled before an arbitrator or in any civil action.

No document or copy thereof prepared for the purpose of, in the course of, or pursuant to the Issue Resolution Ladder process or mediation shall be admissible in evidence, and disclosure of such document or copy shall not be compelled in any arbitration or civil action.

No stenographic or other record of the Issue Resolution Ladder process or mediation session(s) shall be made except to memorialize a settlement record.

To the extent permitted by applicable law, all conduct, statements, promises, offers, views, and opinions, oral or written, made during the Issue Resolution Ladder process or mediation by any Party or agent are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views, and opinions shall not be subject to discovery and shall not be admissible for any purpose, including impeachment, before an arbitrator or in any civil action involving the Parties to the extent permitted by law.

The limitations of this Section 14.02(D) do not affect the discovery or admissibility of facts, opinions, statements, documents or other evidence existing or developed independent of the Issue Resolution Ladder process or mediation, and the discoverability or admissibility of such evidence is not changed or affected because of its use in the Issue Resolution Ladder process or mediation.

The Parties may waive any of the confidentiality provisions of this Section 14.02(D) through a written waiver or consent to disclosure.

(E) Binding Arbitration**(1) Disputes Eligible for Arbitration**

Within 30 Days following the conclusion of mediation in accordance with Section 14.02(C), either Party shall have the right to initiate binding arbitration proceedings for a Dispute, together with related or similar unresolved Disputes that arise fairly contemporaneously out of the same set of acts, events or circumstances, that:

- (a) Is or are unresolved;
- (b) Has or have fully exhausted the processes set forth in Sections 14.01, 14.02(B), and 14.02(C);
- (c) Has or have a cumulative amount in controversy not exceeding \$2,500,000, and
- (d) Has or have a cumulative Contractual Deadline adjustment in controversy not exceeding 45 Days.

All unresolved Disputes that arise fairly contemporaneously out of the same set of acts, events or circumstances shall be aggregated in order to determine eligibility for arbitration under items (c) and (d) above.

(2) Arbitration Process

The arbitration process is as follows:

- (a) The Party electing to bring an unresolved Dispute to arbitration shall serve upon the other Party a written request for mandatory and binding arbitration. Failure to serve such written request within 30 Days after conclusion of mediation will constitute waiver of all rights to arbitrate or litigate the Dispute and all the Claims in dispute.
- (b) The Parties shall then seek to agree upon the arbitration process, and any other matter pertinent to arbitration not otherwise addressed in this Section 14.02(E).
- (c) If the Parties cannot agree upon an arbitration process within 30 Days after service of the written request for mandatory and binding arbitration, then the Party seeking arbitration shall be entitled to compel arbitration by serving a demand for arbitration, in accordance with American Arbitration Association ("AAA") *Construction Industry Arbitration Rules and Mediation Procedures*. The scope and extent of discovery shall be as determined by the arbitrator in accordance with AAA rules set forth above.
- (d) Notwithstanding Section 14.02(E)(2) item (c), for insurance Disputes, the arbitrator shall be experienced in the industry of insurance underwriting.
- (e) The arbitrator shall render a decision by applying the pertinent provision(s) of the Contract Documents and applicable Law to the relevant facts and circumstances of the Dispute. The arbitrator shall set forth the decision and reasoning for the decision in writing.
- (f) If any Party acts to unreasonably delay or prevent arbitration, the other Party shall be entitled to enforce the arbitration provisions of this DBA by petition to the Superior Court located in Maricopa County, Arizona.
- (g) The arbitrator shall not have the power to award punitive damages, rescind this DBA, reform the Contract Documents, or void any limitations on liability contained in this DBA.
- (h) The venue of any arbitration hearing shall be in Maricopa County, Arizona.
- (i) Design-Builder and ADOT will share equally the expenses of the arbitrator and the arbitration forum. Each Party shall bear its own costs of preparing for and participating in the arbitration.

(3) Arbitration Outcome

The decision of the arbitrator shall be binding, and judgment upon the award rendered by the arbitrator may be entered in the Superior Court located in Maricopa County, Arizona and thereafter in any such jurisdiction as may be necessary to enforce the judgment.

(F) State Court Litigation; Jurisdiction and Venue

Either Party shall have the right to initiate litigation proceedings if:

- (1) A Dispute, together with all related or similar unresolved Dispute that arise fairly contemporaneously out of the same set of acts, events or circumstances, is or are unresolved after having fully exhausted the process set forth in Sections 14.01, 14.02(B), and 14.02(C), and

(2) The unresolved Dispute is not eligible for arbitration. Any such litigation proceeding shall be *de novo*.

All litigation between the parties concerning any Disputes shall be filed, heard, and decided in the Superior Court located in Maricopa County, Arizona, which shall have exclusive jurisdiction and venue.

(G) Continuation of Work and Payments During Dispute

Failure by ADOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Design-Builder's obligation to perform under the Contract Documents, including Design-Builder's obligation to achieve the Contractual Deadlines and perform all Work in accordance with the Contract Documents. At all times while any dispute is pending or during the Dispute Resolution Procedures, Design-Builder and all Design-Builder-Related Entities shall continue with the performance of the Work and their obligations, including any disputed Work or obligations, diligently and without delay or slow down, in accordance with the Contract Documents, except to the extent enjoined by order of a court or otherwise specified or directed by ADOT. Design-Builder acknowledges that it shall be solely responsible for the results of any delaying actions or inactions that Design-Builder or any Design-Builder-Related Entity takes during the pendency of resolution of a dispute relating to the Work even if Design-Builder's position in connection with the dispute ultimately prevails. In addition, during the pendency of resolution of a dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the PMP, the Governmental Approvals, Community Approvals, BIA Approvals, and applicable Law.

During the course of any and all Dispute Resolution Procedures, ADOT will continue to pay to Design-Builder when due all undisputed amounts owing under this DBA.

Any Dispute regarding disputed payment shall be resolved pursuant to this Section 14. Design-Builder shall proceed as directed by ADOT pending resolution of the Dispute. Upon resolution of any such Dispute, each Party shall promptly pay to the other any amount owing, subject to the restrictions governing payment under the Contract Documents.

(H) Attorney's Fee

Except as expressly provided otherwise in this DBA, each Party shall bear its own attorney's fees and expenses incurred in connection with any Dispute Resolution Procedures, regardless of the outcome.

14.03 Dispute Escalation During Design

ADOT also encourages an expedited partnering process during the Project design period with Design-Builder, including accelerated dispute escalation. Any unresolved design review comments that remain after 20 Days have expired since the date of the comment resolution meeting (see TP Section 113.03(A)(2)(c)(iv) (Comment Escalation)) for the Final Design Submittal shall be immediately escalated to Issue Resolution Ladder "Level Two" for consideration. Design-Builder and ADOT will each prepare an *Issue Resolution Routing Form* for such unresolved comments, and transmit the completed *Issue Resolution Routing Form* to the respective Issue Resolution Ladder "Level Two" representatives. The Issue Resolution Ladder "Level Two" representatives shall schedule an escalation meeting to be held within 10 Days after receiving the completed *Issue Resolution Routing Form*. References to the "ADOT Design Manager or Design Manager" in *Issue Resolution Routing Form* refers to the GEC design manager.

End Section

15 LIQUIDATED DAMAGES AND SANCTIONS**15.01 Key Personnel****(A) Availability of Key Personnel**

Design-Builder shall provide office telephone numbers, mobile telephone numbers, and e-mail addresses for all Key Personnel and their backups to ADOT. ADOT must be able to contact the Project Manager and Construction Manager 24 hours per Day, seven Days per week. If ADOT attempts, but cannot make contact with the Project Manager or Construction Manager or their backup, Design-Builder shall be liable for Liquidated Damages in the amount of \$500 per hour or portion thereof that ADOT is unable to make such contact.

(B) Key Personnel Liquidated Damages

If individuals filling Key Personnel positions are not available to perform the roles identified in the Contract Documents, Design-Builder acknowledges that ADOT, the Work, and the Project will suffer significant and substantial losses due to the unavailability of that individual.

Design-Builder also acknowledges it is impracticable and extremely difficult to determine the actual losses that would accrue to ADOT in the event of such unavailability of Key Personnel. Except as stated in Section 15.01(C), if at any time during the duration of the DBA and as specified in TP Section 110.03 (Personnel Requirements), an individual filling a Key Personnel position shown in Table 15-1 is not available to perform the responsibilities of that Key Personnel position as required by the Contract Documents or if any one of the Key Personnel listed in Table 15-1 are replaced without ADOT approval, then Design-Builder shall pay ADOT Liquidated Damages in the amount shown in Table 15-1, based on the individual's Key Personnel position and per occurrence and per individual.

Table 15-1: Key Personnel Liquidated Damages

No.	Key Personnel Position	Liquidated Damages
1.	Project Manager	\$190,000
2.	Construction Manager	\$150,000
3.	Design Manager	\$150,000
4.	Maintenance of Traffic (MOT) Manager	\$130,000
5.	Environmental Compliance Manager (ECM)	\$130,000

Design-Builder understands and agrees that any Key Personnel Liquidated Damages payable are not a penalty and that such sums are reasonable under the circumstances existing as of the Effective Date. The Parties have agreed to Liquidated Damages in order to fix and limit Design-Builder's costs and to avoid later Disputes over what amounts of damages are properly chargeable to Design-Builder.

ADOT will have the right to deduct Liquidated Damages owing from Design-Builder to ADOT from amounts owing from ADOT to Design-Builder under the DBA, or to collect such Liquidated Damages from any letter of credit or bond furnished under this DBA.

(C) Limitations of Key Personnel Liquidated Damages

Design-Builder shall not be liable for Key Personnel Liquidated Damages under the following conditions:

- (1) Design-Builder removes or replaces an individual filling a Key Personnel position at ADOT's direction;

(2) An individual filling a Key Personnel position is unavailable because of death, retirement, injury, or termination of employment by the applicable Design-Builder-Related Entity (except where the individual moves to an Affiliate). Design-Builder shall promptly propose a replacement individual for the Key Personnel position to ADOT for approval; or

(3) Design-Builder may replace the individuals identified in Exhibit 2-10 (Key Personnel) as of the Effective Date (initial Key Personnel) without liability for the Liquidated Damages specified in Section 15.01(B), provided that Design-Builder proposes a replacement that is acceptable to ADOT in its good faith discretion and such replacement commences Work no later than the Day following departure of the initial Key Personnel. Any further replacement of individuals identified as Key Personnel shall be subject to Liquidated Damages under Section 15.01(B).

(D) Liquidated Damages for Failure to Timely Replace Key Personnel

In addition to any Liquidated Damages that may apply under Section 15.01(B), Design-Builder shall pay ADOT Liquidated Damages in the amount of \$2,000 for each Day that any Key Personnel position is not replaced, commencing on the 60th Day after the Key Personnel position became unfilled and ending on the day that Design-Builder fills the Key Personnel position in accordance with this DBA. The Liquidated Damages payable under this Section 15.01(D) shall be applicable regardless of the reason for the departure of the individual previously filling the Key Personnel role and regardless of whether Liquidated Damages are applicable under Section 15.01(B) or excused under Section 15.01(C) item (2).

15.02 Failure to Complete the Work on Time

Design-Builder shall be liable for and pay to ADOT Liquidated Damages for any failure to achieve the Contractual Deadlines specified in Exhibit 5. The amount of Liquidated Damages are as follows:

(A) A daily value of **\$500** has been established for each Day that the Early Opening Deadline is delayed beyond the Early Opening Deadline.

(B) A daily value of **\$76,000** has been established for each Day that the Substantial Completion Deadline is delayed beyond the Substantial Completion Deadline.

(C) A daily value of **\$14,000** has been established for each Day that the Final Acceptance (D&C) Deadline is delayed beyond the Final Acceptance (D&C) Deadline.

Liquidated Damages will be deducted from any monies due to Design-Builder, for each whole or partial Day that Design-Builder fails to achieve Substantial Completion of the Work by the Substantial Completion Deadline. Liquidated Damages will be deducted from any monies due to Design-Builder, for each whole or partial Day that Design-Builder fails to achieve Final Acceptance (D&C) of the design and construction Work by the Final Acceptance (D&C) Deadline. The daily value as shown above will continue to be assessed, as necessary, until Substantial Completion or Final Acceptance (D&C), as applicable, is achieved.

Both of the monies specified above will be deducted, not as penalties, but as Liquidated Damages; provided however, that due account will be taken of any Contractual Deadline adjustment as a result of a Supplemental Agreement in accordance with Section 8. Permitting Design-Builder to continue and finish all or any part of the Work after a Contractual Deadline or after that date to which a Contractual Deadline may have been extended will in no way operate as a waiver on the part of ADOT of any of its rights under the DBA.

15.03 Subcontracting Liquidated Damages

(A) ADOT Consent

If a Subcontractor begins Work on the Project prior to Design-Builder submitting the required documentation and receiving consent from ADOT, ADOT will retain \$1,000 from monies due or becoming due to Design-Builder. The money retained under this Section 15.03(A) will be for each Subcontractor that starts Work without the consent of

ADOT. These sanctions will be in addition to all other retention or Liquidated Damages provided for elsewhere in the DBA.

(B) Payment Reporting

For each month that Design-Builder fails to submit timely and complete payment information for each Reportable Contract, ADOT will retain \$5,000 as Liquidated Damages from the monies due to Design-Builder. After 90 consecutive Days of non-reporting once the Subcontractor begins Work on the Project, the Liquidated Damages will increase to \$10,000 for each subsequent month which Design-Builder fails to report until the information is provided. These Liquidated Damages shall be in addition to all other retention or Liquidated Damages provided for elsewhere in the DBA.

(C) Prompt Payment

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established in Section 5.06, will result in remedies, as ADOT deems appropriate, which may include but are not limited to:

(1) Liquidated Damages. These Liquidated Damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the DBA:

(a) ADOT will withhold two times the dollar amount not paid to each Subcontractor;

(b) If full payment is made within 30 Days of ADOT's payment to Design-Builder, the amount withheld by ADOT will be released in the next Draw Request; and

(c) If full payment is made after 30 Days of ADOT's payment to Design-Builder, ADOT will release 75% of the funds withheld in the next Draw Request. ADOT will retain 25% of the monies withheld as Liquidated Damages.

(2) Additional Remedies. If Design-Builder fails to make prompt payment for three consecutive months, or any four months over the course of the Project, ADOT may, in addition, invoke the following remedies:

(a) Withhold monthly progress payments until the issue is resolved and full payment has been made to all Subcontractors, subject to the Liquidated Damages described in paragraph (1) above;

(b) Terminate the DBA for default in accordance with Section 17.02(A) of the specifications; and/or

(c) Disqualify Design-Builder from future bidding, temporarily or permanently, depending on the number and severity of violations.

In determining whether Liquidated Damages will be assessed, the extent of the Liquidated Damages, or additional remedies assessed, the State Construction Engineer will consider whether there have been other violations on this DBA or other contracts, whether the failure to make prompt payment was due to circumstances beyond the Design-Builder's control, and other circumstances. Design-Builder may, within 15 Days of receipt of the decision of the State Construction Engineer, escalate the decision to the State Engineer. If Design-Builder does not escalate the decision of the State Construction Engineer, in writing to the State Engineer, within 15 Days of receipt of the decision, Design-Builder will be deemed to have accepted the decision and there will be no further remedy for Design-Builder. If Design-Builder escalates the decision to the State Engineer, and Design-Builder does not agree with the State Engineer's decision, the contractor may initiate litigation, arbitration or mediation pursuant to Section 14.02. The State Engineer's decision remains binding until reversed through a court decision.

(D) Intentionally Left Blank

15.04 Intentionally Left Blank**15.05 Intentionally Left Blank****15.06 Sewage Discharge Liquidated Damages****(A) Liquidated Damage Amount**

ADOT will assess Liquidated Damages for each unplanned breakage that occurs in an active sanitary sewer line as a result of the Design-Builder's operation. The rate of Liquidated Damages assessed is based on the type and quantity of effluent discharged as determined by ADOT.

These Liquidated Damages do not relieve the Design-Builder from any of its responsibilities under the DBA, including any Liquidated Damages that may be assessed under Section 15.02 for failure to achieve Contractual Deadlines.

Liquidated Damages assessed by ADOT will be independent of any penalties imposed by others.

Design-Builder acknowledges that regulatory agencies may assess or impose civil or criminal penalties on Design-Builder resulting from sewer discharges.

ADOT will not be responsible for any civil or criminal penalties, fines, damages, or other charges imposed on Design-Builder by any regulatory agency or court for sewage discharges that are a result, directly or indirectly, of the Design-Builder's Work performed under this DBA.

Table 15-2: Liquidated Damage (each 24 hour period, or portion thereof)

No.	Volume of Discharge	Raw Sewage or Industrial Wastewater	Treated Effluent
1.	Less than 10,000 gallons	\$5,000.00	\$1,000.00
2.	10,000-99,999 gallons	\$10,000.00	\$2,000.00
3.	100,000-1 million gallons	\$25,000.00	\$3,000.00
4.	Greater than 1 million gallons	\$40,000.00	\$5,000.00

Liquidated Damages shall be assessed for each 24-hour period, or portion thereof, until the Design-Builder has completed all of the following tasks:

- (1) Stopped the discharge.
- (2) Repaired the damaged pipe.
- (3) Restored normal service.
- (4) Fully cleaned and disinfected the site to the satisfaction of ADOT.

(B) Reduction of Liquidated Damages

Upon completion of tasks (1), (2), and (3) in Section 15.06(A), and prior to completion of task (4) in Section 15.06(A), the Liquidated Damages assessed for the current 24-hour period shall be at the rate shown in Table 15-2. However, for each subsequent 24-hour period, the assessment will be one half of the rate shown in Table 15-2.

Liquidated Damages will continue at the reduced rate until the Site has been fully cleaned and disinfected to the satisfaction of ADOT.

As an example, the amounts assessed each 24-hour period for an unplanned discharge of 20,000 gallons of raw sewage, in which the Design-Builder completes tasks (1), (2), and (3) within the second 24-hour period but does not complete full cleanup until the third 24-hour period, will be as follows:

First 24-hour period:	\$10,000.00
Second 24-hour period:	\$10,000.00
Third 24-hour period:	\$5,000.00

For this example, the total liquidated damage assessment will be \$25,000.00 (\$10,000 + \$10,000 + \$5,000).

15.07 Liquidated Damages and Sanctions for Lane Closures

For any full or partial Lane Closure that occurs within the Project ROW outside the time approved by ADOT under TP Section 701.04(M)(1) (*Lane and Shoulder Closures*), Design-Builder shall be liable for and pay to ADOT Liquidated Damage and sanction amounts specified in Table 15-3, Table 15-4, and Table 15-5 for every 15-minute interval; or portion thereof, that such Lane Closure continues or exists outside approved time periods, as applicable.

Table 15-3: Mainline Closure Sanctions

No.	Location	Amount
1.	I-10 EB: North of Wild Horse Pass TI	\$78,000
2.	I-10 EB: SR 347 TI to Wild Horse Pass TI	\$67,000
3.	I-10 EB: Riggs Rd to SR 347 TI	\$57,000
4.	I-10 EB: South of Riggs Rd	\$47,000
5.	I-10 WB: North of Wild Horse Pass TI	\$73,000
6.	I-10 WB: SR 347 TI to Wild Horse Pass TI	\$65,000
7.	I-10 WB: Riggs Rd to SR 347 TI	\$54,000
8.	I-10 WB: South of Riggs Rd	\$45,000
9.	I-10: Rolling Closures	\$10,134

Table 15-4: Ramp Closure Sanctions

No.	Location	Amount
1.	SR 202 WB to I-10 EB: System Ramp	\$8,000
2.	I-10 WB to SR 202 WB: System Ramp	\$7,000
3.	I-10 WB to SR 202:EB System Ramp	\$7,000
4.	SR 202 EB to I-10 EB: System Ramp	\$8,000
5.	I-10 EB Wild Horse Pass TI Service On Ramp	\$2,500
6.	I-10 EB Wild Horse Pass TI Service Off Ramp	\$6,000

No.	Location	Amount
7.	I-10 WB Wild Horse Pass TI Service On Ramp	\$5,000
8.	I-10 WB Wild Horse Pass TI Service Off Ramp	\$2,000
9.	I-10 EB Koli Rd TI Service On Ramp	\$2,500
10.	I-10 EB Koli Rd TI Service Off Ramp	\$6,000
11.	I-10 WB Koli Rd TI Service On Ramp	\$5,000
12.	I-10 WB Koli Rd TI Service Off Ramp	\$2,000
13.	I-10 EB Queen Creek/ SR 347 Service On Ramp	\$350
14.	I-10 EB Queen Creek/ SR 347 Service Off Ramp	\$11,500
15.	I-10 WB Queen Creek/ SR 347 Service On Ramp	\$9,500
16.	I-10 WB Queen Creek/ SR 347 Service Off Ramp	\$300
17.	I-10 EB Riggs Rd Service On Ramp	\$800
18.	I-10 EB Riggs Rd Service Off Ramp	\$3,800
19.	I-10 WB Riggs Rd Service On Ramp	\$3,200
20.	I-10 WB Riggs Rd Service Off Ramp	\$1,200

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Table 15-5: Crossroad Closure Sanctions

No.	Location	Amount
1.	Wild Horse Pass Rd Crossroad	\$9,500
2.	Koli Rd Crossroad	\$9,500
3.	SR 347/Queen Creek Rd Crossroad	\$8,000
4.	Riggs Rd Crossroad	\$3,000
5.	Goodyear Rd Crossroad	\$2,500

2 Design-Builder acknowledges and agrees that the sanctions described in this Section 15.07 are reasonable to
3 compensate ADOT for damages ADOT will incur by reason of the matters that result in sanctions, as applicable, for
4 Lane Closures. Such damages include loss of use, enjoyment and benefit of the Project, and connection to ADOT
5 transportation facilities by the general public, injury to the credibility and reputation of ADOT's transportation
6 improvement program with policy makers and with the general public who depend on and expect availability of
7 service, and additional costs of administering this DBA (including engineering, legal, accounting, overhead, and other
8 administrative costs). Design-Builder further acknowledges that these damages are incapable of accurate
9 measurement because of, among other things, the unique nature of the Project and the unavailability of a substitute
10 for it. The Parties have agreed to sanctions under this Section 15.07 to fix and limit Design-Builder's costs and to
11 avoid later disputes over what amounts of damages are properly chargeable to Design-Builder.

Sanctions for Lane Closures shall not be assessed for Lane Closures that are necessary because of damage or destruction to a traffic lane, ramp, structure, cross road, shoulder or sidewalk directly attributable to a Relief Event; provided that such waiver of sanctions or Liquidated Damages will continue only for so long as necessary, taking into account Design-Builder's duty to mitigate under Section 8.03(C)(1) to repair or replace the damage or destruction and reopen the affected traffic lane, ramp, structure, cross road, shoulder or sidewalk.

Sanctions for any full or partial Lane Closure shall not be assessed to the extent it persists beyond the end of the approved time period as a result of any of the following, provided that:

(A) Such waiver of sanctions shall only apply to the minimum extra time period that would be required to end the Lane Closure through use of diligent efforts, and

(B) Design-Builder shall immediately notify ADOT if any such event occurs that Design-Builder believes will delay ending the Lane Closure on time:

(1) A Relief Event that occurs during the Lane Closure and directly adversely impacts the ability to end the Lane Closure on time;

(2) An Incident or Emergency that occurs during the Lane Closure and directly adversely impacts the ability to end the Lane Closure on time, provided that the Incident or Emergency is not caused by the negligence, willful misconduct, breach of contract, or violation of Law, Governmental Approval, Community Approval, or BIA Approval by any Design-Builder-Related Entity;

(3) Unexpected loss, disruption, break, explosion, leak or other damage of a Utility that occurs during the Lane Closure and directly adversely impacts the ability to end the Lane Closure on time, provided that the same is not caused by the negligence, willful misconduct, breach of contract, or violation of Law, Governmental Approval, Community Approval, or BIA Approval by any Design-Builder-Related Entity; or

(4) ADOT's unjustified and direct delay of, or unjustified and direct interference with, Design-Builder's efforts to end the Lane Closure on time.

Assessment of sanctions for Lane Closures shall not preclude ADOT's exercise of its right to remove a Lane Closure that is not a Permitted Closure at Design-Builder's expense under Section 16.07.

Sanctions for Lane Closures shall separately apply to each Lane Closure that is not a Permitted Closure and shall be cumulative. When a Lane Closure that is not a Permitted Closure affects multiple junctions or lanes, Liquidated Damages shall separately accrue for each affected portion, regardless of whether the junctures or lanes overlap.

15.08 Limitation on Damages

To the extent permitted by applicable Law, neither Party shall be liable to the other for punitive damages or indirect or incidental consequential damages, whether arising out of breach of this DBA, tort (including negligence) or any other theory of liability, and each Party hereby releases the other party from any such liability.

The foregoing limitations on Design-Builder's liability for consequential damages shall not apply to or limit any right of recovery ADOT may have respecting the following:

(A) Losses (including defense costs) to the extent:

(1) Covered by the proceeds of insurance required to be carried pursuant to Section 19;

(2) Covered by the proceeds of insurance actually carried by or insuring any Design-Builder-Related Entity under policies solely with respect to the Project and the Work, regardless of whether required to be carried pursuant to Section 19; or

(3) Design-Builder is deemed to have self-insured the Loss pursuant to Section 19;

- (B) Losses arising out of fraud, criminal conduct, intentional misconduct (which does not include any intentional Event of Default), recklessness or bad faith on the part of any Design-BUILDER-Related Entity;
- (C) Design-BUILDER's indemnities set forth in Sections 11.05, 12.02, and 21.03;
- (D) Design-BUILDER's obligation to pay Noncompliance Charges and Liquidated Damages in accordance with this Section 15;
- (E) Losses arising out of Design-BUILDER Releases of Hazardous Materials;
- (F) Costs reasonably incurred by ADOT, or any Person acting on ADOT's behalf, to complete or correct Nonconforming Work, or have Nonconforming Work completed or corrected by another Person, in excess of the sum otherwise payable to Design-BUILDER under this DBA for the Work; and
- (G) Amounts Design-BUILDER may owe or be obligated to reimburse to ADOT under the express provisions of the Contract Documents, including, subject to ADOT's Recoverable Costs.

15.09 Payment of Liquidated Damages and Sanctions

ADOT will have the right to deduct and offset Liquidated Damages and/or sanctions from any amounts owing to Design-BUILDER. ADOT also shall have the right to draw on any bond, certificate of deposit, letter of credit or other security provided by Design-BUILDER pursuant to this DBA to satisfy Liquidated Damages and/or sanctions not paid when due.

Permitting or requiring Design-BUILDER to continue and finish the Work or any part thereof after a Contractual Deadline, as applicable, shall not act as a waiver of ADOT's right to receive Liquidated Damages and/or sanctions hereunder or any rights or remedies otherwise available to ADOT.

End Section

16 CONTRACTUAL NONCOMPLIANCE**16.01 Noncompliance Points****(A) General**

Noncompliance Points shall be used to measure Design-Builder's performance of certain obligations listed in the Exhibit 11 (*Noncompliance Table*) and trigger remedies described in this Section 16.01 for failures to perform any such obligations (i.e., Noncompliance Events). Exhibit 11 lists the Noncompliance Events and the corresponding cure period that is available to Design-Builder for each Noncompliance Event. For purposes of this Section 16.01, references to "cure periods" shall mean those cure periods and repair response times listed or referenced in Exhibit 11.

(B) Noncompliance Events

Exhibit 11 contains a representational, but not an all-inclusive, list of Noncompliance Events possible under the Contract Documents. Accordingly, ADOT, from time to time, may add new Noncompliance Events to Exhibit 11, or modify existing Noncompliance Events, subject to the terms and conditions of this Section 16.01.

(1) New Noncompliance Events

For any new Noncompliance Event that ADOT adds to Exhibit 11, ADOT will establish the applicable assessment category ("A" or "B," as more fully described in Section 16.02), number of Noncompliance Points, Noncompliance Charges, and cure period. ADOT's right to make additions to Exhibit 11 shall not be exercised in a manner to expand, nor shall it be deemed to expand, Design-Builder's obligations under the Contract Documents; but rather to add to or eliminate from Exhibit 11 existing contractual obligations for which Noncompliance Points may be assessed. Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim for additions or adjustments ADOT makes under this Section 16.01(B)(1), provided that the addition or adjustment complies with Section 16.01(B)(2).

(2) New Noncompliance Events Limitations

ADOT's right to add existing contractual obligations to Exhibit 11 is limited such that the total number of Noncompliance Points and total Noncompliance Charges established in Exhibit 11, as it exists on the Effective Date, shall not increase. To avoid a net increase in the total number of Noncompliance Points and total Noncompliance Charges, ADOT may elect to:

- (a) Remove or reduce Noncompliance Points allocated to listed contractual obligations in Exhibit 11 or
- (b) Remove or reduce Noncompliance Charges allocated to listed contractual obligations in Exhibit 11.

Further, ADOT will have no right to assess Noncompliance Points or Noncompliance Charges on account of a Noncompliance Event that occurs prior to the addition of the subject existing contractual obligation(s) to Exhibit 11.

(C) Noncompliance Charges for Noncompliance Points**(1) General**

Design-Builder shall be liable for and pay to ADOT amounts to compensate ADOT for damages due to the occurrence of Noncompliance Events, as described in Exhibit 11. The amounts owing from Design-Builder to ADOT as Noncompliance Charges do not liquidate the costs to ADOT to rectify the corresponding Noncompliance Event and do not preclude ADOT from pursuing additional remedies against Design-Builder.

(2) Noncompliance Event Charges Amount

Except as provided in Section 16.03, for each assessed Noncompliance Point, Design-Builder shall be subject to charges in the amount of \$1,000 (the "Noncompliance Charges").

(3) Justification for Noncompliance Charge Amounts

Design-Builder acknowledges that the Noncompliance Charges assessed in accordance with the Contract Documents are reasonable liquidated amounts to compensate ADOT for damages it will incur by reason of Design-Builder's failure to comply with the applicable provisions of the Contract Documents. The damages addressed by the Noncompliance Charges include:

- (a) ADOT's increased costs of administering this DBA, including the increased costs of engineering, legal, accounting, monitoring, oversight, overhead, and increased costs of monitoring and enforcing Design-Builder's compliance with applicable Governmental Approvals, Community Approvals, or BIA Approvals;
- (b) Potential harm and future costs to ADOT from reduction in the condition and useful life of the Elements;
- (c) Potential harm to the credibility and reputation of ADOT with other Governmental Entities, the Community, the BIA, policy makers, and with the general public who depend on and expect timely and quality delivery and availability of service;
- (d) To those using the Project, which may include loss of use, enjoyment and benefit of the Project and of facilities connecting to the Project, additional wear and tear on vehicles, and increased costs of congestion, travel time, and accidents; and
- (e) ADOT's increased costs of addressing potential harm to the environment, including increased harm to air quality caused by congestion, and harm to water quality, soils conditions, historic structures, and other environmental resources caused by Noncompliance Events.

(4) Non-Measurable Noncompliance Charge Justification

Design-Builder further acknowledges that the damages described in Section 16.01(C) would be difficult and impracticable to measure and prove, because, among other things:

- (a) The Project is of a unique nature and no substitute for it is available;
- (b) The costs of monitoring and oversight will be variable and extremely difficult to quantify;
- (c) The nature and level of increased monitoring and oversight will be variable depending on the circumstances; and
- (d) The variety of factors that influence use of and demand for the Project makes it difficult to sort out causation of the matters that will trigger these Noncompliance Charges and to quantify actual damages.

16.02 Noncompliance Assessment Notification and Cure Process**(A) Notification by Design-Builder****(1) Electronic Database**

As an integral part of Design-Builder's self-monitoring obligations, Design-Builder shall establish within 60 Days after NTP 1 and thereafter maintain an electronic database of all Noncompliance Events, which shall at a minimum provide the following information for each Noncompliance Event:

- (a) Description of the Noncompliance Event, including its item number established in the first column of Exhibit 11;
- (b) Date and time the Noncompliance Event commenced;
- (c) Location of the Noncompliance Event (if applicable);
- (d) Applicable cure period;
- (e) Whether the Noncompliance Event was cured during the applicable cure period;
- (f) Date and time of cure (if any);
- (g) Status of Noncompliance Event;
- (h) The number of Noncompliance Points (if any) to be assessed; and
- (i) The amount of Noncompliance Charges to be assessed.

Design-Builder shall retain each Noncompliance Event entry in the electronic database until Final Acceptance (D&C).

(2) Monthly Report

Commencing on the Effective Date, Design-Builder shall deliver to ADOT, concurrently with the draft Draw Request, a monthly report of all Noncompliance Events that occurred during the immediately preceding month, and any Noncompliance Events from previous months that remain uncured as of the start of the preceding month. For each such Noncompliance Event, the monthly report must provide the same information required in the electronic database, as described Section 16.02(A)(1).

(3) ADOT Response

Within a reasonable time after receiving the monthly report, ADOT will deliver to Design-Builder a written notice in response to:

- (a) ADOT's determination whether the Noncompliance Events reported as cured were cured within the applicable cure periods; and
- (b) The Noncompliance Points and Noncompliance Charges to be assessed.

(B) Notification Initiated by ADOT

If ADOT believes that a Noncompliance Event specified in Exhibit 11 has occurred but has not been entered into the electronic database, ADOT may deliver to Design-Builder a notice of determination, in writing describing the following:

- (1) Description of the Noncompliance Event, including its item number in the first column of the Exhibit 11;
- (2) Date and time the Noncompliance Event commenced;

- 1 (3) Location of the Noncompliance Event (if applicable);
- 2 (4) Applicable cure period;
- 3 (5) If applicable, determination whether the Noncompliance Event was cured during the
- 4 applicable cure period;
- 5 (6) Date and time of cure (if any);
- 6 (7) ADOT's opinion of the current status of the Noncompliance Event;
- 7 (8) The number of Noncompliance Points (if any) to be assessed; and
- 8 (9) The amount of Noncompliance Charges (if any) to be assessed.

9 (C) Cure Periods

10 Design-Builder shall cure Noncompliance Events by the end of the applicable cure periods established in Exhibit 11.

11 For each Noncompliance Event identified by the assessment category "A" in Exhibit 11, Design-Builder's cure period
12 with respect to the Noncompliance Event shall be deemed to start on the date Design-Builder first obtained
13 knowledge or had reason to know of the Noncompliance Event. For this purpose, if the notice of the Noncompliance
14 Event is initiated by ADOT, Design-Builder shall be deemed to first obtain knowledge of the Noncompliance Event
15 not later than the date of delivery of the notice to Design-Builder.

16 For each Noncompliance Event identified by the assessment category "B" in Exhibit 11, Design-Builder's cure period
17 shall be deemed to start on the date the Noncompliance Event occurred, regardless of whether ADOT has delivered
18 a notice to Design-Builder.

19 For purposes of the assessment of Noncompliance Points and Noncompliance Charges, each of the cure periods in
20 Exhibit 11 shall be the only cure period available to Design-Builder for the corresponding Noncompliance Event, and
21 shall control if it differs from any cure period in Section 16.02(C) or might otherwise apply to the Noncompliance
22 Event.

23 (D) Notification of Cure

24 When Design-Builder determines it has cured any Noncompliance Event, Design-Builder shall enter in the electronic
25 database, as well as in the next monthly report, notice identifying the Noncompliance Event, stating that Design-
26 Builder has completed cure, and briefly describing the cure, including any modifications to the PMP to protect
27 against future, similar Noncompliance Events. Thereafter, ADOT will have the right, but not the obligation, to inspect
28 and verify completion of the cure.

29 ADOT may reject any Design-Builder notice of cure if ADOT determines that Design-Builder has not fully cured the
30 Noncompliance Event. Upon making this determination, ADOT will deliver a written notice of rejection to Design-
31 Builder. Any dispute regarding rejection of cure may be resolved according to the Dispute Resolution Procedures.

32 16.03 Assessment and Waiver of Noncompliance Points

33 (A) Assessment

34 When Design-Builder knew or should have known of a Noncompliance Event, whether initiated by Design-Builder
35 under Section 16.02(A) or notified by ADOT under Section 16.02(B), ADOT may assess Noncompliance Points in
36 accordance with Exhibit 11, and subject to the terms and conditions set forth as follows:

- 37 (1) For each Noncompliance Event identified by the assessment category "A" in Exhibit 11, if it is
- 38 cured by the end of the first cure period, no Noncompliance Points shall be assessed; but if it
- 39 is not cured by the end of the first cure period, the Noncompliance Points shall be assessed at

the end of the first cure period, and shall be assessed again at the end of each subsequent cure period, unless cured by the end of the subsequent cure period.

(2) For each Noncompliance Event identified by the assessment category "B" in Exhibit 11, the Noncompliance Points shall first be assessed on the date the Noncompliance Event occurred (the start of the first cure period). Provided that the Noncompliance Event is not then cured, Noncompliance Points shall be assessed again at the end of the first and each subsequent cure period.

(3) ADOT will not assess Noncompliance Points under more than one assessment category for any particular Noncompliance Event.

(4) The number of points listed in Exhibit 11 for any particular Noncompliance Event, as such number of points may be adjusted pursuant to Section 16.01(B), is the maximum number of Noncompliance Points that may be assessed for each occurrence or circumstance that constitutes a Noncompliance Event. ADOT may, but is not obligated to, assess fewer than the maximum number of points.

(5) Regardless of the continuing assessment of Noncompliance Points under this Section 16.03, ADOT will be entitled to exercise its step-in rights in accordance with Section 16.01 and, if applicable, its work suspension rights in accordance with Sections 8.02(D) and 16.08, after expiration of the initial cure period available to Design-Builder.

(6) Upon either Party's request at any time after ADOT has assessed Noncompliance Points three or more times for failure to cure the same occurrence or circumstance that constitutes a Noncompliance Event, the Parties will meet and confer to discuss the occurrence or circumstance and measures to mitigate continuation of such assessments and to effect a cure. This provision shall not be construed to imply that ADOT is obligated to waive the Noncompliance Event or Design-Builder's obligation to cure.

(B) Waiver

ADOT will waive such Noncompliance Charges first accruing in a calendar month only if the total of such monthly Noncompliance Charges does not exceed \$15,000.00 (the "monthly waiver limit"). For clarity, if Noncompliance Charges first accruing in a calendar month exceed the monthly waiver limit, none of such Noncompliance Charges will be waived; Noncompliance Charges that accrue due to (i) a second or further failure to cure the corresponding Noncompliance Event or (ii) Noncompliance Events that adversely affect the safety of the traveling public, as determined by ADOT, will not be waived even if Design-Builder does not exceed the monthly waiver limit, and will count toward whether the monthly waiver limit is exceeded;

Waiver of Noncompliance Charges does not waive the corresponding Noncompliance Event or Noncompliance Points; and ADOT shall have all other rights and remedies under the Contract Documents regarding such Noncompliance Event.

16.04 Special Provisions for Certain Noncompliance Events

(A) General

This Section 16.04 applies only to a Noncompliance Event that is directly attributable to:

(1) A Relief Event;

(2) A traffic accident on the Project ROW not caused by the negligence, willful misconduct, breach of contract, or violation of Law, Governmental Approval, Community Approval, or BIA Approval by any Design-Builder-Related Entity; or

- (3) Unexpected loss, disruption, break, explosion, leak or other damage of a Utility serving or in the vicinity of the Project but not within the responsibility of Design-Builder.

(B) Certain Noncompliance Events Requirements

If a Noncompliance Event established in Section 16.04(A) occurs, then:

- (1) The applicable cure period shall be extended if the Noncompliance Event is not reasonably capable of being cured within the applicable cure period due solely to an occurrence set forth in Section 16.04(A), and for a Noncompliance Event with an assessment category of "B", the assessment of Noncompliance Points and the start of successive cure periods shall not commence and shall be extended. An extension under this Section 16.04(B) item (2) shall be for a reasonable period of time under the circumstances, taking into account the scope of the efforts necessary to cure, the effect of such occurrence on Design-Builder's ability to cure, availability of temporary remedial measures, and need for rapid action due to impact of the Noncompliance Event on safety or traffic movement;
- (2) The Noncompliance Event shall not be counted toward a Persistent Design-Builder Default for purposes of Section 16.05, provided the Noncompliance Event is cured within the applicable cure period, as it may be extended pursuant to this Section 16.04(B) item (1);
- (3) Regardless of which Party initiates notification of the Noncompliance Event, no Noncompliance Points shall be assessed if Design-Builder cures such Noncompliance Event within the applicable cure period, as it may be extended pursuant to this Section 16.04(B) item (1); and
- (4) The Noncompliance Event shall not result in Noncompliance Charges under Section 16.01(C) if the Noncompliance Event is cured within the applicable cure period, as it may be extended pursuant to this Section 16.04(B) item (1).

16.05 Persistent Design-Builder Default

(A) Trigger Points for Persistent Design-Builder Default

A "Persistent Design-Builder Default", entitling ADOT to require submittal of Design-Builder's remedial plan under Section 16.05(B), shall exist on any date when:

- (1) 180 Noncompliance Points have been assessed in any consecutive 365-Day period; or
- (2) 270 Noncompliance Points have been assessed in any consecutive 720-Day period.

The number of Noncompliance Points that would otherwise be counted in accordance with this Section 16.05 is subject to reduction in accordance with Section 16.05(C).

(B) Remedial Plan

Upon the occurrence of a Persistent Design-Builder Default (refer to the trigger points in Section 16.05(A)), ADOT will provide Design-Builder with a notice that Persistent Design-Builder Default has been triggered. Not later than 15 Days after receipt of the notice of Persistent Design-Builder Default, Design-Builder shall prepare and submit a remedial plan for ADOT's approval in its good faith discretion. The remedial plan shall set forth a schedule and specific actions to be taken by Design-Builder to improve its performance, reduce the number, frequency, and severity of Noncompliance Events, and reduce the assessment of Noncompliance Points under Section 16.04 to the point that such Persistent Design-Builder Default will not continue. ADOT may require that such actions include improving Design-Builder's quality management practices, plans and procedures, revising and restating the PMP, as applicable, changing organizational and management structure, increasing monitoring and inspections, changing Key Personnel and other important personnel, replacing Subcontractors, and delivering security to ADOT.

(C) Reduction in Compliance Points

If (a) Design-Builder complies in all material respects with the schedule and specific elements of, and actions required under, the approved remedial plan; (b) as a result thereof Design-Builder reduces the assessment of Noncompliance Points under Section 16.03 to the point that such Persistent Design-Builder Default is no longer ongoing; and (c) as of the date it achieves such requirements there exist no Design-Builder Defaults for which ADOT provided notice, then ADOT will reduce the number of Noncompliance Points that would otherwise then be counted toward Persistent Design-Builder Default by 25%. Such reduction shall be taken from the earliest assessed Noncompliance Points that would otherwise then be counted toward Persistent Design-Builder Default.

(D) Failure to Deliver Required Remedial Plans

Design-Builder's failure to deliver to ADOT the required remedial plan within the 30-Day period established in Section 16.05(B) shall constitute a Design-Builder Default that may result in issuance of a notice thereof by ADOT.

(E) Failure to Comply with Remedial Plans

Design-Builder's failure to comply in any material respect with the schedule or specific elements of, or actions required under, a remedial plan shall constitute a Design-Builder Default that may result in issuance of a notice thereof by ADOT triggering a 30-Day cure period.

(F) Uncured Remedial Plan Requirements

If either of the events described in Section 16.05(D) and Section 16.05(E) remain uncured following expiration of the 5-Day or 30-Day cure period specified, respectively, then ADOT may declare that an Event of Default has occurred in accordance with Section 17.01(B).

16.06 Provisions Regarding Dispute Resolution

The Dispute resolution provisions are as follows:

(A) Design-Builder may object to the assessment of Noncompliance Points or the starting point for or duration of the cure period respecting any Noncompliance Event by delivering to ADOT written notice of such objection no later than five Days after ADOT delivers its corresponding notice of determination.

(B) Design-Builder may object to ADOT's rejection of any notification of completion of a cure given pursuant to Section 16.02(D) by delivering to ADOT written notice of such objection no later than 15 Days after ADOT delivers its notice of rejection.

(C) If for any reason Design-Builder fails to deliver its notice of objection within the applicable time periods in Section 16.10 items (A) and (B), Design-Builder shall be conclusively deemed to have accepted the matters in the applicable notice from ADOT, and shall be forever barred from challenging them.

(D) If Design-Builder gives timely written notice of objection, either Party may refer the matter for resolution according to the Dispute Resolution Procedures.

(E) In the case of any dispute as to the number of Noncompliance Points to assign for Noncompliance Events added to Exhibit 11, either Party may refer the matter for resolution according to the Dispute Resolution Procedures, and the sole issue for resolution shall be how many Noncompliance Points should be assigned.

(F) Pending the resolution of any Dispute arising under this Section 16.06, the provisions of Sections 16.01 through 16.05 shall take effect as if the matter were not in Dispute. If the final decision regarding the Dispute is that:

(1) The Noncompliance Points should not have been assessed,

(2) The number of Noncompliance Points must be adjusted,

- (3) The starting point or duration of the cure period must be adjusted, or
- (4) A Noncompliance Event has been cured, then the number of Noncompliance Points assigned or assessed, the Noncompliance Points balance, and the related liabilities of Design-Builder shall be adjusted to reflect such decision.
- (G) For the purpose of determining whether ADOT may declare an Event of Default under Section 16.05(B) for failure to timely submit or comply with the remedial plan, the number of Noncompliance Points in Dispute:
- (1) Shall not be counted pending resolution of the Dispute by the Dispute Resolution Procedures if Design-Builder delivers written notice of objection within the applicable time limit set forth in this Section 16.06 items (A) or (B); and
- (2) Shall be counted if Design-Builder for any reason does not deliver written notice of objection within the applicable time limit set forth in this Section 16.06 items (A) or (B) or does not diligently pursue Dispute Resolution Procedures to conclusion (and in any such case Design-Builder shall be deemed to have irrevocably waived the Dispute).

16.07 ADOT's Right to Immediate Entry to Cure

(A) Contractual Noncompliance Related to Maintenance and Protection of Traffic

Without prior notice and without awaiting lapse of the period to cure, if any Design-Builder Default occurs under Section 17.01(A) item (8), ADOT may enter and take control of the relevant portion of the Project to reopen and continue traffic operations for the benefit of the public and restore the permitted uses, until such time as such Design-Builder Default is cured or ADOT terminates this DBA.

Design-Builder shall pay to ADOT on demand ADOT's Recoverable Costs in connection with ADOT's exercise of its rights above under this Section 16.07.

So long as ADOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such a Design-Builder Default, ADOT's action shall not be deemed unlawful or a breach of this DBA, shall not subject ADOT to any liability to Design-Builder, and shall not entitle Design-Builder to an increase in the Contract Price, Contractual Deadline adjustment, or any other Claim, unless ADOT's action constitutes recklessness or willful misconduct. Design-Builder acknowledges that ADOT has a high priority, paramount public interest in maintaining continuous public access to the Project and maintaining the authorized uses of the Project. ADOT's good faith determination that such action is needed shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

Immediately following rectification of such Design-Builder Default, as determined by ADOT, ADOT will relinquish control of the relevant portion of the Project back to Design-Builder.

(B) Contractual Noncompliance Related to Safety

Notwithstanding anything to the contrary in this DBA, if in the good faith judgment of ADOT a Design-Builder Default results in an Emergency or danger to persons or property, and if Design-Builder is not then diligently taking all necessary steps to rectify such Emergency or danger, ADOT may, without notice and without awaiting lapse of the period to cure any breach, and in addition and without prejudice to its other remedies, (but is not obligated to):

- (1) Immediately take such action as may be reasonably necessary to rectify the Emergency or danger, in which event Design-Builder shall pay to ADOT the cost of such action, including ADOT's Recoverable Costs; or
- (2) Suspend the Work or close or cause to be closed any and all portions of the Project affected by the Emergency or danger.

So long as ADOT undertakes such action in good faith, even if under a mistaken belief in the occurrence of such failure or existence of an Emergency or danger as a result thereof, such action shall not be deemed unlawful or a breach of this DBA, shall not expose ADOT to any liability to Design-Builder and shall not entitle Design-Builder to an increase in the Contract Price, Contractual Deadline adjustment, or any other Claim, it being acknowledged that ADOT has a high priority, paramount public interest in protecting public and worker safety at the Project and adjacent and connecting areas.

ADOT's good faith determination of the existence of such a failure, Emergency or danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

Immediately following rectification of such Emergency or danger, as determined by ADOT, ADOT will allow the Work to continue or such portions of the Project to reopen, as the case may be.

16.08 Suspensions for Cause

(A) Reasons for Suspensions for Cause

Upon ADOT's delivery of notice of a Design-Builder breach for any of the following, ADOT will have the right and authority to suspend for cause all of the Work or any affected portion of the Work, regardless of whether a Noncompliance Event has been declared or any cure period (other than any cure period provided of this Section 16.08 items (4), (5), (6), (8), and (10)) has not yet lapsed, or if any of the following conditions exist:

- (1) The existence of conditions unsafe for workers, other Project personnel or the general public, including failure to comply with any provision of the Safety Management Plan;
- (2) Failure to comply with any Law, Governmental Approval, Community Approval, or BIA Approval;
- (3) Performance of Construction Work sooner than permitted under Section 7.04(A);
- (4) Discovery of Nonconforming Work or of any activity that is proceeding or about to proceed that would constitute or cause Nonconforming Work, where the Nonconforming Work or activity is not substantially cured within 15 Days after ADOT delivers written notice thereof to Design-Builder, unless Design-Builder demonstrates to ADOT's satisfaction that Design-Builder has completed a full and complete cure of the Nonconforming Work and that verification by ADOT of such cure remains practicable if Work continues without suspension;
- (5) Failure to carry out and comply with Directive Letters, where such failure is not cured within 15 Days after ADOT delivers written notice thereof to Design-Builder;
- (6) Failure to replace or remove personnel as established in Sections 5.07 and 15.01, as applicable, where such failure is not cured within 30 Days after ADOT delivers written notice Design-Builder;
- (7) Failure to provide proof of required insurance coverage as established in Section 19 (which suspension is also available in the case of such failure following a written request rather than notice of a Design-Builder Default, established in Section 18);
- (8) Except for Noncompliance Events where no Persistent Design-Builder Default exists, other failure to perform the Work in compliance with, or other breach of, the Contract Documents, where such failure is not cured within 15 Days after ADOT delivers notice to Design-Builder;
- (9) Failure to deliver or maintain the Payment Bond, Performance Bond, or any other bonds or other security required hereunder;
- (10) Failure to comply with any provision of the QMP, where such failure is not cured within 15 Days after ADOT delivers written notice to Design-Builder;

- (11) Intentionally left blank;
- (12) Failure of the Erosion Control Coordinator (ECC) to comply with the requirements of TP Section 110.03(C)(6) (*Erosion Control Coordinator*); or
- (13) If at any time during the Construction Work Design-Builder does not have at least one ADOT-approved IQF under Subcontract.

(B) Post Suspension Notification Requirements

Design-Builder shall promptly comply with any such suspension order, even if Design-Builder disputes the grounds for suspension. ADOT will lift the suspension order promptly after Design-Builder fully cures and corrects the applicable breach or failure to perform or all other reasons for the suspension order cease to apply. Design-Builder shall promptly recommence the Work upon receipt of notice from ADOT directing Design-Builder to resume work. ADOT will have no liability to Design-Builder, and Design-Builder shall have no right to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim in connection with any suspension of Work properly founded on any of the grounds in Section 16.08(A). If Design-Builder contends that ADOT's suspension order was not properly founded on any of the grounds established in Section 16.08(A), Design-Builder may initiate the Dispute Resolution Procedures in Section 14 to determine whether ADOT properly issued the suspension order. If ADOT orders suspension of Work on one of the foregoing grounds but it is finally determined under the Dispute Resolution Procedures that such grounds did not exist, the suspension shall be treated as an ADOT Suspension for Convenience under Section 8.02(D); and the amount of any compensation or Contractual Deadline adjustment may be determined by the Dispute Resolution Procedures. Design-Builder may request that the same initiation of the Dispute Resolution Procedures be used to determine both whether ADOT properly issued the suspension order and the amount, if any, of compensation and/or Contractual Deadline adjustment.

16.09 Responsibilities of Design-Builder during Suspension Periods

During periods in which Work is suspended, Design-Builder shall make the Site passable, place it in a maintainable condition, and shall open such portions of the Project and temporary roadways to traffic as may be agreed upon between ADOT and Design-Builder for temporary accommodation of traffic during the anticipated period of suspension. Additionally, if ADOT does not suspend the Work in its entirety, Design-Builder shall continue other Work that has been or can be performed at the Site or off the Site during the period that Work is suspended.

16.10 Special Provisions for ADOT Step-in

If ADOT exercises a suspension right under Sections 8.02(D) and 16.08 or a step-in right under Section 17.04, with respect to any portion of the Project (the "affected Project portion"), then:

- (A) During the period that ADOT is in control of the Work for the affected Project portion (the "step-in or suspension period"), neither the condition of the affected Project portion nor the performance of or failure to perform Work respecting the affected Project portion shall result in a new Noncompliance Event, assessment of new Noncompliance Points or new Noncompliance Charges under Section 16.01;
- (B) All cure periods that are available for Noncompliance Events respecting the affected Project portion and that arose prior to and are pending as of the date the step-in or suspension period commences shall be deemed forfeited by Design-Builder;
- (C) During the step-in or suspension period for the affected Project portion, Section 15.02 shall not be applied to Noncompliance Events that arose prior to the date such step-in or suspension period commences; and
- (D) The step-in or suspension period for the affected Project portion shall be disregarded for purposes of determining a Persistent Design-Builder Default under Section 16.05.

End Section

17 DEFAULT**17.01 General****(A) Events and Conditions Constituting Default**

Design-Builder shall be in breach under this DBA upon the occurrence of any one or more of the following events or conditions (each a "Design-Builder Default"):

- (1) Persistent Design-Builder Default;
- (2) Subject to Section 6.09, Design-Builder fails to achieve Substantial Completion or Final Acceptance (D&C) by the applicable Contractual Deadline, as either may be extended pursuant to this DBA;
- (3) Design-Builder commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect, seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it any substantial part of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing;
- (4) An involuntary case is commenced against Design-Builder seeking:
 - (a) Liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Design-Builder or Design-Builder's debts under any U.S. or foreign bankruptcy, insolvency or other similar Law now or hereafter in effect,
 - (b) The appointment of a trustee, receiver, liquidator, custodian or other similar official of Design-Builder or any substantial part of Design-Builder's assets,
 - (c) The issuance of a writ of attachment, execution, or similar process, or
 - (d) Like relief; and such involuntary case is not dismissed or stayed within 60 Days of commencement;
- (5) Any representation or warranty in the Contract Documents made by Design-Builder, or any certificate, schedule, report, instrument or other document delivered by or on behalf of Design-Builder to ADOT pursuant to the Contract Documents is false or materially misleading or inaccurate when made or omits material information when made;
- (6) After exhaustion of all rights of appeal, there occurs any disqualification, suspension or debarment (distinguished from ineligibility due to lack of financial qualifications), or there goes into effect an agreement for voluntary exclusion, from bidding, proposing or contracting with any federal or state department or agency of Design-Builder or Design-Builder-Related Entity;
- (7) Whether in connection with this Project or any other, any final judgment is issued holding Design-Builder liable for an amount in excess of \$100,000 based on a finding of intentional or reckless misconduct or violation of a state or federal false claims act;
- (8) There occurs any Closure of the roadway within the Project ROW or any portion thereof, or any Lane Closure, except as expressly permitted or otherwise expressly excused under this DBA, the Technical Provisions, and the ADOT-approved TMP; and

- 1 (9) Design-Builder fails to comply with ADOT's written suspension of Work order issued in
2 accordance with Section 16.08 within the time stated in such order.

3 **(B) Declaration of Event of Default**

4 The events or conditions described in Section 17.01(A) items (1) through (7) are not subject to cure. If any such
5 events or conditions occurs, an "Event of Default" has occurred.

6 **17.02 ADOT Remedies for Design-Builder Default**

7 **(A) Termination for Default**

8 **(1) General**

9 Subject to Section 17.01(B), in the event of any Design-Builder Default that is or becomes an Event of Default, ADOT
10 may terminate this DBA or a portion thereof, including Design-Builder's rights of entry upon and control of the
11 Project. Such termination shall be effective upon delivering notice of termination or any other date specified in such
12 notice, which notice may be included in the declaration of the Event of Default. If this DBA or a portion thereof is so
13 terminated for an Event of Default, ADOT will have the following rights without further notice and without waiving
14 or releasing Design-Builder from any obligations and Design-Builder shall have the following obligations (as
15 applicable).

16 (a) ADOT may deduct any amounts owed by Design-Builder to ADOT (including interest
17 thereon as permitted under this DBA) from any amounts payable by ADOT to Design-
18 Builder. The amounts that ADOT may deduct include reimbursements owing;
19 Liquidated Damages and Noncompliance Charges up to the date specified in the
20 notice of termination; amounts ADOT deems advisable to cover any existing or
21 threatened claims and stop notices of Subcontractors, laborers or other Persons;
22 amounts of any Losses that have accrued, subject to any limitations on the recovery
23 thereon in the Contract Documents; the cost to complete or remediate uncompleted
24 Work or Nonconforming Work; interest owing ADOT under this DBA; or other
25 damages or amounts that ADOT has determined are or may be payable to ADOT
26 under the Contract Documents.

27 (b) ADOT will have the right, but not the obligation, to pay any amount or perform any
28 act as may then be required from Design-Builder under the Contract Documents or
29 Subcontracts.

30 (c) ADOT may appropriate any or all materials, supplies, and equipment on the Site and
31 may direct the Surety to complete this DBA or may enter into an agreement for the
32 completion of this DBA according to the terms and provisions hereof with another
33 contractor or the Surety, or use such other methods as may be required for the
34 completion of the Work and the requirements of the Contract Documents, including
35 completion of the Work by ADOT.

36 (d) If ADOT exercises any right to perform any obligations of Design-Builder, ADOT may,
37 but is not obligated to, among other things:

38 (i) Perform or attempt to perform, or cause to be performed, such Work;

39 (ii) Spend such sums as ADOT deems necessary to employ such architects,
40 engineers, consultants, and contractors and obtain materials and
41 equipment as may be required for the purpose of completing such Work;

42 (iii) Execute all applications, certificates, and other documents as may be
43 required for completing the Work;

- (iv) Modify or terminate any contractual arrangements;
- (v) Take any and all other actions that it may in its good faith discretion consider necessary to complete the Work; and
- (vi) Prosecute and defend any action or proceeding incident to the Work.

(2) Costs

Design-Builder shall be liable to ADOT for all costs reasonably incurred by ADOT or any Person acting on ADOT's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work, and increased financing costs). ADOT will be entitled to withhold all or any portion of further payments to Design-Builder until such time as ADOT is able to determine:

- (a) How much, if any, remains payable to Design-Builder and
- (b) The amount payable by Design-Builder to ADOT in connection with ADOT's damages and Claims against Design-Builder-Related Entities or as otherwise required by the Contract Documents.

ADOT will determine the total cost of all completed Work and will notify Design-Builder of the amount, if any, that Design-Builder shall pay ADOT or ADOT will pay Design-Builder or its Surety with respect thereto. ADOT's Recoverable Costs will be deducted from any moneys due or which may become due to Design-Builder or its Surety. If ADOT's Recoverable Costs exceed the sum then payable to Design-Builder under this DBA, then Design-Builder shall be liable and shall pay to ADOT the amount of such excess.

(3) ADOT's Option

In lieu of the provisions of this Section 17.02(A) for terminating this DBA for default and completing the Work, ADOT may, in its sole discretion, pay Design-Builder for the parts already done according to the provisions of the Contract Documents and ADOT may treat the parts remaining undone as if they had never been included or contemplated by this DBA. No Claim or other request for relief in any form under this Section 17.02(A)(3) will be allowed for prospective profits on, or any other compensation relating to, Work uncompleted by Design-Builder.

(4) Later Determination

If this DBA is terminated for grounds that are later determined not to justify a Termination for Default in accordance with Section 17.02(A), such termination shall be deemed to constitute a Termination for Convenience pursuant to Section 22.

(B) Damages; Offset

Subject to Section 15, ADOT will be entitled to recover any and all damages available at Law for any and all causes of action ADOT may have against Design-Builder, including, but not limited to, for damages caused by a Design-Builder Default. Design-Builder shall owe any such damages that accrue after the occurrence of the Design-Builder Default (provided that ADOT delivers notice thereof, if any, required by this DBA) regardless of whether the Design-Builder Default is subsequently cured or becomes an Event of Default.

Subject to Section 15, Design-Builder and Sureties shall not be relieved of liability for continuing Liquidated Damages or Noncompliance Charges due to a Design-Builder Default nor by ADOT's declaration of an Event of Default, or actions taken by ADOT under this Section 17.02.

ADOT's remedies with respect to Nonconforming Work shall include the right to accept such Work and receive payment as provided in Section 7.04(C) in lieu of the remedies specified in this Section 17.02.

Where this DBA is not terminated, damages include:

- (1) Costs ADOT incurs to complete the Work;
- (2) Compensation and reimbursements due but unpaid to ADOT under the Contract Documents;
- (3) Costs to remedy any defective part of the Work;
- (4) Costs to rectify any breach or failure to perform by Design-Builder or to bring the condition of the Project to that required by the Contract Documents; and
- (5) Any other damages available at law or in equity.

(C) Performance Security

Upon the occurrence of an Event of Default and without waiving or releasing Design-Builder from any obligations, ADOT will be entitled to make demand upon and enforce any bond, and make demand upon, draw on and enforce and collect any letter of credit or other performance security available to ADOT under this DBA with respect to the Event of Default in question. Where access to a bond is to satisfy damages owing, ADOT will be entitled to make demand and enforce, regardless of whether the Event of Default is subsequently cured. Where access to a letter of credit or other performance security is to satisfy damages owing, ADOT will be entitled to make demand, draw, enforce, and collect, regardless of whether the Event of Default is subsequently cured. ADOT will apply the proceeds of any such action to the satisfaction of Design-Builder's obligations under this DBA, including payment of amounts due ADOT. The foregoing does not limit or affect ADOT's right to give notice to or make demand upon and enforce any bond, and make demand upon, draw on and enforce, and collect any letter of credit or other performance security, immediately after ADOT is entitled to do so under the bond, letter of credit or other performance security.

17.03 Failure to Achieve Contractual Deadlines

If an Event of Default consists solely of Design-Builder's failure to achieve Substantial Completion or Final Acceptance (D&C) by the applicable Contractual Deadline (See Section 17.01(A) item (2)), then ADOT agrees not to terminate or seek damages respecting the delay except its right to Liquidated Damages so long as:

- (A) The ADOT-approved Project Schedule (incorporating any ADOT-approved Recovery Schedule) demonstrates that Design-Builder is capable of meeting such Contractual Deadline within 180 Days of the Substantial Completion Deadline;
- (B) The ADOT-approved Project Schedule (incorporating any ADOT-approved Recovery Schedule) demonstrates that Design-Builder is capable of meeting such Contractual Deadline within 45 Days of the Final Acceptance (D&C) Deadline; and
- (C) Design-Builder diligently performs the Work in accordance with such schedule. Nothing in this Section 17.03 shall prejudice any other rights or remedies that ADOT may have due to any other Event of Default during such 180-Day period or 45-Day period, as applicable.

If Substantial Completion or Final Acceptance (D&C) of the Project has not occurred within 180 Days or 45 Days, respectively, of the applicable Contractual Deadline, ADOT will have the right to exercise any other right or remedy under this DBA, at law or in equity, including termination of this DBA.

17.04 ADOT Step-in Rights

Without having declared an Event of Default, ADOT may exercise its step-in rights on the terms and conditions set forth in this Section 17.04:

- (A) If a Design-Builder Default has occurred; and
- (B) If the cure period, if any, available to Design-Builder under Section 17.01, or any shorter period specified in Section 17.02, has expired without full and complete cure by Design-Builder.

ADOT will have the right, but not the obligation, to pay and perform (including by entering an agreement with another Person to perform) all or any portion of Design-Builder's obligations and the Work that are the subject of a Design-Builder Default, as well as any other then-existing Design-Builder Defaults or failures to perform for which Design-Builder received prior written notice from ADOT but has not commenced or does not continue diligent efforts to cure. Exercise of such rights shall not waive or release Design-Builder from any obligations.

ADOT may, to the extent reasonably required for or incident to curing the Design-Builder Default or such other Design-Builder Defaults or failures to perform:

- (A) Perform or attempt to perform, or caused to be performed, such Work;
- (B) Employ security guards and other safeguards to protect the Project;
- (C) Spend such sums as ADOT deems reasonably necessary to employ and pay such architects, engineers, consultants, and contractors and obtain materials and equipment as may be required to perform such Work, without obligation or liability to Design-Builder, Design-Builder-Related Entity, or any Subcontractors for loss of opportunity to perform the same Work or supply the same materials and equipment;
- (D) In accordance with Section 17.02(C), draw on and use proceeds from the Payment Bond and Performance Bond and any other available security to the extent such instruments provide recourse to pay such sums;
- (E) Execute all applications, certificates, and other documents as may be required;
- (F) Make decisions respecting, assume control over, and continue Work as may be reasonably required;
- (G) Modify or terminate any contractual arrangements in ADOT's good faith discretion, without liability for termination fees, costs or other charges;
- (H) Meet with, coordinate with, direct and instruct contractors and suppliers, process invoices and applications for payment from contractors and suppliers, pay contractors and suppliers, and resolve claims of contractors, subcontractors and suppliers, and for this purpose Design-Builder irrevocably appoints ADOT as its attorney-in-fact with full power and authority to act for and bind Design-Builder in its place and stead;
- (I) Take any and all other actions it may in its good faith discretion consider necessary to effect cure and perform the Work; and
- (J) Prosecute and defend any action or proceeding incident to the Work.

Design-Builder shall reimburse ADOT, within 30 Days of receiving an invoice, for ADOT's Recoverable Costs in connection with the performance of any act or Work authorized by this Section 17.04. In lieu of reimbursement, ADOT may elect to deduct such amounts from any amounts payable to Design-Builder under this DBA. Design-Builder acknowledges that amounts owing from Design-Builder to ADOT as Noncompliance Charges are not intended to liquidate or satisfy ADOT's Recoverable Costs.

ADOT's rights under this Section 17.04 are subject to the right of any Surety under payment and performance bonds to assume performance and completion of all bonded work.

In the event ADOT takes action described in this Section 17.04 and it is later finally determined that ADOT lacked the right to do so because there did not occur a Design-Builder Default and expiration, without full and complete cure, of the cure period, if any, available to Design-Builder, and expiration of such cure period is a precondition to ADOT's action, then ADOT's action shall be treated as a Directive Letter for an ADOT-Directed Change. Design-Builder shall

- 1 comply with the Relief Event process under Section 8 if Design-Builder seeks an increase in the Contract Price, a
- 2 Contractual Deadline adjustment, or to assert any other Claim arising therefrom.

3 **End Section**

18 BONDS AND GUARANTEES**18.01 Provision of Bonds**

Design-Builder shall provide Performance Bonds and Payment Bonds to ADOT securing Design-Builder's obligations during the Work, and Design-Builder shall maintain such bonds in full force and effect as described in this Section 18.01.

(A) Performance Bond

On or before the Effective Date, Design-Builder shall have delivered to ADOT the Performance Bond in the amount of 40% of the Contract Price.

ADOT will provide a release of the Performance Bond provided that (and upon such date thereafter that) all of the following have occurred:

- (1) Final Acceptance (D&C) has occurred;
- (2) There exists no Design-Builder Default; and
- (3) No event has occurred that with the giving of notice or passage of time, or both, would constitute a Design-Builder Default.

(B) Payment Bond

On or before the Effective Date, Design-Builder shall have delivered to ADOT the Payment Bond in the amount of 40% of the Contract Price.

ADOT will provide a release of the Payment Bond upon:

- (1) Receipt of evidence satisfactory to ADOT that all Persons eligible to file a claim against the Payment Bond have been fully paid, and unconditional releases of claims and stop notices from all Subcontractors who filed preliminary notices of a claims against the Payment Bond (or evidence satisfactory to ADOT that any such claims and stop notices have been secured by a separate bond(s), which separate bond(s), with the exception of the amount, shall meet the requirements for the Payment Bond established in this Section 18.01(B)); and
- (2) Expiration of the statutory period for Subcontractors to file a claim against the Payment Bond, if no claims have been filed.

(C) Surety Requirements

Each Performance Bond and Payment Bond required hereunder shall be issued by a Surety that is:

- (1) Licensed and authorized to do business in the State;
- (2) Listed on the "Department of the Treasury's Listing of Approved Sureties (Department Circular 570)" (found at www.fiscal.treasury.gov/fsreports/ref/suretybnd/c570.htm); and
- (3) Rated in one of the top two categories (i.e., AA- or its equivalent) by two nationally recognized rating agencies (Fitch Ratings, Moody's Investor Service and Standard & Poor's) or rated at least A minus ("A-") or better and Class VIII or better according to A.M. Best and Company's Financial Strength Rating and Financial Size Category, or as otherwise approved by ADOT.

If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the foregoing requirements, Design-Builder shall provide a replacement bond in the same form and issued by a Surety meeting the foregoing requirements, or other assurance satisfactory to ADOT. If any bond is provided by co-Sureties

and at least one of the co-Sureties meets the foregoing requirements and is liable for the full amount of the bond, then no replacement bond shall be required so long as such co-Surety continues to meet the foregoing requirements.

If the Contract Price is increased in connection with a Supplemental Agreement, ADOT may require a corresponding and proportionate increase in the amount of each Performance Bond and Payment Bond, or alternative security. A reduction in the Contract Price in connection with a Supplemental Agreement shall not result in any decrease to the amount of each Performance Bond and Payment Bond.

18.02 No Relief of Liability

Notwithstanding any other provision in the Contract Documents, performance by a Surety of any of the obligations of Design-Builder under the Contract Documents shall not relieve Design-Builder of any of its other obligations hereunder, including the payment of Liquidated Damages.

End Section

19 INSURANCE CLAIMS AND LOSS**19.01 Insurance Requirements****(A) General**

Design-Build shall procure and keep in effect, or cause to be procured and kept in effect, the insurance policies in accordance with the requirements in this Section 19 and Exhibit 14.

Prior to the execution of the DBA, Design-Builder shall file with ADOT a certificate or certificates of insurance evidencing insurance as required by this DBA has been placed with an insurer authorized to transact insurance in the State pursuant to ARS Title 20, Chapter 2, Article 1, or with a surplus lines insurer approved and identified by the director of the Department of Insurance pursuant to ARS Title 20, Chapter 2, Article 5.

All insurers shall have an "A.M. Best" rating of A-VII or better.

Each insurance policy must provide that the coverage is primary and noncontributory coverage with respect to any other insurance available to ADOT and the other Indemnified Parties, except for coverage that by its nature cannot be written as primary. For each property policy, such policy must provide that the coverage thereof is primary and noncontributory with respect to all insureds as their interest may appear. Any insurance or self-insurance beyond that specified in this DBA that is maintained by an insured or any additional insured must be excess of such insurance and shall not contribute with it.

The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Design-Builder from potential insurer insolvency.

Design-Builder's submission of the required insurance certificates constitutes a representation to ADOT that:

- (1) Design-Builder has provided a copy of these specifications to every broker who has obtained or filed a certificate of insurance and has communicated the necessity of compliance with these specifications to the broker; and
- (2) To the best of Design-Builder's knowledge, each certificate of insurance and each insurance coverage meets the requirements of these specifications.

Design-Builder shall provide ADOT with certificates of insurance (ACORD form or equivalent acceptable to the State) as required by the DBA. The certificates for each insurance policy shall be signed by a person authorized by that insurer.

All insurance policies or certificates shall include a requirement providing for 30 Days prior written notice to ADOT of any cancellation or reduction of coverage. Design-Builder shall immediately notify ADOT and shall cease operations on the occurrence of any such cancellation or reduction and shall not resume operations until the required insurance is in force and new certificates of insurance have been filed with ADOT.

The certificate(s) of insurance shall be issued to ADOT by Design-Builder's insurer as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Certificates of insurance should be addressed as follows:

Arizona Department of Transportation
Contracts and Specifications Section
205 South 17th Avenue, Room 121F
Phoenix, Arizona 85007

ADOT reserves the right to request and receive certified copies of any or all of the above policies and/or endorsements.

1 If Design-Builder has not provided ADOT with proof of coverage of required insurance and payment within five Days
2 after ADOT delivers to Design-Builder a written request therefor and demand for the foregoing proof of coverage,
3 ADOT may take either the following actions, in ADOT's sole discretion, in addition to any other available remedy,
4 without obligation or liability and without further inquiry as to whether such insurance is actually in force:

5 (1) Obtain such an insurance policy; and Design-Builder shall reimburse ADOT for the cost thereof
6 upon ADOT's demand; and

7 (2) Suspend all or any portion of Work for cause and close the Project until ADOT receives such
8 proofs of coverage in compliance with this Section 19.01 from Design-Builder (or until ADOT
9 obtains an insurance policy, if it elects to do so).

10 Design-Builder shall have no right to an increase to the Contract Price, a Contractual Deadline, or any other Claim
11 due to delay in obtaining any certificates of insurance.

12 The cost of coverage will be considered as included in the Contract Price. Costs for coverage maintained by Design-
13 Builder in excess of those required shall not be charged to ADOT.

14 Without limiting any liabilities or any other obligations of Design-Builder, Design-Builder shall provide and maintain
15 the minimum insurance coverage specified in Exhibit 14. Design-Builder shall not be entitled to an increase in the
16 Contract Price, any extension of the Contractual Deadlines, or any other Claim resulting from or arising out of the
17 unavailability of any coverage or acceptable alternatives as required in the Contract Documents. Design-Builder shall
18 bear the risk of any insurance premium increases and shall not be entitled to an increase in the Contract Price, a
19 Completion Deadline adjustment, or any other Claim for such increases.

20 In the event that Design-Builder is unable to provide required insurance policies or coverages, ADOT may agree, in
21 its sole discretion, to accept alternative policies providing less than equivalent coverage. In such event, Design-
22 Builder will not be obligated to self-insure for such risks.

23 Design-Builder and its insurers providing the required coverages shall waive all rights of recovery against ADOT and
24 its agents, officials, and employees.

25 No defense costs shall be included within or erode the limits of coverage of any of the insurance policies, except
26 that:

27 (1) Litigation and mediation defense costs may be included within the limits of coverage of
28 professional and pollution liability policies;

29 (2) Investigation and expert defense costs may also be included within the limits of coverage of
30 professional liability policies; and

31 (3) Other defense costs may be included within the limits of coverage of professional and
32 pollution liability policies with ADOT's prior written approval.

33 If any insurance carrier for an insurance policy required to be maintained by this DBA denies coverage with respect
34 to any claims reported to such carrier, Design-Builder shall be responsible for contesting the insurance carrier's
35 denial of coverage and for all costs associated with contesting the denial of coverage. Design-Builder shall not be
36 entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim arising from such
37 denial of coverage, nor shall Design-Builder be relieved of any liability to ADOT or of its indemnity obligations to the
38 Indemnified Parties.

39 Design-Builder shall have the right to satisfy the requisite insurance coverage amounts for liability insurance through
40 a combination of primary policies and umbrella or excess policies. Umbrella and excess policies shall comply with
41 the required form of underlying policies and shall comply with all insurance requirements, terms, and provisions set
42 forth in this DBA for the applicable type of coverage.

(B) Subcontractor Insurance Requirements

Design-Builder shall comply with the obligations regarding Subcontractor's insurance set forth in Exhibit 14. Design-Builder shall cause each Subcontractor to provide to ADOT insurance coverage and proof of such coverage in the manner and in the form consistent with the requirements in this DBA. ADOT shall have the right to contact the Subcontractors directly to verify insurance coverages if Design-Builder does not provide verification of such Subcontractor coverage as and when required.

If a Subcontractor is unable to obtain a particular insurance policy because such policy is not commercially available or is cost prohibitive, Design-Builder shall propose, as applicable, an alternative policy to ADOT for the particular Subcontractor, which proposed alternative shall provide sufficient coverage for the Work to be performed by the Subcontractor. ADOT shall determine in its good faith discretion whether to accept such substitute insurance coverage in place of any requirement specified in Exhibit 14. ADOT will respond to Design-Builder's request within 10 Days. Provided that ADOT responds to Design-Builder's request within 10 Days of receipt of a complete submission from Design-Builder, Design-Builder shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim associated with a request that ADOT approve an alternative insurance policy for a Subcontractor.

If any Subcontractor fails to procure and keep in effect the insurance required of such Subcontractor specified in Exhibit 14 or such alternative coverage as ADOT may accept in accordance with this Section 19, and ADOT asserts a Noncompliance Event has occurred hereunder, then Design-Builder may, within the applicable cure period, cure such Noncompliance Event by:

- (1) Causing such Subcontractor to obtain the requisite insurance and providing to ADOT proof of insurance;
- (2) Procuring the requisite insurance for such Subcontractor and providing to ADOT proof of insurance; or
- (3) Terminating the Subcontractor and removing its personnel from the Site.

ADOT will assess Noncompliance Points if Design-Builder fails to cure a Subcontractor's failure to procure and keep in effect the insurance required of such Subcontractor.

(C) Policies with Insureds in Addition to Design-Builder

The policies in Exhibit 14 shall be endorsed to include ADOT, its agents, officials, employees and the State of Arizona as additional insured with respect to any negligence of Design-Builder which may be legally imputed to ADOT or State, and shall further stipulate that the insurance afforded Design-Builder shall be primary insurance and that any insurance carried by ADOT, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance to that provided by Design-Builder as provided by ARS § 41-621(C).

The additional insured endorsements shall be as described in this Section 19.01(C) and Design-Builder shall provide ADOT evidence of coverage and a copy of the policy.

All insurance policies that are required to insure Persons (whether as named or additional insureds) in addition to Design-Builder shall be endorsed to comply with the following provisions:

- (1) The insurance policies shall provide limits for each line of coverage. The policies shall have separate and unimpaired aggregate limits for each line of coverage on the policy and shall not be eroded by any claim, allegation, and/or loss, except with respect to the insurers' limits of liability or joint defense of insureds. The policies shall not contain any limitations, conditions, restrictions, and/or exceptions to coverage in addition to those that apply to the insurance policy generally;

(2) For purposes of clarity, the policy limits shall apply equally for each of the insureds and shall be unaffected by any actual or alleged acts, errors, omissions, misrepresentations, negligence, and/or breach of any policy provision that would otherwise result in forfeiture or reduction of coverage of any other insureds covered under the policy;

(3) All endorsement adding ADOT and the other additional insureds as required by the Contract Documents to the required insurance policies shall contain no limitations, conditions, restrictions or exceptions to coverage in addition to those that apply under the insurance policy generally and that are commercially available, and shall state that the interests and protections of each such additional insured shall not be affected by any misrepresentation, act or omission of a named insured or any breach by a named insured of any provision in the policy that would otherwise result in forfeiture or reduction of coverage; and

(4) The insurance policy shall be written and/or endorsed so that no acts or omissions of an insured shall terminate or otherwise adversely impact coverage of the other insureds. Without limiting the foregoing, the policy shall be written and/or endorsed so that any failure on the part of a named insured to comply with reporting provisions or other conditions of the insurance policies, any breach of warranty, any action or inaction of a named insured or others, or any change in ownership of all or any portion of the Project shall not affect coverage provided to the other named insureds or additional insureds (and their respective members, directors, officers, employees, agents and, if applicable, ADOT Consultants). The insurance shall apply separately to each named insured and additional insured against which a claim is made or suit is brought, except with respect to the limits of the insurer's liability or joint defense of insureds.

Each insurance policy shall be endorsed to state that coverage cannot be canceled, voided, suspended, adversely modified, or reduced in coverage or in limits (including for non-payment of premium) except after 30 Days of prior notice (or 10 Days in the case of cancellation for non-payment of premium) by registered or certified mail, return receipt requested, has been given to, at a minimum, ADOT and Design-Builder; provided, however, that (a) no such notice from the insurer shall be required for reduction in limits due to claims payments, and (b) if Design-Builder establishes that an endorsement compliant with this paragraph is not available, Design-Builder may obtain an endorsement that is as comparable as possible. The endorsement required by this Section 19 shall not include any limitation of liability of the insurer for failure to provide the required notice.

The commercial general liability insurance policy shall cover liability arising out of the acts or omissions of Design-Builder's employees engaged in the Work as well as employees of Subcontractors if Subcontractors are covered by a Design-Builder-controlled insurance program. If any Subcontractor is not covered by such Design-Builder-controlled insurance program, then such Subcontractor shall provide commercial general liability insurance to cover liability arising out of the activities of Subcontractor's employees engaged in the Work.

(D) Waiver of Subrogation

Subject to the self-insurance provision below, ADOT waives all rights against the Design-Builder-Related Entities, and Design-Builder waives all rights against the Indemnified Parties, for any claims to the extent covered by insurance obtained pursuant to this Section 19, except such rights as the Parties may have to the proceeds of such insurance. For the avoidance of doubt, and subject to the self-insurance provision below, such mutual waivers shall not apply to claims denied by the insurer, or otherwise not covered by insurance obtained pursuant to this Section 19. If Design-Builder is deemed to self-insure a claim or loss, then Design-Builder's waiver shall apply as if it carried the required insurance. Design-Builder shall require all Subcontractors to provide similar waivers in writing each in favor of all other Persons enumerated in this Section 19. Subject to inadequacy or unavailability of required coverages below, each policy, including worker's compensation if permitted under the applicable worker's compensation insurance laws, shall include a waiver of any right of subrogation against the Indemnified Parties or the insurer's consent to the Insured's waiver of recovery in advance of loss. However, no waiver of subrogation rights under any policy providing professional liability coverage to the insureds shall be required of any party.

The insurance coverage provided, or caused to be provided, hereunder by Design-Builder shall not limit Design-Builder's indemnification obligations under the Contract Documents.

(E) Contractor-Controlled Insurance Program

Nothing in this DBA, including in Exhibit 14, is intended, or shall be construed to preclude use of a contractor-controlled insurance program to fulfill the insurance requirements under this DBA.

19.02 Claim Prosecution; Use of Insurance Proceeds

Except for Relief Events as specified in Section 8.03(C), Design-Builder shall be responsible for reporting and processing all potential claims by ADOT or Design-Builder against the insurance policies required hereunder. Design-Builder agrees to report timely to the insurer(s) under such insurance policies any and all matters that may give rise to an insurance claim by Design-Builder or ADOT or another Indemnified Party, and to promptly and diligently pursue such insurance claims in accordance with the claims procedures specified in such insurance policies, whether for defense or indemnity or both. Design-Builder shall enforce all legal rights against the insurer under the applicable insurance policies and applicable Laws to collect thereon, including pursuing necessary litigation and enforcement of judgments, provided that Design-Builder shall be deemed to have satisfied this obligation if a judgment is not collectible after exhausting all lawful and diligent means.

Design-Builder shall immediately notify ADOT, and thereafter keep ADOT fully informed, of any incident, potential claim, claim or other matter of which Design-Builder becomes aware that involves or could conceivably involve an Indemnified Party.

ADOT agrees to promptly notify Design-Builder of incidents that involve ADOT's interests, potential claims against ADOT, and matters that may give rise to a claim against ADOT that may be covered by insurance, to tender to the insurer ADOT's defense of the claim under such insurance policies, and to cooperate with Design-Builder as necessary for Design-Builder to fulfill its duties hereunder.

If in any instance Design-Builder has not performed its obligations respecting insurance coverage set forth in this DBA or is unable to enforce and collect any such insurance for failure to assert claims in accordance with the terms of the insurance policies or to prosecute claims diligently, then for purposes of determining Design-Builder's liability and the limits thereon or determining reductions in compensation due from ADOT to Design-Builder on account of available insurance, Design-Builder shall be treated as if it elected to self-insure up to the full amount of insurance coverage that would have been available had Design-Builder performed such obligations and not committed such failure. Nothing in the Contract Documents shall be construed to treat Design-Builder as electing to self-insure where Design-Builder is unable to collect due to the bankruptcy or insolvency of any insurer that at the time the insurance policy is written meets the rating qualifications set forth in this Section 19.

If in any instance Design-Builder has not promptly performed its obligation to report to applicable insurers and process any potential insurance claim tendered by ADOT or another Indemnified Party, then ADOT or the other Indemnified Party may, but is not obligated to:

(A) Notify Design-Builder of ADOT's or the other Indemnified Party's intent to report or tender the claim directly to the insurer and thereafter process the claim; and

(B) Proceed with reporting and processing the claim if ADOT or the other Indemnified Party does not receive from Design-Builder, within five Days after so notifying Design-Builder, written proof that Design-Builder has reported the claim directly to the insurer.

ADOT or the other Indemnified Party may dispense with such notice to Design-Builder if ADOT or the other Indemnified Party have a reasonable belief that reporting the claim in fewer than five Days is necessary to preserve the claim or is in the best interest of ADOT or the Indemnified Party.

Design-Builder shall deliver to ADOT a report, on a policy-by-policy basis, within 30 Days after cumulative payments made by the insurer under any coverage with an aggregate limit exceed:

- (A) 25% of the aggregate limit and
- (B) Each additional 10% increment of the aggregate limit thereafter.

The report must identify the affected policy and limit of coverage, state the amount and nature of each claim paid, and state the balance of the coverage limit remaining available.

19.03 Risk of Loss

Design-Builder shall rebuild, repair, restore or replace all loss, damage or destruction to the Project, or to materials, equipment, supplies, and maintenance equipment purchased for permanent installation in, or for use during construction or maintenance during construction of, the Project, whether within or outside the Project ROW, regardless of who has title thereto under the Contract Documents and regardless of the cause of the loss, damage or destruction; provided, however, that, upon acceptance by a third party, Design-Builder shall not be responsible for rebuilding, repairing, restoring or replacing Project-related property that will be maintained by such third party, unless such property is damaged due to negligent or willful acts of a Design-Builder-Related Entity.

If the loss, damage, or destruction to the Project is from a risk or event covered by a builder's risk policy or other self-insurance policy and the loss, damage or destruction is not attributable to a Relief Event for which ADOT owes compensation to Design-Builder under Section 8.03(C), then Design-Builder shall bear all costs, including delay and disruption costs, of repair or replacement Work not covered by available insurance proceeds, including the amount of deductibles, and any costs in excess of insurance coverage limits.

If the loss, damage or destruction to the Project is from a risk or event and the loss, damage, or destruction is attributable to a Relief Event and the Design-Builder elects, with approval from ADOT, to pursue the claim against insurers, then:

- (A) ADOT shall be named as a loss payee under the insurance policy claim and shall have exclusive right to receive claim payments from insurers under such policies;
- (B) Subject to the terms and conditions of Section 8, ADOT will bear the Extra Work Costs and Delay Costs for the repair or replacement Work to the Project; and
- (C) Except to the extent there are available insurance proceeds as provided herein, Design-Builder shall bear all costs, including Extra Work Costs and Delay Costs, to repair or replace, and shall not be entitled to an increase in the Contract Price, a Contractual Deadline adjustment, or any other Claim arising from any loss, damage or destruction of the Design-Builder's items of property identified below that were caused by a Relief Event or other event (except ADOT's gross negligence, recklessness or willful misconduct) to:
 - (1) Any tools, machinery, equipment, facilities, protective fencing, job trailers, scaffolding or other items of any Design-Builder-Related Entity used in the performance of the Work but not intended for permanent installation into the Project;
 - (2) Any machinery, equipment, facilities, materials, inventory, supplies, and other property of any Design-Builder-Related Entity outside the Project ROW; or
 - (3) Any machinery, equipment, facilities, materials, inventory, supplies, and other property of any Design-Builder-Related Entity while in transit to the Site.

Design-Builder's rights, if any, to a Contractual Deadline adjustment in the event of loss, damage or destruction to the Project shall be limited to situations where the loss, damage or destruction is caused by a Relief Event and shall be subject to the applicable provisions of Section 8.

19.04 Claims Against Third Parties

Design-Builder shall have the right to pursue claims against third parties for damage caused to the Project, including but not limited to, a vehicle collision, vandalism or other acts of damage or destruction by third parties.

The provisions above in this Section 19.04 shall not apply to the extent Design-Builder is entitled under this DBA to relief from ADOT for the cost to repair or replace the destruction or damage to the Project (e.g., damages due to a collision described in clause (C)(8) of the definition of Force Majeure Event).

19.05 General Insurance Disclaimer

Design-Builder and each Subcontractor have the sole responsibility to acquire and maintain insurance coverage suitable for the Work to be performed under the Contract Documents, whether or not specified herein.

ADOT, in consultation with the State's risk management department, reserves the right to review or make modifications to the insurance limits, required coverages, and/or endorsements throughout the Work, as deemed necessary. Such actions may be made by administrative action by ADOT. To the extent that such action increases Design-Builder's costs of maintaining required insurance, Design-Builder may request relief for such action as an ADOT-Directed Change.

End Section

20 ASSIGNMENT OF WARRANTIES**20.01 Warranties and Guaranties**

Design-Builder shall obtain all manufacturer's or producer's warranties or guaranties on all items, materials, electrical or mechanical equipment consistent with those provided as customary trade practice. The form in which such warranties or guaranties are delivered to the Design-Builder must include the provision that they are subject to transfer to the maintaining agency as named by ADOT and shall be accompanied by proper validation of such fact. Transfer of warranties or guaranties shall occur at the time of final acceptance of the Work or equipment by ADOT.

Design-Builder, without prejudice to the terms of the DBA, shall be liable to ADOT for latent Defects, fraud, or such gross mistakes as may amount to fraud, or as regards to ADOT's rights under any warranty or guaranty.

End Section

21 INDEMNIFICATION**21.01 Personal Liability of Public Officials**

In carrying out any of the provisions of the Contract Documents or in exercising any power or authority granted to them by or within the scope of the DBA, there shall be no liability upon the Transportation Board and any member thereof, or ADOT, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the State.

21.02 Responsibility for Damage Claims

Design-Builder shall indemnify, defend, and hold harmless the State, acting by and through ADOT, from any and all claims, demands, suits, actions, proceedings, loss, cost and damages of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by ADOT on account of loss of or damage to any property or for injuries to or death of any person, to the extent caused by, arising out of, or contributed to, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of Design-Builder-Related Entities in connection with or incident to the performance of the Work, or arising out of *Workmen's Compensation* claims, *Unemployment Compensation* claims, or *Unemployment Disability Compensation* claims of employees of the contractor and/or its subcontractors or claims under similar such laws or obligations. Design-Builder's obligation under this subsection shall not extend to any liability to the extent caused by the negligence of ADOT except the obligation does apply to any negligence of Design-Builder which may be legally imputed to ADOT by virtue of its ownership or possession of land.

Design-Builder shall indemnify, defend, and hold harmless any county, incorporated city, the Community, the BIA, its officers and employees, within the limits of which county or incorporated city work is being performed, all in the same manner and to the same extent as provided above.

21.03 Indemnity by Design-Builder**(A) General**

Subject to Section 21.03(B), Design-Builder shall release, protect, defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, demands and Losses, in each case if asserted or incurred by or awarded to any third party, arising out of, relating to or resulting from:

- (1) The breach or alleged breach of any of the Contract Documents by any Design-Builder-Related Entity;
- (2) The failure or alleged failure by any Design-Builder-Related Entity to comply with the Governmental Approvals, Community Approvals, or BIA Approvals, any applicable Environmental Laws or other Laws (including laws regarding Hazardous Materials Management);
- (3) Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information, or other items furnished or communicated to ADOT or another Indemnified Party pursuant to this DBA; provided, however, that this indemnity shall not apply to any infringement to the extent resulting from ADOT's failure to comply with specific written instructions regarding use provided to ADOT by Design-Builder;
- (4) The actual or alleged culpable act, error, omission, negligence, breach or misconduct of any Design-Builder-Related Entity in or associated with performance of the Work;

- (5) Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or sales, or the use of any property or income of any Design-BUILDER-Related Entity with respect to any payment for the Work made to or earned by any Design-BUILDER-Related Entity;
- (6) The failure or alleged failure by any Design-BUILDER-Related Entity to pay sums due for the work or services of Subcontractors, laborers, or Suppliers, provided that ADOT has paid all undisputed amounts owing to Design-BUILDER with respect to such work;
- (7) Any actual or threatened Design-BUILDER Release of Hazardous Materials;
- (8) The claim or assertion by any other ADOT contractor or developer:
 - (a) That any Design-BUILDER-Related Entity failed to cooperate reasonably with such other ADOT contractor or developer, so as to cause disruption, delay or loss, except where the Design-BUILDER-Related Entity was not in any manner engaged in performance of the Work or
 - (b) That any Design-BUILDER-Related Entity interfered with or hindered the progress or completion of work being performed by such other ADOT contractor or developer, so as to cause disruption, delay or loss, to the extent such claim arises out of the actual or alleged culpable act, error, omission, negligence, breach or misconduct of any Design-BUILDER-Related Entity;
- (9) Design-BUILDER's performance of, or failure to perform, the obligations under any Utility Agreement, or any dispute between Design-BUILDER and a Utility Company arising out of Utility Adjustments;
- (10) Any Design-BUILDER-Related Entity's breach of or failure to perform an obligation that ADOT owes to a third person, including Governmental Entities, the Community, or the BIA under Law or under any agreement between ADOT and a third person, where ADOT has delegated performance of the obligation to Design-BUILDER under the Contract Documents or the acts or omissions of any Design-BUILDER-Related Entity that render ADOT unable to perform or abide by an obligation that ADOT owes to a third person, including Governmental Entities, the Community, or the BIA under any agreement between ADOT and a third person, where the agreement was disclosed or known to Design-BUILDER;
- (11) The fraud, bad faith, arbitrary or capricious acts, or violation of Law by any Design-BUILDER-Related Entity in or associated with the performance of the Work;
- (12) Inverse condemnation, trespass, nuisance or similar taking of or harm to real property by reason of:
 - (a) The failure of any Design-BUILDER-Related Entity to comply with the requirements of the Contract Documents, the PMP, Governmental Approvals, Community Approvals, or BIA Approvals respecting control and mitigation of construction activities and construction impacts;
 - (b) The negligence or intentional misconduct of any Design-BUILDER-Related Entity; or
 - (c) The actual physical entry onto or encroachment upon another's property by any Design-BUILDER-Related Entity;
- (13) Errors, inconsistencies, or other Defects in the design, construction or maintenance of the Project or of Utility Adjustments included in the Work. For Design Work, this indemnity obligation shall only apply to the extent Design-BUILDER did not perform such Design Work in accordance with Section 7.01(B);

(14) Damage to water or sewer lines caused by Design-Builder's operations, as provided in TP Section 119.04(B)(1) (Maintaining Utility Service); or

(15) Any other indemnity obligation of Design-Builder in the Contract Documents.

The indemnity set forth in this Section 21.03(A) is intended to operate as an agreement pursuant to Section 107(E) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e) to insure, protect, hold harmless, and indemnify the Indemnified Parties.

The obligations under this Section 21 shall not be construed to negate, abridge, or reduce other rights or obligations that would otherwise exist in favor of an Indemnified Party hereunder.

(B) Third Party Loss

Subject to the releases and disclaimers herein, including all the provisions set forth in Section 3.01(D), Design-Builder's indemnity obligation shall not extend to any third party Loss to the extent caused by:

(1) The sole negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party;

(2) ADOT's material breach of any of its material obligations under the Contract Documents;

(3) An Indemnified Party's material violation of any Laws, Governmental Approvals, Community Approvals, or BIA Approvals; or

(4) An unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Technical Provisions, but only where, prior to occurrence of the third party Loss:

(a) Design-Builder complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement created a potentially unsafe condition or

(b) Design-Builder knew of and reported to ADOT the potentially unsafe requirement.

(C) Indemnified Parties

In claims by an employee of Design-Builder, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 21.03 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Design-Builder or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

For purposes of this Section 21.03, "third party" means any person or entity other than an Indemnified Party and Design-Builder, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party that is within the scope of the indemnities and that is not covered in full by the Indemnified Party's worker's compensation program.

Design-Builder hereby acknowledges that it is Design-Builder's obligation to perform the Work in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on Design-Builder's performance of such obligation. Design-Builder further agrees that any certificate, review or approval by ADOT or others hereunder shall not relieve Design-Builder of any of its obligations under the Contract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Section 21.

21.04 Defense and Indemnification Procedures**(A) Notice of a Claim**

If ADOT receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 21.03, and if ADOT gives notice thereof pursuant to Section 21.04(A), then ADOT will have the right to conduct its own defense unless either an insurer accepts defense of the claim within the time required by law or Design-Builder accepts the tender of the claim in accordance with Section 21.04(C).

(B) Insurer

Subject to Section 21.04(F) (*Indemnified Party Assumes its Own Defense*), if the insurer under any applicable insurance policy accepts the tender of defense, ADOT and Design-Builder shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 21.04(C) shall apply.

(C) Design-Builder Response to Tendered Defense

If the defense is tendered to Design-Builder, then within 15 Days after receipt of the tender, Design-Builder shall notify the Indemnified Party whether Design-Builder has tendered the matter to an insurer. If Design-Builder does not tender the matter to an insurer, then within such 15 Days, or if the insurer has rejected the tender, then within five Days after such rejection, Design-Builder shall deliver a notice to the Indemnified Party stating one of the following:

- (1) Design-Builder accepts the tender of defense and confirms that the claim is subject to full indemnification without any "reservation of rights" to deny or disclaim full indemnification thereafter;
- (2) Design-Builder accepts the tender of defense but with a "reservation of rights" to deny or disclaim indemnification thereafter, in whole or in part; or
- (3) Design-Builder rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this DBA or any other agreement or obligation to provide indemnification.

(D) Tender of Defense Without Any "Reservations of Rights"

If Design-Builder accepts the tender of defense under Section 21.04(C) item (1), Design-Builder shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Design-Builder shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

- (1) Design-Builder shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and
- (2) The Indemnified Party shall fully cooperate in said defense, provide to Design-Builder all materials and access to personnel it requests as necessary for defense, preparation, and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Design-Builder concerning such defense.

(E) Tender of Defense With a "Reservations of Rights" or Rejection of the Tender of Defense

If Design-Builder responds to the tender of defense as specified in Section 21.04(C) item (2) or 21.04(C) item (3), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

(F) Indemnified Party Assumes its Own Defense

Notwithstanding Section 21.04(C) item (1) or 21.04(C) item (2), the Indemnified Party may assume its own defense by delivering to Design-Builder notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

- (1) A conflict exists between it and Design-Builder that prevents or potentially prevents Design-Builder from presenting a full and effective defense;
- (2) Design-Builder is otherwise not providing an effective defense in connection with the claim; or
- (3) Design-Builder lacks the financial capacity to satisfy potential liability or to provide an effective defense.

(G) Reimbursement

If the Indemnified Party is entitled and elects to conduct its own defense of a claim for which it is entitled to indemnification, Design-Builder shall reimburse on a current basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending, except to the extent the Indemnified Party conducts its own defense as a result of Design-Builder's denial of such defense pursuant Section 21.04(C) item (3). In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

- (1) In the case of a defense conducted under Section 21.04(C) item (1), it shall have the right to settle or compromise the claim with Design-Builder's prior consent, which shall not be unreasonably withheld or delayed;
- (2) In the case of a defense conducted under Section 21.04(C) item (2), it shall have the right to settle or compromise the claim with Design-Builder's prior consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Design-Builder and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Design-Builder; and
- (3) In the case of a defense conducted under Section 21.04(C) item (3), it shall have the right to settle or compromise the claim without Design-Builder's prior consent and without prejudice to its rights to be indemnified by Design-Builder. If it is determined that Design-Builder wrongfully denied the defense of the Indemnified Party, the Indemnified Party shall be entitled to reimbursement of the costs of defense, including reimbursement of reasonable attorney's fees and other litigation and defense costs, and indemnification of costs to settle or compromise the claim, in addition to interest, calculated as the Prime Rate in effect from time to time plus 100 basis points, payable on such defense and settlement amounts from the date such costs and expenses are incurred by the Indemnified Party.

(H) Shared Liabilities

The Parties acknowledge that while Section 21.03 contemplates that Design-Builder will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 Days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration, judicial proceedings, or otherwise, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorney's fees and other litigation and defense costs, in accordance with the indemnification arrangements of Section 21.04, and

consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third-party claim.

(I) Considerations

In determining responsibilities and obligations for defending suits pursuant to this Section 21.04, and to the extent consistent with applicable Law, specific consideration shall be given to the following factors:

- (1) The party performing the activity in question;
- (2) The location of the activity and incident;
- (3) Contractual arrangements then governing the performance of the activity; and
- (4) Allegations of respective fault contained in the claim.

End Section

22 EARLY TERMINATION OF DBA**22.01 Termination of DBA for Default**

If Design-Builder:

- (A) Fails to begin the Work under the DBA within the time specified, or
- (B) Fails to perform the Work with sufficient workers and equipment or with sufficient materials to ensure the prompt completion of said Work, or
- (C) Performs the Work unsuitably or neglects or refuses to remove materials or to cure such Work as may be rejected as unacceptable and unsuitable, or
- (D) Discontinues the prosecution of the Work, or
- (E) Fails to resume Work which has been discontinued within a reasonable time after notice to do so, or
- (F) Becomes insolvent, or
- (G) Allows any final judgment to stand against it unsatisfied for a period of 10 Days, or
- (H) Makes an "assignment for the benefit of creditors," or
- (I) Fails to comply with DBA requirements in Exhibit 3-4, or
- (J) Is a party to fraud, or
- (K) For any other cause whatsoever, fails to carry on the Work in an acceptable manner, ADOT will give notice in writing to Design-Builder and to the Surety of such delay, neglect or default.

If Design-Builder or the Surety, within a period of 10 Days after such notice, does not proceed in accordance therewith, ADOT will, upon written notification from ADOT of the fact of such delay, neglect or default and Design-Builder's failure to comply with such notice, have full power and authority without violating the DBA to terminate the DBA. ADOT may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of said DBA according to the terms and provisions thereof or use such other methods as in the opinion of ADOT will be required for the completion of said DBA in an acceptable manner.

All costs and charges incurred by ADOT, together with the cost of completing the work, will be deducted from any monies due or which may become due Design-Builder. If such expense exceeds the sum which would have been payable under the DBA, then Design-Builder and the Surety shall be liable and shall pay to ADOT the amount of such excess.

If it is determined, after termination of the Design-Builder's right to proceed, that the Design-Builder was not in default, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of ADOT in accordance with Section 22.02. Thus, damages to which Design-Builder may be entitled as a result of an improper default termination will be limited to the amounts provided for in Section 22.02.

22.02 Termination of DBA for Convenience of ADOT

ADOT may terminate the entire DBA or any portion thereof, if ADOT determines that a termination is in ADOT's best interest. ADOT will deliver to Design-Builder a *Written Order of Termination* specifying the extent of termination and the effective date.

(A) Submittals and Procedures

After receipt of a *Written Order of Termination*, Design-Builder shall immediately proceed with the following obligations:

- (1) Stop Work as specified in the notice.
- (2) Place no further Subcontracts for orders or materials, services, equipment or facilities, except as necessary to complete the continued portion of the DBA.
- (3) Terminate all Subcontracts or orders for materials, services, equipment or facilities to the extent they relate to the Work terminated.
- (4) Transfer title and deliver to ADOT:
 - (a) The fabricated, partially fabricated, or unfabricated parts; work in process; completed Work; supplies; and other material produced or acquired for the Work terminated, and
 - (b) The completed or partially completed Plans, drawings, information, and other property that, if the DBA had been completed, would be required to be furnished to ADOT.
- (5) Take any action necessary, or that ADOT may direct, for the protection and preservation of the property related to the DBA that is in the possession of Design-Builder and in which ADOT has or may acquire an interest.
- (6) Complete performance of the Work not terminated, including Submittals, Requests for Information (RFIs), and pending Relief Events.

(B) Inventory

All material that complies with the requirements of the Contract Documents and obtained by Design-Builder for the Project that have not been incorporated in the Work shall be inventoried in conjunction with ADOT at a date identified by ADOT and will become the property of ADOT.

(C) Settlement Provisions

When ADOT orders termination of all or a part of the DBA effective on the termination date, as specified in the *Written Order of Termination*, completed items of Work as of that date will be paid for in accordance with Section 6.

(1) Additional Costs

Within 60 Days of the effective termination date, Design-Builder may submit a Claim to ADOT for additional damages or costs not covered above or elsewhere in the DBA. Such Claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and Project investigative costs, overhead expenses attributable to the Project terminated, legal and accounting charges involved in claim preparation, Subcontractor costs not otherwise paid for, actual idle labor cost if Work is stopped in advance of termination date, guaranteed payments for private land usage as part of the original DBA, and any other cost or damage for which Design-Builder requests reimbursement be made. Anticipated profits will not be considered as part of any settlement.

Design-Builder and ADOT may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on Work done. The agreed amount may not exceed the total Contract Price as reduced by the amount of payments previously made, and the value of Work not terminated. A Supplemental Agreement will be prepared, and Design-Builder then paid the agreed amount.

(2) Additional Cost Review

If Design-Builder and ADOT fail to agree on the whole amount to be paid to Design-Builder because of the termination of Work, ADOT will pay the amounts determined as follows, but without duplication of any amounts agreed upon above:

- (a) For DBA Work performed before the effective date of termination, the actual and reasonable costs of Work performed and inventoried materials, plus a reasonable profit thereon, not to exceed 10%.
- (b) The reasonable costs of settlement of the Work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and support data;
 - (ii) The termination and settlement of Subcontracts and orders for materials, services, equipment and facilities; and
 - (iii) Storage, transportation, and other costs incurred, as reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (c) Except for normal spoilage, and to the extent that ADOT expressly accepts the risk of loss, ADOT will exclude from the fair value, all that is destroyed, lost, stolen, or damaged so as to become undeliverable to ADOT or to the buyer.
- (d) In arriving at the amount due Design-Builder under this clause, ADOT will deduct:
 - (i) All unliquidated advance or other payments to Design-Builder under the terminated portion of the DBA;
 - (ii) Any Claim that ADOT has against Design-Builder under the DBA; and
 - (iii) The agreed price for, or the proceeds from the sale of materials, supplies, or other things acquired and sold by Design-Builder not recovered by or credited to ADOT.

If the termination is partial, Design-Builder may file a proposal with ADOT for an equitable adjustment of the price(s) of the continued portion of the DBA. ADOT will make any equitable adjustment agreed upon. Any proposal for an equitable adjustment under this clause shall be requested within 90 Days from the effective date of termination unless extended in writing by ADOT.

ADOT may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Design-Builder for the terminated portion of the DBA, if these payments will not exceed the amount to which Design-Builder is entitled.

Design-Builder shall maintain and make available all Project cost records to ADOT for audit to the extent necessary to determine the validity and amount of each item claimed. This includes all books and other evidence bearing on Design-Builder's costs and expenses under the DBA. These records and documents shall be made available to ADOT at Design-Builder's office, at all reasonable times, without any direct charge. If approved by ADOT, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

Termination of the DBA or portion thereof shall not relieve Design-Builder of contractual responsibilities for the Work completed, nor shall it relieve the Surety of its obligation for and concerning any just claim arising out of the Work performed.

End Section

23 RECORDS AND AUDITS**23.01 Design-Builder and Subcontractor Records**

Design-Builder, Subcontractors, and all Suppliers shall keep and maintain all books, papers, records, files, accounts, reports, Detailed Pricing Documents (DPDs), including electronic data, and all other material relating to the DBA and Project for five years following issuance of Final Acceptance (D&C).

Design-Builder shall make all of the above material be available to ADOT for auditing, inspection and copying and shall be produced, upon request, at ADOT offices located at 206 South 17th Ave., Phoenix, Arizona 85007.

Design-Builder shall insert the above requirement in each Subcontract, purchase order, and lease agreement and shall also include in all Subcontracts a clause requiring Subcontractors and Suppliers to include the above requirement in any lower-tier Subcontract, purchase order or lease agreement.

23.02 Detailed Pricing Documents**(A) Storage of DPDs**

Prior to execution of this DBA, Design-Builder delivered to ADOT (the ADOT field office administering the DBA) one copy of all the DPDs. Upon execution of this DBA, the DPDs shall be held in locked fireproof cabinet(s) supplied by Design-Builder and located in the ADOT office space in the Project Office with the key to the fireproof cabinet(s) held only by Design-Builder. Within 21 Days after the Effective Date, Design-Builder shall deliver a detailed index and catalogue of the DPDs to ADOT. Upon completion and delivery of the index and catalogue of the DPDs, the Parties shall add the index and catalogue to the locked fireproof cabinet(s). Further, concurrently with execution of each Subcontract or with approval of each Supplemental Agreement or amendment to any Contract Document, the Parties shall add to the cabinet one copy of all documentary information respecting the pricing by the Subcontractor or used in preparation of the Supplemental Agreement and shall update the index and catalogue.

The DPDs and index and catalogue pertaining to the Work shall be held in such cabinet or otherwise maintained until all of the following have occurred:

- (1) 180 Days have elapsed from the earlier of Final Acceptance (D&C) or termination of this DBA;
- (2) All Claims or Disputes regarding the Work have been settled; and
- (3) The Final Payment has been made and accepted.

(B) Availability for Review

The DPDs shall be available for joint review by Design-Builder and ADOT, or by Design-Builder, ADOT, and any persons involved in dispute resolution, in accordance with Section 14, in connection with approval of the Project Schedule, negotiation of Supplemental Agreements, resolution of Claims or disputes under the Contract Documents, and aiding in determining the value of terminated Work. ADOT will be entitled to review all or any part of the DPDs to satisfy itself regarding the applicability of the individual documents to the matter at issue, and Design-Builder shall cooperate with ADOT's request for review of the DPDs upon 24 hours' notice.

(C) Proprietary Information

The DPDs are, and shall always remain, the property of Design-Builder and shall be considered to be in Design-Builder's possession, subject to ADOT's right to review the DPDs as provided in this Section 23.02. ADOT acknowledges that Design-Builder may consider that the DPDs constitute trade secrets or proprietary information. ADOT will have the right to copy the DPDs for the purposes set forth in this Section 23.02, provided that the Parties execute a mutually agreeable confidentiality agreement with respect to DPDs that constitute trade secrets or proprietary information, which confidentiality agreement shall explicitly acknowledge that it is subject to applicable Law (including the Arizona Public Records Act).

(D) Representation

Design-Builder represents and warrants that the DPDs constitute all documentary information used in the preparation of its Proposal, including the Contract Price. Design-Builder agrees that no other price proposal preparation information will be considered in resolving disputes or Claims. Design-Builder further agrees that the DPDs are not part of the Contract Documents and that nothing in the DPDs shall change or modify any Contract Document.

(E) Review by ADOT to Confirm Completeness

ADOT may at any time conduct a review of the DPDs to determine whether they are complete. If ADOT determines that any data is missing from a DPD, Design-Builder shall provide such data within three Business Days after delivery of ADOT's request for such data. At the time of its submission to ADOT, such data will be date stamped, labeled to identify it as supplementary DPD information, and added to the DPDs. Design-Builder shall have no right to add documents to the DPDs except upon ADOT's request. The DPDs associated with any Supplemental Agreement or Contract Price adjustment under this DBA shall be reviewed, organized, and indexed in the same manner as the original DPDs.

23.03 Subcontract Pricing Documents

Each Subcontract must include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Design-Builder or ADOT in connection with any claim made by such Subcontractor or any Claim or Supplemental Agreement by Design-Builder that involves work performed by such Subcontractor.

23.04 Maintenance and Inspection of Books and Records**(A) Storage**

Except for DPDs (which shall be maintained as set forth in Section 23.02), Design-Builder shall keep and maintain in a secure, fireproof location in Maricopa County, Arizona, or in another location ADOT approves in its sole discretion, accurate and complete Books and Records, including copies of all original documents delivered to ADOT. Design-Builder shall keep and maintain such Books and Records in accordance with applicable provisions of the Contract Documents and the PMP. Design-Builder shall notify ADOT where the Books and Records are kept.

(B) Availability for Review

Design-Builder shall make all its Books and Records available for inspection by ADOT and ADOT's representatives at Design-Builder's principal offices in Arizona, or at the ADOT office space at the Project Office for DPDs, at all times during normal business hours, without charge. Design-Builder shall provide copies thereof to ADOT, or make available for review to ADOT, as and when expressly required by the Contract Documents, or, for those not expressly required, upon request and at no expense to ADOT. ADOT may conduct any such inspection upon 24 hours' prior notice, or unannounced and without prior notice where ADOT has a good faith suspicion of fraud. The right of inspection includes the right to make extracts and take notes. The provisions of this Section 23.04(B) are subject to the following:

- (1) They shall remain in full force and effect regardless of whether a Claim or dispute exists or whether either Party or both of the Parties have invoked the Dispute Resolution Procedures; and
- (2) Design-Builder reserves the right to assert exemptions from disclosure for information that would be exempt under applicable State Law from discovery in legal actions, including information protected by the attorney-client or other legal privilege based upon an opinion of counsel reasonably satisfactory to ADOT.

(C) Retention

Design-Builder shall retain Books and Records for a minimum of 10 years after Final Acceptance (D&C) or after the date generated, whichever is later; provided, however, that if the Contract Documents specify any longer time period for retention of particular records, such time period shall control. Any provision of the Contract Documents establishing a stated period for retention of Books and Records means the period of time, as stated, after the date the Book or Record is generated, unless specifically provided otherwise.

In addition to the foregoing, Design-Builder shall retain and make available all Books and Records that relate to Claims and disputes being processed or the subject of the Dispute Resolution Procedures for a period of not less than one year after the date the dispute is finally resolved (or for any longer period required under any other applicable provision of the Contract Documents).

(D) Additional Requirements

For any Work performed pursuant to an ADOT-Directed Change, or Work that Design-Builder contends entitles it to Extra Work Costs or Delay Costs following a Relief Event, and throughout the course of any Work that is in dispute and the subject of the Dispute Resolution Procedures, Design-Builder shall keep separate and complete Books and Records that provide a clear distinction between the incurred direct costs of disputed Work (or Work for which Design-Builder seeks Extra Work Costs and Delay Costs) and that of undisputed Work, and shall permit ADOT access to these Books and Records on an Open Book Basis.

(E) Intentionally Left Blank**23.05 Audits**

ADOT shall have the right to review and audit Design-Builder, its Subcontractors, and their respective Books and Records as and when ADOT deems necessary for purposes of verifying compliance with the Contract Documents and applicable Law. Without limiting the foregoing, ADOT shall have the right to audit the PMP and compliance therewith, including the right to inspect Work or activities and to verify the accuracy and adequacy of the PMP and its component parts, plans, and other documentation. ADOT may conduct any such audit of Books and Records upon 24 hours' prior notice, or unannounced and without prior notice.

All Claims or disputes are subject to audit at any time following Design-Builder's delivery of notice of the Claim or dispute. The audit may be performed by employees of ADOT or by an auditor under contract with ADOT. No notice is required from ADOT before commencing any audit during the Work and up to (i) 60 Days after Final Acceptance (D&C) or (ii) 60 Days after termination of this DBA. Thereafter, ADOT will provide 20 Days' notice to Design-Builder, any Subcontractors or their respective agents before commencing an audit. Design-Builder, Subcontractors or their agents shall provide and cause Design-Builder-Related Entities to provide adequate facilities, acceptable to ADOT, for the audit during normal business hours. Design-Builder shall cooperate and cause Design-Builder-Related Entities to cooperate with the auditors. At a minimum, the auditors shall have available to them the following documents:

(A) Daily time sheets and supervisor's daily reports;

(B) Union agreements;

(C) Insurance, welfare, and benefits records;

(D) Payroll registers;

(E) Earnings records;

(F) Payroll tax forms;

(G) Material invoices and requisitions;

(H) Material cost distribution work sheet;

- 1 (I) Equipment records (list of company equipment, rates, etc.);
 - 2 (J) Subcontractors' and Suppliers' invoices;
 - 3 (K) Subcontractors' and agents' payment certificates;
 - 4 (L) Canceled checks (payroll, Subcontractors and Suppliers);
 - 5 (M) Job cost report;
 - 6 (N) Job payroll ledger;
 - 7 (O) General ledger;
 - 8 (P) Cash disbursements journal;
 - 9 (Q) Project Schedules;
 - 10 (R) All documents that relate to each and every Claim or dispute, together with all documents that support
 - 11 the amount of damages in each Claim or dispute; and
 - 12 (S) Work sheets used to prepare the Claim or dispute establishing the cost components for items of the
 - 13 Claim or dispute, including labor, benefits and insurance, materials, equipment, Subcontractors, all
 - 14 documents that establish the time periods, individuals involved, the hours for the individuals, and the
 - 15 rates for the individuals.
- 16 Failure of any Design-Builder-Related Entity to maintain and retain sufficient records to allow the auditors to verify
- 17 any portion of a Claim or dispute shall constitute a waiver, and bar any recovery or relief, regarding such portion of
- 18 the Claim or dispute. Failure of any Design-Builder-Related Entity to permit the auditor access to the Books and
- 19 Records of any Design-Builder-Related Entity, or to otherwise fully comply with the provisions of this Section 23.05
- 20 shall constitute a waiver of the Claim or dispute and shall bar any recovery or relief thereunder.
- 21 Certain rights of the FHWA to review and audit Design-Builder, its Subcontractors, and their respective Books and
- 22 Records are set forth in Exhibit 3. Design-Builder represents and warrants the completeness and accuracy of all
- 23 information it or its agents provide in connection with ADOT audits, and shall cause all Subcontractors other than
- 24 ADOT, Utility Companies, and Governmental Entities acting as Subcontractors to warrant the completeness and
- 25 accuracy of all information such Subcontractors or their agents provide in connection with ADOT audits.
- 26 ADOT's rights of audit include the right to observe the business operations of Design-Builder and its Subcontractors
- 27 to confirm the accuracy of Books and Records.
- 28 Design-Builder's internal and third party quality and compliance auditing responsibilities shall be set forth in the
- 29 PMP, consistent with the audit requirements referred to in TP Sections 110.02(A) (Project Administration Plan),
- 30 110.03 (Personnel Requirements), 112.02 (Quality Management Plan), and 114 (Safety Management).
- 31 Nothing in the Contract Documents shall in any way limit the constitutional and statutory powers, duties, and rights
- 32 of elected State officials, including the independent rights of the State Auditor General, in carrying out his or her
- 33 legal authority. Design-Builder understands and acknowledges that:
- 34 (A) The State Auditor General may conduct an audit or investigation of any Person receiving funds from
 - 35 the State directly under this DBA or indirectly through a Subcontract;
 - 36 (B) Acceptance of funds directly under this DBA or indirectly through a Subcontract acts as acceptance of
 - 37 the authority of the State Auditor General, under the direction of the Joint Legislative Audit Committee,
 - 38 to conduct an audit or investigation in connection with those funds; and
 - 39 (C) A Person that is the subject of an audit or investigation must provide the State Auditor General with
 - 40 access to any information the State Auditor General considers relevant to the investigation or audit.

23.06 Arizona Public Records Act**(A) General**

Design-Builder acknowledges and agrees that all records, documents, drawings, Plans, specifications, and other materials in ADOT's possession, including materials submitted by Design-Builder, are subject to the provisions of the Arizona Public Records Act. To the extent that this DBA involves the exchange or creation of "public information," as such term is defined by the Arizona Public Records Act, that ADOT collects, assembles, or maintains or has a right of access to, and is not otherwise excepted from disclosure under the Arizona Public Records Act, Design-Builder is required, at its sole cost and expense, to make any such information available in PDF/A format, which is accessible by the public.

Nothing contained in this Section 23.06 shall modify or amend requirements and obligations imposed on ADOT by the Arizona Public Records Act or other applicable Law, and the provisions of the Arizona Public Records Act or other Laws shall control in the event of a conflict between the procedures described above and the applicable Law.

(B) Confidential Material

If Design-Builder believes information or materials submitted to ADOT constitute trade secrets or confidential commercial, financial or proprietary information, or other information that is excepted from disclosure under the Arizona Public Records Act, Design-Builder shall be solely responsible for specifically and conspicuously designating that information by placing "CONFIDENTIAL" in the center header of each such page affected, as it determines to be appropriate; provided that no such designation is necessary for the DPDs, which Design-Builder hereby deems to be confidential. Any specific trade secret or confidential commercial, financial or proprietary information, shall be clearly identified as such, and shall be accompanied by a concise statement of reasons supporting the claim.

Design-Builder is solely responsible for determining, and shall secure its own legal counsel concerning, the applicability ARS § 28-7707 (including what may or may not constitute a "trade secret"), the Arizona Public Records Act, and other applicable laws to the Design-Builder's own circumstances. ADOT is not required to adopt Design-Builder's interpretations and assertions.

If ADOT receives a request for public disclosure of materials marked "CONFIDENTIAL," ADOT will use reasonable efforts to notify Design-Builder of the request and give Design-Builder an opportunity to assert, in writing and at Design-Builder's sole expense, a claimed exception under the Arizona Public Records Act or other applicable Law within the time period specified in the notice issued by ADOT and allowed under the Arizona Public Records Act or other applicable Law. Under no circumstances, however, will ADOT or any of its officers, directors, employees, agents, representatives, contractors, or consultants be responsible or liable to Design-Builder or any other Person for the disclosure of all or a portion of any such labeled materials, whether the disclosure is required by Law or court order, or occurs through inadvertence, mistake or negligence on the part of ADOT or its officers, directors, employees, agents, representatives, contractors, or consultants.

(C) Litigation

In the event of any proceeding or litigation is brought concerning the disclosure of any material submitted by Design-Builder to ADOT, ADOT's sole involvement will be as a stakeholder retaining the material until otherwise ordered by a court or such other authority having jurisdiction with respect thereto, and Design-Builder shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that ADOT reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as it deems necessary or desirable. Except in the case of ADOT's voluntary intervention or voluntary participation in litigation, Design-Builder shall pay and reimburse ADOT within 30 Days after receipt of demand and reasonable supporting documentation for all costs and fees, including attorney's fees and costs, ADOT incurs in connection with any litigation, proceeding or request for disclosure.

23.07 Intellectual Property**(A) Proprietary Intellectual Property**

Design-Builder acknowledges and agrees that all Proprietary Intellectual Property, in any medium, is specially ordered or commissioned by ADOT, including works made for hire in accordance with Section 101 of the Copyright Act of the United States. Design-Builder hereby assigns to ADOT all rights, title, and interest in and to the Proprietary Intellectual Property including any and all software, work product, and designs.

As a condition of Final Acceptance (D&C), Design-Builder shall deliver to ADOT all work product, documents, results, and related materials created in the development of Proprietary Intellectual Property, as well as a complete, indexed collection of such materials. Without limiting the generality of the foregoing, delivery of such materials shall include Design Documents and Construction Documents. Design-Builder may retain a copy of such work product, documents, results, and related materials.

ADOT hereby grants to Design-Builder a non-exclusive, irrevocable, perpetual, fully paid up license to use, exploit, manufacture, distribute, copy, adapt, and display the Proprietary Intellectual Property, including in connection with:

- (1) Incorporation into the Project;
- (2) The Work for this Project;
- (3) All other services performed for or on behalf of ADOT to complete the Work, or comply with Design-Builder's obligations under this DBA; and
- (4) Other projects and work of Design-Builder.

No Intellectual Property rights of ADOT are being licensed to Design-Builder except as otherwise expressly provided in this Section 23.07. Design-Builder's use or exploitation of the licensed Proprietary Intellectual Property shall be at Design-Builder's sole discretion and risk, and in no way shall be deemed to confer liability or an indemnity obligation on ADOT. ADOT shall not be liable to Design-Builder or any other person for any claim, loss, damage, cost, judgment, fee, penalty, charge or expense (including attorney's fees and costs) to the extent arising out of or resulting from use or exploitation of the licensed Proprietary Intellectual Property by Design-Builder, any transferee of the license or any of their respective board members, officers, agents or employees. ADOT makes no warranty or representation, express or implied, regarding the licensed Proprietary Intellectual Property or its suitability for any intended purpose.

(B) Design-Builder Intellectual Property

Subject to Section 23.07(E), Design-Builder hereby grants to ADOT a non-exclusive, irrevocable, perpetual, fully paid-up right and license to use, exploit, manufacture, distribute, copy, adapt, and display the Design-Builder Intellectual Property, including any enhancements thereof.

Design-Builder shall identify and disclose all Design-Builder Intellectual Property contained or included in the Project Intellectual Property, including (when reasonably available) full and specific information detailing Intellectual Property claimed, date of authorship, creation or invention, date of application(s), application number(s) and registering entit(ies), date of registration(s), registration number(s), and registering entit(ies), if any, and owner including person or entity name and address.

Design-Builder shall deliver to ADOT all Design-Builder Intellectual Property contained or included in the Project Intellectual Property promptly upon request.

(C) Third Party Intellectual Property

Whenever using any design, device, material, software or process protectable or protected as Third Party Intellectual Property, Design-Builder shall obtain the right and license for such use. Without limiting the foregoing, and subject to Section 23.07(E), Design-Builder shall secure nonexclusive, transferable, irrevocable, unconditional, royalty-free

licenses in the name of ADOT to use, reproduce, modify, adapt, and disclose Third Party Intellectual Property and shall pay any and all royalties and license fees required to be paid for any Intellectual Property incorporated into the Project Intellectual Property. All Third Party Intellectual Property licenses are subject to ADOT's review and approval. The foregoing requirement shall not apply, however, to mass-marketed software products (sometimes referred to as "shrink wrap software") owned by such a Person where such a license cannot be extended to ADOT using commercially reasonable efforts. In such case, Design-Builder shall acquire the proper rights for ADOT to make use of such products as necessary for Design-Builder to comply with the Contract Documents.

Design-Builder shall identify and disclose all Third Party Intellectual Property contained or included in the Project Intellectual Property, including (when reasonably available) full and specific information detailing Intellectual Property claimed, date of authorship, creation or invention, date of application(s), application number(s) and registering entit(ies), date of registration(s), registration number(s), and registering entit(ies), if any, and owner, including person or entity name and address.

(D) Inclusion in Contract Price

Design-Builder acknowledges and agrees that the Contract Price includes all royalties and costs arising from Project Intellectual Property or in any way involved in the Work.

(E) Licensing Limitations

Licenses granted under Sections 23.07(B) and 23.07(C) shall be limited as follows:

- (1) The right to transfer the license is limited to any Governmental Entity that succeeds to the power and authority of ADOT generally or with respect to the Project, and any Governmental Entity having power and authority over any municipality, city, state or county road where the Proprietary Intellectual Property of Design-Builder is installed, deployed or operated.
- (2) The right to sublicense is limited to State, regional, and local Governmental Entities that own or operate a State Highway or other road (tolled or not tolled) where the Proprietary Intellectual Property of Design-Builder is installed, deployed or operated, and to the concessionaires, developers, contractors, subcontractors, employees, attorneys, consultants, and agents that are retained by or on behalf of ADOT or any such State, regional or local Governmental Entity in connection with the Project, another State Highway, or other road (tolled or untolled) where the Proprietary Intellectual Property of Design-Builder is installed, deployed or operated.
- (3) ADOT will:
 - (a) Not disclose any Design-Builder Intellectual Property or Third Party Intellectual Property to any Person other than authorized transferees and sublicensees who agree to be bound by any confidentiality obligations of ADOT relating thereto;
 - (b) Enter into a commercially reasonable confidentiality agreement if requested by Design-Builder with respect to the licensed Design-Builder Intellectual Property or Third Party Intellectual Property; and
 - (c) Include, or where applicable, require such State, regional or local Governmental Entity to include, in the contract with the sublicensee its covenant to employ sound business practices no less diligent than those used for its own confidential information, and no less diligent than required by commercially reasonable standards of confidentiality, to protect all Design-Builder Intellectual Property or Third Party Intellectual Property and other materials provided under the sublicense against disclosure to third parties not in receipt of a sublicense, and to use the sublicense only for the permitted purposes.

(F) Limitation on ADOT Liability

Notwithstanding any contrary provision of this DBA, in no event shall ADOT or any of its directors, officers, employees, consultants or agents be liable to Design-Builder, any Affiliate, any Subcontractor or any Design-Builder-Related Entity for any damages, including loss of profit, arising out of breach of the duty of confidentiality set forth in Section 23.07(E) if such breach is not the result of recklessness or intentional misconduct. Design-Builder hereby irrevocably waives all claims to any such damages.

End Section

24 MISCELLANEOUS PROVISIONS**24.01 Laws to be Observed**

Design-Builder shall keep fully informed of all federal, State, Community, BIA, and local laws, ordinances and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work or which in any way affect the conduct of the Work. Design-Builder shall, at all times, observe and comply with all Laws, ordinances, regulations, orders, and decrees and shall defend, indemnify, and hold harmless ADOT and its representatives against any claim or liability arising from or based on the violation of any such Law, ordinance, regulation, order or decree, whether by Design-Builder or by any of his Subcontractors or Suppliers, or by any of their employees. Design-Builder shall comply with Drug-Free Workplace Act, Americans with Disabilities Act (ADA), OSHA, and all other pertinent Laws relating to conditions of employment.

24.02 Waiver

No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the obligee Party.

The exercise by a Party of any right or remedy provided under the Contract Documents shall not waive or preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by any Party of any right or remedy under the Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy under the Contract Documents. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

Except as provided otherwise in the Contract Documents, no act, delay or omission done, suffered or permitted by one Party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such Party hereunder, or to relieve the other Party from the full performance of its obligations under the Contract Documents.

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision. Furthermore, if the Parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any subsequent Claims or disputes.

24.03 Independent Contractor

Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with ADOT other than that of Project independent contractor.

Nothing in the Contract Documents is intended or shall be construed to create any partnership, joint venture or similar relationship between ADOT and Design-Builder; and in no event shall either Party take a position in any tax return or other writing of any kind that a partnership, joint venture or similar relationship exists. While the term "public-private partnership" may be used on occasion to refer to contractual relationships of the type hereby created, the Parties do not thereby express any intention to form or hold themselves out as a de jure or de facto partnership, joint venture or similar relationship, to share net profits or net losses, or to give ADOT control or joint control over Design-Builder's financial decisions or discretionary actions concerning the Project and the Work.

In no event shall the relationship between ADOT and Design-Builder be construed as creating any relationship whatsoever between ADOT and Design-Builder's employees. Neither Design-Builder nor any of its employees is or shall be deemed to be an employee of ADOT. Except as otherwise specified in the Contract Documents, Design-Builder has sole authority and responsibility to employ, discharge, and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that Design-Builder or any Subcontractor hires to perform or assist in performing the Work.

24.04 Successors and Assigns; Change of Control

The Contract Documents shall be binding upon and inure to the benefit of ADOT and Design-Builder and their permitted successors, assigns, and legal representatives.

ADOT may transfer and assign all or any portion of its rights, title, and interests in and to the Contract Documents, including rights with respect to the Payment Bond, the Performance Bond, guarantees, letters of credit, and other security for payment or performance:

(A) Without Design-Builder's consent, to any other public agency or public entity as permitted by Law, provided that the successor or assignee has assumed all of ADOT's obligations, duties, and liabilities under the Contract Documents then in effect;

(B) Without Design-Builder's consent, to any other Person that succeeds to the governmental powers and authority of ADOT; provided, however, that such successor(s) has assumed all of ADOT's obligations, duties, and liabilities under the Contract Documents then in effect; and

(C) To any other Person with the prior approval of Design-Builder.

All rights of ADOT under Section 20, as well as all other rights and claims of ADOT, insofar as they will be owned by Persons other than ADOT (such as a Governmental Entity), shall be assignable to such Persons.

In the event of ADOT's assignment of all of its rights, title, and interests in the Contract Documents as permitted hereunder, Design-Builder shall have no further recourse to ADOT under the Contract Documents or otherwise except as specifically provided by other contractual agreement or by statute.

Design-Builder shall not voluntarily or involuntarily sell, assign, convey, transfer, pledge, mortgage or otherwise encumber Design-Builder's interest in and to the Contract Documents or any portion thereof without ADOT's prior approval. Design-Builder shall not grant any right of entry, license or other special occupancy of the Project to any other Person that is not in the ordinary course of Design-Builder performing the Work, without ADOT's prior approval. Any sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, grant of right of entry, license or other special occupancy in violation of this provision shall be null and void ab initio and ADOT, at its option, may declare any such attempted action to be a material Design-Builder Default and Event of Default.

Design-Builder shall not voluntarily or involuntarily cause, permit or suffer any Change of Control without ADOT's prior approval. If there occurs any voluntary or involuntary Change of Control without ADOT's prior approval, ADOT, at its option, may declare it to be a material Design-Builder Default and Event of Default.

Where ADOT's prior approval is required for a proposed sale, assignment, conveyance, transfer, pledge, mortgage, encumbrance, sublease or grant of right of entry, license or other special occupancy, or for any proposed Change of Control, ADOT may withhold or condition its approval in its sole discretion. Any such decision of ADOT to withhold consent shall be final, binding, and not subject to the Dispute Resolution Procedures.

Assignments and transfers of Design-Builder's interest in or to the Contract Documents permitted under this Section 24.04 or otherwise approved by ADOT will be effective only upon ADOT's receipt of notice of the assignment or transfer and a written recordable instrument executed by the transferee, in form and substance acceptable to ADOT, in which the transferee, without condition or reservation, assumes all of Design-Builder's obligations, duties, and liabilities under this DBA and the other Contract Documents then in effect and agrees to perform and observe all provisions thereof applicable to Design-Builder. Each transferee shall take Design-Builder's interest in or to the Contract Documents subject to, and shall be bound by, the PMP, all Subcontracts, the Utility Agreements, the Governmental Approvals, Community Approvals, BIA Approvals, and all agreements between the transferor and Governmental Entities, the Community, or BIA with jurisdiction over the Project or the Work, except to the extent otherwise approved by ADOT in its good faith discretion.

24.05 Change of Organization or Name

Design-Builder shall not change its legal form of business organization without the prior approval of ADOT, which consent may be granted or withheld in ADOT's sole discretion.

24.06 Survival

Design-Builder's representations and warranties, including those under Section 2 and 20, the provisions regarding invoicing and payment under Section 6, the express rights and obligations of the Parties following termination of this DBA under Sections 16 and 24, the provisions of Section 11.05(A) items (6), (7), and (10), the indemnifications and releases contained in Section 21, the Dispute Resolution Procedures contained in Section 14, the provisions of Section 23, and all other provisions in the Contract Documents that contemplate actions or obligations after termination of this DBA or completion of the Work or any other provisions that by their inherent character should survive termination of this DBA or completion of the Work, shall survive the termination of this DBA or completion of the Work. The provisions of Section 14 shall continue to apply after expiration or earlier termination of this DBA to all Claims and Disputes between the Parties arising out of the Contract Documents.

24.07 Limitation on Third Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to commence any legal proceeding of any nature whatsoever pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. Except as otherwise provided in this Section 24.07, the duties, obligations, and responsibilities of the Parties to the Contract Documents with respect to third parties shall remain as imposed by Law. The Contract Documents shall not be construed to create a contractual relationship of any kind between ADOT and a Subcontractor, Supplier or any Person other than Design-Builder.

24.08 No Personal Liability of ADOT Employees; Limitation on State's Liability

ADOT's Authorized Representatives, employees, and consultants are acting solely as agents and representatives of ADOT when carrying out the provisions of or exercising the power or authority granted to them. They shall not be liable to any Design-Builder-Related Entity either personally or as employees of ADOT for actions in their ordinary course of employment.

In no event shall ADOT be liable for any injury, damage or death caused by the actions, omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Design-Builder-Related Entity.

24.09 Governing Law and Venue

The Contract Documents shall be governed by and construed in accordance with the Laws of the State for contracts made and to be performed in the State, and without regard to its principles concerning conflict of laws. The exclusive venue for any litigation, arbitration, mediation, administrative hearing or other legal proceeding or action arising out of or relating to the Contract Documents shall be in Maricopa County, Arizona.

24.10 Arbitration within Litigation

The Parties agree to utilize arbitration to the extent required by ARS § 12-1518.

24.11 Notices and Communications**(A) General**

Notices under the Contract Documents shall be in writing and:

- (1) Delivered personally;
- (2) Sent by certified mail, return receipt requested;

(3) Sent by a recognized overnight mail or courier service, with delivery receipt requested; or

(4) Sent by e-mail communication followed by a hard copy and with receipt confirmed by telephone, to the addresses set forth in Sections 24.11(B) and 24.11(C), as applicable (or to such other address as may from time to time be specified in writing).

(B) Communication to Design-Builder

All notices, correspondence, and other communications to Design-Builder shall be delivered to the following address or as otherwise directed by Design-Builder's Authorized Representative:

Design-Builder
19820 N 7th St, Suite 180
Phoenix, AZ 85024
Attn: Armando Garcia
Telephone: 480.386.5558 (O); 858.371.1368 (M)
E-mail: armando@coffmanspecialties.com

(C) Communication to ADOT

All notices, correspondence, and other communications to ADOT will be marked as regarding the Project and shall be delivered to the following address or as otherwise directed by ADOT's Authorized Representative:

Arizona Department of Transportation
206 S. 17th Ave, MD139A
Phoenix, AZ 85007
Attn: Robert Samour
Telephone: 602.768.4392
E-mail: rsamour@azdot.gov

In addition, ADOT may deliver copies of all notices regarding disputes, suspension, termination, and default to the following:

Office of the Arizona Attorney General
Transportation Section
2005 North Central Avenue
Phoenix, AZ 85004
Telephone: (602) 542-1680
E-mail: transportation@azag.gov
Facsimile: (602) 542-3646

(D) Receipt of Communication

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notices delivered by email communication shall be deemed received when actual receipt at the e-mail address of the addressee is confirmed. Notwithstanding the foregoing, notices sent or received after 5:00 P.M. (measured as of the prevailing time in Phoenix, Arizona) shall be deemed received on the first Business Day following delivery. Any technical or other communications pertaining to the Work shall be conducted by Design-Builder's Authorized Representative and technical representatives designated by ADOT.

24.12 Taxes

Design-Builder shall pay, prior to delinquency, all applicable taxes. Design-Builder shall have no right to an adjustment to the Contract Price, a Contractual Deadline, or any other Claim due to its misinterpretation of Laws respecting taxes or incorrect assumptions regarding applicability of taxes.

24.13 Interest on Amounts Due and Owing

Pursuant to ARS § 44-1201(D), no prejudgment interest shall be due either Party for any unliquidated amount.

Subject to the statement above in this Section 24.13, any amount owed to ADOT under this DBA, including any overpayment to Design-Builder as a result of an inaccuracy in a Draw Request, and not paid when due shall bear interest at a floating rate equal to the following:

(A) If not in good faith dispute, then at the Prime Rate in effect from time to time plus 100 basis points, commencing on the date of ADOT's payment of the Draw Request, or the date ADOT claims any other amount is due, and continuing until the date the overpayment or other amount due is paid to ADOT or ADOT deducts such amount from payment to Design-Builder; and

(B) If the subject of a good faith dispute over whether it is due, then at the Prime Rate in effect from time to time, commencing on the date of ADOT's payment of the Draw Request, or the date ADOT claims any other amount is due, and continuing until the date the amount is finally determined to be due pursuant to settlement or the Dispute Resolution Procedures, and thereafter at the Prime Rate in effect from time to time plus 100 basis points until paid.

ADOT's right to receive interest is without prejudice to any other rights and remedies it may have under this DBA.

24.14 Integration of Contract Documents

ADOT and Design-Builder agree and expressly intend that, subject to Section 24.15, this DBA and other Contract Documents constitute a single, non-severable, integrated agreement the terms of which are interdependent and non-divisible.

24.15 Severability

If any clause, provision, section or part of the Contract Documents is ruled invalid by a court of competent jurisdiction, then the Parties shall:

(A) Promptly meet and negotiate a substitute for such clause, provision, section or part, which shall, to the greatest extent legally permissible, effect the original intent of the Parties, including an adjustment to the Contract Price, in accordance with the procedure for Supplemental Agreements that adjust the Contract Price, to account for any change in the Work resulting from such invalidated portion; and

(B) If necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract Documents, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

24.16 Entire Agreement

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations, and negotiations between the Parties with respect to its subject matter.

24.17 Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24.18 Confidential or Sensitive Information

ADOT may provide Design-Builder with information, including the RIDs, that may contain confidential or sensitive information that are only issued to Design-Builder on a confidential basis. Each Design-Build team member that would like access to any such confidential information must complete and submit a completed Exhibit 15 (Non-Disclosure Agreement) to ADOT. Each Design-Build team member that is granted access to any such confidential information must maintain the confidentiality of the confidential or sensitive information and follow procedures for handling and protection of such information, including as described in TP Section 117.02(H) (Confidential Cultural Information).

End Section

EXHIBIT 1 ABBREVIATIONS, ACRONYMS, AND DEFINITIONS**1 ABBREVIATIONS AND ACRONYMS**

§	Section
3D	three dimensional
A.M.	Ante Meridiem
AASHTO	American Association of State Highway and Transportation Officials
AAA	American Arbitration Association
AC	Asphaltic Concrete
ADA	Americans with Disabilities Act
ADAAG	Americans with Disabilities Act Accessibility Guidelines
ADEQ	Arizona Department of Environmental Quality
ADOT	Arizona Department of Transportation
AR-ACFC	Asphalt Rubber-Asphaltic Concrete Friction Course
ARS	Arizona Revised Statutes
ATC	Alternative Technical Concepts
AZPDES	Arizona Pollutant Discharge Elimination System
BECO	Business Engagement and Compliance Office
BIA	Bureau of Indian Affairs
Blvd	Boulevard
CADD	Computer-Aided Design and Drafting
CCTV	Closed Circuit Television
CFR	Code of Federal Regulations
CHDPEPP	Corrugated High-Density Polyethylene Plastic Pipe
CIP	Cast-in-Place
CIQM	Construction Independent Quality Manager
CM	Construction Manager (ADOT)
CMD	Certified Mean Diameter
CP	Current Price
CPM	Critical Path Method
CQM	Construction Quality Manager
CQMP	Construction Quality Management Plan

1	CRM	Comment Resolution Meeting
2	CRP	Community Relations and Public Involvement Program
3	CWT	Hundredweight
4	D&C	Design and Construction
5	DBA	Design-Build Agreement
6	DBE	Disadvantaged Business Enterprise
7	DCR	Design Concept Report
8	DDI	Diverging Diamond Interchange
9	DM	Design Manager (ADOT)
10	DMS	Dynamic Messaging Sign
11	DPD	Detailed Pricing Document
12	DPS	Department of Public Safety
13	DSFS	Dynamic Speed Feedback Sign
14	DTM	Digital Terrain Model
15	EA	Environmental Assessment
16	EB	Eastbound
17	ECC	Erosion Control Coordinator
18	ECM	Environmental Compliance Manager
19	ECP	Environmental Communications Protocol
20	EDMS	Electronic Data Management System
21	EEO	Equal Employment Opportunity
22	EMP	Environmental Management Plan
23	ENR	Engineering News Record
24	EOR	Engineer of Record
25	EPA	Environmental Protection Agency
26	ESAL	Equivalent Single-Axle Loads
27	FAST	Field Office Automated System
28	FDC	Field Design Change
29	FEA	Final Environmental Assessment
30	FEIS	Final Environmental Impact Statement
31	FHWA	Federal Highway Administration
32	FMS	Freeway Management System

1	FOB	Freight on Board
2	FONSI	Finding of No Significant Impact
3	GEC	General Engineering Consultant
4	GPDM	Geotechnical Project Development Manual
5	GPL	General Purpose Lane
6	GPS	Global Positioning System
7	GRIC DPW	Gila River Indian Community Department of Public Works
8	GRICUA	Gila River Indian Community Utility Authority
9	GRTI	Gila River Telecommunications, Inc.
10	HOV	High Occupancy Vehicle
11	HMWM	High Molecular Weight Methacrylate
12	HVAC	Heating, Ventilation, and Air Conditioning
13	I-10	Interstate 10
14	IC	Initial Cost
15	ID	Identification
16	IQF	Independent Quality Firm
17	ISO	International Organization for Standardization
18	ITS	Intelligent Transportation System
19	JPEG	Joint Photographic Experts Group
20	LiDAR	Light Detection and Ranging
21	Lt	Left
22	MAG	Maricopa Association of Governments
23	MASH	Manual for Assessing Safety Hardware
24	MCDOT	Maricopa County Department of Transportation
25	MDR	Material Design Report
26	MOT	Maintenance of Traffic
27	MP	Milepost
28	MS4	Municipal Separate Storm Sewer System
29	MSE	Mechanically Stabilized Earth
30	MSHA	Mine Safety and Health Administration
31	MU	Maintenance Unit
32	MUTCD	Manual of Uniform Traffic Control Devices

1	N/A	Not Applicable
2	NAICS	North American Industry Classification System
3	NCHRP	National Cooperative Highway Research Program
4	NCR	Non-Conformance Report
5	NDC	Notice of Design Change
6	NEMA	National Electrical Manufacturers Association
7	NEPA	National Environmental Policy Act
8	NESHAP	National Emission Standard for Hazardous Air Pollutants
9	NOI	Notice of Intent
10	NOT	Notice of Termination
11	No.	Number
12	NPDES	National Pollutant Discharge Elimination System
13	NTP	Notice to Proceed
14	OBD	Open Bridge Designer
15	OEM	Original Equipment Manufacturer
16	OPIS	Oil Price Information Service
17	ORD	Open Roads Designer
18	OSHA	Occupational Safety and Health Administration
19	OTS	Over-the-Shoulder
20	OV	Owner Verification
21	P.M.	Post Meridiem
22	P3	Public-Private Partnership
23	PCCP	Portland Cement Concrete Pavement
24	PCT	Project Communications Team
25	PDF/A	Portable Document Format Archival
26	PDS	Pavement Design Summary
27	PIP	Public Involvement Plan
28	PM	Project Manager (ADOT)
29	PMP	Project Management Plan
30	POST	Arizona Peace Officer and Training Board
31	PPC	Polyester Polymer Concrete
32	PPE	Personal Protective Equipment

1	PSQM	Professional Services Quality Manager
2	PSQMP	Professional Services Quality Management Plan
3	QA	Quality Assurance
4	QC	Quality Control
5	QMP	Quality Management Plan
6	PIV	Periodic Index Value
7	PQ	Periodic Quantity
8	RAP	Reclaimed Asphaltic Concrete
9	Rd	Road
10	RE	Resident Engineer
11	RFC	Release for Construction
12	RFI	Request for Information
13	RFP	Request for Proposals
14	RFQ	Request for Qualifications
15	RIDs	Reference Information Documents
16	ROW	Right-of-Way
17	RRBB	Rental Rate Blue Book
18	Rt	Right
19	SDPP	Sewage Discharge Prevention Plan
20	SDS	Safety Data Sheets
21	SIA	Steel Indexation Adjustment
22	SOQ	Statement of Qualifications
23	SR	State Route
24	SRF	Subcontractor Request Form
25	SWPPP	Stormwater Pollution Prevention Plan
26	TCB	Temporary Construction Barrier
27	TCP	Traffic Control Plan
28	TERO	Tribal Employment Rights Office
29	TI	Traffic Interchange
30	TIA	Time Impact Analysis
31	TIFF	Tag Image File Format
32	TMP	Transportation Management Plan

1	TOC	Traffic Operations Center
2	TP	Technical Provision
3	TPA	Technical Provision Attachment
4	TRACS	Transportation Accounting System
5	TSM	Transportation Systems Management
6	TWG	Technical Work Group
7	U.S.	United States
8	U.S.C.	United States Code
9	USACE	United States Army Corps of Engineers
10	USDOT	United States Department of Transportation
11	WB	Westbound
12	WBS	Work Breakdown Structure
13	WLAN	Wide Local Area Network

2 DEFINITIONS

Activity:

A discrete, identifiable task or event that contributes to completing the Project and can be used to schedule and monitor the Work.

Activity ID:

A unique alphanumeric identification code permanently assigned to an Activity.

Adjustment Standards:

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

ADOT Standard Specifications:

The 2021 Arizona Department of Transportation *Standard Specifications for Road and Bridge Construction* and associated ADOT *Stored Specifications*, adopted by the Arizona State Transportation Board, including all revisions thereto applicable on the Setting Date.

ADOT-Caused Delay:

Any of the following events, to the extent they result in a delay or interruption in the performance of any material Design-Builder obligation under the DBA, and provided such events are beyond Design-Builder's control and are not due to any act, omission, negligence, recklessness, willful misconduct or breach or violation of contract, the requirements of the Contract Documents or Law by any Design-Builder-Related Entity, and further provided that such events (or the effects of such events) could not have been avoided by the exercise of caution, due diligence or reasonable efforts by Design-Builder:

- (A) Failure or inability of ADOT to make available to Design-Builder any Schematic ROW parcel within the time frame set forth in TPA 118-1 (*Acquisition and Relocation Status Report*);
- (B) Intentionally left blank;
- (C) Following delivery of written notice from Design-Builder requesting such action in accordance with the terms and requirements of the Contract Documents, the failure of ADOT to provide responses to proposed schedules, plans, Design Documents, and other Submittals and matters submitted to ADOT after the Effective Date for which a response is required under the Contract Documents as an express prerequisite to Design-Builder's right to proceed or act, within the time periods (if any) indicated in the Contract Documents, or if no time period is indicated, within a reasonable time, taking into consideration:
- (1) The nature, importance, and complexity of the Submittal or matter,
 - (2) The number of Submittals or such other items which are then pending for ADOT's response,
 - (3) The completeness and accuracy of the Submittal or such other item, and
 - (4) Design-Builder's performance and history of Nonconforming Work under the Contract Documents;
- (D) Failure of ADOT to complete testing and data recovery of cultural resources at the Known Cultural Resource Sites, as defined in the NEPA Approval, within 180 Days after issuance of NTP 2; and
- (E) Any other event that the Contract Documents expressly state is an "ADOT-Caused Delay".

ADOT-Directed Change:

Means:

- (A) Changes in the scope of the Work or terms and conditions of the Contract Documents (including changes in the standards applicable to the Work) that ADOT has directed Design-Builder to perform; and
- (B) Suspensions of the Work that ADOT orders under DBA Section 8.02(D).

ADOT-Directed Maintenance:

Maintenance During Construction work that ADOT directs Design-Builder to perform that is in addition to the requirements in TP Section 105.15 (*Maintenance During Construction*).

ADOT-Provided Approvals:

The Governmental Approvals that ADOT is responsible for acquiring for the Project as specified in TP Section 117.03(A) (*ADOT-Provided Approvals*).

ADOT's Recoverable Costs:

Means:

- (A) The costs of any assistance, action, activity or Work undertaken by ADOT and for which Design-Builder is liable, or is to reimburse ADOT, under the terms of the Contract Documents, including the charges of additional services by the GEC, third party contractors, and reasonably allocated wages, salaries, compensation, and overhead of ADOT staff and employees performing such action, activity or Work; plus
- (B) Third-party costs ADOT incurs to procure or contract with any third-party contractors; plus

(C) Reasonable fees and costs of attorneys, including the reasonably allocable fees and costs of the Arizona Attorney General's Office (but not including attorney's fees and costs incurred in prosecuting or defending Disputes and Claims under the Dispute Resolution Procedures against Design-Builder, as provided by DBA Section 14), financial advisors, engineers, architects, insurance brokers and advisors, investigators, traffic and revenue consultants, risk management consultants, other consultants, and expert witnesses, as well as court costs and other litigation costs, in connection with any such assistance, action, activity or Work, including in connection with defending claims by and resolving disputes with third party contractors; plus

(D) Interest on all of the foregoing sums at the applicable floating rate set forth in DBA Section 24.13, commencing on the date due under the applicable terms of the Contract Documents and continuing until paid.

Affiliate(s):**Means:**

(A) Any member, partner or joint venture member of Design-Builder;

(B) Any Person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Design-Builder or any of its shareholders, members, partners or joint venture members; and

(C) Any Person for which 20% or more of the equity interest in such Person is held directly or indirectly, beneficially or of record by:

(1) Design-Builder,

(2) Any of the shareholders, members, partners or joint venture members of Design-Builder, or

(3) Any Affiliate of Design-Builder under clause (B) of this definition.

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

Alternative Technical Concept (ATC):

A concept contained in a Proposal that deviates from the Technical Provisions, represents an innovative design or construction approach to the Project, provides equal or better quality and performance, and is approved by ADOT in its sole discretion.

Application for Final Payment:

The application prepared by Design-Builder that requests Final Payment that includes the proposed total amount due to Design-Builder as of the date of Final Acceptance (D&C), including any amounts owing from Supplemental Agreements.

Arizona Department of Transportation (ADOT) or Department:

The Arizona Department of Transportation as constituted under the laws of the State of Arizona.

Arizona Public Records Act:

ARS, Title 39, Chapter 1, Article 2.

Arizona State Plane Coordinate System, Central Zone:

The system of plane coordinates which has been established by the national geodetic survey for defining and stating the positions or locations of points on the surface of the earth in the State of Arizona, as defined in the Arizona Revised Statutes, Title 33, Chapter 1, Article 3 sections 33-131 and 33-132.

Authorized Representative:

The individual(s) from the respective Party with the authority to make decisions and bind their Party on matters relating to the Contract Documents as identified in Exhibit 4-1.

Baseline Schedule:

A Critical Path Method (CPM) schedule illustrating the Design-Builder's committed plan to complete the Work within the Contract Time and used to compare the progress of the Work.

Basic Configuration:

Those items identified in TP Section 100.13 (Basic Configuration) that describes the elements of the Project that are not allowed to be changed unless approved by ADOT in its sole discretion and authorized by a Supplemental Agreement.

Best Management Practice:

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

BIA Approval:

Any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, agreement, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them, required by or with, or provided by the BIA, including agents or employees of the BIA who authorize or pertain to the Work or the Project. BIA Approvals include Environmental Approvals, but specifically excludes Preliminary Design Submittal, Final Design Submittal, and RFC Submittals.

BIA Delay:

Delay to the Critical Path caused by:

(A) BIA's failure to provide material information necessary for Design-Builder to prepare BIA Approval package(s) or submit designated Submittal(s) for which BIA review or approval is required, within 45 Days of notice from Design-Builder.

(B) Design-Builder does not receive written direction from ADOT not later than five Days of the failure of the BIA to provide responses to designated Submittals, within the time periods (if any) indicated in the Contract Documents, provided, however, Design-Builder notifies ADOT in writing of such failure. This item (B) includes BIA Approvals and Submittals identified in the Contract Documents and submitted to ADOT after the Effective Date, for which a response is required under the Contract Documents as an express prerequisite to Design-Builder's right to proceed or act.

Notwithstanding the foregoing, any delay by the BIA caused by, among other things, the failure of any Design-Builder-Related Entity to locate or design the Project diligently or carry out the Work in accordance with the Contract Documents, the applicable BIA's requirements, the NEPA Approval, other BIA Approval, or applicable Law, shall not be considered BIA Delay. Design-Builder's inability to obtain the BIA's approval on an ATC shall not be considered BIA Delay.

This term does not apply to BIA's review of Traffic Control Plans Submittal(s). Therefore, delay to the Critical Path due to the BIA's review or lack thereof of Traffic Control Plans Submittal(s) is not eligible for relief.

Books and Records:

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

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

(B) All budgets, certificates, claims, contracts, correspondence, data (including test data), documents, expert analyses, facts, files, information, investigations, materials, materials generated pursuant to Design-Builder's Public Involvement obligations under TP Section 116 (Community Relations and Public Involvement Program), notices, plans, projections, proposals, records, reports, requests, samples, schedules, settlements, statements, studies, surveys, tests, test results, traffic information (including volume counts, classification counts, origin and destination data, speed and travel time information, and vehicle jurisdiction data) that is analyzed, categorized, characterized, created, collected, generated, maintained, processed, produced, prepared, provided, recorded, stored or used by Design-Builder or any of its representatives in connection with the Project; and

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

Business Day:

A day, exclusive of Saturdays, Sundays, and Holidays, beginning at midnight, extending for a 24-hour period, and ending at midnight.

Buy America:

The Buy America requirements set forth in 23 CFR 635.410.

Certificate of Final Acceptance (D&C):

The certificate issued by ADOT stating that the Project has achieved the conditions for Final Acceptance set forth in DBA Section 4.06(C).

Certificate of Early Completion:

The certificate issued by ADOT stating that the I-10/Wild Horse Pass Blvd/Sundust Rd TI Work described in DBA Section 4.05(C)(1) has achieved the conditions for Early Completion.

Certificate of Substantial Completion:

The certificate issued by ADOT stating that the Project has achieved the conditions for Substantial Completion set forth in DBA Sections 4.05(A) and 4.05(B).

Change In Law:

Means:

(A) The adoption of any Law of the State after the Setting Date that materially increases the costs of, or the time required to complete, Design-Builder's performance of its obligations under the Contract Documents; or

(B) Any change in the Law of the State, or in the interpretation or application thereof by any Governmental Entity of the State, after the Setting Date, in each case that is materially inconsistent with Laws of the

State in effect on the Setting Date and that materially increases the costs of, or the time required to complete, Design-Builder's performance of its obligations under the Contract Documents.

Change of Control:

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

- (A) A change in possession of the power to direct or control the management of Design-Builder or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of a shareholder, member, partner or joint venture member of Design-Builder, (but not if the shareholder, member, partner or joint venture member is the ultimate parent organization), unless the transferee in such transaction is at the time of the transaction suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or State department or agency;
- (B) An upstream reorganization or transfer of direct or indirect interests in Design-Builder so long as there occurs no change in the entity with ultimate power to direct or control or cause the direction or control of the management of Design-Builder;
- (C) A transfer of interests between managed funds that are under common ownership or control other than a change in the management or control of a fund that manages or controls Design-Builder; or
- (D) The exercise of minority veto or voting rights (whether provided by Law, by Design-Builder's organizational documents or by related member or shareholder agreements or similar agreements) over major business decisions of Design-Builder, provided that if such minority veto or voting rights are provided by shareholder or similar agreements, ADOT has received copies of such agreements.

Change Request:

A written request by Design-Builder requesting a Deviation that would reduce Design-Builder's cost of performing the Work or result in time savings.

Claim:

A demand by Design-Builder, which is or potentially could be disputed by ADOT, for:

- (A) A Contractual Deadline adjustment under the Contract Documents,
- (B) Payment of money or damages from ADOT to Design-Builder, including Extra Work Costs and/or Delay Costs, or
- (C) Any other type of relief from ADOT, whether claimed under the Contract Documents or at Law or in equity; or a demand by ADOT, which is or potentially could be disputed by Design-Builder, for payment of money or damages from Design-Builder to ADOT.

A Claim includes each request by Design-Builder due to a Relief Event that is submitted to ADOT, which is subject to the procedures under DBA Section 8.

Closure or Lane Closure:

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

Community Approval:

Any permit, license, consent, concession, grant, franchise, authorization, waiver, certification, exemption, filing, lease, registration or ruling, variance or other approval, guidance, protocol, agreement, mitigation agreement, or memoranda of agreement/understanding, and any amendment or modification of any of them, required by or with, or provided by the Community, including agents or employees of the Community who authorize or pertain to the Work or the Project, but excluding any such approvals given by or required from the Community in its capacity as a Utility Company. Community Approvals include Environmental Approvals, but specifically excludes the business license from the Gila River Indian Community and Preliminary Design Submittal, Final Design Submittal, and RFC Submittals.

Community Delay:

Delay to the Critical Path caused by:

(A) Community's failure to provide material information necessary for Design-Builder to prepare Community Approval package(s) or submit designated Submittal(s) for which Community review or approval is required, within 45 Days of notice from Design-Builder.

(B) Design-Builder does not receive written direction from ADOT not later than five Days of the failure of the Community to provide responses to designated Submittals, within the time periods (if any) indicated in the Contract Documents, provided, however, Design-Builder notifies ADOT in writing of such failure. This item (B) includes Community Approvals and Submittals identified in the Contract Documents and submitted to ADOT after the Effective Date, for which a response is required under the Contract Documents as an express prerequisite to Design-Builder's right to proceed or act.

Notwithstanding the foregoing, any delay by the Community caused by, among other things, the failure of any Design-Builder-Related Entity to locate or design the Project diligently or carry out the Work in accordance with the Contract Documents, the applicable Community's requirements, the NEPA Approval, other Community Approval, or applicable Law, shall not be considered Community Delay. Design-Builder's inability to obtain the Community's approval on an ATC shall not be considered Community Delay.

This term does not apply to Community's review of Traffic Control Plans Submittal(s). Therefore, delay to the Critical Path due to the Community's review or lack thereof of Traffic Control Plans Submittal(s) is not eligible for relief.

Community Right of Entry Permit:

A permit issued by the Community that provides ADOT the right to use a specific portion of the Community Land to construct the Project.

Community Land:

The lands within the boundaries of Gila River Indian Community Reservation.

Constraint:

A limitation placed on a scheduled Activity that affects the start or end date of an Activity.

Construction Document:

All Project and Utility Adjustment Plans, RFIs, Shop Drawings and Working Drawings, fabrication plans, material and hardware descriptions, and specifications required to complete the Construction Work.

Construction Independent Quality Manager:

The individual appointed by the IQF who is responsible for management of construction Quality Acceptance functions, as more particularly described in the program and the Contract Documents.

Construction Manager:

The individual that is responsible for the constructability of the Project and ensuring the Project is constructed in accordance with the Project requirements and is one of the Key Personnel that is listed in Exhibit 2-10.

Construction Quality Manager:

The individual that is responsible for establishing, implementing, monitoring, and adjusting the process to make certain that acceptable quality is achieved for the construction of the Project and is one of the Key Personnel that is listed in Exhibit 2-10.

Construction Work:

All Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project or the Utility Adjustments. Construction Work includes landscaping and landscape establishment.

Contract Documents:

The documents listed in (A) through (G) below.

(A) Supplemental Agreements and amendments to this DBA (excluding amendments to the Technical Provisions addressed in subparagraph (D), below), and all exhibits and attachments thereto;

(B) This DBA (including all exhibits and the executed originals of exhibits that are contracts);

(C) Design-Builder's Proposal commitments and ATCs set forth in Exhibit 2 and Exhibit 2-1;

(D) Technical Provisions, and all exhibits and attachments, as amended;

(E) Intentionally left blank;

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

(G) Standards, manuals, guidelines, and publications to the extent incorporated by reference into the Technical Provisions.

Contract Price:

The final agreed upon amount reflected in the DBA for monies payable by ADOT to Design-Builder for the completion of the Work in accordance with the Contract Documents, as may be adjusted by Supplemental Agreements.

Contract Time:

The number of Days in which Design-Builder must complete the DBA as specified in Exhibit 5, as may be adjusted by Supplemental Agreements.

Contractor Cycle Key Date:

The dates on which ADOT will make payments owing from ADOT to Design-Builder under the DBA. Such payment dates will occur on the third Wednesday of each month.

Contractual Deadline:

Any combination of or all of the Early Opening Deadline, Substantial Completion Deadline, and Final Acceptance (D&C) Deadline, as the context requires.

Controlling Work Item:

A work activity in which any delay in its completion will result in a delay in the completion of the DBA.

Corridor:

Means I-10 from SR 202L to SR 387, that includes the Project. It is also known as the Wild Horse Pass Corridor.

Critical Path:

The longest continuous chain of Activities which establishes the minimum overall Project duration.

Critical Path Method (CPM):

A network-based planning technique that uses Activity Durations and relationships to calculate a schedule for the Project.

D&C Period:

That duration that commences at NTP 1 and ends at Substantial Completion.

Data Date:

The date from which a schedule is calculated, where all Activities occurring earlier than the Data Date are complete and all Activities occurring on or after the Data Date are planned.

Day or Calendar Day:

Any day shown on the calendar, beginning at midnight, extending for a 24-hour period, and ending at midnight.

Daylight Savings Time:

The time as adjusted to achieve longer evening daylight in summer by setting the clocks an hour ahead of the standard time.

DBE System:

ADOT's web-based system for reporting of Reportable Contracts that can be accessed from ADOT's BECO website (<https://adotdoors.dbesystem.com/>).

Defect:

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

- (A) A hazard, nuisance or other risk to public or worker health or safety, including the health and safety of those traveling on the Project;
- (B) A structural deterioration of the affected Element or any other part of the Project;
- (C) Damage to a third party's property or equipment;
- (D) Damage to the environment; or

- (E) Failure of the affected Element or any other part of the Project to meet a requirement of the Contract Documents.

Delay Costs:

Additional costs attributable to a Relief Event, which costs are limited to those provided under Section 2 of Exhibit 10 and provided that the entitlement for such costs is not expressly excluded under this DBA. However, in the event of a Relief Event that is concurrent with delay for which Design-Builder is responsible under the Contract Documents, Design-Builder shall not be entitled to Delay Costs, except that, and subject to other limitations in the Contract Documents on Delay Costs. Delay Costs do not include any costs that Design-Builder can or could reasonably mitigate. Delay Costs are not recoverable for delays to work that is not a Controlling Work Item.

Design Documents:

All drawings (including Plans, profiles, cross-sections, notes, elevations, sections, details, and diagrams), Project Special Provisions, reports, studies, calculations, electronic files, records, and submittals necessary for, or related to, the design of the Project or the Utility Adjustments in accordance with the Contract Documents, Governmental Approvals, Community Approvals, BIA Approvals, and applicable Law.

Design Manager:

The individual that is responsible for coordinating the individual design disciplines and is responsible for ensuring that the overall Project design is completed, and design criteria and Project requirements are met and is one of the Key Personnel that is listed in Exhibit 2-10.

Design Work:

All Work of design, engineering or architecture for the Project or Utility Adjustments.

Design-Build Agreement (DBA or Agreement):

This design-build agreement, including all exhibits attached hereto, as such DBA or any such exhibits may be amended, supplemented, restated or otherwise modified in accordance with the terms hereof, and the executed originals of exhibits that are contracts.

Design-Builder:

Means Coffman Specialties, Inc./Fisher Sand & Gravel Co. Joint Venture (CFJV).

Design-Builder Default:

When the Design-Builder is breach under this DBA upon the occurrence of the any one or more of the events or conditions specified in DBA Section 17.01(A).

Design-Builder Intellectual Property:

All Intellectual Property developed by Design-Builder or its Affiliates or Subcontractors independently of and not related to its (their) obligations to perform under the Contract Documents.

Design-Builder Releases of Hazardous Materials:

Means:

- (A) Release(s) of Hazardous Material, or the exacerbation of any such release(s), attributable to the culpable actions, culpable omissions, negligence, intentional misconduct, or breach of applicable Law or contract by any Design-Builder-Related Entity;
- (B) Release(s) of Hazardous Materials arranged to be brought onto the Site or elsewhere by any Design-Builder-Related Entity, regardless of cause; or

- (C) Use, containment, storage, management, handling, transport, and disposal of any Hazardous Materials by any Design-Builder-Related Entity in violation of the requirements of the Contract Documents or any applicable Law, Governmental Approval, Community Approval, or BIA Approval.

Design-Builder-Related Entity:

Has the meaning established in (A) through (F) below:

- (A) Design-Builder;
- (B) Design-Builder's partners or joint venture members;
- (C) Subcontractors and Suppliers;
- (D) Any other Persons performing any of the Work directly or indirectly on Design-Builder's behalf or over which Design-Builder directly or indirectly exercises control;
- (E) Any other Persons for whom Design-Builder may be legally or contractually responsible; and
- (F) The employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns, and invitees of any of the foregoing.

Detailed Pricing Documents (DPDs):

The Design-Builder documents that are prepared in Design-Builder usual format that:

- (A) Include all cost, unit pricing, price quote, and other documentary information used in preparation of the Contract Price;
- (B) Clearly detail how each cost or price included in the Proposal has been determined and must show cost or price elements in sufficient detail adequate to enable ADOT to understand how Design-Builder calculated the Contract Price;
- (C) Itemize the estimated costs or price of performing the Work separated into usual and customary items and cost or price categories to present a detailed estimate of costs and price, such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, supplies, Subcontract costs, plant and equipment, insurance, bonds, letters of credit, indirect costs, contingencies, mark-up, overhead, and profit;
- (D) Itemize the estimated annual costs of insurance premiums for each coverage required to be provided by Design-Builder under DBA Section 19; and
- (E) Include all assumptions made in determining the scope of the Work and calculating the Contract Price, detailed quantity takeoffs, price reductions and discounts, rates of production and progress calculations, and copies of quotes from Subcontractors and suppliers used by Design-Builder to arrive at the Contract Price, memoranda, narratives, consultant's reports, add/deduct sheets, and any adjustments to the Contract Price under this DBA.

The DPDs that are provided in connection with quotations and Supplemental Agreements must, *inter alia*, clearly detail how the total cost or price and individual components of that cost or price were determined.

Deviation:

Any proposed or actual change, deviation, modification, alteration or exception to the TPs.

Deviation Request:

A written request in which Design-Builder is requesting a Deviation from the Technical Provisions.

Differing Site Conditions:**Means:**

- (A) Subsurface or latent conditions encountered within one foot from the actual perimeter of the boring holes identified in the geotechnical reports included in the Reference Information Documents, which differ materially from those conditions indicated in the geotechnical reports for such boring holes; or
- (B) Subsurface or surface physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of work provided for in the DBA.

The term Differing Site Conditions shall specifically exclude:

- (A) All subsurface, latent or surface conditions that:
 - (1) Were known to Design-Builder prior to the Setting Date or
 - (2) Would have become known to Design-Builder by undertaking Reasonable Investigation;
- (B) Changes in surface topography;
- (C) Variations in subsurface moisture content and variations in the water table;
- (D) Utility facilities;
- (E) Hazardous Materials, including contaminated groundwater;
- (F) Acquisition of real property for drainage purposes; and
- (G) Any conditions that constitute or are caused by a Force Majeure Event.

Directive Letter:

A written letter by ADOT that is issued to Design-Builder for any disagreement regarding the scope of the Work or whether Design-Builder has performed the Work in accordance with the requirements of the Contract Documents.

Director:

The Arizona Department of Transportation Director, acting by and under the authority of the laws of the State of Arizona.

Disadvantaged Business Enterprise (DBE):

Has the meaning set forth in 49 CFR Part 26.

Dispute:

Any dispute, Claim, disagreement or controversy between ADOT and Design-Builder concerning their respective rights and obligations under the Contract Documents, including concerning any alleged breach or failure to perform and remedies therefor, that has satisfied all predicate notice and information requirements set forth in the DBA and that is eligible for resolution using the Dispute Resolution Procedures. Dispute includes all disputes that the DBA expressly designates as Disputes or as eligible for resolution under the Dispute Resolution Procedures without any further prerequisites. The word "dispute" in its lower case spelling shall have its plain language meaning.

Dispute Resolution Procedures:

The multi-step procedures that ADOT and Design-Builder will use to resolve Disputes that could not be resolved by partnering as established in DBA Section 14.02.

Draw Request:

Design-Builders request for payment as described in DBA Section 6.02.

Duration:

The estimated time required to complete an Activity as recorded on the Project Schedule.

Early Opening Deadline:

The date that is the number of Days identified in Exhibit 5 after the first date construction commences for the bridge (except for the center pier), ramps, crossroads, or retaining walls at the I-10/Wild Horse Pass Blvd/Sundust Rd TI.

Effective Date:

The date of the DBA, which shall be the last date on which all required signatures for the DBA to be in effect are obtained.

Electronic Document Management System (EDMS):

The secure data management system provided by Design-Builder containing all of the data Design-Builder is required to submit to ADOT in connection with the Work and compatible with data systems, standards, and procedures employed by ADOT, as more particularly described in TP Section 111.02 (*Document Management Requirements*).

Element:

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

Emergency:

Any unplanned event or condition originating from within or adjacent to the Project ROW that:

- (A) Presents an immediate or imminent threat to the integrity of any part of the infrastructure of the Project, to the environment, to property adjacent to the Project or to the safety of the public;
- (B) Has caused serious injury to persons, or significant damage to property or the environment, within or adjacent to the Project; or
- (C) Is recognized by the Arizona Department of Public Safety as an emergency.

Engineer of Record:

The professional engineer registered and licensed in the State that performs the design and analysis, is responsible for the preparation of the Design Documents and Construction Documents (if applicable), and signs and seals the Design Document and/or Construction Document.

Environmental Approvals:

All Governmental Approvals, Community Approvals, and BIA Approvals arising from or required by any Environmental Law in connection with development of the Project, including;

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

Environmental Compliance Manager (ECM):

The individual that is responsible for coordinating the environmental permitting requirements for Design-Builder and ensuring that issues are resolved before and during construction Work and is one of the Key Personnel that is listed in Exhibit 2-10.

Environmental Law:

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

- (A) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials;
- (B) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- (C) Releases of Hazardous Materials;
- (D) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- (E) The operation and closure of underground storage tanks;
- (F) Safety of employees and other persons; and
- (G) Notification, documentation, and record keeping requirements relating to the foregoing.

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

- (A) The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*), as amended;
- (B) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
- (C) Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. § 303(c))
- (D) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24)
- (E) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 *et seq.*), as amended;
- (F) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*);
- (G) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§ 11001 *et seq.*), as amended;
- (H) The Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- (I) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*);
- (J) The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901, *et seq.*), as amended;
- (K) The Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), as amended;

- 1 (L) The Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), as amended;
- 2 (M) The Oil Pollution Act (33 U.S.C. §§ 2701, *et. seq.*), as amended;
- 3 (N) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§ 136 *et seq.*), as amended;
- 4 (O) The Federal Safe Drinking Water Act (42 U.S.C. §§ 300 *et seq.*), as amended;
- 5 (P) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§ 7401 *et seq.*), as amended;
- 6 (Q) The Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*);
- 7 (R) The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*), as amended;
- 8 (S) The Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 *et seq.*), as amended;
- 9 (T) The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*), as amended;
- 10 (U) The Coastal Zone Management Act (33 U.S.C. §§ 1451 *et seq.*), as amended;
- 11 (V) General (ARS § 49-101 to 191);
- 12 (W) Water Quality Control (ARS § 49-201 to 391);
- 13 (X) Air Quality (ARS § 49-401 to 581);
- 14 (Y) Solid Waste Management (ARS § 49-701 to 881);
- 15 (Z) Hazardous Waste Disposal (ARS § 49-901 to 971);
- 16 (AA) Underground Storage Tank Regulation (ARS § 49-1001 to 1091);
- 17 (BB) Light Pollution (ARS § 49-1101);
- 18 (CC) Water Infrastructure Finance Program (ARS § 49-1201 to 1221); and
- 19 (DD) Natural Gas Facilities (ARS § 49-1301).

20 **Erosion Control Coordinator:**

21 The individual that is responsible for:

- 22 (A) Finalizing the draft SWPPP from the preliminary information included with the Plans;
- 23 (B) Implementing, monitoring, and revising the approved SWPPP throughout the Work;
- 24 (C) Making the required inspections; and
- 25 (D) Implementing any other permit requirements stipulated in the Arizona Pollutant Discharge Elimination
26 System (AZPDES) General Permit

27 **Event of Default:**

28 When any event or condition described in DBA Section 17.01(A) items (1) through (7) are not subject to cure and has
29 occurred.

30 **Event Reporting System:**

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

Existing ROW:

The existing ADOT ROW, including all easements for highway and related purposes as of the Effective Date.

Extra Work:

Extra Work means any Work in the nature of additional work, altered work or deleted work that is directly attributable to occurrence of a Relief Event and absent the Relief Event would not be required by the Contract Documents. For clarity, the term "Extra Work" includes additional work necessary for Design-Builder to obtain Environmental Approvals, reevaluations, amendments and supplements of the NEPA Approval, Community Approvals, BIA Approvals, and other Governmental Approvals required under DBA Section 9.01(A) in connection with a Relief Event; the term "Extra Work" does not include Relief Event Delay.

Extra Work Costs:

The incremental increase in Design-Builder's cost of labor, material, equipment, and other direct and indirect costs directly attributable to Extra Work. Such Extra Work Costs shall be calculated in accordance with Exhibit 10 (Extra Work Costs and Delay Costs Specifications).

Final Acceptance (D&C):

The occurrence of all of the events and satisfaction of all of the conditions set forth in DBA Section 4.06(C), as and when ADOT delivers a Certificate of Final Acceptance (D&C).

Final Acceptance (D&C) Deadline:

The date that is the number of Days identified in Exhibit 5 after issuance of the Certificate of Substantial Completion, beginning on, and including, the date that ADOT issues the Certificate of Substantial Completion, as such deadline may be subject to adjustment by Supplemental Agreement pursuant to the DBA.

Final Design:

Depending on the context:

(A) The RFC Submittals;

(B) The design concepts set forth in the RFC Submittals; or

(C) The process of development of the RFC Submittals.

Final Design Submittal:

The design Submittal for a given element or segment that is 100% complete and that satisfies the requirements of TP Section 113.05(B)(3) (Final Design Submittal).

Final Inspection:

A detailed inspection of all Construction Work provided for and required by the Contract Documents, including any changes to the Contract Documents in accordance with DBA Section 8, that is performed by ADOT after Design-Builder has completed the Punch List Work.

Final Payment:

Payment by ADOT of the final installment of the Contract Price.

Float:

The amount of time that any given Activity or logically connected sequence of Activities shown on the Project Schedule may be delayed before it will affect the achievement of Substantial Completion by the Substantial Completion Deadline, or Final Acceptance (D&C) by the Final Acceptance (D&C) Deadline. Such Float is generally

identified as the difference between the early start date and late start date, or early completion date and late completion date, for Activities shown on the Project Schedule.

Float Suppression/Sequestering:

The process of utilizing zero Free Float techniques that allows an Activity to start as late as possible by using all available Free Float of that Activity, by the utilization of overly generous Activity Durations, or by using overly restrictive calendar non-working periods.

Force Account Work:

Extra Work Costs determined on a force account basis, in accordance with Section 1.02 of Exhibit 10.

Force Majeure Event:

Force Majeure Event means the occurrence of any of the following events that:

- (A) Is beyond the reasonable control of Design-Builder,
- (B) Is not attributable to the negligence, willful misconduct, or breach of applicable Law or contract by any Design-Builder-Related Entity, and
- (C) Actually, demonstrably, materially, and adversely affects performance of Design-Builder's obligations (other than payment obligations) in accordance with the terms of the Contract Documents, provided that such events (or the effects of such events) are not caused, and could not have been avoided by the exercise of caution, due diligence or reasonable efforts, by any Design-Builder-Related Entity:
 - (1) War (including civil war and revolution), invasion, armed conflict, violent act of foreign enemy, military or armed blockade, or military or armed takeover of the Project or the Site, in each case occurring within the State of Arizona;
 - (2) Any act of terrorism, riot, insurrection, civil commotion or sabotage within the Project ROW that hinders or precludes achievement of Substantial Completion by the Substantial Completion Deadline;
 - (3) National strikes not specific to Design-Builder, embargoes, acts or omissions of a port or transportation authority, wars, and currently-listed events that occur outside of the State that, in each case, directly causes interruption to construction of the Project;
 - (4) Nuclear explosion that causes direct physical damage to the Project or the Site, or radioactive contamination of the Project or the Site;
 - (5) Flood event, fire, explosion, gradual inundation caused by natural events, tornado, sinkhole caused by natural events, or landslide caused by natural events, in each case directly impacting the physical improvements of the Project or performance of Work at the Site;
 - (6) Any governor-declared Emergency within the limits of the Project ROW, except one consisting of or arising out of traffic accidents;
 - (7) One or more earthquakes of a moment magnitude greater than 5.0 (measured by the United States Geological Survey moment magnitude) with an epicenter within 150 miles of the northernmost point of the Project ROW, including all foreshocks and aftershocks, where such earthquakes include ground shaking, liquefaction, settlement, or ground movements that directly impact, and cause damage to, temporary or permanent works of the Project;
 - (8) A vehicle collision on any of the roadways within the Project ROW that causes damage to a bridge structure, noise wall, retaining wall or overhead sign structure on which Design-Builder

is working or has already completed, and requires repair due to the collision. The foregoing does not include:

- (a) A collision due to the negligence, gross negligence, recklessness or intentional act by a Design-Builder-Related Entity; or
- (b) A collision involving a vehicle owned, leased, or operated by a Design-Builder-Related Entity when used in furtherance of the Work. For the purposes hereof, a "vehicle" has the meaning set forth in ARS § 28-101, and also means railroad train and aircraft.

Free Float:

The amount of time an Activity may be delayed without delaying the early start date of any of its Successors.

General Engineering Consultant (GEC):

Means HDR Engineering, Inc. and its consultants that is providing owner's representative services for the Project.

Geometric Drawing Submittal:

The design Submittal that includes Geometric Drawings and that satisfies the requirements of TP Section 113.05(B)(1) (*Geometric Drawings Submittal*).

Gila River Indian Community (Community):

Means the tribe, reservation and community council, including any branch of government, department, district, or enterprise. The term Community, for the purposes of the Design-Builder can directly coordinate with Utility Companies, specifically excludes Community owned Utilities, including the San Carlos Irrigation Project, Gila River Indian Community Utility Authority, Pima-Maricopa Irrigation Project, Gila River Indian Irrigation and Drainage District, Gila River Farms, Gila River Telecommunications Inc., and the Gila River Indian Community Department of Public Works.

Governmental Approval:

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

Governmental Entity:

Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity other than ADOT. Governmental Entity includes the Local Jurisdictions but excludes the Community and the BIA.

Governmental Entity Delay:

Delay to the Critical Path caused by:

- (A) A Governmental Entity's failure to provide material information necessary for Design-Builder to present to the Governmental Entity a proposed design package for the applicable Governmental Entity permission and approval for negotiation not later than 45 Days after:
 - (1) Subject to DBA Section 9.07(A), ADOT receives Design-Builder's request for ADOT's assistance as described in DBA Section 9.07(B); and

- (2) ADOT receives satisfactory evidence that the subject Governmental Entity permission and approval is necessary, the time for completion of the Governmental Entity permission and approval in the Project Schedule is reasonable, and Design-Builder has made diligent efforts to obtain the Governmental Entity's cooperation.

Notwithstanding the foregoing, any delay by a Governmental Entity caused by, among other things, the failure of any Design-Builder-Related Entity to locate or design the Project diligently or carry out the Work in accordance with the Contract Documents, the Utility Adjustment standards, the applicable Governmental Entity's requirements, the NEPA Approval, other Governmental Approval or applicable Law, or to cooperate with reasonable requests from the Governmental Entity, shall not be considered Governmental Entity Delay. Design-Builder inability to obtain Governmental Entity approval on an ATC shall not be considered Governmental Entity Delay.

Greenwich Mean Time:

The yearly average of time each day when the sun crosses the prime meridian at the *Royal Observatory Greenwich*.

Hazardous Materials:

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

- (A) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid, or gas, including substances defined as or included in the definition of "hazardous substance", "hazardous waste", "hazardous material", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "radioactive materials", "bio-hazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substance", "toxic waste", "toxic material", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws);
- (B) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
- (C) Any drilling fluids, produced waters, and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
- (D) Any flammable substances or explosives;
- (E) Any radioactive materials;
- (F) Any asbestos or asbestos-containing materials;
- (G) Any lead and lead-based paint;
- (H) Any radon or radon gas;
- (I) Any methane gas or similar gaseous materials;
- (J) Any urea formaldehyde foam insulation;
- (K) Electrical equipment that contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;

(L) Pesticides;

(M) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Entity, the Community, or the BIA or which may or could pose a hazard to the health and safety of the owners, operators, users or any Persons in the vicinity of the Project or to the indoor or outdoor environment; and

(N) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.

Hazardous Materials Management

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

Holiday Moratorium:

A moratorium for construction lane closures from November 15th through the weekend following January 1st.

Holidays:

Those days defined as legal holidays in ARS § 1-301, on the date of issuance of NTP 1.

Inaccurate Utility Information:

With respect to any Utility Adjustment, that one or more of the following circumstances applies:

(A) The subject Utility lies underground and the Utility Information incorrectly indicates that the subject Utility does not exist anywhere within the portion of the Schematic ROW covered by the Utility Information;

(B) The subject Utility lies underground and the horizontal centerline of the actual location of the subject Utility lies more than six horizontal feet from the horizontal centerline as shown in the Utility Information;

(C) The subject Utility lies underground and the Utility Information incorrectly indicates that the subject Utility is abandoned (i.e., nonexistent except for its presence in the records, or existent but no longer active for any type of Utility use);

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

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

(F) The subject Utility is indicated on the Utility Information incorrectly, as it does not exist at all, but is needed to complete the Utility Adjustment Work.

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

Incident:

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

Indemnified Parties:

ADOT, the State, the Transportation Board, and the GEC, and for each of the foregoing, their respective successors, assigns, officeholders, officers, directors, agents, representatives, consultants, and employees.

Independent Quality Firm (IQF):

The independent firm identified in the Proposal (or such other firm approved by ADOT in ADOT's sole discretion) responsible for performing independent quality assurance material testing, inspection, audits of the Construction Quality Management Plan. The initial ADOT-approved IQF is Raba Kistner, Inc., a Texas corporation.

Inspection:

A detailed inspection of a specific Element carried out by duly qualified personnel. When used in its lower case spelling, the term "inspection" shall have its plain language meaning.

Inspector:

ADOT's authorized representative assigned to make detailed inspections of contract performance.

Intellectual Property:

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

Intellectual Property is distinguished from physical embodiments and other documentation that disclose Intellectual Property.

Inter-Government Agreement:

Means a direct contract or agreement between two or more public agencies or public procurement units for joint or cooperative action to contract for or perform some or all of the services specified in the contract or agreement or exercise those powers jointly held by the contracting parties as defined in Arizona Revised Statutes 11-952.

Interpretive Engineering Decision:

Means when Design-Builder applies in writing to ADOT for approval of an interpretive engineering decision concerning the meaning, scope, interpretation, and application of the Technical Provisions.

Issue Escalation Ladder:

The process that consists of three levels of review for elevating Disputes from the Project's field level to various levels of review, up to the Parties' executive management, if necessary, with defined time limits for each level of review.

Key Personnel:

Those individuals identified in Design-Builder's SOQ to fill the "Key Personnel" positions identified in TP Section 110.03(B) (Key Personnel), or those individuals approved by ADOT, in accordance with the DBA, to serve

as replacements. The specific individuals appointed by Design-Builder and approved by ADOT to initially fill the Key Personnel positions are identified in Exhibit 2-10.

Known Cultural Resource Site:

Those specific locations within the Schematic ROW identified in the NEPA Approval that were found to contain cultural resources.

Known or Suspected Hazardous Materials:

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

Landscaping Establishment Period:

The period where Design-Builder maintains and establishes the landscape elements to promote sustained growth and health of all plants in accordance with Section 807 of the ADOT *Standard Specifications for Road and Bridge Construction*.

Landscape Inspection Report:

The document that describes the conditions of the plant material installed in accordance with DBA Section 4.06(B).

Landscape Restoration Plan:

The plan that includes a copy of the Landscape Inspection Report and describes the actions Design-Builder will take to replace dead and underperforming plant materials, and that ensures the conditions described in said report do not reoccur.

Law:

Any:

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

Lead Design Firm:

The member of Design-Builder's team, whether a single entity or joint venture, primarily responsible for the Professional Services of the Project. The Lead Design Firm is Design-Builder's engineering firm of record with primary responsibility for Professional Services Work under the DBA.

Lien:

Any pledge, lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other

1 title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any
2 financing statement under the Uniform Commercial Code of any jurisdiction).

3 **Liquidated Damages:**

4 The damages specified in DBA Section 15, and in any other part of the DBA.

5 **Local Jurisdictions:**

6 The City of Chandler, City of Phoenix, Maricopa County, and Pinal County. This definition excludes the Community
7 and the BIA.

8 **Longest Path:**

9 The longest continuous path of Activities for the Project, which controls Project early completion.

10 **Look-Ahead Schedule:**

11 A computer-generated (Primavera P6) schedule that provides an overview of the upcoming tasks and Activities that
12 need to be completed for the Project, that typically covers the previous week's Work and the Work planned for the
13 current and next three weeks.

14 **Loss(es):**

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

19 **Maintenance During Construction:**

20 Any and all management, administration, maintenance, repair, preservation, modification, reconstruction,
21 rehabilitation, restoration, renewal, and replacement to be performed by Design-Builder in connection with the
22 Project from issuance of NTP 2 until the Final Inspection is complete, as more fully described in TP Section 105.15
23 (*Maintenance During Construction*).

24 **Maintenance of Traffic Manager or MOT Manager:**

25 The individual that is responsible for:

26 (A) Evaluating Design-Builder's sequencing designs, traffic plans, staffing, safety, and other functions that
27 relate to MOT during construction;

28 (B) The implementation of the TMP per 23 CFR § 630.1012;

29 (C) Overseeing MOT functions during construction; and

30 is one of the Key Personnel that is listed in Exhibit 2-10.

31 **Milestone:**

32 An Activity, with no Duration, that is typically used to represent the beginning, end, interim stages and significant
33 events of the Project, or contractually required dates.

34 **Monthly Progress Schedule:**

35 A monthly update to the approved Baseline Schedule that is submitted by Design-Builder, consistent with the
36 Contractual Deadlines, set forth the approved schedule of Work on a monthly basis against which any subsequent
37 schedule amendments are tracked, as more particularly described in TP Section 108.12 (*Schedules*).

Mountain Standard Time:

One of the standard times used in North America that is seven hours behind Greenwich Mean Time.

Narrative:

A written report explaining the Project Schedule in detail, provides a comprehensive overview of the Project activities, timeline, dependencies, and resources required to complete the Project, and as specified in TP Section 108.12(E) (Narrative).

Necessary Design Adjustment:

Means when ADOT decides in its sole discretion to propose engineering solutions in the event that Design-Builder establishes a basis of relief, subject to DBA Section 11.03, with clear and convincing evidence that it is not physically possible to deliver the Basic Configuration within the Schematic ROW through commercially reasonable design modifications.

NEPA Approval:

The *Finding of No Significant Impact for Interstate 10 Corridor Study: State Route 202L to State Route 387*, dated March 28, 2024.

New ROW:

The real property interests, including all airspace, surface and subsurface rights, that ADOT is obtaining for the Project, which is based on the Schematic Design, that will be a part of the new grant(s) of easement, as identified in TPA 118-1 (Acquisition and Relocation Status Report).

Noncompliance Charges:

The liquidated amounts specified in DBA Section 16.01(C)(2).

Noncompliance Event:

Any Design-Builder breach or failure to perform any one of the obligations set forth in Exhibit 11.

Noncompliance Points:

The point(s) ADOT may assess against Design-Builder for the occurrence of Noncompliance Events, in accordance with DBA Section 16.01 and Exhibit 11.

Non-Conformance Report:

The documentation of Nonconforming Work.

Nonconforming Work:

Work that does not conform to the requirements of the Contract Documents, the Governmental Approvals, Community Approvals, BIA Approvals, applicable Law, the Design Documents, or Work which cannot be accepted due to conflicting information from any RFC Submittal(s).

Notice of Intent:

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

Notice of Termination:

The ADEQ form that terminated coverage under the AZPDES stormwater construction general permit.

Notice to Proceed 1 (NTP 1):

A written notice issued by ADOT to Design-Builder authorizing Design-Builder to proceed with the portion of the Work as described in DBA Section 4.03(A).

Notice to Proceed 2 (NTP 2):

A written notice issued by ADOT to Design-Builder authorizing Design-Builder to proceed all Work related activities pertaining to the Project.

Notice to Proceed - Koli (NTP – Koli):

A written notice issued by ADOT to Design-Builder authorizing Design-Builder to perform final design (submitting RFC Submittals) and Construction Work and related activities pertaining to the I-10/Koli Rd TI, contingent upon satisfying all related conditions precedent as specified in DBA Section 4.03(B).

Notice to Proceed - Koli Window (NTP – Koli Window):

The period of time commencing from issuance of NTP 1 and ending 397 Days after issuance of NTP 1, inclusive.

Open Book Basis:

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

Other Personnel:

Means individuals that must be assigned to the Project by Design-Builder, in addition to the Key Personnel.

Oversight:

Monitoring, inspecting, reviewing, analyzing, sampling, measuring, spot checking, attending, observing, testing, investigating, comment, objection, rejection, approval, disapproval, acceptance, concurrence, certification (including certificates of Substantial Completion and Final Acceptance (D&C)) and conducting any other oversight respecting any part or aspect of the Project or the Work, including all the activities described in DBA Section 3.02.

Owner Verification (OV):

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

Parties:

Design-Builder and ADOT, collectively.

Partnering Meeting:

The meetings between the Parties that establishes and maintains effective communication between the Parties to cooperatively identify and resolve critical Project-related issues as specified in DBA Section 14.01(A).

Party:

Design-Builder or ADOT, as the context may require.

Payment Bond:

The security bond included in the Design-Builder's Proposal issued by a Surety that guarantees payment of claims in relation to the Work.

Performance Bond:

The security bond included in the Design-Builder's Proposal issued by a Surety that guarantees the faithful performance of Design-Builder's obligations related to the Work under the Contract Documents.

Permitted Closure:

A Lane Closure that ADOT approves upon written request from Design-Builder, and that involves one of the following:

(A) A Lane Closure due to an ADOT-Directed Change, provided Design-Builder is using commercially reasonable efforts to:

(1) Mitigate the impact of such ADOT-Directed Change;

(2) Reopen the affected segment to traffic; and

(3) Minimize the impact of Design-Builder's activities and the Closure to traffic flow;

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

(C) A Lane Closure required due to a Relief Event, subject to DBA Section 15.07; or

(D) A Lane Closure that is approved by ADOT under TP Section 701.04(M)(1) (*Lane and Shoulder Closures*) during the time period approved by ADOT.

Persistent Design-Builder Default:

When one of the trigger points in DBA Section 16.05(A) occurs that entities ADOT to require Design-Builder to prepare a remedial plan that sets forth a schedule and specific actions that are to be taken by Design-Builder to improve its performance, reduce the number, frequency, and severity of Noncompliance Events, and reduce the assessment of Noncompliance Points under DBA Section 16.04 to the point that such Persistent Design-Builder Default will not continue.

Person(s):

Any individual, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization, or other legal entity.

Personal Protective Equipment (PPE):

Equipment worn to minimize exposure to a variety of hazards.

Plans:

The drawings prepared by Design-Builder that shows the location, character, dimensions and details of the Work to be performed to Construct the Project.

Predecessor:

An Activity or task that must be completed before another Activity or task can begin. The start date of the Successor Activity is dependent on the completion date of the Predecessor Activity.

1 Preliminary Design Submittal:

2 The design Submittal for a given element or segment that is 60% complete and that satisfies the requirements of
3 TP Section 113.05(B)(2) (Preliminary Design Submittal).

4 Preliminary Schedule:

5 The time-scaled, Critical Path network that depicts segment limits, Milestones, Contractual Deadlines, and
6 subordinate Activities and their respective Durations, sequencing, and interrelationships that represent Design-
7 Builder's Work plan for designing, constructing, and completing the Project, attached as Exhibit 2-4.

8 Prime Rate:

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

11 Prior Rights Documentation:

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

16 Professional Engineer:

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

20 Professional Services:

21 All Work performed under the DBA other than Construction Work and Maintenance During Construction, including
22 the following services and Work:

- 23 (A) Design, architecture, and engineering;
- 24 (B) Utility Adjustment design;
- 25 (C) Environmental permitting and compliance;
- 26 (D) Surveying; and
- 27 (E) Independent quality services.

28 Professional Services Quality Manager (PSQM):

29 The individual filling the position with the responsibility to cause the methods and procedures contained in the
30 ADOT-approved Professional Services Quality Management Plan to be implemented and followed by Design-
31 Builder's Professional Services staff in the performance of the Work, as more particularly described in
32 TP Section 110.03(B)(6) (Professional Services Quality Manager). These methods and procedures include, among
33 others, procedures to ensure all design products are accurate and checked before release.

34 Project:

35 The transportation facilities and all related structures, improvements, and systems to be developed, designed, and
36 constructed pursuant to the terms of the Contract Documents. "Project" does not include Temporary Work Areas.

Project Manager:

The individual that is responsible for the day-to-day operations, overall design, construction, quality, and contract administration for the Project and is one of the Key Personnel that is listed in Exhibit 2-10.

Project Office:

The facility and location established and maintained by the Design-Builder, that contains office space for both the Design-Builder and ADOT and is in close proximity to the Project site for the primary purpose of project administration and design.

Project ROW:

The Schematic ROW and the area outside the boundaries of the Schematic ROW required for performance of the Work.

The term Project ROW specifically excludes:

(A) Temporary Work Areas; and

(B) Any portion of the Schematic ROW eliminated from the Project by a Supplemental Agreement.

Project Schedule:

A logic-based Critical Path for all Work leading up to and including Substantial Completion and Final Acceptance (D&C) that is used for tracking the performance of the work. The term "Project Schedule" refers to one or more of the following:

(A) Baseline Schedule,

(B) Monthly Progress Schedule, or

(C) Recovery Schedule.

Project Segment:

The segments identified in the Segment Limits Map.

Project Special Provisions:

The special provisions prepared for the Project by Design-Builder, as detailed in TP Section 113.05(A)(3)(b) (*Project Special Provisions*).

Proposal:

Design-Builder's original Technical Proposal and Price Proposal submitted in response to the RFP, including any revisions thereto.

Proposal Design:

Design-Builder's design for the Project set forth in Exhibit 2-1.

Proposal Due Date:

Means July 14, 2025, the deadline for submission of the Proposal to ADOT under the RFP.

Proposer:

Each entity that was short-listed based on ADOT's evaluation of submissions in response to the Request for Qualifications for the Project issued on February 14, 2024, as amended, and that submitted a Proposal in response to the RFP.

Proprietary Intellectual Property:

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

Protection in Place:

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

Punch List:

The itemized list of the Work that remains to be completed at Substantial Completion, the existence, correction and completion of which will have no material or adverse effect on the normal and safe use and operation of the Project.

Quality Acceptance:

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

Reasonable Investigation:

The following activities that should be performed by appropriate, qualified professionals prior to the Setting Date:

- (A) Review and analysis of all TPs;
- (B) Visit and visual, non-intrusive inspection of the Site and surrounding locations, except areas to which access rights have not been made available by the Setting Date;
- (C) Review and analysis of all RIDs;
- (D) Review and analysis of the NEPA Approval;
- (E) Reasonable inquiry with Utility Companies, including requests for and review of Utility plans provided by Utility Companies;
- (F) Reasonable inquiry with Governmental Entities, the Community through ADOT, or the BIA through ADOT, that issue Environmental Approvals and other approvals for the Project or the Work; and
- (G) Review and analysis of Laws applicable to the Project or the Work as of the Setting Date.

Recognized Environmental Conditions:

Environmental conditions known to exist within the Project ROW and which the NEPA Approval requires Design-Builder to avoid disturbing or otherwise impacting.

Record Drawings:

Construction drawings and related documentation revised to show changes made during the construction process; usually based on modified or edited RFC Submittals furnished by Design-Builder; also known as as-built plans or as-built drawings, and more fully described in TP Section 113.06(D) (*Record Drawings*).

Recovery Schedule:

Is a revised Project Schedule developed to recover the Project that is behind schedule or at risk of not meeting its Contractual Deadlines. The Recovery Schedule outlines the steps and actions needed to bring the Project back on track and meet the Project objectives.

Reference Information Documents (RIDs):

Those documents identified in RID Index that are accompanied with the Contract Documents. Except as expressly provided in the Contract Documents, the Reference Information Documents are not considered Contract Documents and were provided to Design-Builder for informational purposes only and without representation or warranty by ADOT.

Release of Hazardous Materials:

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

Relief Event:

Any of the events eligible for Design-Builder relief in accordance with DBA Section 8.03(C)(3).

Relief Event Delay:

A delay to a Controlling Work Item, after consumption of all Float available pursuant to DBA Section 4.04(B), as a direct result of a Relief Event that could not be avoided by Design-Builder. Relief Event Delay does not include delay to non-Controlling Work Items.

Relief Event Notice:

The written notice in the form of Exhibit 9 that Design-Builder submits to ADOT if there is an occurrence on the Project that Design-Builder believe necessitates a Relief Event and it is not resolved within the time frames specified in DBA Section 8.03(D)(1).

Relief Request:

The written request that Design-Builder submits to ADOT after Design-Builder submits a Relief Event Notice to ADOT in accordance with DBA Section 8.03(D)(2).

Reportable Contract:

Any Subcontract, of any tier, DBE or non-DBE, by which Work shall be performed on behalf of Design-Builder and any contract of any tier with a DBE material supplier.

Request for Change Proposal:

A written notice issued by ADOT to Design-Builder under DBA Section 8.02(A), advising Design-Builder that ADOT may issue an ADOT-Directed Change or wishes to evaluate whether to initiate such a change.

Request for Proposals (RFP):

The written solicitation, including ITP, Contract Documents, and RIDs, including all Addenda thereto, issued by ADOT seeking Proposals from the short-listed Proposers, to undertake the Project to be used to identify the short-listed Proposer offering the best value to ADOT.

Request for Qualifications (RFQ):

The written solicitation issued on February 14, 2024, as amended, by ADOT seeking SOQs to identify and short-list Proposers eligible to receive and respond to the RFP for the Project.

RFC Submittal:

The design Submittal for a given element or segment that is 100% complete, all previous comments have been responded to and modifications have been incorporated to fully reflect and resolve the previous comments in the Design Documents, and that satisfies the requirements of TP Section 113.05(B)(4) (*RFC Submittal*).

Right-of-Way:

A general term denoting land, or an interest therein, as acquired for or devoted to transportation purposes.

Safety Compliance:

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

Safety Compliance Order:

An order or directive from ADOT to Design-Builder to implement Safety Compliance.

Safety Manager:

The individual that is responsible for establishing and supervising Design-Builder's *Safety Management Plan* and all safety related activities, including training and enforcement of safety operations and is one of the Key Personnel that is listed in Exhibit 2-10.

Scheduler:

An individual, who creates, maintains and revises the Project Schedule using the software specified in TP Section 108.12(K) (*Software*).

Schematic Design:

The placemark file, roll plots, utility matrix, wall report, traffic data, and associated CADD files that ADOT prepared depicting ADOT's conceptual design for the Project, as included in the RIDs.

Schematic ROW:

Those real property interests and any temporary right or interests, including all airspace, surface, and subsurface rights for the Existing ROW, New ROW, Community Right of Entry Permits identified in TPA 118-1 (*Acquisition and Relocation Status Report*) and as shown on the Schematic Design included in the RIDs that is based on the Schematic Design.

Selection Official:

A person, designated by ADOT for the Proposals evaluation, who was tasked with making the Best Value ranking determination of the received Proposals, and with presenting the recommended Design-Builder to the ADOT Alternative Delivery and Major Projects Division Director for contract execution.

Service Line:

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

Setting Date:

The date (June 7, 2025) that is 37 Days before the Proposal Due Date.

Site:

Schematic ROW, any ROW where Work for the Project is to be performed, and Temporary Work Areas.

Small Business Concerns (SBCs):

For-profit businesses registered to do business in Arizona and that meet the Small Business Administration size standards for average annual revenue criteria for its primary North American Industry Classification System code.

Stakeholder Management System:

ADOT's stakeholder engagement software, developed by Boréal, used for the Project.

State:

The State of Arizona.

State Engineer:

The individual serving in the position of state engineer for ADOT pursuant to Arizona Revised Statutes, section 28-6921, and appointed by the ADOT Director as the ADOT Deputy Director of Transportation.

Starting Date of Relief Event:

The date on which Design-Builder first became aware (or should have been aware, using all reasonable due diligence) of the potential Relief Event.

Statement of Qualification (SOQ):

A statement, in the prescribed format in the RFQ, submitted by Proposers in support of their request to be considered for short-listing to the second stage of the selection process.

Subcontract:

Any agreement by Design-Builder with any other Person or Subcontractor to perform any part of the Work, or any such agreement at a lower tier, between a Subcontractor and its lower tier Subcontractor, at all tiers.

Subcontractor:

An individual, partnership, firm, corporation, or any acceptable combination thereof, or joint venture, at all tiers to which Design-Builder sublets a part of the DBA with the approval of ADOT.

Subcontractor Request Form (SRF):

The Professional Services SRF and Construction SRF that Design-Builder submits to ADOT requesting approval of the use of a Subcontractor the Project. The Professional Services SRF and Construction SRF are available on the ADOT website:

<https://azdot.gov/business/engineering-and-construction/construction/contractor-information/forms-and-documents>

Submittal:

Any individual document, individual work product item or other written or electronic end product or item required under the Contract Documents to be delivered or submitted to ADOT, including those items identified as Submittals

in the Technical Provisions. "Submittal" does not include notices, correspondence or invoices for payment. When used in its lower case spelling, the term "submittal" shall have its plain language meaning.

Substantial Completion:

The time at which the Work (or a specified part thereof) has progressed to the point where it complies with the requirements of DBA Section 4.05.

Substantial Completion Deadline:

The date that is the number of Days identified in Exhibit 5 after issuance of NTP 1, beginning on, and including, the date that ADOT issues NTP 1, as such deadline may be subject to adjustment by Supplemental Agreement pursuant to the DBA.

Successor:

An Activity or task that follows another Activity or task in the Project Schedule. The Successor Activity cannot begin until the Predecessor Activity has been completed.

Supplemental Agreement:

A written agreement between ADOT and the Design-Builder covering work not otherwise provided for in the DBA, for extensions or reductions of Contract Time or Contract Price or revisions in or amendments to the terms of the DBA. A Supplemental Agreement becomes a part of the DBA when signed by the Design-Builder and ADOT.

Supplier:

One who fabricates, or processes an item off the Project Site, and who may or may not deliver this item to the Project. For purposes of this definition, a Supplier shall not include one who establishes a fabricating process or facility expressly for use of the project, whether on or off the Project Site; or one who performs work on the Project Site that is incorporated into the Project.

Surety:

The corporate body or bodies bound with and for the Design-Builder, for the full and complete performance of the DBA and for payment of all debts pertaining to the Work.

Suspension for Convenience:

When ADOT orders Design-Builder to suspend all or any part of the Work required under the Contract Documents for the period of time that ADOT deems appropriate for the convenience of ADOT in accordance with DBA Section 8.02(D).

Technical Provisions (TPs):

The Contract Documents identified as Technical Provisions, including Technical Provision Attachments, that includes requirements to design and construct the Project.

Technical Provision Attachment (TPA):

The Project-specific attachments to the Technical Provisions entitled "Technical Provision Attachment or TPA", that includes requirements to design and construct the Project.

Temporary Work Areas:

Areas in which Design-Builder carries out, on a temporary basis, Project-specific or Project-related activities in connection with the Work but located outside of the Schematic ROW, such as Construction Work sites, the Project Office, staging areas, storage areas, lay-down areas, earth work material borrow sites, and other locations for the convenience of Design-Builder.

Termination for Convenience:

When ADOT terminates the entire DBA or any portion thereof, if ADOT determines that a termination is in ADOT's best interest.

Termination for Default:

When ADOT terminates the entire DBA or any portion thereof, in the event of any Design-Builder Default that is or becomes an Event of Default (subject to DBA Section 17.01(B)), including Design-Builder's rights of entry upon and control of the Project, in accordance with DBA Section 17.02(A).

Third Party Intellectual Property:

Any Intellectual Property owned by any Person unrelated to Design-Builder or its Affiliates or Subcontractors and that is incorporated into the Project.

Threatened or Endangered Species:

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

Time Impact Analysis:

A forward-looking, prospective schedule analysis developed to demonstrate the impact of a change to the current schedule on its Longest Path.

Total Float (Float):

The cumulative Duration of time an Activity may be delayed without delaying the Contract Time or a Contractual Deadline and without affecting the Critical Path.

Transportation Board:

The State Transportation Board acting under authority of the laws of the State of Arizona.

Uniform Act:

The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sections 4601 *et seq.*, P.L. 91-646, as amended.

Utility:

A public, private, cooperative, municipal or government line, facility or system used for the carriage, transmission or distribution of cable television, electric power, heat, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, hydrocarbons, telecommunications, sewage, storm water not connected with the drainage of the Project, and similar substances that directly or indirectly serve the public. The term "Utility" or "utility" includes private irrigation facilities that are available on a common carriage basis throughout the relevant service area.

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

- (A) Stormwater facilities providing drainage for the Project ROW;
- (B) Street lights and traffic signals; and
- (C) ADOT ITS facilities.

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

Utility Adjustment:

Each relocation (temporary or permanent), abandonment, Protection in Place, removal (of previously abandoned Utilities as well as of newly abandoned Utilities), replacement, reinstallation, or modification of existing Utilities necessary to accommodate construction, operation, or use of the Project.

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

Utility Adjustment Work:

All efforts and costs necessary to accomplish the Utility Adjustments, whether provided by Design-Builder or by the Utility Companies, including all coordination, design, design review, permitting, construction, inspection, maintenance of records, relinquishment of existing Utility Property Interests, and preparation of Utility Adjustments. The term also includes any reimbursement of Utility Companies that is Design-Builder's responsibility pursuant to DBA Section 12. Any Utility Adjustment Work furnished or performed by Design-Builder is part of the Work. Any Utility Adjustment Work furnished or performed by a Utility Company is not part of the Work.

Utility Agreement:

An agreement between Design-Builder and a Utility Company or between ADOT and a Utility Company that establishes the rights and obligations of Design-Builder and the Utility Company or ADOT and the Utility Company with respect to one or more Utility Adjustments. Such an agreement may be general or comprehensive or may address only certain aspects of a Utility Adjustment.

Utility Company:

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

Utility Company Delay:

Only with respect to a necessary Utility Adjustment and Utility JPA Work, delay to the Critical Path caused by:

(A) A Utility Company's failure to provide material information necessary for Design-Builder to present to the Utility Company a proposed design package for the applicable Utility Adjustment, Utility JPA Work, and proposed Utility Agreement for negotiation within 45 Days after:

(1) ADOT receives Design-Builder's request for ADOT's assistance as described in DBA Section 12.06(A), and

(2) ADOT receives satisfactory evidence that the subject Utility Adjustment is necessary, the time for completion of the Utility Adjustment in the Project Schedule is reasonable in ADOT's good faith discretion, and Design-Builder has made diligent efforts to obtain the Utility Company's cooperation;

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

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

(2) ADOT receives Design-Builder's request for ADOT's assistance as described in DBA Section 12.06(A);

(C) A Utility Company's failure to timely perform its other obligations under the applicable, executed Utility Agreement, including Utility Company's failure to apply for and submit a Utility Easement Inside Community Land; or

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

Any delay by a Utility Company caused by, among other things, the failure of any Design-Builder-Related Entity to locate or design the Project diligently or carry out the Work in accordance with the Contract Documents, the Adjustment Standards, the applicable Utility Agreement, the NEPA Approval, Community Approvals, BIA Approvals, other Governmental Approval or applicable Law, or to cooperate with reasonable requests from the Utility Company, shall not be considered Utility Company Delay.

Utility Easement Inside Community Land:

An easement issued by the BIA/Community that provides a specific Utility Company the right to use a specific portion of the BIA Trust Land/Tribal Land for Utility purposes.

Utility Information:

The information regarding Utilities included in the RIDs or in TPA 119-2 (Project Specific Utility Specific Technical Provisions), together with any other information ADOT provided to Design-Builder prior to the Setting Date with regard to identification of Utilities, and the information contained in any encroachment permits ADOT has issued prior to the Setting Date. The Utility Information includes:

(A) Survey information regarding existing utilities;

(B) Utility maps included as an overlay on the survey;

(C) As-built maps for existing Utilities;

(D) Prior Rights Documentation; and

(E) Other information as to the existence or nature of any rights or interests of any Utility Company relating to use or occupancy of real property. In the event of any conflict within the various components of the Utility Information, the more accurate information will prevail.

Utility JPA Work:

The Work performed by Design-Builder as part of the GRTI, GRICUA, and GRIC DPW JPA Work.

Waters of the United States:

Has the meaning set forth by the US Army Corps of Engineers and US Environmental Protection Agency.

Wheel Path:

An area of a traffic lane defined as one foot either side of a point three feet from the nearest lane line or edge line (within two to four feet and eight to 10 feet of a 12-foot lane).

Work:

All of the administrative, design, engineering, utility relocation/adjustments and support services, procurement, legal, professional, manufacturing, supply, installation, construction, environmental mitigation and management, supervision, management, testing, verification, labor, materials, equipment, maintenance, warranty, documentation and other duties, services and cost reimbursements to be furnished and provided by Design-Builder as required by the DBA, including all efforts necessary or appropriate to achieve Final Acceptance (D&C) of the Project and to fulfill

the Design-Builder's warranties. In certain cases, as determined by ADOT, the term is also used to mean the products of the Work.

Workforce Development:

The effort to create measurable employment, training, and business opportunities for residents and businesses impacted by design and construction.

Workforce Development Coordinator:

The individual that is responsible for Equal Employment Opportunity (EEO), TERO requirements, and Workforce Development management, monitoring, oversight, and reporting; coordinating with ADOT's Workforce Development Oversight Committee to help ensure Project Workforce Development requirements are met; and is one of the Key Personnel that is listed in Exhibit 2-10.

Workforce Development Oversight Committee:

An interdisciplinary committee to monitor Design-Builder's progress towards achieving the objectives of the Workforce Development Plan. The Workforce Development Oversight Committee includes representatives from ADOT's General Engineering Consultant, Business Engagement and Compliance Office (BECO), Communications and Public Involvement, and the Gila River Indian Community.

Workforce Development Plan:

The Design-Builder's ADOT-approved plan for meeting Workforce Development objectives described in DBA Section 5.11.

Work Breakdown Structure (WBS):

A framework for organizing and ordering the Work activities into hierarchical groups.

3 SUBMITTALS

Unless otherwise specified in Section 2 of this Exhibit 1, the terms that are capitalized, italicized, and underlined (e.g., *Basis of Design Report*) throughout the DBA and the Technical Provisions are to identify the Submittals and do not have specific definitions. The Submittals are described in the associated Technical Provisions sections.

1 **EXHIBIT 2 PROPOSAL COMMITMENTS AND CERTIFICATIONS**

2 Exhibit 2-1 Proposal Design Including ATCs 184

3 Exhibit 2-2 Proposal Commitments.....185

4 Exhibit 2-3 Contract Price Tables 188

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6 Exhibit 2-5 Equal Employment Opportunity Certification.....192

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8 Exhibit 2-7 Buy America Certification 194

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12 Exhibit 2-11 Conflict of Interest Disclosure Statement 198

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14 Exhibit 2-13 Participation in Boycott of Israel Certification 200

15 Exhibit 2-14 Forced Labor of Ethnic Uyghurs Ban Certification 201

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1 EXHIBIT 2-1 PROPOSAL DESIGN INCLUDING ATCS**2 1 DESIGN-BUILDER'S PROPOSAL DESIGN**

No.	Description
1.	Preliminary Roadway Plans: Sheets 1 through 33 (Including Rev. 1 for sheets 1, 2, 3, 5, 12, 16, 22, 23, and 28-30 that supersedes the associated sheet)

3 2 DESIGN-BUILDER'S ALTERNATIVE TECHNICAL CONCEPTS (ATCS)

No.	ATC No.	Description
1.	01-R1	New Bridge at Goodyear Road, only to the extent incorporated into the Technical Provisions, and subject to the terms and conditions thereof, set forth in ADOT's response letter dated June 6, 2025, which are hereby incorporated herein by reference.
2.	05-R1	Lower I-10 Mainline Profile & Balance Earthwork, only to the extent incorporated into the Technical Provisions, and subject to the terms and conditions thereof, set forth in ADOT's response letter dated June 6, 2025, which are hereby incorporated herein by reference.

4 3 ALTERNATIVE DESIGN CONCEPTS

No.	ADC No.	Description
1.	1	New SR 347/Queen Creek Rd TI Direct-Connect Ramp
2.	2	Use of 42-inch Temporary Concrete Barrier During Construction and in Final Configuration

5

1 **EXHIBIT 2-2 PROPOSAL COMMITMENTS**

No.	Topic	Reference			Commitment
		Document	Proposal Section	Proposal Page No.	
1.	Project-Specific Orientation	Technical Proposal Body	3.1a.iii	3-6	Design-Builder will conduct Project-Specific Orientation (Kick-off Training) to ensure all team members understand project goals, scope, and compliance requirements. All project staff, including subcontractors will be required to attend.
2.	Specific Technical Skills-Based Training	Technical Proposal Body	3.1a.iii	3-6	Design-Builder will provide specific technical skills-based training on a monthly or quarterly basis as required.
3.	Daily Huddles	Technical Proposal Body	3.1a.iii	3-7	Design-Builder will Implement daily huddles to address immediate issues.
4.	Project Specific Training Programs	Technical Proposal Body	3.1b.i	3-8	Project Manager, Armando Garcia, will conduct project-specific training programs to align personnel with ADOT standards and project-specific requirements.
5.	Monthly Risk Management Workshops	Technical Proposal Body	3.1c	3-10	Design-Builder will conduct monthly risk management workshops with ADOT.
6.	Initial Risk Assessment Workshop	Technical Proposal Body	3.1d	3-12	Project Manager, Armando Garcia, will lead an initial risk assessment workshop that will include all of the necessary members of CFJV's team, as well as ADOT and other stakeholders, to perform qualitative and quantitative analysis of each identified risk.
7.	Unique Hard Hats for New Employees	Technical Proposal Body	3.5b, Item 5	3-34	New employees will be issued unique hard hats (e.g., color) for the first 30 days to alert other workers and supervisors that they are new to the project and may need additional instruction or training.
8.	Hard Hat Stickers for Being Environmentally Trained	Technical Proposal Body	3.5b, Item 5	3-34	Hard hat stickers will be issued so employees who have received environmental training on various topics are readily identifiable.

No.	Topic	Reference			Commitment
		Document	Proposal Section	Proposal Page No.	
9.	Bi-Weekly meetings for the Construction Advisory Team	Technical Proposal Body	4.1.a	4-5	The Construction Advisory Team (CAT) will meet bi-weekly during early phases and weekly during high impact periods.
10.	Design Quality Staff Experience	Technical Proposal Body	5.1.a.ii	5-3	The design quality staff will have a minimum of five years of experience and possess experience within the design area where they are performing checks.
11.	ASQ Certified Auditor	Technical Proposal Body	5.1.a.iii	5-4	Audits will be performed by an ASQ certified auditor.
12.	Local Suppliers for Architectural Metals	Technical Proposal Body	4.4.e.ii	4-30	Architectural metals for graphics/icons will be sourced locally from experienced suppliers.
13.	Specific MOT Devices	Technical Proposal Body	4.1.c	4-8	The Design-Builder will implement and use Smart Work Zones at the mainline crossovers. The Smart Work Zones will be provided and used throughout the limits of the crossovers for 30 days after the traffic pattern has been established. The Design-Builder will use Sequential Flashing Lights and Smart Work Zone Alerts at taper points, lane closures, or queuing locations to provide enhanced nighttime visibility. Queue Warning Systems (QWS) will alert motorists to downstream congestion and help reduce rear-end collisions, especially in high-speed transition zones.
14.	Specific MOT Tools	Technical Proposal Body	4.1.e, Section 3	4-10	Design-Builder will use Shared MOT Review Sessions, TOC Integration and GIS-based work zone visualization tools to map active work zones from neighboring projects for planning conflicts or redundancies.
15.	PI Dedicated Feedback Mechanisms	Technical Proposal Body	Section 3	1-6	Design-Builder will establish dedicated feedback mechanisms (e.g., hotlines, email) to address public and stakeholder concerns.
16.	Barrier Type on Goodyear Road	Appendix I-F: Proposal Design (Prelim RDW Plans)	N/A	3 of 33	Barrier on Goodyear Road is specified as C-10.52, 32" Type F Concrete barrier with 2' gutter. Only guardrail is required by the TPs.

No.	Topic	Reference			Commitment
		Document	Proposal Section	Proposal Page No.	
17.	HOV Fine Signs	Appendix I-F: Proposal Design (Prelim Traffic System Plans)	N/A	2-5 of 8	Design-Builder will provide HOV fine signs every half mile.
18.	Utility Relocation Tracking System	Technical Proposal Body	3.1c	3-10	Design-Builder will utilize a Utility Relocation Tracking System to monitor progress and manage potential conflicts.

1	EXHIBIT 2-3	CONTRACT PRICE TABLES	
2	Exhibit 2-3.1	Contract Price Breakdown	189
3	Exhibit 2-3.2	Design-Builder Anticipated Contract Price Draw/Cash Flow	190
4			

1	EXHIBIT 2-3.1	CONTRACT PRICE BREAKDOWN
2		<i>See Attached</i>

Form M-1 Contract Price Breakdown**Proposer:** Coffman/Fisher JV**Instructions:**

- A. All amounts must be in nominal dollars and include all taxes.
 B. Form M-1 has no page limitation.

Notes:

1. "Professional Services" for categorization for Workforce Development purposes.
 2. "Construction" for categorization for Workforce Development purposes.

Item/ Line No.	Description	Base NTP 1 Work Effort	Eligible for Fuel Cost Adjustment	Item Total (in U.S. Dollars)
PW	Section 1 Project Wide			
PS	Professional Services			
1	Project Administration Plan ¹	X	No	\$ 100,000.00
2	Document Management Plan ¹	X	No	\$ 100,000.00
3	QMP General Requirements ¹	X	No	\$ 250,000.00
4	Professional Services Quality Management Plan (PSQMP) ¹	X	No	\$ 50,000.00
5	Environmental Management Plan (EMP) ¹	X	No	\$ 50,000.00
6	Segment Limits Map ¹	X	No	\$ 150,000.00
7	Basis of Design Report ¹	X	No	\$ 100,000.00
8	Utility Coordination Plan ¹	X	No	\$ 100,000.00
9	Professional Services Management ¹	X	No	\$ 4,000,000.00
10	Proposal Design ¹	X	No	\$ 1,720,000.00
11	Project Design, Design Survey, and Site Investigations ¹	X	No	\$ 30,000,000.00
12	Environmental Permitting ¹	X	No	\$ 1,000,000.00
13	Utility Locates, Utility Survey, and Utility Adjustment Design ¹	X	No	\$ 250,000.00
14	Independent Quality Firm (IQF) ¹	X	No	\$ 20,000,000.00
15	Miscellaneous Professional Services not covered by the items above ¹	X	No	\$ 100,000.00
			PS Subtotal:	\$ 57,970,000.00

Form M-1 Contract Price Breakdown

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars and include all taxes.	
B. <u>Form M-1</u> has no page limitation.	
Notes:	
1. "Professional Services" for categorization for Workforce Development purposes.	
2. "Construction" for categorization for Workforce Development purposes.	

Item/ Line No.	Description	Base NTP 1 Work Effort	Eligible for Fuel Cost Adjustment	Item Total (in U.S. Dollars)
C	Construction			
16	Construction Quality Management Plan (CQMP) ²	X	No	\$ 25,000.00
17	Safety Management Plan ²	X	No	\$ 25,000.00
18	Site Security Plan ²	X	No	\$ 25,000.00
19	Transportation Management Plan (TMP) ²	X	No	\$ 25,000.00
20	Initial Project Office Lease and Equipment ²	X	No	\$ 250,000.00
21	Project Office Layout Plan ²	X	No	\$ 20,000.00
22	Network Administration Plan and Setup ²	X	No	\$ 30,000.00
23	Existing Conditions Site Documentation ²	X	No	\$ 100,000.00
24	Baseline Schedule ²	X	No	\$ 100,000.00
25	Workforce Development Plan ²	X	No	\$ 25,000.00
26	Construction Management ²	X	Yes	\$ 12,000,000.00
27	Mobilization ²	X	Yes	\$ 18,000,000.00
28	Project Bond and Insurance Premiums ²	X	No	\$ 17,500,000.00
			C Subtotal:	\$ 48,125,000.00
			PW Subtotal:	\$ 106,095,000.00

Form M-1 Contract Price Breakdown**Proposer:** Coffman/Fisher JV**Instructions:**

- A. All amounts must be in nominal dollars and include all taxes.
 B. Form M-1 has no page limitation.

Notes:

1. "Professional Services" for categorization for Workforce Development purposes.
 2. "Construction" for categorization for Workforce Development purposes.

Item/ Line No.	Description	Base NTP 1 Work Effort	Eligible for Fuel Cost Adjustment	Item Total (in U.S. Dollars)
MAG	Section 2 MAG: I-10 Mainline from SR 202L to Riggs Rd (MP161 to MP167.5); I-10/SR 347/Queen Creek Rd TI; I-10/Koli Rd TI			
29	Maintenance of Traffic (MOT) ²		Yes	\$ 6,500,000.00
30	Roadway ²		Yes	\$ 89,000,000.00
31	Bridges ²		Yes	\$ 6,500,000.00
32	Retaining Walls ²		Yes	\$ 3,000,000.00
33	Roadway Lighting ²		Yes	\$ 5,500,000.00
34	Traffic Signals ²		Yes	\$ 800,000.00
35	Signing and Pavement Markings ²		Yes	\$ 5,800,000.00
36	Drainage ²		Yes	\$ 4,800,000.00
37	Landscape and Irrigation ²		Yes	\$ 1,910,000.00
38	Environmental Mitigation ²		Yes	\$ 250,000.00
39	Utility Adjustments ²		Yes	\$ 1,300,000.00
40	I-10/Koli Rd TI ²		Yes	\$ 26,935,000.00
41	Miscellaneous construction items not covered by the items above ²		Yes	\$ 250,000.00
ADC	Proposal Changes		Yes	\$ 32,240,000.00
	MAG Subtotal:			\$ 184,785,000.00

Form M-1 Contract Price Breakdown**Proposer:** Coffman/Fisher JV**Instructions:**

- A. All amounts must be in nominal dollars and include all taxes.
 B. Form M-1 has no page limitation.

Notes:

1. "Professional Services" for categorization for Workforce Development purposes.
 2. "Construction" for categorization for Workforce Development purposes.

Item/ Line No.	Description	Base NTP 1 Work Effort	Eligible for Fuel Cost Adjustment	Item Total (in U.S. Dollars)
STATE	Section 3 State: I-10 Mainline from Riggs Rd to Gila River Bridges (MP 167.5 to 172.8); I-10/Goodyear Rd Underpass and Crossroad; I-10/Wild Horse Pass Blvd/Sundust Rd TI; I-10/Riggs Rd TI; ADOT ITS			
42	Maintenance of Traffic (MOT) ²		Yes	\$ 5,000,000.00
43	Roadway ²		Yes	\$ 65,845,000.00
44	Bridges ²		Yes	\$ 15,000,000.00
45	Retaining Walls ²		Yes	\$ 7,250,000.00
46	Roadway Lighting ²		Yes	\$ 2,000,000.00
47	Traffic Signals ²		Yes	\$ 800,000.00
48	Signing and Pavement Markings ²		Yes	\$ 2,100,000.00
49	Drainage ²		Yes	\$ 4,000,000.00
50	ADOT ITS ²		Yes	\$ 4,500,000.00
51	Landscape and Irrigation ²		Yes	\$ 6,160,000.00
52	Environmental Mitigation ²		Yes	\$ 250,000.00
53	ADOT-Directed Maintenance Work (Allowance) ²		Yes	\$ 1,000,000.00
54	Miscellaneous construction items not covered by the items above ²		Yes	\$ 250,000.00
	STATE Subtotal:			\$ 114,155,000.00

Form M-1 Contract Price Breakdown

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars and include all taxes.	
B. <u>Form M-1</u> has no page limitation.	
Notes:	
1. "Professional Services" for categorization for Workforce Development purposes.	
2. "Construction" for categorization for Workforce Development purposes.	

Item/ Line No.	Description	Base NTP 1 Work Effort	Eligible for Fuel Cost Adjustment	Item Total (in U.S. Dollars)
COMMUNITY	Section 4 Community: Koli Rd Equipment Underpass			
55	Structures ²		Yes	\$ 1,350,000.00
	COMMUNITY Subtotal:			\$ 1,350,000.00
GRTI	Section 5 GRTI: Gila River Telecommunications, Inc. (GRTI) JPA Work			
56	GRTI JPA Construction Work ²		Yes	\$ 1,400,000.00
	GRTI Subtotal:			\$ 1,400,000.00
GRICUA	Section 6 GRICUA: Gila River Indian Community Utility Authority (GRICUA) JPA Work			
57	GRICUA JPA Construction Work ²		Yes	\$ 1,900,000.00
	GRICUA Subtotal:			\$ 1,900,000.00
GRIC DPW	Section 7 GRIC DPW: Gila River Indian Community Department of Public Works (GRIC DPW) JPA Work			
58	GRIC DPW JPA Construction Work ²		Yes	\$ 1,100,000.00
	GRIC DPW Subtotal:			\$ 1,100,000.00
	Total (PW+MAG+STATE+COMMUNITY+GRTI+GRICUA+GRIC DPW):			\$ 410,785,000.00

Proposer proposes the above total amount from ADOT for the Contract Price for all Work under the Contract Documents.

See attached for descriptions of each item and a map showing the general limits of work covered by the funding source.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars.	
B. <u>Form M-1</u> has no page limitation.	

Item/ Line No.	Item Description
PW	Section 1 Project Wide
PS	Professional Services
<u>1</u>	<u>Project Administration Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Project Administration section of the Project Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>2</u>	<u>Document Management Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Document Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>3</u>	<u>QMP General Requirements</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the QMP General Requirements, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>4</u>	<u>Professional Services Quality Management Plan (PSQMP)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Professional Services Quality Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>5</u>	<u>Environmental Management Plan (EMP)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Environmental Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>6</u>	<u>Segment Limits Map</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Segment Limits Map, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>7</u>	<u>Basis of Design Report</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Basis of Design Report, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>8</u>	<u>Utility Coordination Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to the development of the Utility Coordination Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
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Item/ Line No.	Item Description
<u>9</u>	<u>Professional Services Management</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the Professional Services management provisions and requirements as specified in the Contract Documents, with, no additional compensation being allowed therefor.
<u>10</u>	<u>Proposal Design</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the development of the Proposal Design, with no additional compensation being allowed therefor.
<u>11</u>	<u>Project Design, Design Survey, and Site Investigations</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with Professional Services, including design survey, geotechnical engineering and site condition investigation provisions and requirements, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>12</u>	<u>Environmental Permitting</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the environmental permitting and Governmental Approval activities provisions and requirements as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>13</u>	<u>Utility Locates, Utility Survey, and Utility Adjustment Design</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the utility location, utility survey, any Utility Adjustment design performed by Design-Builder, and Utility Company coordination for all Utility Adjustment Work and all Design-Builder Work, and the provisions and requirements as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>14</u>	<u>Independent Quality Firm (IQF)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the IQF provisions and requirements as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>15</u>	<u>Miscellaneous Professional Services not covered by the items above</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with miscellaneous Professional Services, which are not included in other items, as specified in the Contract Documents, with no additional compensation being allowed therefor.
C	Construction
<u>16</u>	<u>Construction Quality Management Plan (CQMP)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Construction Quality Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>17</u>	<u>Safety Management Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to the development of the Safety Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars.	
B. <u>Form M-1</u> has no page limitation.	

Item/ Line No.	Item Description
<u>18</u>	<u>Site Security Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Site Security Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>19</u>	<u>Transportation Management Plan (TMP)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Transportation Management Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>20</u>	<u>Initial Project Office Lease and Equipment</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to the initial Project Office lease and equipment, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>21</u>	<u>Project Office Layout Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to the Project Office Layout Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>22</u>	<u>Network Administration Plan and Setup</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Network Administration Plan and setup, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>23</u>	<u>Existing Conditions Site Documentation</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Existing Conditions Site Documentation, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>24</u>	<u>Baseline Schedule</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Baseline Schedule, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>25</u>	<u>Workforce Development Plan</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with provisions and requirements related to development of the Workforce Development Plan, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>26</u>	<u>Construction Management</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the construction management provisions and requirements as specified in the Contract Documents, with no additional compensation being allowed therefor.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
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Item/ Line No.	Item Description
<u>27</u>	<u>Mobilization</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the Project mobilization provisions, including design mobilization, subject to <u>DBA Section 6.02(A) (Mobilization Payment)</u> , as specified in the Contract Documents.
<u>28</u>	<u>Project Bond and Insurance Premiums</u> Includes all cost and incidentals in association with securing and providing all Project bond and insurance coverages as specified in the Contract Documents, with no additional compensation being allowed therefor.
MAG	Section 2 MAG: I-10 Mainline from SR 202L to Riggs Rd (MP161 to MP167.5); I-10/SR 347/Queen Creek Rd TI; I-10/Koli Rd TI
<u>29</u>	<u>Maintenance of Traffic (MOT)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with Maintenance of Traffic requirements for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>30</u>	<u>Roadway</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all roadways (complete in place), including pavement construction, earthwork construction, roadway barriers, guardrails, fencing, bridge and roadway demolition and roadway preparation for the Project, as specified in the Contract Documents, including the work described in <u>TPA 200-8 (Repairs and Modifications to Existing Roadways)</u> , with no additional compensation being allowed therefor.
<u>31</u>	<u>Bridges</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with constructing the bridges, as specified in the Contract Documents, including item 1 of <u>TPA 600-3 (Repairs and Modifications to Existing Bridges)</u> , all work associated with asbestos and lead-based paint control management, removal, and disposal, with no additional compensation being allowed therefor.
<u>32</u>	<u>Retaining Walls</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all the work efforts associated with constructing all retaining walls and noise barriers (complete in place) for the Project, including associated aesthetics, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>33</u>	<u>Roadway Lighting</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all roadway lighting and electrical improvements (complete in place) for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>34</u>	<u>Traffic Signals</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with installing all traffic signals (complete in place) for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars.	
B. <u>Form M-1</u> has no page limitation.	

Item/ Line No.	Item Description
<u>35</u>	<u>Signing and Pavement Markings</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all signing & pavement markings (complete in place) for the Project, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>36</u>	<u>Drainage</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all drainage improvements (complete in place) for the Project, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>37</u>	<u>Landscape and Irrigation</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with construction activities related to the installation of aesthetics, landscaping and irrigation, including plant establishment, provisions, and requirements (complete in place) and temporary and permanent Stormwater Pollution Prevention Plan work for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>38</u>	<u>Environmental Mitigation</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with all environmental mitigation activities (complete in place) as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>39</u>	<u>Utility Adjustments</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing Utility Adjustments (complete in place) performed by Design-Builder for the Project, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>40</u>	<u>I-10/Koli Rd TI</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing the I-10/Koli Rd TI (complete in place) as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>41</u>	<u>Miscellaneous construction items not covered by the items above</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with miscellaneous Construction Work, which are not included in other items, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>ADC</u>	<u>Proposal Changes</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with Proposal changes Design Work and Construction Work, which are not included in other items, as specified in the Contract Documents, with no additional compensation being allowed therefor.
STATE	Section 3 State: I-10 Mainline from Riggs Rd to Gila River Bridges (MP 167.5 to 172.8); I-10/Goodyear Rd Underpass and Crossroad; I-10/Wild Horse Pass Blvd/Sundust Rd TI; I-10/Riggs Rd TI; ADOT ITS
<u>42</u>	<u>Maintenance of Traffic (MOT)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with Maintenance of Traffic requirements for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars.	
B. <u>Form M-1</u> has no page limitation.	

Item/ Line No.	Item Description
<u>43</u>	<u>Roadway</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all roadways (complete in place), including pavement construction, earthwork construction, roadway barriers, guardrails, fencing, bridge and roadway demolition and roadway preparation for the Project, as specified in the Contract Documents, including the work described in <u>TPA 200-8 (Repairs and Modifications to Existing Roadways)</u> , with no additional compensation being allowed therefor.
<u>44</u>	<u>Bridges</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with constructing bridges, as specified in the Contract Documents, including item 1 of <u>TPA 600-3 (Repairs and Modifications to Existing Bridges)</u> , all work associated with asbestos and lead-based paint control management, removal, and disposal, with no additional compensation being allowed therefor.
<u>45</u>	<u>Retaining Walls</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all the work efforts associated with constructing all retaining walls and noise barriers (complete in place) for the Project, including associated aesthetics, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>46</u>	<u>Roadway Lighting</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all roadway lighting and electrical improvements (complete in place) for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>47</u>	<u>Traffic Signals</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with installing all traffic signals (complete in place) for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>48</u>	<u>Signing and Pavement Markings</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all signing & pavement markings (complete in place) for the Project, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>49</u>	<u>Drainage</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all drainage improvements (complete in place) for the Project, as specified in the Contract Documents, with no additional compensation being allowed therefor.
<u>50</u>	<u>ADOT ITS</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with constructing all ADOT ITS and FMS (complete in place) for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.

Form M-1 Contract Price Breakdown (Descriptions)

Proposer:	Coffman/Fisher JV
Instructions:	
A. All amounts must be in nominal dollars.	
B. <u>Form M-1</u> has no page limitation.	

Item/ Line No.	Item Description
51	<u>Landscape and Irrigation</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with construction activities related to the installation of aesthetics, landscaping and irrigation, including plant establishment, provisions, and requirements (complete in place) and temporary and permanent Stormwater Pollution Prevention Plan work for the Project as specified in the Contract Documents, with no additional compensation being allowed therefor.
52	<u>Environmental Mitigation</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work efforts associated with all environmental mitigation activities (complete in place) as specified in the Contract Documents, with no additional compensation being allowed therefor.
53	<u>ADOT-Directed Maintenance Work (Allowance)</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the ADOT-Directed Maintenance Work provisions, subject to <u>DBA Section 6.02(G)(1) (ADOT-Directed Maintenance Payment)</u> , as specified in the Contract Documents.
54	<u>Miscellaneous construction items not covered by the items above</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with miscellaneous Construction Work, which are not included in other items, as specified in the Contract Documents, with no additional compensation being allowed therefor.
COMMUNITY	Section 4 Community: Koli Rd Equipment Underpass
55	<u>Structures</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with the equipment underpass, as specified in the Contract Documents, all work associated with asbestos and lead-based paint control management, removal, and disposal, with no additional compensation being allowed therefor.
GRTI	Section 5 GRTI: Gila River Telecommunications, Inc. (GRTI) JPA Work
56	<u>GRTI JPA Construction Work</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with constructing the Gila River Telecommunications, Inc. JPA work, as specified in the Contract Documents, with no additional compensation being allowed therefor.
GRICUA	Section 6 GRICUA: Gila River Indian Community Utility Authority (GRICUA) JPA Work
57	<u>GRICUA JPA Construction Work</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with constructing the GRICUA JPA work, as specified in the Contract Documents, with no additional compensation being allowed therefor.
GRIC DPW	Section 7 GRIC DPW: Gila River Indian Community Department of Public Works (GRIC DPW) JPA Work
58	<u>GRIC DPW JPA Construction Work</u> Includes full compensation for furnishing all labor, materials, tools, equipment, and incidentals; performing all work effort in association with constructing the GRIC DPW JPA work, as specified in the Contract Documents, with no additional compensation being allowed therefor.

1 **Form M-1 Contract Price Breakdown (General limits of work covered by the funding source)**

Legend

MAG

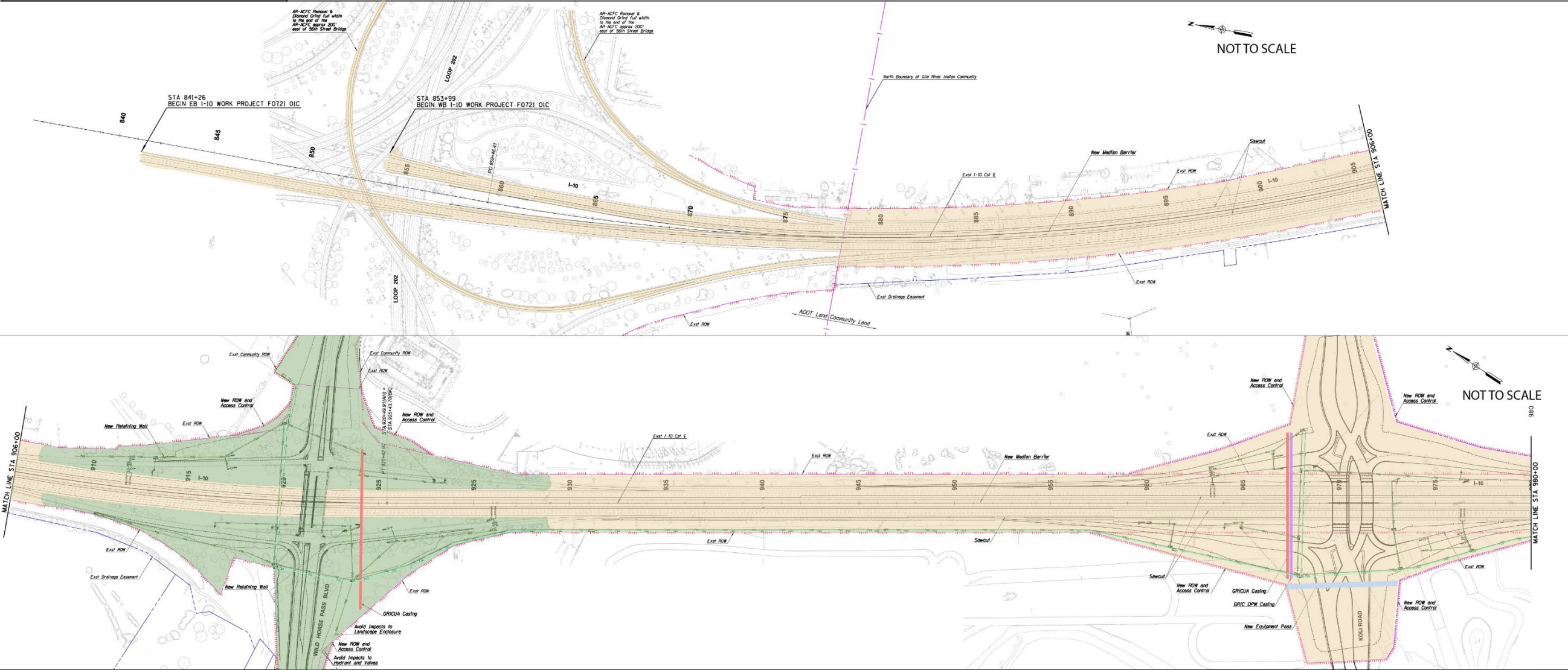
STATE

COMMUNITY

GRTI

GRICUA

GRIC DPW



**GENERAL LIMITS BY
FUNDING SOURCE**

Legend

MAG

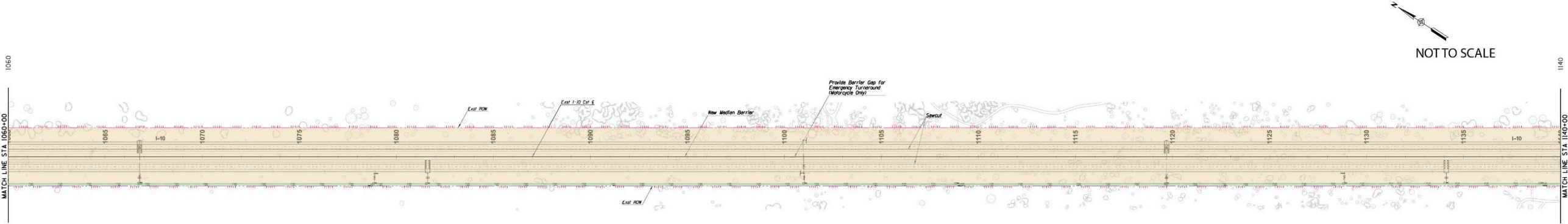
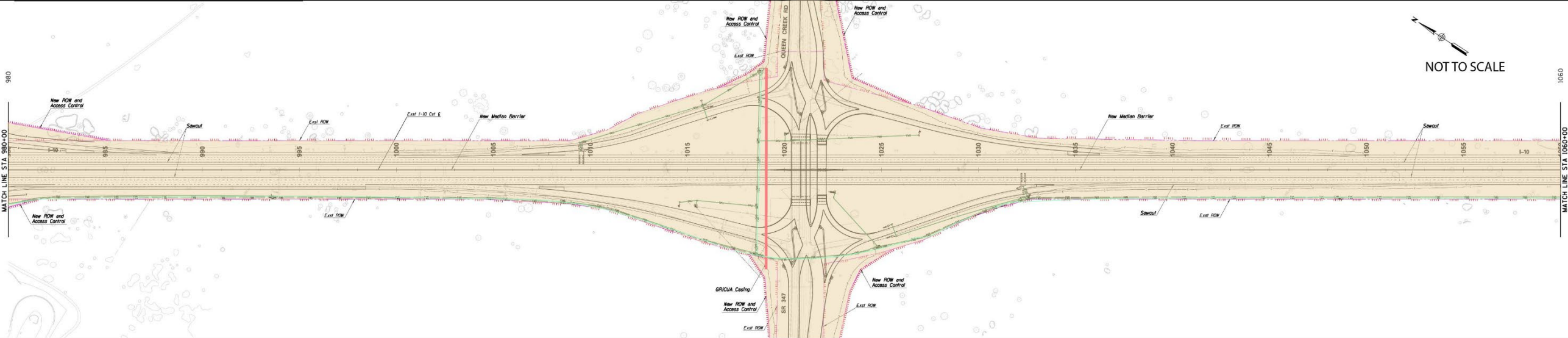
STATE

COMMUNITY

GRTI

GRICUA

GRIC DPW



GENERAL LIMITS BY
FUNDING SOURCE

Legend

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STATE

COMMUNITY

GRTI

GRICUA

GRIC DPW

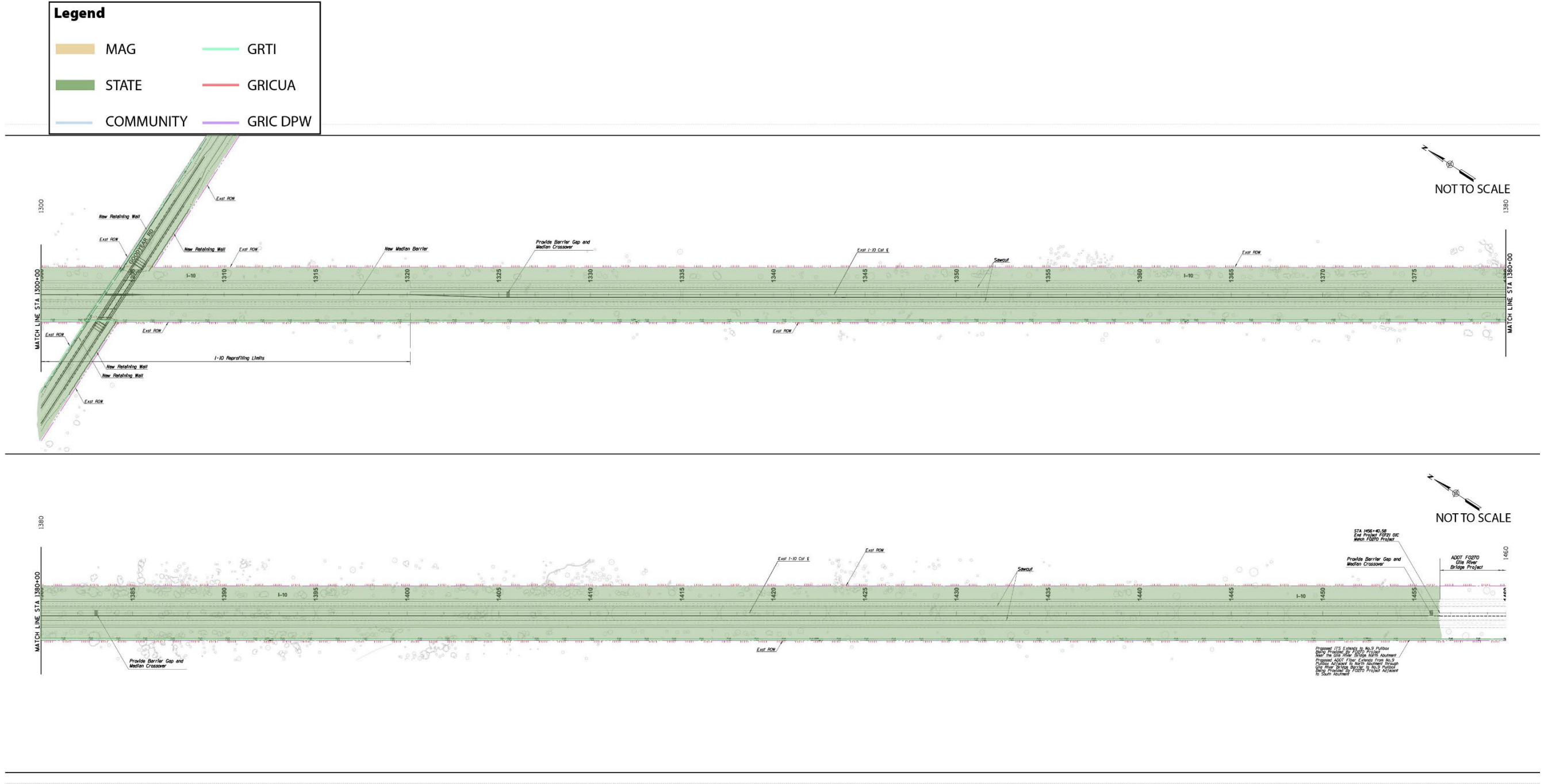
GENERAL LIMITS BY
FUNDING SOURCE

1

I-10 Gila River Indian Community Project
010 MA 161 F0721 01C
010-C-NFA

- 167 -
Exhibit 7
Form M-1

Instructions to Proposers
Required Forms
Contract Price Breakdown



GENERAL LIMITS BY
FUNDING SOURCE

Legend

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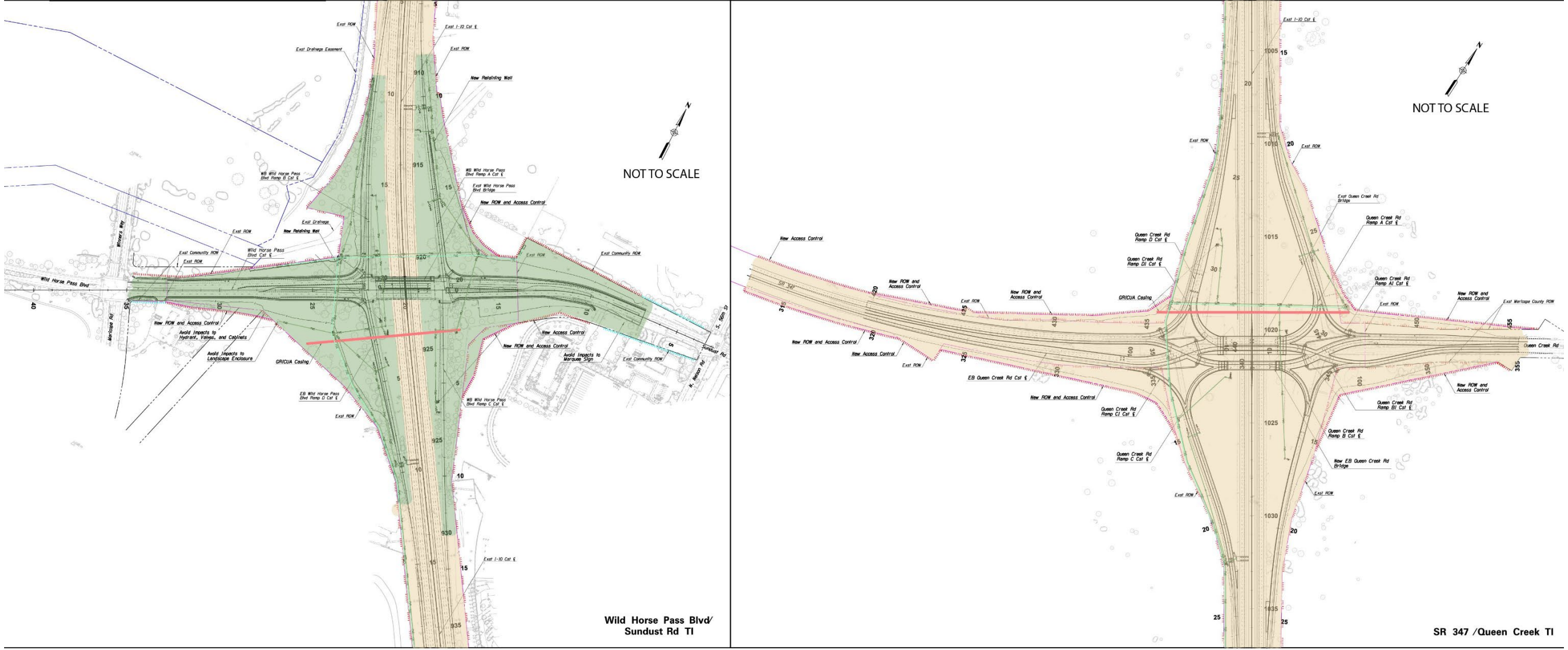
STATE

COMMUNITY

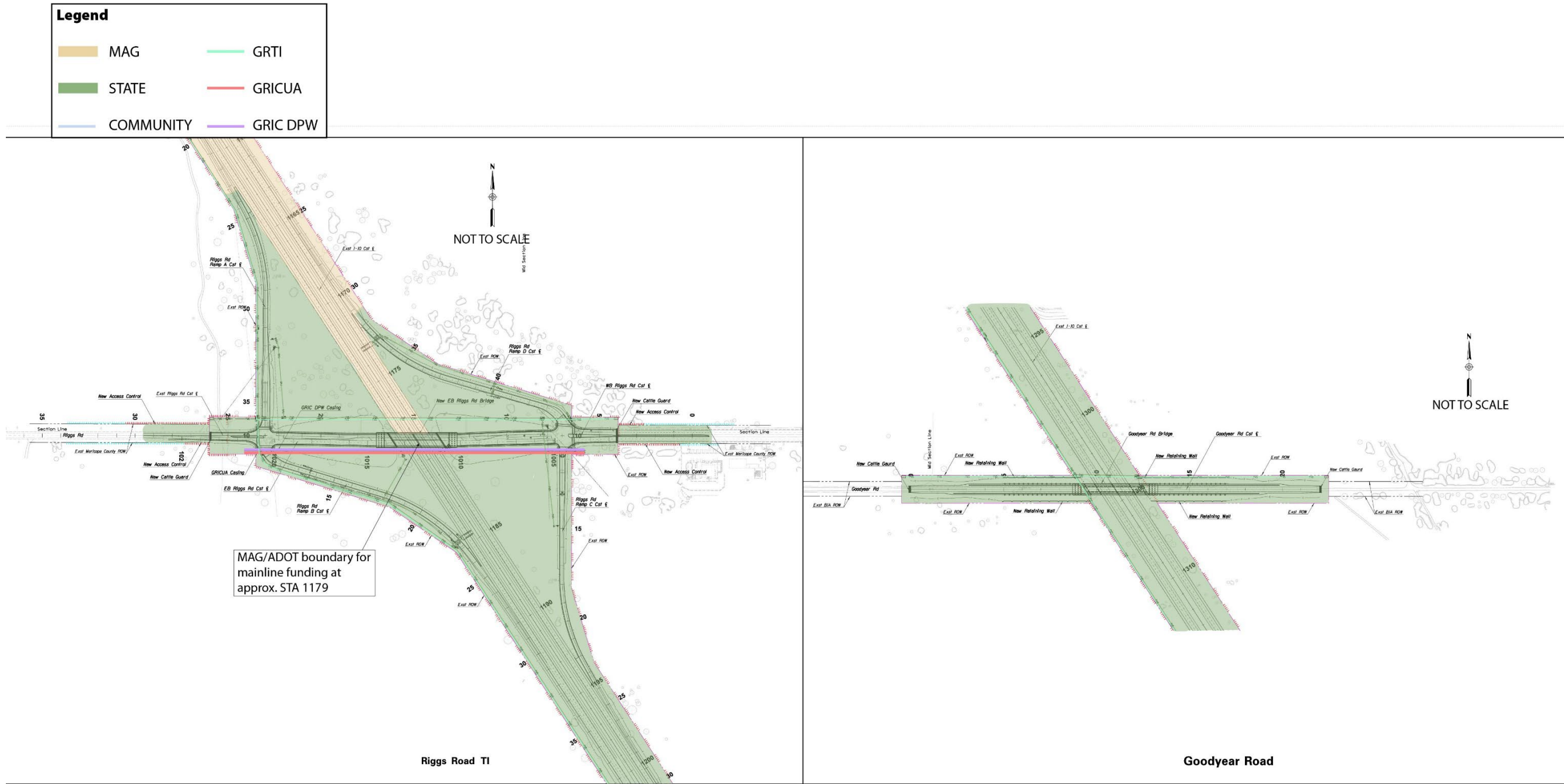
GRTI

GRICUA

GRIC DPW



GENERAL LIMITS BY
FUNDING SOURCE





1	EXHIBIT 2-3.2	DESIGN-BUILDER ANTICIPATED CONTRACT PRICE DRAW/CASH FLOW
2		<i>See Attached</i>

Form M-2 Contract Price Draw/Cash Flow Table

Proposer:	Coffman/Fisher JV
Instructions:	
A. Proposer shall complete this <u>Form M-2</u> for all months after NTP 1 until the month after the Final Acceptance (D&C) Deadline indicated in <u>DBA Exhibit 5 (Contractual Deadlines)</u> (such last month is presumed to be the month of the Final Payment).	
B. All amounts must be in nominal dollars and include all taxes.	
C. <u>Form M-2</u> has no page limitation.	

No. of Months after Issuance of NTP 1	Anticipated Monthly Draw/Cash Flow (in US Dollars)	Anticipated Cumulative Draw/Cash Flow (in US Dollars)	Draw/Cash Flow Percentage of Cumulative (Percentage)
A	B	C	D = B/C
1	\$ 15,125,000	\$ 15,125,000	100%
2	\$ 4,021,801	\$ 19,146,801	21%
3	\$ 2,221,801	\$ 21,368,601	10%
4	\$ 4,120,134	\$ 25,488,735	16%
5	\$ 2,221,801	\$ 27,710,536	8%
6	\$ 2,221,801	\$ 29,932,336	7%
7	\$ 4,120,134	\$ 34,052,470	12%
8	\$ 2,221,801	\$ 36,274,271	6%
9	\$ 2,221,801	\$ 38,496,071	6%
10	\$ 14,920,134	\$ 53,416,205	28%
11	\$ 9,938,967	\$ 63,355,173	16%
12	\$ 9,938,967	\$ 73,294,140	14%
13	\$ 13,538,967	\$ 86,833,107	16%
14	\$ 9,938,967	\$ 96,772,074	10%
15	\$ 9,938,967	\$ 106,711,042	9%
16	\$ 9,938,967	\$ 116,650,009	9%
17	\$ 9,938,967	\$ 126,588,976	8%
18	\$ 11,738,967	\$ 138,327,943	8%
19	\$ 14,868,006	\$ 153,195,949	10%
20	\$ 14,011,815	\$ 167,207,764	8%
21	\$ 14,011,815	\$ 181,219,580	8%
22	\$ 13,561,815	\$ 194,781,395	7%
23	\$ 11,049,910	\$ 205,831,305	5%
24	\$ 11,049,910	\$ 216,881,216	5%
25	\$ 12,516,577	\$ 229,397,793	5%
26	\$ 12,516,577	\$ 241,914,370	5%
27	\$ 12,516,577	\$ 254,430,947	5%
28	\$ 11,049,910	\$ 265,480,858	4%
29	\$ 11,049,910	\$ 276,530,768	4%
30	\$ 11,049,910	\$ 287,580,679	4%
31	\$ 11,049,910	\$ 298,630,589	4%
32	\$ 12,299,910	\$ 310,930,500	4%
33	\$ 10,499,910	\$ 321,430,410	3%
34	\$ 9,642,768	\$ 331,073,178	3%

Form M-2 Contract Price Draw/Cash Flow Table

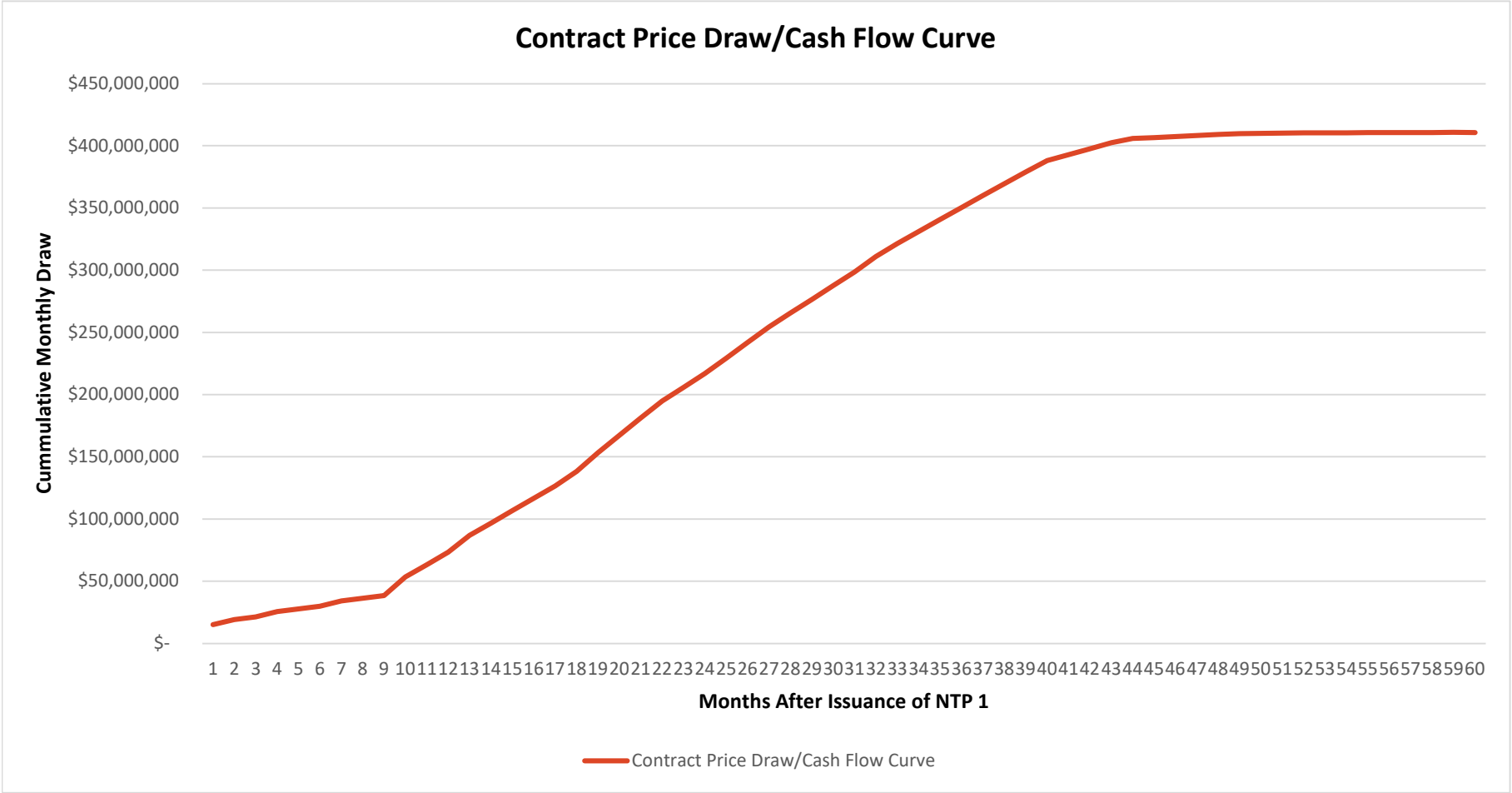
Proposer:	Coffman/Fisher JV
Instructions:	
A. Proposer shall complete this <u>Form M-2</u> for all months after NTP 1 until the month after the Final Acceptance (D&C) Deadline indicated in <u>DBA Exhibit 5 (Contractual Deadlines)</u> (such last month is presumed to be the month of the Final Payment).	
B. All amounts must be in nominal dollars and include all taxes.	
C. <u>Form M-2</u> has no page limitation.	

No. of Months after Issuance of NTP 1	Anticipated Monthly Draw/Cash Flow (in US Dollars)	Anticipated Cumulative Draw/Cash Flow (in US Dollars)	Draw/Cash Flow Percentage of Cumulative (Percentage)
A	B	C	D = B/C
35	\$ 9,642,768	\$ 340,715,945	3%
36	\$ 9,642,768	\$ 350,358,713	3%
37	\$ 9,642,768	\$ 360,001,481	3%
38	\$ 9,392,768	\$ 369,394,248	3%
39	\$ 9,392,768	\$ 378,787,016	2%
40	\$ 9,392,768	\$ 388,179,784	2%
41	\$ 4,722,268	\$ 392,902,051	1%
42	\$ 4,722,268	\$ 397,624,319	1%
43	\$ 4,722,268	\$ 402,346,586	1%
44	\$ 3,472,268	\$ 405,818,854	1%
45	\$ 793,229	\$ 406,612,083	0%
46	\$ 793,229	\$ 407,405,312	0%
47	\$ 793,229	\$ 408,198,542	0%
48	\$ 793,229	\$ 408,991,771	0%
49	\$ 793,229	\$ 409,785,000	0%
50	\$ 200,000	\$ 409,985,000	0%
51	\$ 200,000	\$ 410,185,000	0%
52	\$ 150,000	\$ 410,335,000	0%
53	\$ 100,000	\$ 410,435,000	0%
54	\$ 50,000	\$ 410,485,000	0%
55	\$ 50,000	\$ 410,535,000	0%
56	\$ 50,000	\$ 410,585,000	0%
57	\$ 50,000	\$ 410,635,000	0%
58	\$ 50,000	\$ 410,685,000	0%
59	\$ 50,000	\$ 410,735,000	0%
60	\$ 50,000	\$ 410,785,000	0%

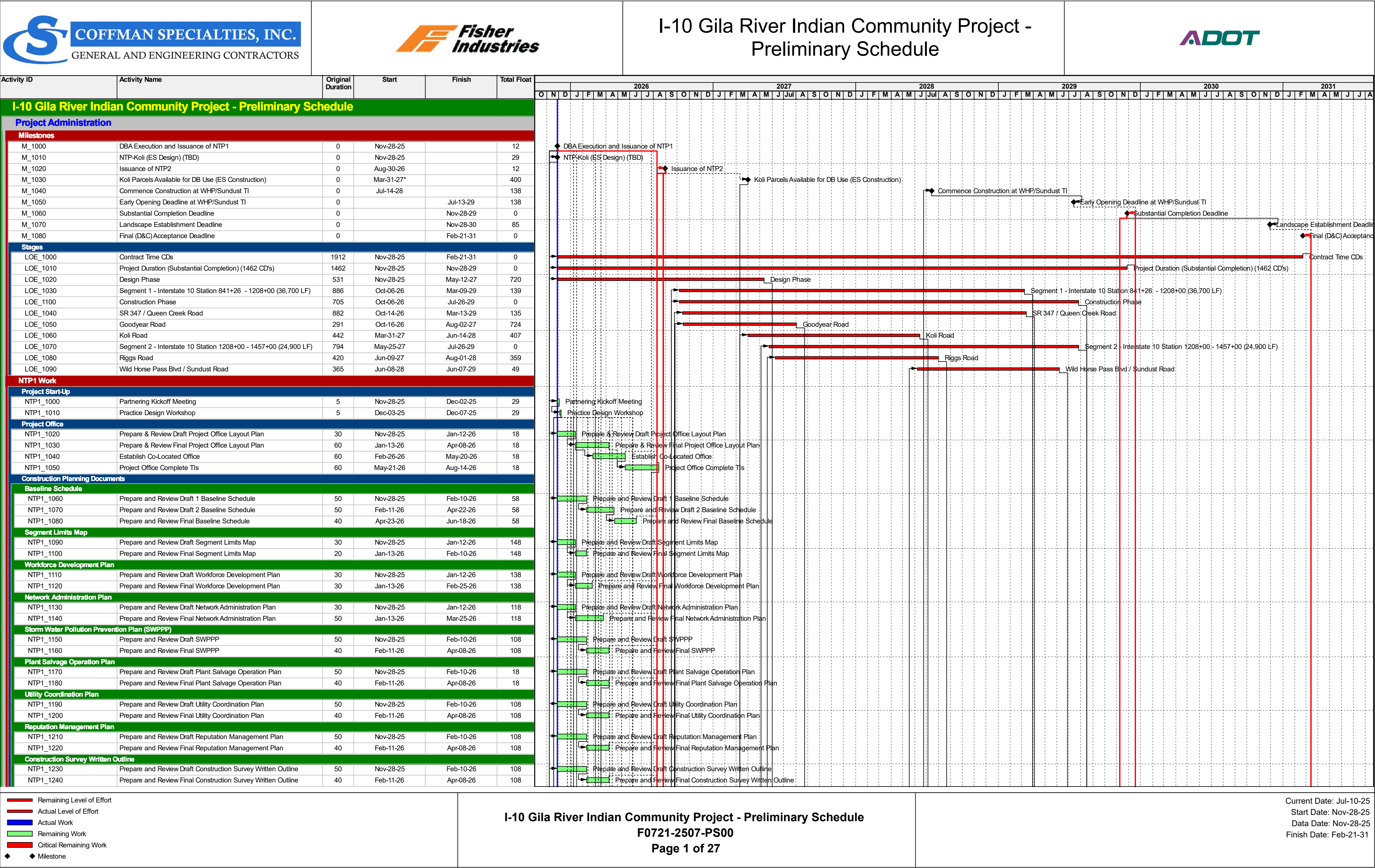
\$ 410,785,000

(For Comparison with
Form M-1)

Form M-2 Contract Price Draw/Cash Flow Curve



1	EXHIBIT 2-4	PRELIMINARY SCHEDULE
2		<i>See Attached</i>



 Remaining Level of Effort  Actual Level of Effort  Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 2 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

 Remaining Level of Effort  Actual Level of Effort  Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 3 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

Remaining Level of Effort
 Actual Level of Effort
 Actual Work
 Remaining Work
 Critical Remaining Work
 Milestone

I-10 Gila River Indian Community Project - Preliminary Schedule

F0721-2507-PS00

Page 5 of 27

Current Date: Jul-10-25

Start Date: Nov-28-25

Data Date: Nov-28-25

Finish Date: Feb-21-31

 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 6 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 7 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

 Remaining Level of Effort Actual Level of Effort  Actual Work  Remaining Work  Critical Remaining Work Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 8 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

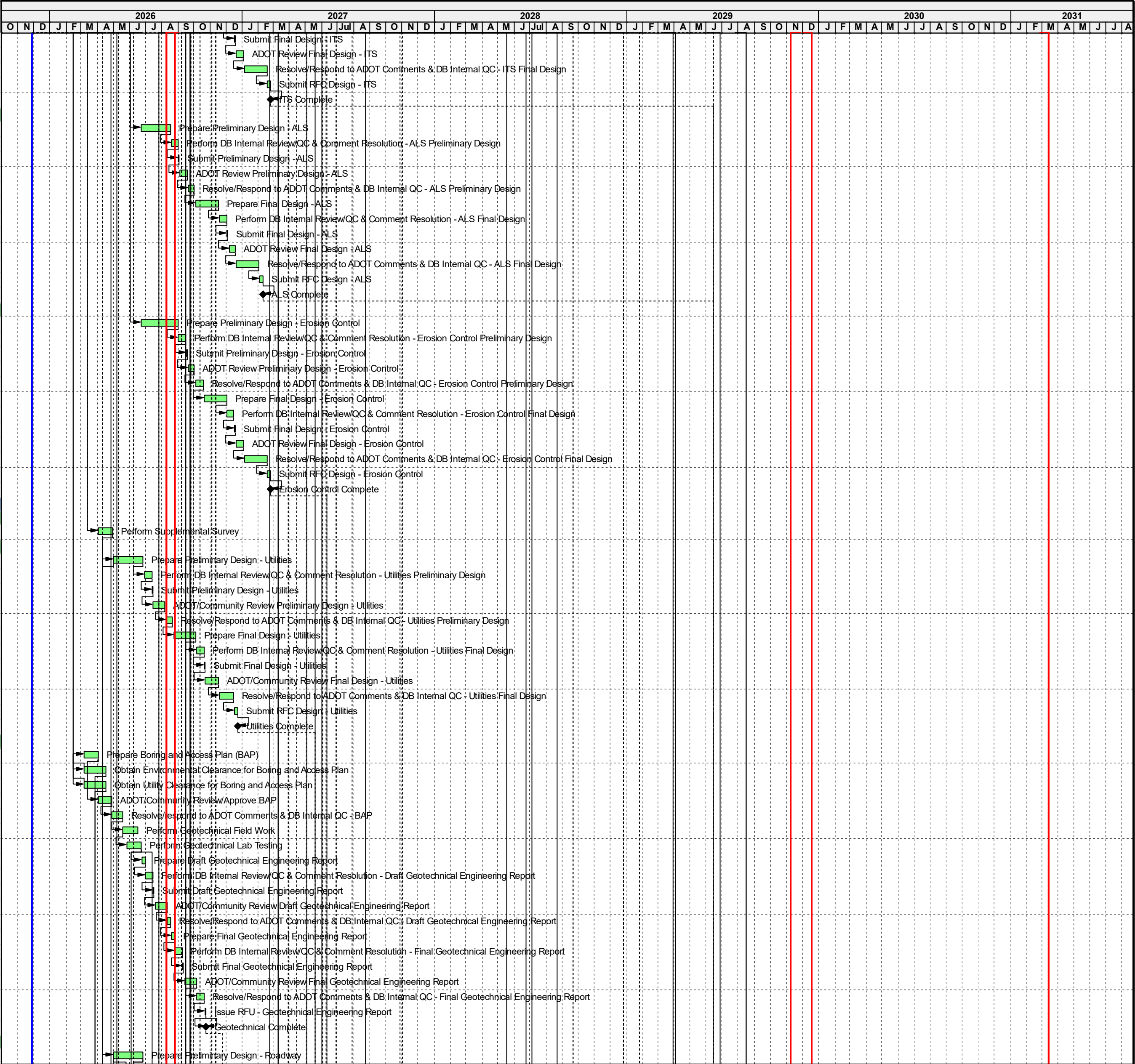
 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 9 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

 Remaining Level of Effort  Actual Level of Effort  Actual Work Remaining Work Critical Remaining Work  Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 10 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

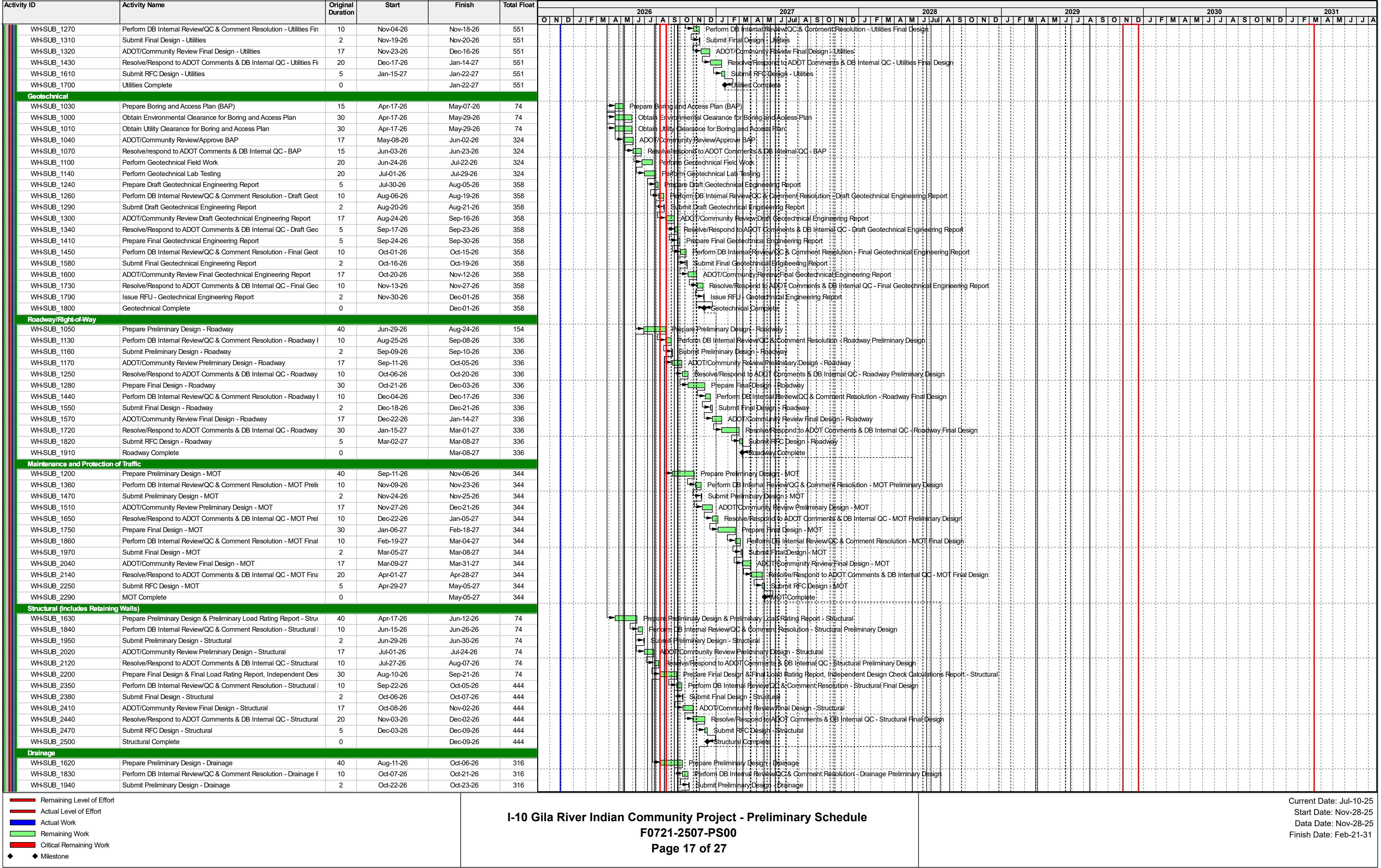
 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 11 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 12 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

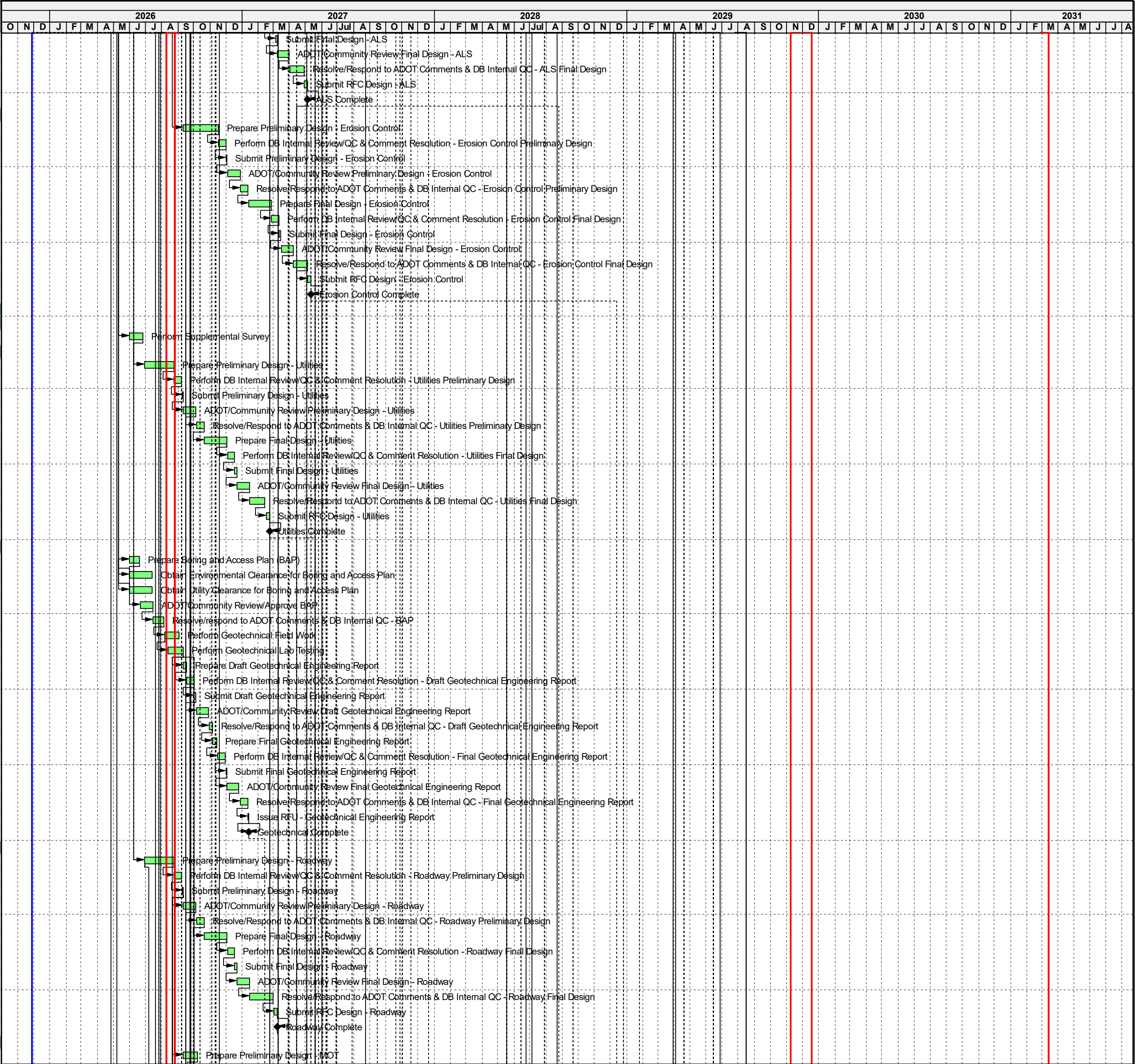




 Remaining Level of Effort  Actual Level of Effort  Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 15 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31



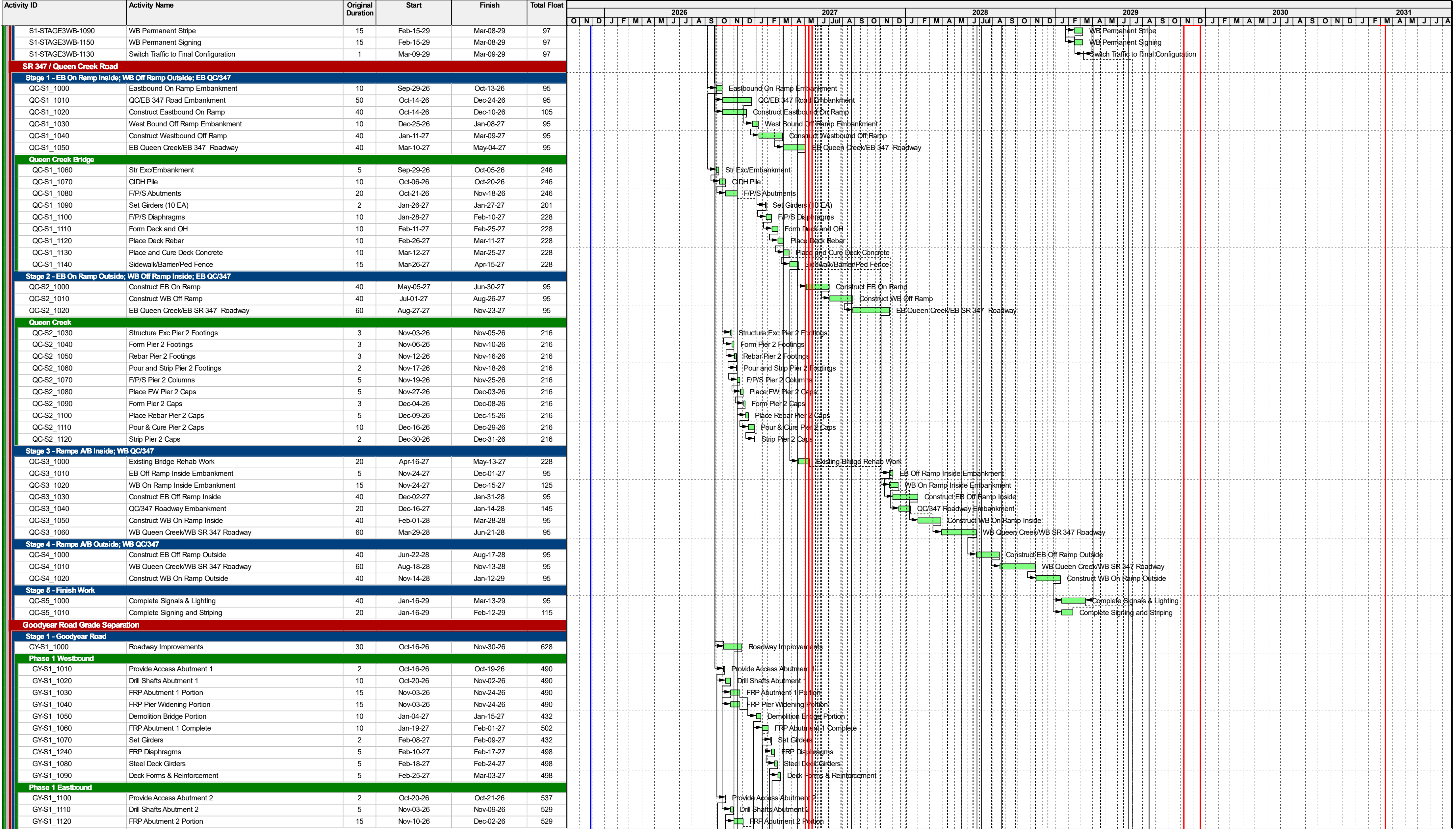
 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 18 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31



 Remaining Level of Effort  Actual Level of Effort  Actual Work  Remaining Work  Critical Remaining Work  Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 20 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31



 Remaining Level of Effort  Actual Level of Effort  Actual Work  Remaining Work  Critical Remaining Work   Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 22 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31



Remaining Level of Effort

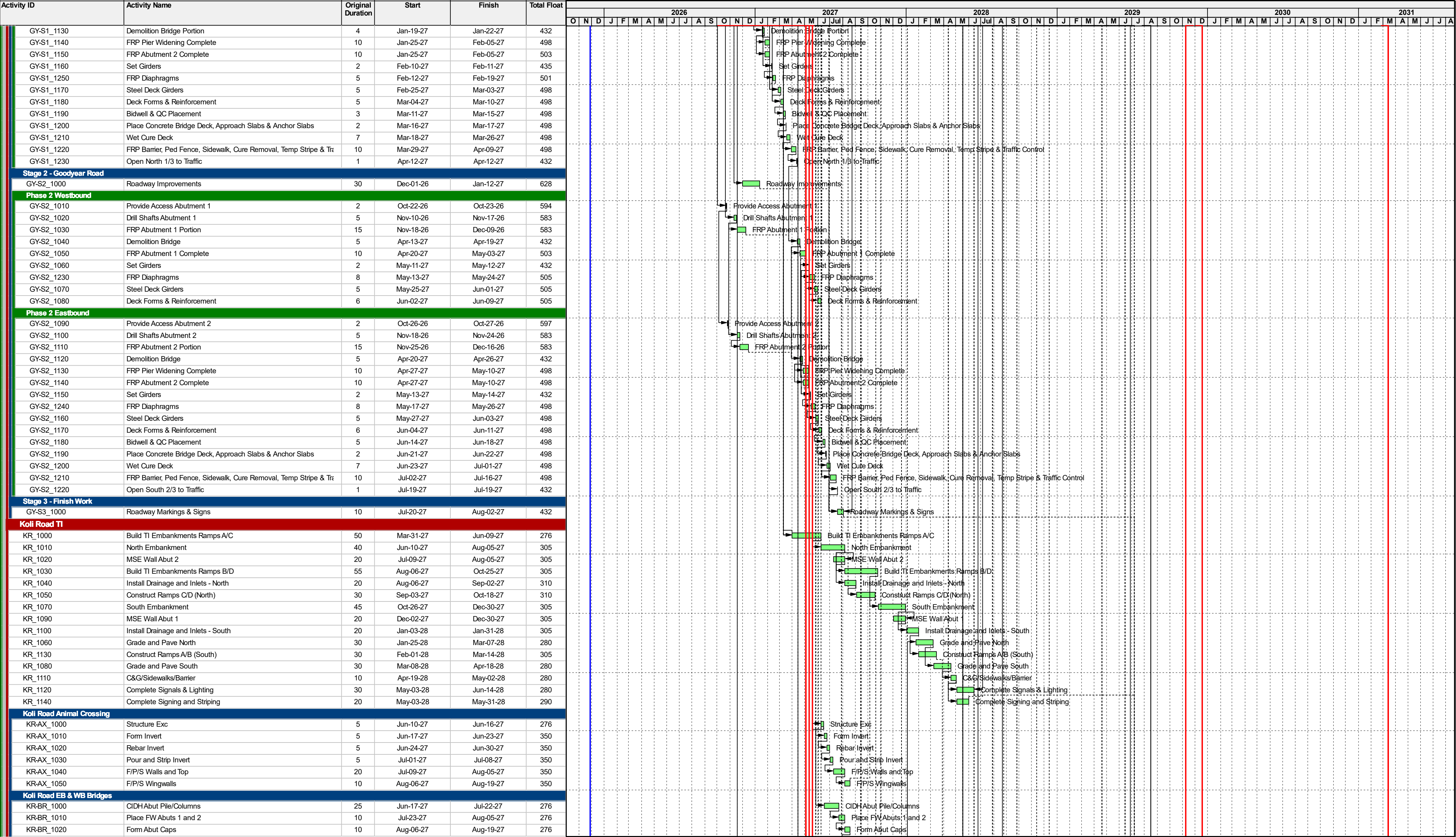
Actual Level of Effort

Actual Work

Remaining Work

Critical Remaining Work

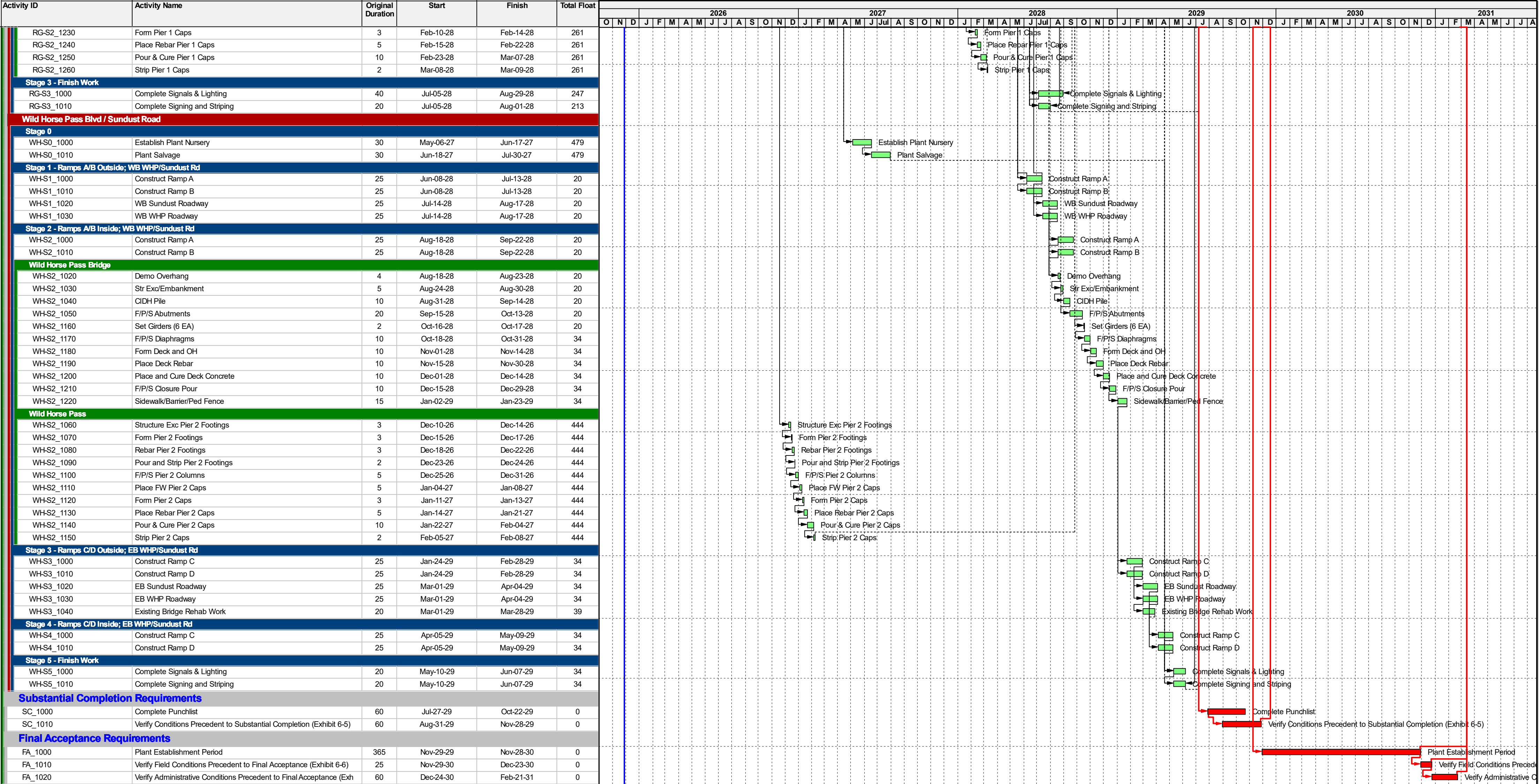
Milestone



 Remaining Level of Effort  Actual Level of Effort  Actual Work Remaining Work Critical Remaining Work  Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 25 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31

[illegible]

 Remaining Level of Effort  Actual Level of Effort Actual Work  Remaining Work  Critical Remaining Work Milestone	I-10 Gila River Indian Community Project - Preliminary Schedule F0721-2507-PS00 Page 26 of 27	Current Date: Jul-10-25 Start Date: Nov-28-25 Data Date: Nov-28-25 Finish Date: Feb-21-31



1	EXHIBIT 2-5	EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION
2		<i>See Attached</i>

Form I-1 Equal Employment Opportunity Certification

Proposer: Coffman/Fisher JV

Instructions: To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. Form I-1 has no page limitation.

**CERTIFICATION WITH REGARD TO THE
PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL
OPPORTUNITY CLAUSE
OF EXECUTIVE ORDER NO. 99-4 AND THE FILING OF REPORTS**

AUGUST 1, 2000

The undersigned contractor or subcontractor, as appropriate, hereby certifies that he either has or has not, as indicated, participated in previous contract or subcontract subject to the equal opportunity clause in Executive Order No. 99-4 of March 26, 1999, and furthermore that he either has or has not, as indicated, filed with the Highways Division, Arizona Department of Transportation, or the Arizona Civil Rights Division, all reports due under the filing requirements of the regulations of the Arizona Civil Rights Division.

Participated in previous contracts: Yes ☐ No ☒

Filed Required reports: Yes ☐ No ☒

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Colleen Coffman

Title: President

Firm: Coffman/Fisher JV

Date: July 14, 2025

Signature: 

Print Name: Todd Mack

Title: Chief Business Officer

Firm: Coffman/Fisher JV

Date: July 14, 2025

Form I-1 Equal Employment Opportunity Certification

Proposer: Coffman/Fisher JV
Instructions: To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. <u>Form I-1</u> has no page limitation.

**CERTIFICATION WITH REGARD TO THE
PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL
OPPORTUNITY CLAUSE
OF EXECUTIVE ORDER NO. 99-4 AND THE FILING OF REPORTS**

AUGUST 1, 2000

The undersigned contractor or subcontractor, as appropriate, hereby certifies that he either has or has not, as indicated, participated in previous contract or subcontract subject to the equal opportunity clause in Executive Order No. 99-4 of March 26, 1999, and furthermore that he either has or has not, as indicated, filed with the Highways Division, Arizona Department of Transportation, or the Arizona Civil Rights Division, all reports due under the filing requirements of the regulations of the Arizona Civil Rights Division.

Participated in previous contracts: Yes ☒ No ☐
Filed Required reports: Yes ☒ No ☐

Proposer: Coffman/Fisher JV

Signature: 
Print Name: Colleen Coffman
Title: President
Firm: Coffman Specialties, Inc.
Date: July 14, 2025

Form I-1 Equal Employment Opportunity Certification**Proposer:** Coffman/Fisher JV**Instructions:** To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. Form I-1 has no page limitation.

**CERTIFICATION WITH REGARD TO THE
PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL
OPPORTUNITY CLAUSE
OF EXECUTIVE ORDER NO. 99-4 AND THE FILING OF REPORTS**

AUGUST 1, 2000

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Participated in previous contracts: Yes ☒ No ☐Filed Required reports: Yes ☒ No ☐**Proposer:** Coffman/Fisher JVSignature: Print Name: Todd MackTitle: Chief Business OfficerFirm: Fisher Sand & Gravel Co.Date: July 14, 2025

Form I-1 Equal Employment Opportunity Certification

Proposer: Coffman/Fisher JV

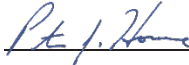
Instructions: To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. Form I-1 has no page limitation.

**CERTIFICATION WITH REGARD TO THE
PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL
OPPORTUNITY CLAUSE
OF EXECUTIVE ORDER NO. 99-4 AND THE FILING OF REPORTS**

AUGUST 1, 2000

The undersigned contractor or subcontractor, as appropriate, hereby certifies that he either has or has not, as indicated, participated in previous contract or subcontract subject to the equal opportunity clause in Executive Order No. 99-4 of March 26, 1999, and furthermore that he either has or has not, as indicated, filed with the Highways Division, Arizona Department of Transportation, or the Arizona Civil Rights Division, all reports due under the filing requirements of the regulations of the Arizona Civil Rights Division.

Participated in previous contracts: Yes ☐ No ☒
Filed Required reports: Yes ☐ No ☒
To the best of our knowledge.

Proposer: Coffman/Fisher JV
Signature: 
Print Name: Peter Howe
Title: Senior Vice President, Major Projects
Firm: Stantec Consulting Services Inc.
Date: July 3, 2025

See attached Microsoft Word file for fillable form.

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Participated in previous contracts:	Yes	☒	No	☐
Filed Required reports:	Yes	☒	No	☐

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Gary Fromm

Title: Practice Director

Firm: Ardurra

Date: 07/07/2025

See attached Microsoft Word file for fillable form.

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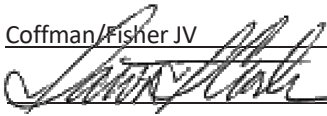
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Participated in previous contracts: Yes ☒ No ☐
Filed Required reports: Yes ☒ No ☐

Proposer: Coffman/Fisher JV
Signature: 
Print Name: Dawn D Cartier
Title: President
Firm: CivTech Inc.
Date: July 7, 2025

See attached Microsoft Word file for fillable form.

Form I-1 Equal Employment Opportunity Certification**Proposer:** Coffman/Fisher JV**Instructions:** To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. Form I-1 has no page limitation.

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Participated in previous contracts: Yes ☐ No ☒Filed Required reports: Yes ☐ No ☒**Proposer:** Coffman/Fisher JVSignature: Saeid AsgariPrint Name: Saeid Asgari, PETitle: Project ManagerFirm: CQMS, Construction Quality Management Solutions, Inc.Date: 6/18/2025

Form I-1 Equal Employment Opportunity Certification

Proposer: Coffman/Fisher JV

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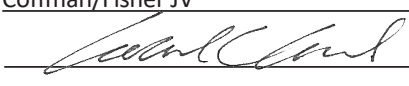
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Participated in previous contracts: Yes ☒ No ☐

Filed Required reports: Yes ☒ No ☐

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Edward Corral _____

Title: President _____

Firm: Corral Design Group, Inc. _____

Date: 7/7/25 _____

See attached Microsoft Word file for fillable form.

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Proposer: Coffman/Fisher JV

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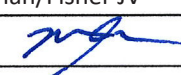
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Participated in previous contracts: Yes ☒ No ☐

Filed Required reports: Yes ☒ No ☐

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Ross Genenbacher

Title: Vice President

Firm: CS Construction, Inc.

Date: 06/23/2025

See attached Microsoft Word file for fillable form.

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Participated in previous contracts:	Yes	☒	No	☐
Filed Required reports:	Yes	☒	No	☐

Proposer: Coffman/Fisher JV
Signature: Courtney M. Arviso
Print Name: Courtney Arviso
Title: Engineer
Firm: Geotechnical Testing Services, Inc.
Date: 06/20/25

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Participated in previous contracts: Yes ☒ No ☐
Filed Required reports: Yes ☒ No ☐

Proposer: Coffman/Fisher JV
Signature: Jill Himes
Print Name: Jill Himes
Title: Owner
Firm: Himes Consulting, LLC
Date: 6-16-25

Digitally signed by Jill Himes
DN: cn=Jill Himes, o=Himes Consulting, LLC, ou,
email=jill@himesconsulting.com, c=US
Date: 2025.06.16 17:46:15 -0700

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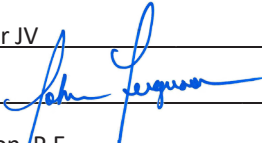
Proposer: Coffman/Fisher JV
Instructions: To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. <u>Form I-1</u> has no page limitation.

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Participated in previous contracts: Yes ☒ No ☐
Filed Required reports: Yes ☒ No ☐

Proposer: Coffman/Fisher JV
Signature: 
Print Name: John Ferguson, P.E.
Title: Vice President – Design-Build
Firm: Jacobs Engineering Group Inc.
Date: July 7, 2025

See attached Microsoft Word file for fillable form.

Form I-1 Equal Employment Opportunity Certification**Proposer:** Coffman/Fisher JV**Instructions:** To be executed by the Proposer, Equity Members, Major Non-Equity Members, and proposed known Subcontractors. Form I-1 has no page limitation.

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Participated in previous contracts: Yes ☐ No ☒Filed Required reports: Yes ☐ No ☒**Proposer:** Coffman/Fisher JVSignature: Print Name: Newel WhiteTitle: Associate COOFirm: Raba Kistner, IncDate: 6/19/25

Form I-1 Equal Employment Opportunity Certification

Proposer: Coffman/Fisher JV

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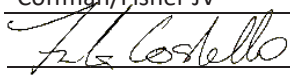
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Participated in previous contracts: Yes ☐ No ☒

Filed Required reports: Yes ☐ No ☒

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Frank Costello

Title: President

Firm: Terrane Engineering Corporation

Date: June 24, 2025

1 **EXHIBIT 2-6 INTENTIONALLY LEFT BLANK**

1	EXHIBIT 2-7	BUY AMERICA CERTIFICATION
2		<i>See Attached</i>

Form H-1 Buy America Certification

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

A. Proposer, the Design-Builder and all Subcontractors shall comply with the Federal Highway Administration (FHWA) Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Project only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. Notwithstanding any other provision of this certification, this requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Contract Price.

B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, Proposer has the burden of proof to establish that it is in compliance.

C. At Proposer's request, ADOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Proposer certifies that it, the Design-Builder and all Subcontractors will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by ADOT.

D. All material fully incorporated into the Project must be certified to comply with Buy America on the appropriate material certification documents. Material certification documents must be signed by the appropriate material Suppliers and not the Design-Builder or Subcontractors.

(Must be signed by the Proposer's authorized representative)

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Colleen Coffman

Title: President

Firm: Coffman/Fisher JV

Date: July 14, 2025

Signature: 

Print Name: Todd Mack

Title: Chief Business Officer

Firm: Coffman/Fisher JV

Date: July 14, 2025

1 **EXHIBIT 2-8 INTENTIONALLY LEFT BLANK**

1 **EXHIBIT 2-9 INTENTIONALLY LEFT BLANK**

1 **EXHIBIT 2-10 KEY PERSONNEL**

No.	Key Personnel Position	Design-Builder Named Key Personnel	Job Description and Requirements
1.	Project Manager	Armando Garcia	See <u>TP Section 110.03(B)(1)</u>
2.	Construction Manager	Norman Bessler	See <u>TP Section 110.03(B)(2)</u>
3.	Design Manager	Rob Lemke, PE	See <u>TP Section 110.03(B)(3)</u>
4.	Maintenance of Traffic (MOT) Manager	Adam Carreon, PE	See <u>TP Section 110.03(B)(4)</u>
5.	Construction Quality Manager (CQM)	Courtney Arviso, PE	See <u>TP Section 110.03(B)(5)</u>
6.	Professional Services Quality Manager (PSQM)	Gary Fromm, PE	See <u>TP Section 110.03(B)(6)</u>
7.	Safety Manager	Jon Acuña	See <u>TP Section 110.03(B)(7)</u>
8.	Workforce Development Coordinator	Maria Espinoza-Yepes	See <u>TP Section 110.03(B)(8)</u>
9.	Environmental Compliance Manager (ECM)	Don Smith	See <u>TP Section 110.03(B)(9)</u>

2

1	EXHIBIT 2-11	CONFLICT OF INTEREST DISCLOSURE STATEMENT
2		<i>See Attached</i>

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, Equity Members, Major Non-Equity Members, proposed consultants and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. Such disclosure is required for organizational conflicts of interest as defined or described in 23 CFR Section 636.103, in ADOT's conflict of interest policy for the Project provided as RFP Exhibit 5 (Conflict of Interest Policy), and in the laws and other policies referenced in ITP Section 3.08(B)(2).

Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

The Coffman/Fisher JV (CFJV) is not aware of any past, present, of planned interests of the CFJV's team (including the CFJV, Coffman Specialties, Inc., Fisher Sand and Gravel Co., Stantec Consulting Services, Inc., proposed consultants, proposed Subcontractors, and their respective chief executives, directors, and key personnel) that may result, or could be viewed as an organizational conflict of interest in connection with this RFP.

In that regard, we hereby disclose the following:

a) Current contractual relationships with ADOT:

- CFJV – No current contractual relationships
- Coffman Specialties, Inc. – Prime Contract for Project No. 101 MA 016 F031601C
- Fisher Sand and Gravel Co – Prime Contract(s) for Project No(s):

- 040-A(212)S H799301C
- 010-A(239)T F058301C
- 040-A(385)T F058501C
- 010-A(236)T F038501C
- 086-A-(227)T F054901C

b) Past, present or planned contractual relationships with any ADOT member, officer, or employee:

Neither the CFJV, Coffman Specialties Inc., nor Fisher Sand & Gravel have any past, present or planned contractual or employment relationships with any ADOT member, officer, or employee.

c) The CFJV knows of no other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if the CFJV is awarded the DBA.

Also, the CFJV made two prior disclosures regarding a potential conflict of interest.

The CFJV determined that the disclosures met the foregoing disclosure requirements.

ADOT subsequently issued eligibility determinations for each of the disclosures (described below):

Disclosure No. 1

- i. Circumstance: a potential organizational conflict of interest existed due to a spousal relationship between Above Barr Marketing, the firm hired by the CFJV to assist in the marketing development of the CFJV's Technical Proposal, and T.Y. Lin, a subconsultant to the Lead Designer on the FNF Team.
- ii. Previous Disclosure: The CFJV certifies that all required information has been previously disclosed.
- iii. Notice of Eligibility: ADOT issued a notice of eligibility on January 29, 2025.

Disclosure No. 2

- i. Circumstance: a potential organizational conflict of interest existed between CFJV's Proposed Independent Quality Firm (Raba Kistner, Inc.), and a consultant (T2 UES, Inc.) that provided services to ADOT during the project development stage of the I-10 GRIC Project. This is because Raba Kistner, Inc. and T2 UES, Inc. were both previously acquired by Kiwa Group.
- ii. Previous Disclosure: The CFJV certifies that all required information has been previously disclosed.
- iii. Notice of Eligibility: ADOT issued a notice of eligibility on March 31, 2025.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

Disclosure No. 1

In a letter to ADOT dated September 13, 2024, the CFJV Proposed that the following step taken sufficiently mitigated the potential conflict:

- The CFJV had requested that Above Barr Marketing enter into a Confidentiality/Non-Disclosure Agreement ("the agreement") during the SOQ Phase of the I-10 GRIC Project procurement. A copy of the agreement dated February 23, 2024 (the "Effective Date"), was provided. The confidentiality obligations contained therein remain effective as of the Effective Date and remain effective until February 23, 2026. (two years from the Effective Date).

In a letter to the CFJV dated January 29, 2025 (previously described), ADOT issued an eligibility determination after reviewing the measures taken by both the CFJV and FNF teams and determined that Above Barr Marketing could continue its participation on the CFJV team.

Disclosure No. 2

A letter from Raba Kistner to CFJV dated March 11, 2025, was included in CFJV's letter to ADOT dated March 14, 2025, disclosing the potential conflict. The Raba Kistner letter clarified the distinct and independent nature of RK and T2 UES, Inc. within the broader Kiwa group structure stating the following:

"While both RK and T2 UES, Inc. ultimately share a common parent entity, they operate as separate and independent business units. Specifically:

- *Independent Directorship/Leadership: RK is led by its own localized management teams and reports to the RK Board of Directors, which consists of Chris Schultz, Renan Pierre-Louis, Gary Raba and Matt Courtney. This governance structure operates independently of T2 UES, Inc.*
- *No Overlap in Operations: RK and T2 UES, Inc. maintain completely separate operational management, resources, and decision-making processes. Raba Kistner, Inc. has not discussed the project with any representatives of T2 UES, Inc., and will not pursue any information in the future. Raba Kistner, Inc., and T2 UES, Inc. maintains separate IT systems, data storage, and access controls limited to its employees, so one company cannot access non-public information of the other. Proposer and T2 UES, Inc. maintain independent financial records and bank accounts.*

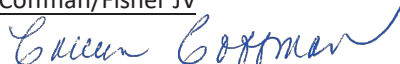
Additionally: (i) neither RK nor T2 UES, Inc. owns 10% or more of the stock of the other; (ii) there are no joint ventures, partnerships, or contractual agreements between RK and any ADOT consultant that would create an unfair competitive advantage; (iii) T2 UES, Inc. is not a contractor, consultant, subcontractor, or subconsultant to RK or any member of RK's team."

In a letter to the CFJV dated March 31, 2025, (previously described), ADOT issued an eligibility determination stating that the measures implemented by Raba Kistner, Inc. to mitigate the potential organizational conflict of interest as described in the Raba Kistner letter dated March 11, 2025 were satisfactory to ADOT, and Raba Kistner could continue participating on the CFJV team.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

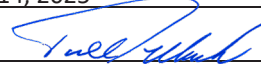
Signature: 

Print Name: Colleen Coffman

Title: President

Firm: Coffman/Fisher JV

Date: July 14, 2025

Signature: 

Print Name: Todd Mack

Title: Chief Business Officer

Firm: Coffman/Fisher JV

Date: July 14, 2025

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, Equity Members, Major Non-Equity Members, proposed consultants and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. Such disclosure is required for organizational conflicts of interest as defined or described in 23 CFR Section 636.103, in ADOT's conflict of interest policy for the Project provided as RFQ Exhibit 5 (Conflict of Interest Policy), and in the laws and other policies referenced in ITP Section 3.08(B)(2).

Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

Please see attachment.

2. Explanation

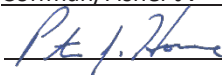
In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

See attached.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Peter Howe

Title: Senior Vice President, Major Projects

Firm: Stantec Consulting Services Inc.

Date: July 14, 2025

See attached Microsoft Word file for fillable form.



Stantec Consulting Services Inc.

Date: July 14, 2025

Re: Identification of Any Organizational Conflicts of Interest

On behalf of lead design firm, Stantec Consulting Services Inc. and in accordance with RFP ITP for Phoenix – Casa Grande Highway (I-10) SR 202L (Santan/South Mountain) to Gila River Bridge Design-Build Capacity Improvements, Form E-1, Conflict of Interest Disclosure Statement, please see below.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

a) Stantec's current contractual relationships with ADOT:

Project Name	Location	ADOT PM	Contract #
City of Douglas POE Conn Rd	Douglas, AZ	Tazeen Dewan	2023-003
Panther Drive; US 60-Sunset Dr	Superior, AZ	Tricia Brown	2022-006.15
Golden Hill Rd Sidewalk.	Globe, AZ	Tricia Brown	2022-006.15
T0119 01C FYA City of Glendale	Glendale, AZ	Angela (Angie) Galletti	2022-006.15
F0627 01C 260 PDS	Overgaard, AZ	Jeff Davidson	2022-006.15
MB&D ADOT 2026 PDOC	AZ	Various	2022-006.15

b) Past, present or planned contractual relationships with any ADOT member, officer, or employee:

- Upon reasonable inquiry, Stantec believes it has no past, present, or planned contractual relationships with any ADOT member, officer, or employee.

c) Any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA:

- Upon reasonable inquiry, Stantec believes there are no circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA.

d) Ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2):

- Upon reasonable inquiry Stantec believes that it does not have ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

e) Contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team.

- Upon reasonable inquiry Stantec discloses that:
 - Stantec and HDR Engineering, Inc have formed an unincorporated joint venture for San Francisco Public Utilities Commission's Water CIP Program Management contract and providing program management and technical support services for Water CIP projects in the San Francisco area.

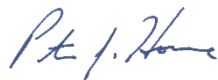
- Stantec and Aztec Engineering Group, Inc. dba TYPSE US have formed a joint venture in advance of the issuance of a solicitation. Should the JV be awarded the contract, the end client will be United States Army Corps of Engineers (USACE), Transatlantic Middle East District (TAM). The contract will be a multiple year Indefinite Delivery Indefinite Quantity (IDIQ) Single Award Task Order Contract (SATOC) under the Selection of Professional Services Statute, also known as The Brooks Act, and the Federal Acquisition Regulation (FAR) part 36 (A&E services). Multiple Task Orders (projects) would be awarded for which the JV would provide qualified personnel who can monitor construction and facilities maintenance, with project locations throughout the Kingdom of Saudi Arabia (KSA).
- Stantec has consultant and/or subconsultant relationships with the following list of firms from ITP Section 3.08(B)(2).
 - HDR Engineering, Inc
 - Rider Levett Bucknall Ltd.
 - T2 UES, Inc.
 - Terracon Consultants Inc.
- The contractual relationships with the ADOT consultants listed are unrelated to and have no effect on the ADOT I-10 Project for which we are proposing.

- f) If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest
- Stantec did not make a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest.

2. Explanation

Upon reasonable inquiry, Stantec believes that the disclosures listed do not result in an organizational conflict of interest. There are no activities or relationships with other persons, that cause a person unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. These disclosures have no effect on the Project.

Sincerely,



Peter Howe
Senior Vice President, Major Projects
Stantec Consulting Services Inc.
Peter.Howe@Stantec.com
(781) 221-1121

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, Equity Members, Major Non-Equity Members, proposed consultants and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. Such disclosure is required for organizational conflicts of interest as defined or described in 23 CFR Section 636.103, in ADOT's conflict of interest policy for the Project provided as RFQ Exhibit 5 (Conflict of Interest Policy), and in the laws and other policies referenced in ITP Section 3.08(B)(2).

Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

Ardurra currently has the active contracts with ADOT listed below and there is no conflict of interest in connection with this RFP.

ADOT Right of Way On-Call – Contract No. 2020-007.07

ADOT Project Development On-Call – Contract No. 2022-066.13

Russell Road; MP 3.5 – MP 5.2 – Contact No. 2025-005

2. Explanation

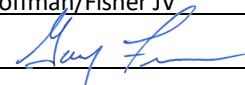
In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

If a conflict of interest is identified, Ardurra will take immediate action to isolate the conflict and develop a firewall between the parties that will include restricting communication, sharing of information and files.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Gary Fromm

Title: Practice Director

Firm: Ardurra Group, Inc.

Date: 07/07/2025

See attached Microsoft Word file for fillable form.

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

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Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

No potential conflicts of interest have been identified.

2. Explanation

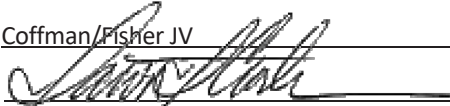
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N/A

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Dawn D Cartier

Title: President

Firm: CivTech Inc.

Date: July 7, 2025

See attached Microsoft Word file for fillable form.

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, Equity Members, Major Non-Equity Members, proposed consultants and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. Such disclosure is required for organizational conflicts of interest as defined or described in 23 CFR Section 636.103, in ADOT's conflict of interest policy for the Project provided as RFP Exhibit 5 (Conflict of Interest Policy), and in the laws and other policies referenced in ITP Section 3.08(B)(2).

Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

CQMS, Construction Quality Management Solutions, Inc. does not have any Past Present or Planned Conflict of Interest to disclose.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

If any future COI is discovered CQMS, Inc. will immediately disclose it to all parties.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: Saeid Asgari

Print Name: Saeid Asgari, PE

Title: Project Manager

Firm: CQMS, Construction Quality Management Solutions, Inc.

Date: 6/17/2025

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

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Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

Disclosures: Subconsultants current subcontracts with Prime Consultants on the following ADOT Contracts:

SR 30, Sr 202L to 71st Avenue – Contract # 2024-018.02, F050101D

SR 303L, MC85 to Van Buren – Contract # 2021-006, H687001D

SR 24, SR202 to Ironwood Dr – Contract # 2024-009, F071901D

SR 101/I-10 TI – Contract # 2022-005, F047501D

ADOT PDOC – Contract # 2022-006 (various)

ADOT Geotech On Call – Contract # 2023-009.03 (various)

ADOT Temp Tech On Call - 2022-014 (various)

SR 101, 75th Avenue to I-17 – Contract # 2020-024, F031601D

SR 260, Lion Springs – Contract # 2020-020, F013901D

I-10, I-17 to SR 202L GEC – Contract # 2018-018

I-17, Anthem to Sunset Point GEC – Contract # 2020-013

I-10, SR 85 to Citrus – Contract # 2024-005, F066001D

2. Explanation

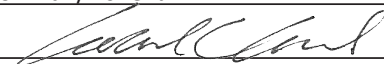
In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

It is the opinion of CDG that no organizational conflicts of interest are known on this contract. Confidentiality agreements are in place for this project and will continue to be enforced by CDG throughout the project. Therefore, no additional steps are proposed by CDG. If in the opinion of ADOT additional steps are necessary to avoid, neutralize, or mitigate potential conflicts, Corral Design Group Inc. will follow directives as determined by ADOT.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Edward C. Corral

Title: President

Firm: Corral Design Group,

Inc. Date: July 7, 2025

See attached Microsoft Word file for fillable form.

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

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Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

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If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

N/A

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

N/A

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JVSignature: Print Name: Ross GenenbacherTitle: Vice PresidentFirm: CS Construction, Inc.Date: 06/23/2025

See attached Microsoft Word file for fillable form.

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

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Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

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N/A

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

N/A

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JVSignature: Courtney M. ArvisoPrint Name: Courtney ArvisoTitle: EngineerFirm: Geotechnical Testing Services, Inc.Date: 06/19/25

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, Equity Members, Major Non-Equity Members, proposed consultants and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. Such disclosure is required for organizational conflicts of interest as defined or described in 23 CFR Section 636.103, in ADOT's conflict of interest policy for the Project provided as RFQ Exhibit 5 (Conflict of Interest Policy), and in the laws and other policies referenced in ITP Section 3.08(B)(2).

Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

N/A

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

N/A

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV
Signature: Jill Himes
Print Name: Jill Himes
Title: Owner
Firm: Himes Consulting, LLC
Date: 6-16-2025

Digitally signed by Jill Himes
DN: cn=Jill Himes, ou=Himes Consulting, LLC, ou=
email=jillhimes@himes.com, c=US
Date: 2025.06.16 17:46:59 -0700

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer's team (including the Proposer, Design-Builder, Equity Members, Major Non-Equity Members, proposed consultants and proposed Subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP. Such disclosure is required for organizational conflicts of interest as defined or described in 23 CFR Section 636.103, in ADOT's conflict of interest policy for the Project provided as RFQ Exhibit 5 (Conflict of Interest Policy), and in the laws and other policies referenced in ITP Section 3.08(B)(2).

Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

Proposer should also disclose contractual relationships with any such ADOT consultant in the nature of a joint venture, as well as relationships wherein the consultant is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer's team. The foregoing is provided by way of example and shall not constitute a limitation on the disclosure obligations.

If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

See Conflict of Interest Disclosure Supplement to Form G for additional information.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

Disclosed projects with the following firms:

- Ardurra Group, Inc.
- Aztec Engineering Group Inc.
- Bowman Consulting Group Ltd
- Burgess & Niple, Inc.
- CivTech Inc.
- Corral Design Group Inc.
- HDR Engineering, Inc.
- High Street Consulting Group, LLC
- Kuniklo Corporation
- NFRA, Inc.

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: _____

Print Name: John Ferguson, P.E.

Title: Vice President – Design-Build

Firm: Jacobs Engineering Group Inc.

Date: July 7, 2025

See attached Microsoft Word file for fillable form.



**Challenging today.
Reinventing tomorrow.**

1501 West Fountainhead Parkway
Suite 401
Tempe, AZ 85282
United States
T +1 480 966 8188
F +1 480 966 9450
www.jacobs.com

April 22, 2025

Attn:
Arizona Department of Transportation
Sarker Rahman, Procurement Manager
205 South 17th Avenue, MD 121F Phoenix, Arizona 85007
F0721_db_i-10@azdot.gov

Project Name: Phoenix-Casa Grande Highway (I-10) SR 202L (Santan/South Mountain) to Gila River Bridge
Project No: 010 MA 161 F0721 01C (Federal Project No: 010-C-NFA)

Subject: Conflict of Interest Disclosure Supplement to Form E-1

To Whom It May Concern,

Regarding the subject project, Jacobs Engineering Group Inc. (Jacobs) was shortlisted as a member of the Coffman Specialties-Fisher Industries Joint Venture team. Upon good faith review, formed after reasonable inquiry, Jacobs has found no projects that the firm took part in along the I-10 corridor that would be perceived as a conflict of interest.

Jacobs acknowledges its ongoing obligations outlined in the Conflict of Interest policy. Jacobs does not have an organizational conflict of interest in connection with this RFP as defined or described by ADOT in the RFP, or in the laws and policies referenced relating to past, present, or planned interest of the Proposer's team, proposed consultants, and proposed subcontractors, and their respective chief executives, directors, and key project personnel.

Jacobs has no past, present, or planned contractual or employment relationships with any ADOT member, officer or employee. Furthermore, Jacobs has reviewed and vetted relationships, and there are no other circumstances that might be considered to create a financial interest in the contract by any ADOT member, officer, or employee if Coffman Specialties-Fisher Industries Joint Venture is awarded the DB contract. Jacobs has no stock ownership in and no directors in common with any of the ADOT Consultants listed in Exhibit G.

Jacobs holds, or has held, contract agreements with ADOT (as a prime), members of the General Engineering Consultant (GEC) Team (as a prime or subconsultant), and members of the Coffman Specialties-Fisher Industries Joint Venture Team (as a prime or subconsultant) over the last 3 years. Those contracts have been included as a supplement to this letter after the signature page. However, none of those contractual agreements directly, indirectly, or organizationally relate to the subject project.

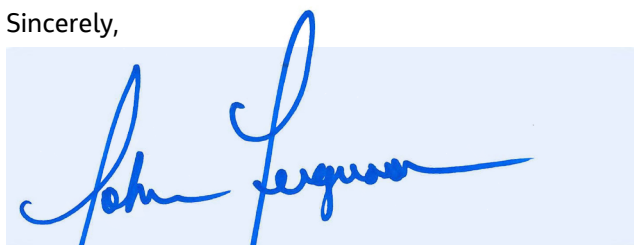
We respectfully request that ADOT make the determination of no conflict of interest in relation to the subject project and our involvement in the pursuit of the project in our role as a subconsultant to Stantec on the Coffman Specialties-Fisher Industries Joint Venture Team. If there are other steps ADOT would like us to take to avoid the appearance of a conflict of interest, please let us know, so we can make the appropriate arrangements.

Date: 22 April 2025

Subject: Conflict of Interest Disclosure Supplement to Form E-1

Jacobs

Sincerely,



John Ferguson, PE
Jacobs' Authorized Signatory

(503) 559-0055 (cell)
john.ferguson1@jacobs.com

Date: 22 April 2025**Subject:** Conflict of Interest Disclosure Supplement to Form E-1

**Current or Recent Contractual Relationships with ADOT
(Jacobs is Prime Consultant to ADOT)**

ADOT Contract No.	Project Name
CTR053899 dated 2/8/2021	On Call Transit Consulting Services
CTR060473 dated 5/24/2022	Multimodal Transportation Planning Consulting Services
CTR060239 dated 5/4/2022	Geospatial Transportation Planning On Call
CTR062474 dated 9/30/2022	Transportation Systems Mgmt & Operations (TSMO) On Call Consultants
2018-006.10 dated 1/28/2019	Project Development On-Call Statewide Locations
2019-002 dated 1/28/2019	I-40/US93 (Kingman TI) System Interchange Enhancement Study
2019-001 dated 10/17/2018	Management Consultant for Regional Transportation Plan Freeway Program (RTPFP)
2022-005 dated 4/19/2022	SR101L System TI Improvements with I-10, Design Concept Report and Environmental Document
2025-003 dated 11/6/2024	Supplemental Services Temporary Part-Time Project Delivery Manager
2021-018 dated 7/19/2021	Final Design, SR303L, 51st Ave and 43rd Ave Interchanges, New Traffic Interchanges Maricopa County
2022-003.04 dated 4/18/2022	Supplemental Services for Temporary Part-Time Project Delivery Managers
2022-006.07 dated 7/1/2022	Project Development On-Call, Statewide Locations
2023-006 dated 10/2/2023	Cesar Chavez Boulevard Improvements City of San Luis
2023-007 dated 8/14/2024	North-South Corridor Study, I-10 to Arizona Farm Road Design Concept Report and Tier 2 Environmental Impact Study
CTR045707/CTR045746 dated 8/2/2019	On Call Environmental Consultant Services
CTR035991 /17-171966/17-171994 dated 6/1/2017	Consulting Services Transportation Planning On-Call
2013-001.03	Environmental On-Call
2017-028.003	Alternate Project Delivery & Value Methodology

Date: 22 April 2025**Subject:** Conflict of Interest Disclosure Supplement to Form E-1

**Current or Recent Contractual Relationships with ADOT GEC Team or Coffman Specialties-Fisher Industries Joint Venture Team Members
(Jacobs is the Prime Consultant or a Subconsultant)**

Owner Name	Owner Contract No.	Project Name	Jacobs Role	JV or Standard Contract	ADOT Consultant/ Proposed Team Member
City of Phoenix, AZ	Subcontract dated 5/1/2024	CAPEX/I-10WEST TOD (Jacobs as Sub) Land Use Planning and Equitable Housing Consulting	Subconsultant	Standard	Ardurra Group, Inc.
City of Avondale, AZ	Subcontract dated 12/6/2024	East Lower Buckeye Road widening, 107th Avenue to Litchfield Road	Subconsultant	Standard	Ardurra Group, Inc.
ADOT	2021-010	SR86 Kitt Peak Wildlife Linkage Crossing - Design of traffic and roadway elements	Subconsultant	Standard	AZTEC Engineering Group, Inc.
ADOT	2023-004	I-10, Baseline Rd TI, Design Concept Report and Environmental Document - Traffic operations analysis, utilities review and visualization services.	Subconsultant	Standard	AZTEC Engineering Group, Inc.
ADOT	2023-002	I-17 - SR303/ 51st Avenue - Final Design Services	Subconsultant	Standard	AZTEC Engineering Group, Inc.
ADOT	2025-012	On Call Environmental Investigation Services ADOT	Subconsultant	Standard	AZTEC Engineering Group, Inc.
ADOT	2024-007	WO1: ASU College Ave & University Drive	Subconsultant	Standard	Bowman Consulting Group Ltd

Date: 22 April 2025**Subject:** Conflict of Interest Disclosure Supplement to Form E-1

		Pedestrian Underpass (JEG as sub)			
ADOT	2024-001	El Mirage Rd, SR303L to Jomax Road, DCR and EA	Subconsultant	Standard	Burgess & Niple, Inc.
ADOT	2018-001	I-15, Virgin River Bridge Number 1	Subconsultant	Standard	HDR Engineering, Inc.
ADOT	CTR057886	Bridge Grant for I-40/US-93 W. Kingman TI	Subconsultant	Standard	High Street Consulting Group, LLC
ADOT	2022-009	ADOT Environmental Services Support for Five Mile Wash and Little Colorado bridges	Subconsultant	Standard	NFRA, Inc.

**Current or Recent Contractual Relationships with Proposed Subconsultants
(Jacobs is the Prime)**

Owner/Client	Project Name	JV or Standard Contract	Subconsultant
ADOT	Capitol Extension Design Svcs	Standard	Ardurra Group, Inc.
ADOT	NORTHWEST EXTENSION PHASE II TRANSIT ORIENTED DEVELOPMENT PLANNING PROJECT	Standard	Ardurra Group, Inc.
ADOT	Tucson 22nd St Fueling Fac	Standard	Aztec Engineering Group Inc.
ADOT	40th St Bridge - Grand Canal	Standard	Aztec Engineering Group Inc.
ADOT	I-10; Kino Parkway TI's Design	Standard	Aztec Engineering Group Inc.
ADOT	Cesar Chavez Blvd Improvements	Standard	Aztec Engineering Group Inc.
ADOT	Management Consultant RTPFP (multiple tasks)	Standard	Aztec Engineering Group Inc.
ADOT	SR101L & SR51 Ramp	Standard	Aztec Engineering Group Inc.
ADOT	SR303L, 51st Ave & 43rd Ave TI (multiple tasks)	Standard	Aztec Engineering Group Inc.
Valley Metro	Capitol Extension Design Svcs	Standard	Aztec Engineering Group Inc.
Valley Metro	DSDC - NWE II	Standard	Aztec Engineering Group Inc.
ADOT	Statewide Rest Area Study	Standard	CivTech Inc.
ADOT	SR 101L/I-10 DCR - DCR Final Design	Standard	Corral Design Group Inc.

Date: 22 April 2025
Subject: Conflict of Interest Disclosure Supplement to Form E-1



ADOT	West Kingman TI (multiple tasks)	Standard	HDR Engineering, Inc.
ADOT	N-S Corridor, I-10 to AZ Farms	Standard	HDR Engineering, Inc.
ADOT	Capitol Extension Design Svcs	Standard	Kuniklo Corporation

Form E-1 Conflict of Interest Disclosure Statement

Proposer's attention is directed to 23 CFR Part 636 Subpart A and in particular to Section 636.116 regarding organizational conflicts of interest. Section 636.103 defines "organizational conflict of interest" as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposer's attention is also directed to ITP Section 3.08(B)(2) and the laws, policies and matters referenced therein. Proposers are advised that in accordance with ITP Section 3.08(B)(2), certain firms and individuals will not be allowed to participate on any Proposer's team for the Project because of their work with ADOT in connection with the Project procurement and document preparation.

1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

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Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

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If (a) Proposer made a prior disclosure to ADOT regarding an actual, potential or perceived conflict of interest, (b) Proposer determines such disclosure met the foregoing disclosure requirements and (c) ADOT issued an eligibility determination, then please state below (i) the circumstance, (ii) a certification that Proposer previously disclosed all required information and (iii) the date of ADOT's letter or notice of the eligibility determination.

(i) Raba Kistner is owned by the same entity that owns T2
(ii) We have previously disclosed all required information regarding this potential conflict of interest
(iii) Refer to ADOT letter of eligibility dated March 31, 2025

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein. If Proposer previously proposed, or if ADOT previously issued an eligibility determination specifying, steps to be taken to avoid, neutralize or mitigate an organizational conflict of interest, then please identify the correspondence or notice that set forth such steps and certify that they will be followed.

Previously disclosed - refer to ADOT letter of eligibility dated March 31, 2025

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Newel White

Title: Associate Chief Operating Officer

Firm: Raba Kistner, Inc

Date: 6/19/25

Form E-1 Conflict of Interest Disclosure Statement

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1. Disclosure Pursuant to 23 CFR Section 636.116(a)(2)(v), ADOT Conflict of Interest Policy and Arizona Laws

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Proposer should disclose (a) any current contractual relationships with ADOT, (b) any past, present, or planned contractual or employment relationships with any ADOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the Contract by any ADOT member, officer, or employee if Proposer is awarded the DBA. Proposer should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the following ADOT consultants specified in ITP Section 3.08(B)(2).

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N/A

2. Explanation

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N/A

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Proposer: Coffman/Fisher JV
Signature: Frank Costello
Print Name: Frank Costello
Title: President
Firm: Terrace Engineering Corp
Date: 7/3/25

See attached Microsoft Word file for fillable form.

1	EXHIBIT 2-12	NON-COLLUSION AFFIDAVIT
2		<i>See Attached</i>

Form E-2 Non-Collusion Affidavit

STATE OF California) STATE OF Arizona)
)ss:)ss:
 COUNTY OF San Diego) COUNTY OF Maricopa)

Each of the undersigned, being first duly sworn, deposes and says that:

A. Colleen Coffman is the President of Coffman Specialties, Inc. and Todd Mack is the Chief Business Officer of Fisher Sand & Gravel Co., which entity(ies) are the members of the Coffman/Fisher Joint Venture, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against ADOT or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the DBA or rejection of all Proposals and cancellation of the RFP.

Colleen Coffman
 (Signature)

Colleen Coffman

(Name Printed)

President, Coffman Specialties, Inc.

Coffman/Fisher Joint Venture, Managing Partner

(Title)

Todd Mack
 (Signature)

Todd Mack

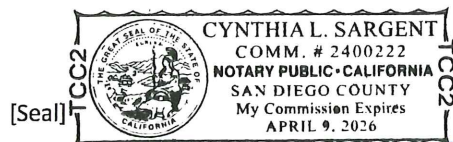
(Name Printed)

Chief Business Officer, Fisher Sand & Gravel Co.

Coffman/Fisher Joint Venture, Managing Partner

(Title)

Subscribed and sworn to before me this 7th day of July, 2025, by Colleen Coffman.



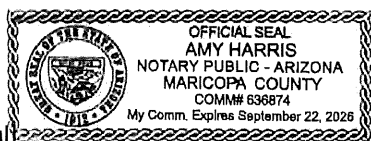
Cynthia L. Sargent
 Notary Public in and for said County and State

My commission expires: APRIL 9, 2026.

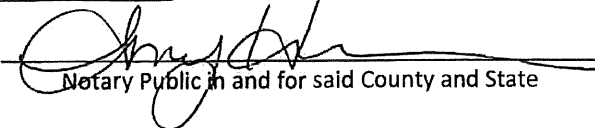
Arizona Department of Transportation

Request for Proposals
Addendum No. 4 June 10, 2025

1 Subscribed and sworn to before me this 7th day of July, 2025, by Todd Mack.



[Seal]


Notary Public in and for said County and State

5 My commission expires: 9/22/2026

6 *[Duplicate or modify this form as necessary so that it (i) accurately describes the entity making the Proposal and (ii)*
7 *is signed by and on behalf of all partners, members, joint venture members and Equity Members of the Proposer.]*

8
9

Form E-2 Non-Collusion Affidavit

STATE OF California)

)ss:

COUNTY OF San Diego)

Each of the undersigned, being first duly sworn, deposes and says that:

A. Colleen Coffman is the President of Coffman Specialties, Inc. and Todd Mack is the Chief Business Officer of Fisher Sand and Gravel Co., which entity(ies) are the members of the Coffman/Fisher Joint Venture, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against ADOT or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the DBA or rejection of all Proposals and cancellation of the RFP.

Colleen Coffman
(Signature)

Colleen Coffman

(Name Printed)

President

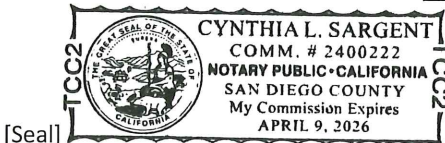
(Title)

(Signature)

(Name Printed)

(Title)

Subscribed and sworn to before me this 7th day of JULY, 2025.



Cynthia L. Sargent
Notary Public in and for said County and State

My commission expires: APRIL 9, 2026.

[Duplicate or modify this form as necessary so that it (i) accurately describes the entity making the Proposal and (ii) is signed by and on behalf of all partners, members, joint venture members and Equity Members of the Proposer.]

Form E-2 Non-Collusion Affidavit

STATE OF Arizona)

)ss:

COUNTY OF Maricopa)

Each of the undersigned, being first duly sworn, deposes and says that:

A. Colleen Coffman is the President of Coffman Specialties, Inc. and Todd Mack is the Chief Business Officer of Fisher Sand & Gravel Co., which entity(ies) are the members of the Coffman/Fisher Joint Venture, the entity making the foregoing Proposal.

B. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company or corporation; the Proposal is genuine and not collusive or sham; the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal, and has not directly or indirectly colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham Proposal or that anyone shall refrain from proposing; the Proposer has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the prices of the Proposer or any other Proposer, or to fix any overhead, profit or cost element included in the Proposal, or of that of any other Proposer, or to secure any advantage against ADOT or anyone interested in the proposed agreement; all statements contained in the Proposal are true; and, further, the Proposer has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Proposal depository or any member, partner, joint venture member or agent thereof to effectuate a collusive or sham Proposal.

C. The Proposer will not, directly or indirectly, divulge information or data regarding the price or other terms of its Proposal to any other Proposer, or seek to obtain information or data regarding the price or other terms of any other Proposal, until after award of the DBA or rejection of all Proposals and cancellation of the RFP.

(Signature)

(Signature)

Todd Mack

(Name Printed)

(Name Printed)

Chief Business Officer, Fisher Sand & Gravel Co.

(Title)

(Title)

Subscribed and sworn to before me this 7th day of July, 2025.



[Seal]

(Signature)
Notary Public in and for said County and State

My commission expires: 9/22/2026

[Duplicate or modify this form as necessary so that it (i) accurately describes the entity making the Proposal and (ii) is signed by and on behalf of all partners, members, joint venture members and Equity Members of the Proposer.]

- 1

EXHIBIT 2-13

PARTICIPATION IN BOYCOTT OF ISRAEL CERTIFICATION
- 2

See Attached

Form E-4 Participation in Boycott of Israel Certification**ADOT Project No.:** 010 MA 161 F0721 01C**Project Name:** I-10 Gila River Indian Community Project

This Certification is required in response to legislation enacted to prohibit the State of Arizona from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with ARS § 35-393.01, this form must be completed and returned with the Proposal. The Proposer understands that this response will become public record and may be subject to public inspection.

As defined by ARS § 35-393.01:

(A) "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:

(1) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.

(2) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.

(B) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, Limited Liability Company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.

(C) "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.

(D) "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:

(1) Together with other investors that are not subject to this section.

(2) That are held in an index fund.

(E) "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

(F) "Public fund" means the state treasurer or a retirement system.

(G) "Restricted companies" means companies that boycott Israel.

(H) "Retirement system" means a retirement plan or system that is established by or pursuant to ARS title 38.

All Proposers must select one of the following:

☒ The Proposer **does not** participate in and agrees not to participate in during the term of the DBA a boycott of Israel in accordance with ARS § 35-393.01.

☐ The Proposer **does** participate in a boycott of Israel as defined by ARS § 35-393.01.

By submitting this response, the Proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

(Must be signed by the Proposer's authorized representative)

Proposer: Coffman/Fisher JV

Signature: 

Print Name: Colleen Coffman

Title: President

Firm: Coffman/Fisher JV

Date: July 14, 2025

Signature: 

Print Name: Todd Mack

Title: Chief Business Officer

Firm: Coffman/Fisher JV

Date: July 14, 2025

- 1

EXHIBIT 2-14

FORCED LABOR OF ETHNIC UYGHURS BAN CERTIFICATION
- 2

See Attached

Form E-5 Forced Labor of Ethnic Uyghurs Ban Certification

Proposer: Coffman/Fisher JV

Instructions: Responses shall be addressed within the space below. Should additional space be needed by Proposers to address subject areas identified below, Proposers shall add additional space within each subject area as appropriate. Form E-5 has no page limitation.

Please note that if any of the following apply to the Contractor, then the Proposer shall select the "Exempt Contractor" option below:

- (A) Contractor is a sole proprietorship;
- (B) Contractor has fewer than 10 employees; OR
- (C) Contractor is a non-profit organization.

010 MA 161 F0721 01C

010-C-NFA

I-10 Gila River Indian Community Project

Pursuant to ARS § 35-394, written certification is required to show that the company entering into a contract with a public entity does not use the forced labor, or use any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor, of ethnic Uyghurs in the People's Republic of China.

Under ARS § 35-394:

- 1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.
- 2. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

In compliance with ARS §§ 35-394 *et seq.*, all bidders must select one of the following:

☒	The Proposer <u>does not</u> use, and agrees not to use during the term of the contract, any of the following: (a) Forced labor of ethnic Uyghurs in the People's Republic of China; (b) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) Any Contractors, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
☐	The Proposer <u>does</u> participate in use of Forced Uyghurs Labor as described in ARS § 35-394.
☐	Exempt Contractor Select all statements that applies to this Contractor: ☐ Contractor is a sole proprietorship; ☐ Contractor has fewer than 10 employees; and/or ☐ Contractor is a non-profit organization.

(Must be signed by the Proposer's authorized representative)

Proposer: Coffman/Fisher JV

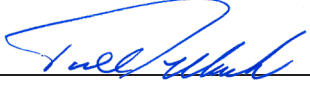
Signature: 

Print Name: Colleen Coffman

Title: President

Firm: Coffman/Fisher JV

Date: July 14, 2025

Signature: 

Print Name: Todd Mack

Title: Chief Business Officer

Firm: Coffman/Fisher JV

Date: July 14, 2025

1 **EXHIBIT 3 FEDERAL REQUIREMENTS**

2 Exhibit 3-1 Intentionally Left Blank 203

3 Exhibit 3-2 Intentionally Left Blank 204

4 Exhibit 3-3 Intentionally Left Blank 205

5 Exhibit 3-4 Equal Employment Opportunity 206

6 Exhibit 3-5 Affirmative Action 210

7 Exhibit 3-6 Appendix A to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Contractor

8 Assurances 211

9 Exhibit 3-7 Appendix E to DOT Standard Title VI Assurances and Non-Discrimination Provisions: Pertinent Non-

10 Discrimination Authorities 212

11 Exhibit 3-8 Compliance with Federal Immigration Laws 213

12 Exhibit 3-9 Intentionally Left Blank 215

13 Exhibit 3-10 State of Arizona Executive Order 2009-09 216

14

1 **EXHIBIT 3-1 INTENTIONALLY LEFT BLANK**

1 **EXHIBIT 3-2 INTENTIONALLY LEFT BLANK**

1 **EXHIBIT 3-3 INTENTIONALLY LEFT BLANK**

EXHIBIT 3-4 EQUAL EMPLOYMENT OPPORTUNITY

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
EXECUTIVE ORDER 11246, July 1, 1978
(Revised November 3, 1980)
(Revised 04-15-81)**

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Hometown Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Hometown Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Hometown Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Hometown Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Hometown Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Hometown Plan goals and timetables.
4. The contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the

contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

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

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

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

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

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

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

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

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

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

A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

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

9. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor

1 may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner
2 (for example, even though the contractor has achieved its goals for women generally, the contractor may be
3 in violation of the Executive Order if a specific minority group of women is underutilized).

4 10. Design-Builder shall not use the goals and timetables or affirmative action standards to discriminate against
5 any person because of race, color, religion, sex, or national origin.

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

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

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

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

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

EXHIBIT 3-5 AFFIRMATIVE ACTION

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)
JULY 1, 1978 (Revised November 3, 1980)
(Revised April 15, 1981)**

1. Design-Builder's attention is called to the "Equal Employment Clause" and the "Standard Equal Employment Specifications set forth in this Exhibit 3-5.
2. The goals and timetables for minority and female participation, expressed in percentage terms for Design Builder's aggregate work force in each trade on all construction work in the covered area, are as follows:

	Percentage of Minority	Percentage of Female
Tucson and balance of Pima County	24.1	6.9
Cochise, Graham, Greenlee, and Santa Cruz Counties	27.0	6.9
Phoenix and balance of Maricopa County	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai and Yuma Counties	19.6	6.9

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in all areas where Design-Builder has Federal or federally assisted work.

Design-Builder's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and Design-Builder shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Design-Builder to contractor or from project to project for the sole purpose of meeting Design-Builder's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

EXHIBIT 3-6 APPENDIX A TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS: CONTRACTOR ASSURANCES

Note: Whenever in this Exhibit 3-6 makes a reference to:

- a. "contract," such reference shall be construed to mean DBA;
- b. "contractor," such reference shall be construed to mean Design-Builder; and
- c. "Recipient," such reference shall be construed to mean ADOT.

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally- assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT 3-7 APPENDIX E TO DOT STANDARD TITLE VI ASSURANCES AND NON-DISCRIMINATION PROVISIONS: PERTINENT NON-DISCRIMINATION AUTHORITIES

Note: Whenever in this Exhibit 3-7 makes a reference to:

1. "contract," such reference shall be construed to mean the DBA; and
2. "contractor," such reference shall be construed to mean Design-Builder.

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to - ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

EXHIBIT 3-8 COMPLIANCE WITH FEDERAL IMMIGRATION LAWS**Part A – General**

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

Design-Builder shall include the provisions of this Exhibit 3-8 in all Subcontracts. In addition, Design-Builder shall: (1) require that all Subcontractors comply with the provisions of this Exhibit 3-8; (2) monitor such Subcontractors' compliance; and (3) assist ADOT in any compliance verification regarding any Subcontractor.

Part B – Compliance Requirements for ARS § 41-4401, Government Procurement, E-Verify Requirement; Warranties

Design-Builder warrants that Design-Builder and all Subcontractors are and shall remain in compliance with:

1. All State and federal laws applicable to immigration, including federal law and regulations relating to the immigration status of their employees who perform services under the DBA; and
2. ARS § 23-214, subsection A (which reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.").

Part C – Compliance Verification

In accordance with Arizona Executive Order 2005-30, ADOT shall retain the legal right to, and may at any time during the Work, inspect the papers of any employee of Design-Builder or any Subcontractor who works under the DBA to ensure compliance with the warranties set forth in Part B, above.

If ADOT requests from Design-Builder evidence of such compliance, Design-Builder shall complete and return to ADOT the State Contractor Employment Record Verification Form and Employee Verification Worksheet (which ADOT will provide to Design-Builder) no later than 21 Days from Design-Builder's receipt of such request.

Listing of the compliance verification procedure described in this Part C shall not preclude ADOT from utilizing other means to determine compliance with the warranties set forth in Part B, above.

Part D— Sanctions for Non-Compliance

For purposes of this Part D, non-compliance refers to either Design-Builder's or any Subcontractor's breach of the warranties set forth in Part B, above, or Design-Builder's failure to comply with the compliance verification procedure described in Part C, above. Such non-compliance shall be deemed a material breach of the DBA, subjecting Design-Builder to the remedies set forth in this Part.

ADOT will reduce Design-Builder's compensation under the DBA for non-compliance as follows:

1. \$10,000 for Design-Builder's and any Subcontractor's first instance of non-compliance;
2. \$10,000 for Design-Builder's and any Subcontractor's subsequent non-compliance occurring more than two years after the Design-Builder's or the Subcontractor's, as applicable, preceding non-compliance; and
3. \$50,000 for Design-Builder's or any Subcontractor's subsequent non-compliance occurring less than two years after the Design-Builder's or the Subcontractor's, as applicable, preceding non-compliance.

If either Design-Builder or any Subcontractor is in non-compliance more than three times within a two-year period, then, in addition to the monetary sanctions set forth in this Part D, ADOT may apply other remedies available under the Contract Documents, including the following:

1. In the case of Design-Builder, ADOT may (a) suspend the Work for cause in accordance with DBA Section 16.08(A), (b) declare a Design-Builder Default under DBA Section 17.01(A), and (c) if such Design-Builder Default is not cured within the applicable cure period, terminate the DBA in accordance with DBA Section 17.02(A).

2. In the case of any Subcontractor, ADOT may (a) suspend the Subcontractor's Work for cause in accordance with DBA Section 16.08(A), and (b) require that Design-Builder terminate the corresponding Subcontract, in which case the Subcontractor will be prohibited from participating in ADOT contracts for a minimum of one year after said termination (and, if applicable, the Subcontractor's prequalification status with ADOT will be revoked).

If ADOT exercises its right to terminate the DBA or any Subcontract, as provided in this Part D, then after the minimum one-year suspension period, the terminated party may be considered eligible to participate in subsequent ADOT contracts, but only after successfully demonstrating, to the satisfaction of ADOT, that the party's hiring practices comply with the requirements specified herein. If considered eligible, the terminated party shall be required to apply or reapply, if applicable, for ADOT prequalification and be accepted prior to bidding on ADOT contracts. For purposes of considering suspension from participating in ADOT contracts: (1) non-compliance by a Subcontractor does not count as a violation by Design-Builder, and (2) ADOT will count instances of non-compliance on other ADOT contracts.

Design-Builder and Subcontractors may appeal suspensions from participating in ADOT contracts to the State Engineer. Appeals must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Appeals must be received by the State Engineer no later than seven Days after ADOT's determination. The State Engineer will promptly consider appeals and notify the interested party of the State Engineer's findings and decision. The State Engineer's decision shall be considered administratively final.

Any delay resulting from a compliance verification or exercise of a remedy under this Exhibit 3-8 is a non-excusable delay. Accordingly, Design-Builder shall not be entitled to any compensation or extension of time for any delays or additional costs resulting from a compliance verification or exercise of a remedy.

An example of the minimum sanctions under this Part D is presented in the following table:

Non-compliance by			Minimum Reduction in Design-Builder's Compensation
Design-Builder	Subcontractor A	Subcontractor B	
First			\$10,000
	First		\$10,000
	Second		\$50,000
		First	\$10,000
	Third		\$50,000*
* May, in addition, result in termination of the Subcontractor, prohibition from participating in ADOT contracts, and revocation of any ADOT prequalification that the Subcontractor may have obtained.			

1 **EXHIBIT 3-9 INTENTIONALLY LEFT BLANK**

EXHIBIT 3-10 STATE OF ARIZONA EXECUTIVE ORDER 2009-09*** EXECUTIVE ORDER 2009-09 *****PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS****NONDISCRIMINATION IN EMPLOYMENT BY****GOVERNMENT CONTRACTORS AND SUBCONTRACTORS****(Superseding Executive Order 99-4 and Amending Executive Order 75-5)
(November 13, 2009)**

[M09-395]

WHEREAS, Executive Order 99-4 was effectuated to assure that persons or entities contracting with the State of Arizona or its political subdivisions comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, *et. seq.*) and with Arizona's Civil Rights Act (Title 41, Chapter 9, Article 4);

WHEREAS, Executive Order 99-4 correctly states that various religious organizations are exempted from Arizona's Civil Rights Act;

WHEREAS, Executive Order 99-4 does not expressly state the federal and state exemptions for Indian tribes under both the federal and State Civil Rights Acts;

WHEREAS, 42 U.S.C. § 200e(b)(1) exempts tribes from the definition of employer;

WHEREAS, ARS § 41-1461 4 (b)(i) also exempts Indian tribes from the definition of employers to whom the Arizona Civil Rights Act applies;

WHEREAS, Indian tribes across the State have recently begun to experience difficulty contracting with the State, often for money or services to which they are lawfully entitled, as a result of their exclusion from specified exemptions within Executive Order 99-4;

WHEREAS, the Attorney General's Office has in some cases interpreted the existing provisions as requiring tribes to waive rights guaranteed by both federal and State law;

WHEREAS, a modification is necessary to expressly provide that the exemptions found in federal and State law continue in full force and effect;

NOW, THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this State, hereby order and direct as follows:

1. Executive Order 75-5 is hereby amended as follows:

PART I - Non-discrimination in employment by government contractors and subcontractors.

Unless otherwise exempted by federal or state civil rights laws, all government contracting agencies shall include in every government contract hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, or national origin. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex or national origin. Such action shall include, but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

A continued Executive Order No. 75-5 is hereby amended to permit government contractors and subcontractors that are exempted from compliance under Title 41, chapter 9, article 4, Arizona Revised Statutes or 42 U.S.C. § 200e(b)(1), to provide employment preferences consistently with federal and state statutes;

Therefore, Executive Order 75-5 does not apply to Indian tribes. It likewise does not apply to religious organizations with respect to the employment of individuals of a particular religion to perform work connected with the activities of the employer. It also provides that religious organizations may provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonably necessary to the operation of the religious organization. This is consistent with the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000e, *et seq.*). In addition, in the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, Congress provided that religious organizations are eligible for the receipt of federal funds on the same basis as other private organizations.

Executive Order No. 75-5 prohibits all other government contractors and subcontractors from discriminating against any employee or applicant for employment because of race, age, color, religion, sex or national origin. Executive Order No. 75-5 further requires all government contractors and subcontractors to take action to insure that applicants are employed and employees are treated during employment without regard to their race, age, color, religion, sex or national origin.

B. The contractor will in all solicitations or advertisement for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard of race, age, color, religion, sex or national origin.

C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under the Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books, records, and accounts by the contracting agency and the Civil Rights Division for purposes of investigation to ascertain compliance with such rules, regulations and orders.

E. In the event of the contractor's noncompliance with the nondiscrimination clauses of the contract or with any such rules, regulations or orders of the Arizona Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible for future government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Arizona Civil Rights Division, and such sanctions may be imposed and remedies invoked as provided in Part II of this order, and the rules and regulations of the Arizona Civil Rights Division.

F. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to the subcontract or purchase orders the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vender as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interest of the State of Arizona.

G. Each contractor having a contract containing the provisions prescribed in this section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall

1 contain such information as the practices, policies, programs and employment policies, programs and
2 employment statistics of the contractor and each subcontract and shall be in form as the Arizona Civil
3 Rights Division may prescribe.

4 H. Bidders or prospective contractors of subcontractors shall be required to state whether they have
5 participated in any previous contract subject to the provisions of this order or any preceding similar
6 Executive Order and in such event to submit on behalf of themselves and the proposed subcontractors
7 compliance reports prior to, or as an initial part of negotiation of a contract.

8 I. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or
9 understanding with a labor union or an agency referring workers of providing or supervising
10 apprenticeship or training for such workers, the compliance report shall include such information from
11 such labor unions or agency practices and policies affecting compliance as the contracting agency or
12 Civil Rights Division may prescribe: provided that, to the extent such information is within the exclusive
13 possession of a labor union or an agency referring workers or providing or supervising apprenticeship
14 or training and such labor union or agency shall refuse to furnish such information to the contractor,
15 the contractor shall so certify the contracting agency as part of its compliance report and shall set forth
16 what efforts he has made to obtain such information.

17 J. The contracting agency or the Civil Rights Division shall require that the bidder or prospector contractor
18 or subcontractor shall submit as part of his compliance report a statement in writing signed by an
19 authorized officer or agent on behalf of any labor union or any agency referring workers or providing
20 or supervising apprenticeship or other training with which the bidder or prospective contractor deals
21 with supporting information to the effect that the signer's practices and policies do not discriminate
22 on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively
23 cooperate in the implementation of the policy and provisions of this order or that it consents and
24 agrees that recruitment, employment, and the terms and conditions of employment under the
25 proposed contract shall be in accordance with the purpose and provisions of this order. In the event
26 that the union or the agency shall refuse to execute such a statement, the compliance shall so certify
27 and set forth what efforts have been made to secure such a statement and such additional factual
28 material as the contracting agency or the Civil Rights Division may require.

29 PART II - Enforcement

30 A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order
31 with respect to contracts entered into by such agency or its contractors. All contracting agencies shall
32 comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing
33 compliance with the provisions of contracts and otherwise with the terms of this order and the rules and
34 regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to
35 cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may
36 require in the performance of the Division's functions under this order. They are further directed to appoint
37 or designate from among the agency personnel compliance officers. It shall be the duty of such officers to
38 first seek compliance with the objective of this order by conference, conciliation, mediation or persuasion.

39 B. The Civil Rights Division may investigate the employment practices of any government contractor if
40 subcontractor of initiate such investigation by the appropriate contracting agency or determine whether or
41 not the contractual provisions specified in this order have been violated. Such investigations shall be
42 conducted in accordance with the procedures established by the Civil Rights Division and the investigating
43 agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division
44 may receive and investigate or cause to be investigated complaints by employees or prospective employees
45 of a government contractor or subcontractor which alleges discrimination contrary to the contractual
46 provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a
47 contracting agency, that agency shall report to the Civil Rights Division what action has been taken or its
48 recommendation with regard to such complaint.

- C. The Civil Rights Division shall use its best efforts directly and through contracting agencies, other interested state and local agencies, contractors and all other available instrumentalities to cause any labor union engaged in work under government contracts or any agency referring workers or providing or supervising apprenticeship or training for it in the course of such work or cooperate in the implementation of the purposes of this order.
- D. The Civil Rights Division or any agency, officer or employee in the executive branch of the government designated by rule, regulation or order of the Civil Rights Division may hold such hearings, public or private, as the Division may deem advisable for compliance, enforcement of educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering or recommending the imposition of penalties and sanctions under this order.
- E. No order for debarment of any contractor from further government contracts under this order shall be made without affording the contractor an opportunity for a hearing.
- F. Sanctions and Penalties. In accordance with such rules, regulations or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations and orders of the Civil Rights Division.
1. Contracts may be cancelled, in whole or in part, terminated, or suspended absolutely, or continuation of contracts may be conditioned upon a program for future compliance approved by the contracting agency or the Civil Rights Division: provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any noncomplying contractor until such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.
 2. Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation and persuasion before proceedings shall be instituted under this order of before a contract shall be cancelled or terminated in whole or in part under this order for failure of a contractor or subcontractor to comply with the contract provisions of this order.
- G. This Executive Order shall become effective immediately of its issuance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona

Janice K. Brewer
GOVERNOR

DONE at the Capitol in Phoenix, Arizona this 20th day of October in the year Two Thousand and Nine and of the Independence of the United States of America the Two Hundred and Thirty-fourth.

ATTEST:
Ken Bennett
Secretary of State

1	EXHIBIT 4	INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES	
2	Exhibit 4-1	ADOT Authorized Representatives	221
3	Exhibit 4-2	Design-Builder Authorized Representatives	222
4			

1 **EXHIBIT 4-1 ADOT AUTHORIZED REPRESENTATIVES**

No.	Name	Title	Phone	E-Mail
All Matters				
1.	Robert Samour	Project Director	602.768.4392	rsamour@azdot.gov
2.	Julie Gadsby	Construction Manager	602.768.2167	jgadsby@azdot.gov
Construction:				
3.	Craig Regulski	Resident Engineer	480.758.0361	cregulski2@azdot.gov

2

EXHIBIT 4-2 DESIGN-BUILDER AUTHORIZED REPRESENTATIVES

Form to be submitted through DocuSign.



43-1200 R01/17 azdot.gov

AUTHORIZED SIGNATURE FORM

WHEREAS, _____, an _____ corporation, is required to execute certain documents which are necessary for the prompt and efficient execution of the corporate business:

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the _____ that (name of parties authorized) _____, be authorized to execute and sign documents on behalf of said corporate the following documents:

1. The Proposal	7. Extension of Time
2. The Contract	8. Request for Force Account Work
3. The Bond	9. All other papers necessary for the conduct of the corporation's affairs and the execution of the contract
4. Payroll	
5. Claims	10. Subcontracts
6. Supplemental Agreements	11. Monthly Estimates

The powers and duties herein granted shall be and is hereby granted for the duration of the Contract for the construction of _____, Tracs No. _____ Project No. _____, or until express notice of revocation has been duly given in writing, whichever is the lesser period.

Dated and passed by the Board of Directors this _____

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
(SIGNATURES OF PERSONS AUTHORIZED TO SIGN)	(TITLE)	(DOCUMENT NO.)

CERTIFICATE

STATE OF _____)
COUNTY OF _____) S.S.

I, _____ of the _____, a corporation do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Directors of said corporation, by unanimous written consent on _____ and that the same in full force and effect at this time. (DATE)

Dated _____ (OFFICER OF THE CORPORATION)

(Seal of Corporation)

STATE OF _____) S.S.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____ by _____ appearing before the undersigned Notary Public, and state that he executed such instrument on behalf of said corporation for the purpose and consideration therein expressed.

(NOTARY PUBLIC)

My Commission Expires: _____

1 EXHIBIT 5 CONTRACTUAL DEADLINES

No.	Description	Deadline ^A
1.	Issuance of NTP 2	Not earlier than 275 Days after issuance of NTP 1 ^B
2.	Early Opening Deadline	Not later than 365 Days after construction commences for the bridge (except for the center pier), ramps, crossroads, or retaining walls at the I-10/Wild Horse Pass Blvd/Sundust Rd TI
3.	Substantial Completion Deadline	Not later than 1,462 Days after issuance of NTP 1
4.	Landscape establishment deadline	Not later than 365 Days after issuance of the Certificate of Substantial Completion
5.	Final Acceptance (D&C) Deadline	Not later than 450 Days after issuance of the Certificate of Substantial Completion
<u>Note:</u> A. Subject to change pursuant to <u>DBA Section 8</u> . B. Day 1 of the duration of the DBA is considered the Day that ADOT issues NTP 1.		

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1	EXHIBIT 6	CONDITIONS PRECEDENT EXHIBITS	
2	Exhibit 6-1	Conditions Precedent to ADOT Review of Design Documents	225
3	Exhibit 6-2	Conditions Precedent to Ground Disturbing Activities	226
4	Exhibit 6-3	Conditions Precedent to Issuance of NTP 2	227
5	Exhibit 6-4	Conditions Precedent to Commencement of Construction Work	229
6	Exhibit 6-5	Conditions Precedent to Substantial Completion	230
7	Exhibit 6-6	Conditions Precedent to Final Acceptance (D&C).....	231
8			

1 EXHIBIT 6-1 CONDITIONS PRECEDENT TO ADOT REVIEW OF DESIGN DOCUMENTS

No.	Condition Precedent	Reference	Check
1.	ADOT has issued NTP 1.	<u>DBA Section 4.03(A)</u>	☐
2.	ADOT has approved the <u>Basis of Design Report</u> .	<u>TP Section 100.17</u>	☐
3.	ADOT has approved the Volume 1 – <u>QMP General Requirements</u> .	<u>TP Section 112.02(A)</u>	☐
4.	ADOT has approved the Volume 2 - <u>Professional Services Quality Management Plan (PSQMP)</u> .	<u>TP Section 112.02(B)</u>	☐

2

1 **EXHIBIT 6-2 CONDITIONS PRECEDENT TO GROUND DISTURBING ACTIVITIES**

No.	Condition Precedent	Reference	Check
1.	ADOT or Design-Builder, as applicable, has (i) obtained an order for immediate possession, (ii) closed the acquisition of the parcel, or (iii) otherwise obtained permanent right of entry through settlement, negotiation, the condemnation process or otherwise for Project ROW necessary to commence construction of the applicable portion of the Project.	<u>DBA Section 11.02(B)</u>	☐
2.	ADOT has approved the final <u>SWPPP</u> .	<u>TP Section 104.09(B)</u>	☐
3.	The appropriate environmental clearance (e.g., cultural resources, hazardous materials, or biological evaluation) has been issued for the applicable area where the ground disturbing activities is to occur.	<u>TP Section 117.04</u>	☐
4.	Design-Builder installed four-foot tall orange plastic barrier fencing with metal t-posts around all environmentally sensitive areas within the Project ROW, or Design-Builder's Temporary Work Areas.	<u>TP Section 117.04(A)(1)</u>	☐
5.	Design-Builder notified ADOT a minimum of five Business Days prior to the start of any ground disturbing activity requiring an archaeological monitor that will be provided by ADOT.	<u>TP Section 117.04(B)</u>	☐
6.	ADOT has approved the <u>Noxious and Invasive Species Control Plan</u> 15 Days prior to ground disturbance.	<u>TP Section 800.02(B)</u>	☐
7.	Design-Builder has treated for noxious and invasive species before ground disturbance begins and throughout the D&C Work, excluding geotechnical activities.	<u>TP Section 800.02(B)</u>	☐
8.	Design-Builder excavated, side boxed or bare rooted, and removed all plants scheduled to be salvaged from their in-situ locations prior to initiation of clearing and grubbing or any other ground disturbing activities in the plant salvage locations.	<u>TP Section 800.04(C)(1)(a)</u>	☐

2

1 **EXHIBIT 6-3 CONDITIONS PRECEDENT TO ISSUANCE OF NTP 2**

No.	Condition Precedent	Reference	Check
1.	ADOT has received from the Design-Builder, a copy of the approved Workforce Development Plan.	<u>DBA Section 5.11</u>	☐
2.	The Parties have conducted the design partnering meeting.	<u>DBA Section 14.01(B)</u>	☐
3.	There exists no Design-Builder Default for which Design-Builder has received written notice from ADOT.	<u>DBA Section 17.01(A)</u>	☐
4.	If applicable under this DBA, the guarantees in favor of ADOT required under <u>DBA Section 18</u> have been executed and submitted to ADOT and are in full force and effect.	<u>DBA Section 18.01</u>	☐
5.	Insurance policies not included prior to issuance of NTP 1 and required under <u>DBA Section 19</u> have been obtained and are in full force and effect, and Design-Builder has submitted to ADOT certificates of insurance of such policies.	<u>DBA Section 19.01</u>	☐
6.	Design-Builder has erected in a location approved by ADOT, the bulletin board(s).	<u>TP Section 100.18</u>	☐
7.	ADOT has approved the <u>Existing Conditions Site Documentation</u> .	<u>TP Section 100.19(B)</u>	☐
8.	ADOT has approved the <u>Baseline Schedule</u> .	<u>TP Section 108.12(C)</u>	☐
9.	ADOT has approved the <u>Project Administration Plan</u> .	<u>TP Section 110.02(A)</u>	☐
10.	ADOT has approved the <u>Document Management Plan</u> .	<u>TP Section 111.03</u>	☐
11.	ADOT has approved the <u>QMP</u> Volume 1 – <u>QMP General Requirements</u> .	<u>TP Section 112.02(A)</u>	☐
12.	ADOT has approved the <u>QMP</u> Volume 2 – <u>PSQMP</u> .	<u>TP Section 112.02(B)</u>	☐
13.	ADOT has approved the <u>QMP</u> Volume 3 – <u>CQMP</u> .	<u>TP Section 112.02(C)</u>	☐
14.	ADOT has approved the <u>Segment Limits Map</u> .	<u>TP Section 113.04(A)</u>	☐
15.	ADOT has approved the <u>Safety Management Plan</u> .	<u>TP Section 114.02</u>	☐
16.	ADOT has approved the <u>Reputation Management Plan</u> .	<u>TP Section 116.02(B)(3)</u>	☐
17.	ADOT has approved the <u>EMP</u> .	<u>TP Section 117.02(C)</u>	☐
18.	ADOT has approved the <u>Utility Coordination Plan</u> .	<u>TP Section 119.02(C)(1)</u>	☐
19.	Design-Builder has submitted the <u>Pre-project Drainage Facility Condition Memorandum</u> to ADOT.	<u>TP Section 500.02(A)(2)</u>	☐
20.	Design-Builder has submitted the <u>TMP</u> to ADOT.	<u>TP Section 701.02(A)</u>	☐
21.	Design-Builder has submitted the <u>ITS Inventory</u> to ADOT.	<u>TP Section 738.02(B)</u>	☐
22.	ADOT has approved the <u>Written Outline</u> .	<u>TP Section 925.04(C)</u>	☐

No.	Condition Precedent	Reference	Check
23.	Design-Builder has completed the improvements for, and made available to ADOT for occupancy, the ADOT office space in the Project Office.	<u>TP Section 926.02</u>	☐
24.	ADOT has approved the <u>Network Administration Plan</u> .	<u>TP Section 926.03(B)</u>	☐

1 **EXHIBIT 6-4 CONDITIONS PRECEDENT TO COMMENCEMENT OF CONSTRUCTION WORK**

No.	Condition Precedent	Reference	Check
1.	ADOT or Design-Builder, as applicable, has (i) obtained an order for immediate possession, (ii) closed the acquisition of the parcel, or (iii) otherwise obtained permanent right of entry through settlement, negotiation, the condemnation process or otherwise for Project ROW necessary to commence construction of the applicable portion of the Project.	<u>DBA Section 11.02(B)</u>	☐
2.	Design-Builder held <i>Pre-Activity Meetings</i> prior to the start of all major Construction Work activities.	<u>TP Section 108.13(L)</u>	☐
3.	ADOT has approved the relevant <i>PMP</i> volumes applicable to the specific Construction.	<u>TP Section 110.02</u>	☐
4.	At least 30 Days prior to commencement of Construction Work, Design-Builder participated in up to four public open houses (one virtual and one in-person in the Community and one virtual and one in-person outside of the Community) with the Project team and key stakeholders, property owners and tenants.	<u>TP Section 116.03(H)</u>	
5.	All Governmental Approvals, Community Approvals, and BIA Approvals including Environmental Approvals, necessary to begin Construction Work in the applicable portion of the Project have been obtained, and Design-Builder has furnished to ADOT fully executed copies of such Governmental Approvals.	<u>TP Section 117.03</u>	☐
6.	Design-Builder has satisfied for the applicable portion of the Project all applicable preconstruction requirements contained in the Governmental Approvals, Community Approvals, and BIA Approvals including Environmental Approvals.	<u>TP Section 117.03</u>	☐
7.	Design-Builder has made all arrangements necessary for the protection at points where Design-Builder's operations are adjacent to right-of-way properties or easements for the Community, the BIA, Utility Companies, and Governmental Entities, or are adjacent to other facilities and property, damage to which might result in considerable expense, loss, inconvenience, injury, or death.	<u>TP Section 119.04(B)(2)</u>	☐
8.	Design-Builder has delivered to ADOT all Submittals relating to the applicable Construction Work required by the <i>PMP</i> or Contract Documents, in the form and with the content required by the <i>PMP</i> or Contract Documents.	Varies	☐

2

1 **EXHIBIT 6-5 CONDITIONS PRECEDENT TO SUBSTANTIAL COMPLETION**

No.	Condition Precedent	Reference	Check
1.	Design Builder has removed any temporary Utility facilities no longer required.	<u>TP Section 119.03(F)</u>	☐
2.	Design-Builder has submitted the <u>Post-Project Drainage Facility Condition Memorandum</u> .	<u>TP Section 500.02(A)(2)</u>	☐
3.	Design-Builder has removed all temporary ITS and all required ITS systems have been installed and functional, and all required ITS testing has been successfully completed.	<u>TP Section 701.03(H)</u>	☐
4.	Design-Builder has installed ADOT locks on all new and existing pull boxes.	<u>TP Section 736.04(B)</u>	☐
5.	Design-Builder has submitted the <u>ITS Final Compiled Documentation</u> to ADOT.	<u>TP Section 738.04(F)</u>	☐
6.	All aesthetic and landscaping features for the Project have been completed, and the Plans and designs prepared in accordance therewith, with the exception of completion of the Landscaping Establishment Period.	<u>TP Section 800</u>	☐
7.	Design-Builder has treated, prepared, and repainted all aesthetic painted elements that show any sign of efflorescence.	<u>TP Section 800.04(B)(4)(c)</u>	☐
8.	Design-Builder has submitted the <u>IT Equipment Demobilization Plan</u> to ADOT.	<u>TP Section 926.03(C)</u>	☐
9.	Design-Builder has completed the final lift of paving and the final coat of striping.	N/A	☐
10.	All major safety features are installed and functional. For purposes of this condition precedent, major safety features include shoulders, guardrails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, ROW fences, metal beam guard fences, safety end treatments, terminal anchor sections, and crash attenuators.	N/A	☐
11.	All required illumination is installed and functional.	N/A	☐
12.	All required permanent signs and signals are installed and functional.	N/A	☐
13.	The need for temporary traffic controls or for lane closures at any time has ceased, except for temporary lane closures during hours of low traffic volume in accordance with and as permitted by the <u>TMP</u> solely to complete Punch List items.	N/A	☐
14.	All lanes of traffic (including ramps, interchanges, overpasses, and underpasses) are in their final configuration and traffic can move unimpeded through the Project at the normal, posted speed.	N/A	☐
15.	All <u>Non-Conformance Reports (NCRs)</u> have been fully resolved, and Design-Builder has otherwise completed the Work in accordance with the Contract Documents and Design Documents, such that the Project is in a condition that it can be used for safe vehicular travel in all lanes at the normal, posted speed and at all points of entry and exit, subject only to Punch List items.	N/A	☐

2

1 **EXHIBIT 6-6 CONDITIONS PRECEDENT TO FINAL ACCEPTANCE (D&C)**

No.	Condition Precedent	Reference	Check
1.	ADOT has issued a Certificate of Substantial Completion for the Project.	<u>DBA Section 4.05</u>	☐
2.	All Punch List items have been completed and delivered to the reasonable satisfaction of ADOT.	<u>DBA Section 4.06(A)</u>	☐
3.	Design-Builder has submitted the Application for Final Payment to ADOT.	<u>DBA Section 6.05(A)</u>	☐
4.	ADOT has received from Design-Builder the electronic database for Noncompliance Event entries.	<u>DBA Section 16.02(A)(1)</u>	☐
5.	ADOT has received a complete set of indexed set of all Proprietary Intellectual Property.	<u>DBA Section 23.07(A)</u>	☐
6.	ADOT has approved the <u>Project Completion SWPPP</u> .	<u>TP Section 104.09(B)</u>	☐
7.	ADOT has approved the <u>Notice of Termination (NOT)</u> .	<u>TP Section 104.09(H)</u>	☐
8.	Design-Builder has restored and repaired all damage or injury arising from such removal to the satisfaction of ADOT, and the Site is in good working order and condition.	<u>TP Section 104.10</u>	☐
9.	The highway, borrow and local material sources, and all areas occupied by Design-Builder in connection with the Work has been cleaned of all rubbish, excess materials, temporary structures and equipment, and all parts of the Work and is left in a condition acceptable to ADOT.	<u>TP Section 104.14</u>	☐
10.	All existing and new drainage facilities within the limits of the Project have been cleaned out.	<u>TP Section 104.14</u>	☐
11.	ADOT has approved the <u>Record Schedule</u> .	<u>TP Section 108.12(H)</u>	☐
12.	ADOT has received a complete set of Electronic Document Management System records.	<u>TP Section 111.03</u>	☐
13.	ADOT has received a complete set of the <u>Record Drawings</u> and, as applicable, Design Documents.	<u>TP Section 113.06(D)</u>	☐
14.	ADOT has received a complete <u>As-Built Quantities List</u> .	<u>TP Section 113.06(E)</u>	☐
15.	Design-Builder has removed fencing from environmentally sensitive areas.	<u>TP Section 117.04(A)(1)</u>	☐
16.	ADOT has received all <u>Record Drawings</u> for the Utility Adjustment Work.	<u>TP Section 119.04(C)(2)</u>	☐
17.	All Utility Adjustment Work and other Work that Design-Builder is obligated to perform for or on behalf of third parties with respect to the Project has been accepted by such third parties.	<u>TP Section 119.04(C)(3)</u>	☐
18.	Design-Builder has demonstrated to ADOT that the high mast lowering devices within the Project limits are fully functional.	<u>TP Section 736.03(E)</u>	☐
19.	Design-Builder has submitted the <u>ITS Certifications</u> .	<u>TP Section 738.04(E)</u>	☐
20.	Completion of the Landscaping Establishment Period.	<u>TP Section 800.04(C)(19)</u>	☐

No.	Condition Precedent	Reference	Check
21.	All Submittals required by the <i>PMP</i> or Contract Documents to be submitted to and approved by ADOT prior to Final Acceptance have been submitted to and approved by ADOT, in the form and with the content required by the <i>PMP</i> or Contract Documents.	Varies	☐
22.	Design-Builder has delivered to ADOT a certification representing that there are no outstanding Claims (for purposes of this certification, the term "Claim" shall include all facts which may give rise to a Claim) of Design-Builder or claims or stop notices of any Subcontractor, Supplier, laborer, Utility Company or other Persons with respect to the Work, other than: (A) Any previously submitted unresolved Claims of Design-Builder and any claims or stop notices of a Subcontractor, Supplier, laborer, Utility Company or other Persons being contested by Design-Builder (in which case the certification shall include a list of all such matters with such detail as is requested by ADOT and, with respect to all claims or stop notices of a Subcontractor, Supplier, laborer, Utility Company, and other Person, shall include a representation by Design-Builder that it is diligently and in good faith contesting such matters by appropriate legal proceedings that shall operate to prevent the enforcement or collection of the same); and (B) Amounts owed to Utility Companies that have not yet been invoiced to Design-Builder, provided that Design-Builder has made diligent efforts to obtain invoices therefor;	N/A	☐
23.	Design-Builder has paid in full all Liquidated Damages and Noncompliance Charges that are owing to ADOT pursuant to this DBA and are not the subject of a Dispute, and has provided to ADOT security for the full amount of Liquidated Damages and Noncompliance Charges that may then be the subject of an unresolved Dispute.	N/A	☐
24.	All of Design-Builder's other obligations under the Contract Documents (other than obligations that by their nature are required to be performed after Final Acceptance (D&C)) have been satisfied in full or waived by ADOT.	N/A	☐

1 **EXHIBIT 7 INTENTIONALLY LEFT BLANK**

1 **EXHIBIT 8 INTENTIONALLY LEFT BLANK**

EXHIBIT 10 EXTRA WORK COSTS AND DELAY COSTS SPECIFICATIONS

This Exhibit 10 (*Extra Work Costs and Delay Costs Specifications*) sets forth the methods for calculating Extra Work Costs and Delay Costs owing from ADOT to Design-Builder under the DBA. Extra Work Costs and Delay Costs shall be calculated separately where applicable.

1 EXTRA WORK COSTS

At the sole discretion of ADOT, Extra Work Costs shall be determined, in whole or in part, on either a negotiated lump sum basis as described in Section 1.01 of this Exhibit 10 or force account basis as described in Section 1.02 of this Exhibit 10. Extra Work Costs shall not include Delay Costs; Delay Costs shall be calculated separately as provided in Section 2 of this Exhibit 10, and shall not be eligible for additional markup as Extra Work Costs.

1.01 Negotiated Lump Sum

When Extra Work Costs are determined on a lump sum basis, such Extra Work Costs shall be negotiated based on:

- (A) Estimated costs of labor;
- (B) Estimated costs of material;
- (C) Estimated costs of equipment;
- (D) Actual fees and charges (e.g., permit fees, plan check fees, review fees and charges) of Governmental Entity, the Community, and/or the BIA in connection with Governmental Approvals, Community Approvals, and BIA Approvals required to perform the Extra Work;
- (E) Extra insurance costs and extra costs of bonds and letters of credit;
- (F) Other estimated direct costs (refer to DBA Section 8.03(D)(2) item (e) for eligible items); and
- (G) Other estimated risks.

Negotiated lump sum Extra Work Costs shall also include a 15% markup for Design-Builder indirect costs, field office overhead, and profit. Where the Extra Work is performed by Subcontractors, the Subcontractor may include a 15% markup for the Subcontractor's indirect costs, Project Office overhead, and profit. The negotiated lump sum shall not include any home office overhead of Design-Builder or Subcontractors.

Where Extra Work is performed by Subcontractors, Design-Builder may only include a supplemental markup of 5% of the Subcontractor's costs as Extra Work Costs. Design-Builder's 5% markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the Extra Work. ADOT will apply such 5% markup to the Subcontractor's Extra Work Costs less the Subcontractor's 15% markup for overhead and profit.

Price negotiations for lump sum Extra Work Costs shall be on an Open Book Basis.

In pricing any negotiated lump sum for Extra Work Costs, Design-Builder shall include sales or use taxes only on such portion of the Extra Work Costs that does not qualify for exemption from such sales or use taxes under applicable Law.

1.02 Force Account Basis

If ADOT and Design-Builder cannot agree upon Extra Work Costs, then ADOT will direct in part or all on a force account basis. When Extra Work Costs are determined on a force account basis, ADOT will pay Design-Builder for the direct costs of labor, materials and equipment used, and fees and charges of Governmental Entities, the Community, and the BIA in connection with Governmental Approvals, Community Approvals, and BIA Approvals required, to perform the Extra Work, plus markup for labor burden costs, indirect costs, overhead and profit, as set forth in and as limited by Section 1.02 of this Exhibit 10.

(A) Labor

Extra Work Costs for force account Extra Work shall include the cost of labor for workers, both for Professional Services and other than Professional Services, used in the actual and direct performance of the force account Extra Work and labor costs directly attributable to pursuing and obtaining Governmental Approvals, Community Approvals, and BIA Approvals, if any, required to perform the force account Extra Work. For Extra Work other than Professional Services, workers include foremen and classifications below foremen actually engaged in the performance of the Extra Work or in direct charge of specific operations included in the force account Extra Work. For Extra Work consisting of Professional Services, workers include only the staff directly engaged in the performance of the Extra Work. Costs, salaries, or any expenses associated with Project superintendence or management personnel or on-site clerical staff, except as provided in Section 1.02(E) of this Exhibit 10, are not allowable labor costs under Section 1.02(A) of this Exhibit 10. In no case shall an officer or director of Design-Builder, an Affiliate or any Subcontractor, nor those persons who own more than 1% of Design-Builder, an Affiliate or any Subcontractor, be considered Project superintendence personnel, workers or foremen under Section 1.02(A) of this Exhibit 10.

For workers who are allowable to include in labor costs in accordance with the paragraph above in this Section 1.02(A) of this Exhibit 10, the force account Extra Work cost of labor, whether the employer is Design-Builder, an Affiliate, or a Subcontractor, will be the sum of the following.

(1) Work other than Professional Services**(a) Regular Pay**

Regular pay shall be determined as follows:

$$RP = (WR + FR) \times 1.5$$

Where:

RP = Regular pay;

WR = hourly wage as determined by payroll records;

FR = fringe benefit rate as determined by payroll records; and

1.5 = the labor multiplier providing for a 35% labor burden rate and 15% markup for indirect costs, overhead, and profit. ADOT views the burden for labor as the total of all indirect labor costs necessary for a worker to perform the work that the worker is hired to perform. Therefore, such burden includes *Social Security and Medicare Tax, Worker's Compensation* (that is, insurance the employer must purchase), State and federal unemployment insurance, training, paid holidays, use of vehicles, personal protective equipment (PPE), office, office furniture, equipment, supplies, etc.

(b) Overtime Pay

Overtime pay shall apply as provided by applicable Law. When allowable labor costs include overtime pay, such overtime pay shall be calculated as follows:

Overtime pay shall be determined as follows:

$$OT = [(WR \times 1.5) + FR] \times 1.5$$

Where:

OT = Overtime pay

WR, FR, and 1.5 are as provided Section 1.02(A)(1)(a) of this Exhibit 10.

(2) Professional Services**(a) Regular Pay**

Regular pay shall be determined as follows:

$$RP = WR \times 2.5$$

Where:

RP = Regular pay;

WR = hourly wage as determined by payroll records;

2.5 = a labor surcharge of 150% of actual unburdened wages constituting full compensation for indirect costs, overhead, and profit. The labor surcharge compensates Design-Builder for all indirect labor costs necessary for a worker to perform the work that the worker is hired to perform. Such burden includes *Social Security and Medicare Tax, Worker's Compensation* (that is, insurance the employer must purchase), other taxes, State and federal unemployment insurance, fringe benefits, training, paid holidays, use of vehicles, PPE, office, office furniture, equipment, supplies, etc.

(b) Overtime Pay

Overtime pay shall only apply where required by applicable Law. When allowable labor costs include overtime pay, such overtime pay shall be calculated as follows:

Overtime pay shall be determined as follows:

$$OT = (WR \times 2.5) + (WR \times 0.5)$$

Where:

OT = Overtime pay;

WR and 2.5 are as provided in Section 1.02(A)(2)(a) of this Exhibit 10.

The overtime pay rate shall not apply to workers exempt from the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, whether or not a worker's employer elects to pay overtime wages that exceed WR for hours worked in excess of 40 hours per week.

(1) All Labor Categories (Professional Services and non-Professional Services):**(a) Provision of Information**

Design-Builder shall provide to ADOT the hourly wage rates and fringe benefit rates, as applicable, before the start of the force account Extra Work as part of Design-Builder's Relief Request or response to Request for Change Proposal, as applicable, required under DBA Sections 8.03 and 8.02, respectively. ADOT may verify the hourly wage rates and fringe benefit rates by comparing such rates to actual payroll records or signed timesheets of Design-Builder, Affiliates, or Subcontractors, as applicable.

(b) Subsistence and Travel Allowance

The actual subsistence and travel allowances paid to the workers as required by collective bargaining agreements or as approved by ADOT shall be allowable for reimbursement. Rates for subsistence and travel allowances, including rates for lodging, meals, and mileage, shall not exceed the rates in effect in the *Arizona Department of Transportation Policies and Procedures* "FIN-6.02 Travel Authorization Policy" at the time the force account Extra Work is performed. Design-Builder shall not markup, and ADOT will not pay any markup on, travel or subsistence allowances.

(B) Materials**(1) ADOT-Furnished Materials**

ADOT reserves the right to furnish any materials it deems appropriate for use in force account Extra Work, and Design-Builder shall have no claims for any costs, overhead or profit on the materials provided by ADOT, or lost profits due to ADOT furnishing the materials.

(2) Design-Builder-Furnished Materials

Design-Builder may include in Extra Work Costs materials furnished by Design-Builder only if the materials meet the requirements of the Contract Documents, are necessary to perform, and are actually used to perform, the force account Extra Work. The reimbursable cost of those materials will be the actual invoice cost plus 15% to the purchaser of such materials — whether the purchaser is Design-Builder, an Affiliate, or a Subcontractor — from the Supplier thereof, including actual freight and express charges, except as the following are applicable:

(a) Discounts and Rebates

If a cash, trade or other discount or rebate is offered or available to the purchaser, the discount or rebate shall be credited to ADOT even if the discount or rebate is not taken by the purchaser.

(b) Non-direct Purchases

If materials are procured by the purchaser by any method that is not a direct purchase from a direct billing by the actual Supplier to the purchaser, the cost of those materials shall be deemed to be the price paid to the actual Supplier as determined by ADOT plus the actual costs, if any, incurred in the handling of the materials.

(c) Purchaser-supplied Materials

If the materials are obtained from a supply or source owned wholly or in part by the purchaser, the cost of those materials shall not exceed the lower of:

(i) The price the purchaser paid for similar materials furnished from that source and used to perform other work; or

(ii) The current wholesale price for those materials delivered to the Site.

(d) Excessive Costs

If the cost of the materials is, in the opinion of ADOT, excessive, then the cost of the material shall be deemed to be the lowest current wholesale price at which the materials were available in the quantities delivered to the Site, less any discounts or rebates as provided in Section 1.02(B)(2)(a) of this Exhibit 10.

(e) Evidence of Cost

ADOT will pay Design-Builder for materials only after the materials invoice is submitted by Design-Builder to ADOT along with any documentary backup for the cost of the materials, less any discounts as provided in Section 1.02(B)(2)(a) of this Exhibit 10.

(C) Equipment Rental**(1) General Equipment Rental Provisions**

Force account Extra Work Costs for the use of equipment owned by Design-Builder, an Affiliate or a Subcontractor shall be determined at the rental rates listed for that equipment in the current edition and appropriate volume of the Rental Rate Blue Book (RRBB) as published by EquipmentWatch®, which is in effect on the date on which the force account Extra Work is performed, modified in accordance with the formula below, and regardless of ownership and any rental or other agreement, if they may exist, for the use of that equipment entered into by Design-Builder

or any Subcontractor. The hourly equipment rental rate in such circumstances will be determined in accordance with the following formula (which does not include operators):

$$HERR = \left(F \times \left\{ \frac{[1.15 \times R]}{176} \right\} \right) + HOC$$

Where:

HERR= Hourly equipment rental rate;

F = ADOT adjustment factor to R as follows: 0.933;

R = the then current monthly rate as published in the then current RRBB; and

HOC = hourly operation cost;

provided, however, that the following provisions (a) through (k) shall apply.

- (a) Design-Builder shall not charge for those pieces of equipment with a rental rate of \$5.00 per hour or less as listed in the RRBB.
- (b) An overhead and profit adjustment of 15% of the rates provided in the RRBB is included in the above formula.
- (c) If ADOT concurs that it is necessary to use equipment owned by Design-Builder, an Affiliate or a Subcontractor that is not listed in the RRBB, ADOT will establish a suitable rental rate for that equipment. Design-Builder may furnish any cost data which might assist ADOT in the establishment of the rental rate. If the rental rate established by ADOT is \$5.00 per hour or less, the provisions of Section 1.02(C)(1) item (a) above of this Exhibit 10 shall apply.
- (d) The hourly operating cost as provided above shall include the major costs of equipment operation, such as the cost of fuel, oil, lubrication, supplies, field repairs, tires, expendable parts, up to one necessary attachment per piece of equipment, maintenance, depreciation, storage, and insurance.
- (e) When multiple attachments are necessary or included for a piece of equipment, only the attachment having the highest rate will be included for the purpose of calculating force account Extra Work Costs, provided that the attachment has been approved by ADOT as being necessary to the force account Extra Work.
- (f) The cost of labor for operators of rented equipment shall be determined as provided in Section 1.02(A) of this Exhibit 10.
- (g) For costs of equipment to be eligible for inclusion in force account Extra Work Costs, the equipment must be in good working condition and suitable for the purpose for which the equipment is to be used. Design-Builder shall handle and use the equipment to provide normal output or normal production. All equipment is subject to approval by ADOT. Equipment that is not in good working order or that is not of proper size for efficient performance of the force account Extra Work may be rejected by ADOT. Rental time shall apply to eligible equipment used for force account Extra Work to establish or calculate the Extra Work Costs related thereto or resulting therefrom until such time as ADOT directs that the use of such equipment be discontinued or until completion of the relevant work.
- (h) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable

rental rates. Equipment which has no direct power unit must be powered by a unit of at least the minimum rating recommended by the manufacturer.

(i) Extra Work Costs shall not include the costs of small tools. Individual pieces of equipment or tools not listed in the RRBB and having a replacement value of \$400 or less, regardless of whether consumed by use, shall be considered to be small tools, ineligible to be included in force account Extra Work Costs.

(j) Rental time will not be allowed while equipment is inoperative due to breakdowns.

(k) For each piece of equipment to be used to perform force account Extra Work, whether owned by Design-Builder, an Affiliate or a Subcontractor (and, therefore, covered by Section 1.02(C)(1) of this Exhibit 10) or rented (and covered by Section 1.02(C)(3) of this Exhibit 10), equipment use hours shall be recorded and charged to the nearest one-half hour and Design-Builder shall provide ADOT with the following additional information: the manufacturer's name; equipment type; year of manufacture; model number; type of fuel used; horsepower rating; attachments required, together with their size or capacity; and any other information necessary to determine the Extra Work Costs.

(2) Stand-By Time

Force Account Extra Work Costs for equipment owned by Design-Builder, an Affiliate or a Subcontractor that is in operational condition and is standing by with ADOT's approval for participation in the Force Account Extra Work shall be determined in accordance with the following stand-by rate formula:

$$SBR = Fx\left(\frac{R}{176}\right) \times 0.5$$

Where:

SBR = stand-by rate;

F and R are as provided in Section 1.02(C)(1) of this Exhibit 10.

Stand-by hours will be limited to not more than eight hours in a 24-hour day or 40 hours in a week. No hours will be allowed or included and force account Extra Work Costs shall not be paid for equipment that is inoperable. No hours shall be allowed or included and Extra Work Costs shall not be paid for equipment that is not operating because the force account Extra Work has been suspended by Design-Builder. Design-Builder shall request ADOT's approval for stand-by time no less than 48 hours prior to commencement of such stand-by time.

(3) Outside Rented Equipment

In cases where a piece of equipment to be used for force account Extra Work is rented or leased by Design-Builder from a third party (not an Affiliate or Subcontractor) exclusively for such force account Extra Work, the Extra Work Costs shall be determined in accordance with the following formula:

$$(Rental Invoice \times 1.10) + HOC$$

The above formula includes a 10% mark-up of the rental invoice for all overhead and incidental costs of furnishing the equipment.

(4) Moving Equipment

(a) The rental time (including for owned equipment) to be included in calculating Extra Work Costs for needed equipment shall be the time the equipment is in operation on the force account Extra Work being performed, and, in addition, shall include no more than the time required to move the equipment to the location of the force

account Extra Work and return the equipment to the original location, or to another location requiring no more time than that required to return the equipment to its original location, except that moving time is not includable in Extra Work Costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work either before or after the force account Extra Work. Loading and transporting costs will be included in force account Extra Work Costs, in lieu of moving time, when the equipment is moved by means other than its own power. However, moving time back to the original location or loading and transporting costs will not be included in the calculation of force account Extra Work costs if the equipment is used at the site of the force account Extra Work on other than the force account Extra Work.

(b) For use of equipment moved from one location on the Site to another location on the Site exclusively for the force account Extra Work, the cost of transferring and/or moving the equipment to the site of the force account Extra Work and returning it the original location may be included in the Extra Work Costs as specified in this Section 1.02(C)(4) of this Exhibit 10.

(c) For use of equipment moved from a location not on the Site to a location on the Site, the original location of the equipment to be hauled to the Site shall be subject to ADOT's prior approval for the purpose of determining allowable force account Extra Work Costs.

(d) Where the move of the equipment is made by common carrier, the force account Extra Work Costs to be included will be the invoiced amount paid for the freight plus 15% of such amount to cover profit, overhead, and indirect costs. If Design-Builder hauls the equipment with its own forces, costs will be included in the force account Extra Work Costs for hauling the unit plus the driver's wages and the cost of loading and unloading the equipment.

(e) For the purposes of determining Extra Work costs, the maximum rental period for the day that the equipment is moved to the location on the Site where the force account Extra Work is performed and the day that the use of the equipment is discontinued for force account Extra Work shall be the actual time that the equipment is in operation on the force account Extra Work.

(D) Fees and Charges of Governmental Entities

Extra Work Costs for force account Extra Work shall include fees and charges paid to Governmental Entities for Governmental Approvals, the Community for Community Approvals, and the BIA for BIA Approvals required to perform the force account Extra Work. Design-Builder shall not markup, and ADOT will not pay any markup on, such fees and charges.

(E) Superintendence

Design-Builder shall not include any part of the salary or expense of anyone connected with Design-Builder's forces (including Affiliates and Subcontractors, as applicable) above the grade of foreman and/or having general supervision of the force account Extra Work (including both Professional Services and non-Professional Services) in the Extra Work Costs covering labor items as specified above (see Section 1.02(A) of this Exhibit 10), except when Design-Builder's organization, including its Affiliates, is entirely occupied with force account Extra Work, in which case the salaries of the superintendent may be included in the Extra Work Costs for labor items specified above when the nature of the force account Extra Work is such that their services in the nature of superintendent are required.

(F) Compensation

Design-Builder shall accept ADOT's payment of the Extra Work Costs as set forth above as payment in full for all Extra Work done on a force account basis. In addition, ADOT will pay Design-Builder an amount equal to 65% of the force account Extra Work Costs compensation as calculated above times the applicable sales tax rate to cover sales tax. Accordingly, the amount for sales tax shall be calculated as follows:

$$\text{Reimbursable amount} = ((\text{Total force account Extra Work Costs}) \times 0.65) \times \text{Sales Tax Rate}$$

ADOT shall not pay any other or additional amount for or on account of sales tax with respect to the force account Extra Work or the Extra Work Costs related thereto or resulting therefrom.

(G) Statements

Receipted invoices for all materials used and transportation charges must accompany and support all of Design-Builder's statements submitted in support of force account Extra Work Costs. If materials used on the force account Extra Work are not specifically purchased for such force account Extra Work but are taken from Design-Builder's stock, then, instead of invoices, the statements must contain or be accompanied by an affidavit of Design-Builder certifying that such materials were taken from stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to Design-Builder. All such costs for materials from Design-Builder's stock shall be subject to ADOT's approval.

Design-Builder shall submit for approval, and shall ensure that Subcontractors submit for approval, an equipment list for all equipment to be used during the performance of the force account Extra Work no less than 72 hours prior to the start of any force account Extra Work.

Design-Builder shall submit payrolls broken down by day and other cost data documents for all force account Extra Work on a monthly basis until such force account Extra Work is complete. ADOT will not make any payment prior to that time. All invoiced work must have documentation for payment. ADOT will not make any payment for Extra Work performed on a force account basis until Design-Builder has furnished duplicate itemized statements of the Extra Work Costs of such force account Extra Work detailing the following:

- (1) Name, classification, date, daily hours, total hours, rate, nature of work performed (Professional Services/non-Professional Services), and amount for each foreman and laborer or other labor classification;
- (2) For Professional Services, a description or narrative of the work performed;
- (3) Designation, dates, daily hours, total hours, rental rate (as calculated in accordance with Section 1.02(C)(1) of this Exhibit 10 for owned equipment, and Section 1.02(C)(3) of this Exhibit 10 for outside rented equipment), and amount for each unit of equipment;
- (4) Quantities of materials, prices, and amounts; and
- (5) Transportation charges on materials, Freight on Board (FOB) the jobsite

(H) Force Account Extra Work by Affiliates

The direct costs of an Affiliate's labor, materials, and equipment used in performing force account Extra Work shall be limited in accordance with DBA Section 5.05.

If an employee or worker of an Affiliate engages in work or tasks that duplicate or repeat work or tasks being performed by an employee or worker of Design-Builder, then none of the Affiliate's labor costs respecting the duplicated or repeated work or tasks shall be allowed as Extra Work Costs.

(I) Force Account Extra Work by Subcontractors

When force account Extra Work is performed by Subcontractors, Design-Builder is permitted, and Extra Work Costs may include, a supplemental markup of 5% of the Subcontractor's costs. This markup shall apply only to the costs of the Subcontractor, at any tier, that actually performs the force account Extra Work. ADOT will apply such 5% markup to the Subcontractor's force account Extra Work Costs less the Subcontractor's allowable markups for overhead and profit.

(J) Bonds

If, in connection with the Relief Event resulting in Extra Work, ADOT requires an increase in the amount of the Performance Bond or Payment Bond, then ADOT will pay an additional amount equal to the lesser of:

- (1) The incremental increase in the cost of such Bond(s) attributable thereto, or
- (2) 0.5% of the total amount otherwise calculated as the force account Extra Work Costs.

(K) Non-Allowable Charges

If Design-Builder performs Extra Work on a force account basis, then ADOT will only compensate Design-Builder for what is stated in the above provisions of Section 1.02 of this Exhibit 10. However, and for purposes of clarity, in no case will Design-Builder be reimbursed or paid for, and Extra Work Costs shall not include, the following items:

- (1) Profit in excess of that provided in Section 1.02 of this Exhibit 10;
- (2) Loss of profit or lost opportunity to earn profit;
- (3) Home office overhead;
- (4) Consequential damages, including loss of bonding capacity, loss of bidding opportunities, or insolvency;
- (5) Indirect costs or expenses of any nature;
- (6) Attorneys' fees, claims preparation expenses, or costs of litigation; and
- (7) Interest.

2 DELAY COSTS

Delay Costs shall include only the following, are subject to the limitations set forth below, and shall be determined as provided below. Design-Builder shall not be entitled to any additional costs for delays to the Work other than those provided below:

2.01 Direct Cost of Idle Labor

Compensation for the direct cost of the actual idle time of labor will be determined in the same manner as provided in Section 1.02(A) of this Exhibit 10, except that the formula for Regular Pay in Section 1.02(A) of this Exhibit 10 shall be adjusted as follows:

(A) Regular Pay

Regular pay shall be determined as follows:

$$RP = (WR + FR) \times 1.35$$

Where:

RP = Regular pay;

WR = hourly wage as determined by payroll records;

FR = fringe benefit rate as determined by payroll records; and

1.35 = the labor multiplier providing for a 35% labor burden rate.

Delay Costs shall not include overtime pay.

2.02 Direct Cost of Idle Equipment

Compensation for the direct cost of the actual idle time of equipment used in the performance of Extra Work will be determined in the same manner as determinations are made for force account Extra Work Costs for stand-by equipment, as provided in Section 1.02(C)(2) of this Exhibit 10 and subject to the following:

(A) The Delay Costs will be determined for the actual normal working time during which the delay condition exists, but in no case will exceed eight hours in any 24-hour day or 40 hours in a week; and

(B) The Delay Costs will be determined for the calendar days, excluding Saturdays, Sundays, and Holidays, during the existence of the delay, except that, when Extra Work Costs for rental of equipment are accruing under the provisions in Section 1.02(C)(2) of this Exhibit 10, Delay Costs shall not include equipment rental costs for such equipment. For purposes of clarity, Design-Builder shall not be entitled to Extra Work Costs for both the rental of equipment under Section 1.02(C)(2) of this Exhibit 10 and Delay Costs for the same equipment for the same time period.

If ADOT determines that idle equipment should not remain on the Site during a delay, then ADOT will pay the actual, reasonable costs, without markup, to: (i) demobilize the equipment during the delay period; and (ii) remobilize the equipment at the end of the delay period. Compensation for idle equipment will not be paid while the subject equipment is demobilized from the Site during a delay period.

2.03 Markup for Subcontractor Direct Costs of Idle Labor and Equipment

In the case of a Relief Event Delay, Delay Costs shall include a markup of 5% of the direct costs of a Subcontractor's idle labor and equipment determined in accordance with Sections 2.01 and 2.02 of this Exhibit 10. This markup shall constitute full compensation for all labor-related and equipment-related indirect costs, expenses, and profit related to such Relief Event Delay.

2.04 Where Delay is to a Work Item that is not a Controlling Work Item

Design-Builder shall not be entitled to Delay Costs for delay to work that is not a Controlling Work Item.

2.05 Overhead

An additional amount for each eligible day of Delay Costs ("D" in the formula below) will be added as Delay Costs as compensation for all other items for which a specific amount is not provided, including profit and all overhead. Such additional cost shall be determined as follows:

$$D = \frac{(A \times C)}{B}$$

Where:

A = Original lump sum Contract Price amount on the Effective Date

B = 1,462 Days

C = 10%

D = Amount per Day

2.06 Extra Work Costs and Delay Costs Attributable to a Relief Event

Extra Work Costs and Delay Costs attributable to a Relief Event shall:

(A) Exclude:

(1) Third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships, in each case to the extent that such costs would not be reimbursed to an employee of ADOT in the regular course of business; and

(2) Unallowable costs under the following provisions of the federal *Contract Cost Principles*, 48 CFR §§ 31.205: 31.205-8 (contributions or donations), 31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), 31.205-14 (entertainment costs), 31.205-15 (fines, penalties, and mischarging costs), 31.205-27 (organization costs), 31.205-34 (recruitment costs), 31.205-35 (relocation costs), 31.205-43 (trade, business, technical, and professional activity costs), 31.205-44 (training and education costs), and 31.205-47 (costs related to legal and other proceedings);

(B) Exclude amounts paid or to be paid to Affiliates in excess of the pricing Design-Builder could reasonably obtain in an arm's length, competitive transaction with an unaffiliated Subcontractor;

(C) Exclude costs incurred in investigating, analyzing, asserting, pursuing or enforcing any Relief Event, Claim or Dispute. Such excluded costs include legal, accounting, financial advisory, and technical advisory fees and expenses, such as, but not limited to, those costs incurred in connection with preparing Relief Event Notices, Relief Requests, final documentation of Claims in respect of Relief Events, and materials prepared for the Dispute Resolution Procedures;

(D) Take into account any savings in costs or time resulting from the Relief Event;

(E) Be subject to Design-Builder's obligation to prevent and to mitigate cost increases and augment cost decreases in accordance with DBA Section 8.03(C); and

(F) Exclude any amounts covered by applicable insurance required in Exhibit 14 (Insurance Coverage Requirements) or deemed self-insurance.

ADOT, at its election, may offset any amounts owing to Design-Builder for Relief Events against any amounts due and owing to ADOT from Design-Builder pursuant to this DBA, such offset rights being in addition to ADOT's offset rights under DBA Section 17.02(B).

Design-Builder's entitlement to Delay Costs is subject to Design-Builder demonstrating that the Project Schedule in the absence of the Relief Event Delay contained a reasonable amount of time to complete the Work.

1 **EXHIBIT 11 NONCOMPLIANCE EVENT TABLE**

Item No.	Noncompliance Charges	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
1 – Reporting & Complying Activities						
1.1	Yes	Governmental Approvals, Community Approvals, and BIA Approvals	Deliver to ADOT executed copies of Governmental Approvals, Community Approvals, or BIA Approvals prior to beginning construction on the applicable Work and comply with Governmental Approvals, Community Approvals, or BIA Approvals that Design-Builder obtained as required by the DBA and all Laws.	6	7 Days	B
1.2	Yes	ADOT Facilities	Comply with the requirements of <u>TP Section 926 (Project Office and Facilities)</u> regarding office facilities and equipment.	3	7 Days	A
1.3	Yes	Governmental Approvals, Community Approvals, BIA Approvals	Submit all applications for Governmental Approvals, Community Approvals, and BIA Approvals to ADOT for approval or review and comment prior to submitting to the respective entity as required by the DBA.	2	7 Days	A
2 – DBA Activities						
2.1	Yes	Subcontracts	Submit to ADOT a copy of each executed Subcontract not later than 30 Days after the Subcontractor commences Work.	2	30 Days	A
2.2	Yes	Punch List	Complete the Work on the Punch List items consistent with the Contract Documents, within the time period to be set forth in the Project Management Plan and in any case within 90 Days after receipt of the Certificate of Substantial Completion.	2	7 Days	A

Item No.	Noncompliance Charges	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
3 – Project Management Activities						
3.1	Yes	Construction Quality Management	Establish, maintain, and comply with the requirements of the <u>Construction Quality Management Plan</u> in accordance with the DBA and the TPs.	3	10 Days	A
3.2	Yes	Professional Services Quality Management	Establish, maintain, and comply with the requirements of the <u>Professional Services Quality Management Plan</u> in accordance with the DBA and the TPs.	3	10 Days	A
3.3	Yes	Quality Management	IQF fails to notify ADOT and Design-Builder and initiate an <u>NCR</u> within 48 hours after becoming aware of Nonconforming Work for each incident of Nonconforming Work.	2	2 Days	A
3.4	No	Work	Design-Builder suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute the Work, exclusive of work stoppage.	5	15 Days	A
3.5	No	Assignment	Design-Builder makes or attempts to make or suffers a voluntary or involuntary assignment or transfer of all or any portion of this DBA in violation of <u>DBA Section 24.04</u> .	5	15 Days	A
3.6	No	Resume Performance	Design-Builder fails to resume performance that had been suspended or stopped within the time specified by ADOT to resume or (if applicable) after cessation of the event preventing performance.	5	15 Days	A
3.7	No	Performance	Design-Builder fails to timely observe, perform, or cause to be observed or performed any other covenant, agreement, obligation, term, or condition required to be observed or performed by Design-Builder under the Contract Documents.	5	30 Days	A

Item No.	Noncompliance Charges	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
3.8	No	Key Personnel	There occurs a change in any Key Personnel that is not otherwise permitted under <u>DBA Section 15.01</u> .	8	30 Days	A
3.9	No	Key Personnel	Any Key Personnel fails to maintain active involvement in the prosecution and performance of the Work.	8	30 Days	A
3.10	No	NTP	Design-Builder: (a) Fails to begin Work authorized by NTP 1 or NTP 2 within 30 Days following issuance of NTP 1 or NTP 2, respectively, or (b) Fails to satisfy all conditions to commencement of the Construction Work, or (c) Fails to commence and prosecute the Construction Work with diligence and continuity.	5	15 Days	A
3.11	No	Insurance Requirements	Design-Builder fails to cure the inability of the Subcontractor to procure and keep in effect insurance coverage requirements described in <u>Exhibit 14</u> in accordance with <u>DBA Section 19.01(B)</u> .	9	30	B
4 – Environmental Activities						
4.1	Yes	<u>EMP</u>	Maintain and update the complete <u>EMP</u> as required by <u>TP Section 117.02(C)</u> (<i>Environmental Management Plan</i>).	6	7 Days	A
4.2	Yes	Environmental Approvals	Comply with the requirements of the <u>EMP</u> and any of its constituent parts including all <u>SWPPP</u> , cultural, biological, and waterways avoidance areas for any Work activity as required by <u>TP Section 117.02(C)</u> (<i>Environmental Management Plan</i>).	4	1 Day	B

Item No.	Noncompliance Charges	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
4.3	Yes	Stormwater	Comply with <u>TP Section 104.09(B)</u> (<i>Stormwater Pollution Prevention Plan (SWPPP)</i>) regarding <u>SWPPP</u> measures.	4	4 Days	A
4.4	Yes	Property Access	Maintain access to all businesses within and adjacent to the Project ROW at all times, as required by <u>TP Section 701.04(K)</u> (<i>Access</i>).	6	2 Hours	A
4.5	Yes	Cultural Sensitivity Orientation	Any staff performing Work from all Design-Builder-Related Entities prior to attending <i>Cultural Sensitivity Orientation</i> in accordance with <u>TP Section 117.02(G)</u> (<i>Cultural Sensitivity Orientation</i>).	1 point per person	N/A	B
5 – Utilities Activities						
5.1	Yes	Maintain service	Maintain utility services fully operational in accordance with the TPs.	6	4 Hours	A
5.2	Yes	Record keeping	Submit any Utility Agreement to ADOT for execution prior to such Utility Adjustment is to occur as required by the DBA.	2	7 Days	A
5.3	Yes	Encroachment Permits	Complete each Utility Adjustment within the time period of any encroachment permit(s) obtained for such Utility Adjustment and one extension thereof. For clarity, the second extension of any encroachment permit(s) (and each extension thereafter) for the same Utility Adjustment shall constitute this noncompliance event.	2	N/A	B
6 – Design and Construction Activities						
6.1	Yes	Sovereignty of Community Land	Failure of the Design-Builder to perform all Professional Services and Construction Work within the Project ROW.	5	4 hours	B

Item No.	Noncompliance Charges	Required Task	Breach of or Failure to Meet the Following Minimum Performance Requirements	Number of Noncompliance Points	Cure Period	Assessment Categories
6.2	Yes	Maintenance During Construction	Comply with the Repair Response times for Maintenance During Construction specified in <u>TPA 105-1</u> (<i>Maintenance During Construction</i>).	2	Equal to the time Specified for "Repair Response Time"	A
6.3	Yes	Testing	Provide quality test results or reports as required by <u>TP Section 112.02(C)(2)(c)(vi)</u> (<i>Materials Sampling and Testing</i>).	2	7 Days	A
6.4	Yes	Traffic Management	Comply with Maintenance of Traffic requirements set forth in <u>TP Section 701</u> (<i>Maintenance and Protection of Traffic</i>).	3	4 Hours	A
6.5	Yes	Traffic Management	Remedy any ITS disruption within the deadlines set forth in <u>TP Section 701.03(H)</u> (<i>ITS Facilities During Construction</i>).	4	12 Hours	B
6.6	Yes	Construction	Comply with environmental monitoring requirements by having an environmental monitor in place, as required by <u>TP Section 117.04</u> (<i>Environmental Requirements</i>), before commencing work in an area that requires environmental monitoring.	6	N/A	B
6.7	Yes	Design	Submit <i>RFC Quantities List</i> in accordance with <u>TP Section 113.05(A)(5)</u> (<i>RFC Quantities</i>).	2	30 Days	A
6.8	No	Construction	Failure to perform in accordance with the Contract Documents or refuses to correct Nonconforming work.	4	30 Days	A
6.9	Yes	Crisis Communication	Failure to notify the appropriate personnel described in the Crisis Management Plan when a sudden, catastrophic event that materially impairs the ability to use the freeway, materially and adversely impacts construction activities, requires Closures of an unusual or more frequent nature than normal, or otherwise creates a health or safety hazard.	5	N/A	B

1	EXHIBIT 12	ISSUE ESCALATION	
2	Exhibit 12-1	Design Issue Escalation Documentation Binder	253
3	Exhibit 12-2	Construction Issue Escalation Documentation Binder	254
4			

EXHIBIT 12-1 DESIGN ISSUE ESCALATION DOCUMENTATION BINDER

When an issue is escalated, it is critical that the individuals at the next escalation level have all of the documentation relevant to the issue so they can make an informed decision. When an issue needs to be escalated, ADOT will work jointly to compile all documentation to support the description of the issue and the recommended resolution. Documentation will include the recommended resolution from each perspective. If an agreement has been reached but the parties do not have authority to sign the agreement, this documentation must still be provided. All documentation must be placed into one binder prior to escalation (electronic binder for Issue Resolution Ladder level of review 1 and 2, and a hard copy binder for Issue Resolution Ladder level of review 3).

The template below includes a list of documents that have been identified as important to the decision making process; however, this list is not intended to cover every situation. The documents should be inserted into three-ring binders or electronic file available to all parties, in the order given. At a minimum, provide a binder for each person on the next level of the Issue Escalation Ladder. The "Issue Escalation Binder" must always be completed.

The routing form for each level of escalation is included in Exhibit 12. The information related to the issue resolution process referenced in the *Partnering 101 Manual* can be found on the following website:

<https://www.azdot.gov/partnering>

Tab	Title	Description
1	Index	A list of all documents in the binder in order.
2	Issue Resolution Routing Form	The completed and signed escalation routing form must include a brief description of the issue and the proposed resolution (from each party if they don't agree).
3	Contract Card/Financial (ADOT document)	A print of the Contract Card and Finance pages from Field Office Automated System (FAST).
4	Plans, specs, estimates & special provisions that apply to the issue	Copies of the pertinent pages from the contract documents.
5	Correspondence	Copies of emails or letters that were used to make your decision.
6	Exhibits to back up your position	Other documents that were used to make your decision.
7	Other pertinent documentation	Any documents not included in the previous tabs.

EXHIBIT 12-2 CONSTRUCTION ISSUE ESCALATION DOCUMENTATION BINDER

When an issue is escalated, it is critical that the individuals at the next escalation level have all of the documentation relevant to the issue so they can make an informed decision. When an issue needs to be escalated, ADOT will work jointly to compile all documentation to support the description of the issue and the recommended resolution. Documentation will include the recommended resolution from each perspective. If an agreement has been reached but the parties do not have authority to sign the agreement, this documentation must still be provided. All documentation must be placed into one binder prior to escalation (electronic binder for Issue Resolution Ladder level of review 1 and 2, and a hard copy binder for Issue Resolution Ladder level of review 3).

The template below includes a list of documents that have been identified as important to the decision making process; however, this list is not intended to cover every situation. The documents should be inserted into three-ring binders or electronic file available to all parties, in the order given. At a minimum, provide a binder for each person on the next level of the Issue Escalation Ladder. The "Issue Escalation Binder" must always be completed.

The routing form for each level of escalation is included in Exhibit 12. The information related to the issue resolution process referenced in the *Partnering 101 Manual* can be found on the following website:

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Tab	Title	Description
1	Index	A list of all documents in the binder in order.
2	Issue Resolution Routing Form	The completed and signed escalation routing form must include a brief description of the issue and the proposed resolution (from each party if they don't agree).
3	Contract Card/Financial (ADOT document)	A print of the Contract Card and Finance pages from Field Office Automated System (FAST).
4	Plans, specs, estimates & special provisions that apply to the issue	Copies of the pertinent pages from the contract documents.
5	Cost analysis and support documentation	Any calculations and support documentation that were used to make your decisions.
6	Correspondence	Copies of emails or letters that were used to make your decision.
7	Exhibits to back up your position	Other documents that were used to make your decision.
8	Schedule and Impacts	Documents showing the schedule and any impacts this issue or the resolution will have to the schedule.
9	Other pertinent documentation	Any documents not included in the previous tabs.

EXHIBIT 13 INTERPRETIVE ENGINEERING DECISION REQUEST FORM



Alternative Delivery
Interpretive Engineering Decision Request
Request #

Submitted to:

[Name]

Arizona Department of Transportation

[Address Line 1]

[Address Line 2]

Request Date:

[Date]

Thru:

[Name]

[Team Name]

[Address Line 1]

[Address Line 2]

Response Date:

[Date]

Submitted By:

[Name]

[Company Name]

[Address Line 1]

[Address Line 2]

Project:

Subject:

1. Information Requested:

2. Attachments to the Request:

3. Response:

1 **4. Attachments to Response:**

2 **Approved by ADOT:**

Signed:		Date:	
Print Name:		Title:	
E-mail:		Phone:	

4

EXHIBIT 14 INSURANCE COVERAGE REQUIREMENTS**1 COMMERCIAL GENERAL LIABILITY INSURANCE DURING THE WORK**

At all times during the Work, Design-Builder shall procure and keep in force, or cause to be procured and kept in force, in its own name, commercial general liability insurance as specified below.

(A) The policy shall be in form reasonably acceptable to ADOT, and shall be an occurrence form. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(B) The policy shall insure against the legal liability of the insureds named in DBA Section 19, relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

- (1) Contractual liability;
- (2) Premises/operations;
- (3) Independent contractors;
- (4) Products and completed operations coverage with an extended reporting period until expiration of the statute of repose set forth in Arizona Revised Statutes (ARS), § 12-552 (with acknowledgement that the Project constitutes an improvement to real property and not a product). Design-Builder may satisfy the products and completed operations coverage by annually renewing its corporate general liability policy until the expiration of the statute of repose;
- (5) Broad form property damage, providing the same or equivalent coverage as *Insurance Services Office* form CG 00 01 04 13 provides;
- (6) Hazards commonly referred to as "XCU", including explosion, collapse, and underground property damage;
- (7) Fellow employee coverage for supervisory personnel;
- (8) Incidental medical malpractice;
- (9) No exclusion for work performed within 50 feet of a railroad;
- (10) No exclusion for claims arising from Professional Services except for CG 22 80 or its equivalent;
- (11) Broad named insured endorsement; and
- (12) Hired/non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 2 of this Exhibit 14.

(C) The policy shall have limits of not less than \$2,000,000 per occurrence/\$4,000,000 General aggregate/\$4,000,000 Products/Completed Operations aggregate with the aggregate applicable specifically for this Project. Such limits shall be shared by all insureds and additional insured parties. Excess policy limits will be required in the event the Design-Builder's insurance broker cannot provide the required limits under this DBA. Excess policy limits may be combined with primary limits to meet the requirements of this paragraph so long as the excess policies are follow form policies.

(D) ADOT and the Indemnified Parties shall be named as additional insureds, using *Insurance Services Office* form CG 20 10 04 13 and *Insurance Services Office* form CG 20 37 04 13 or their equivalent, subject to the provisions of DBA Section 19.03.

- (E) The policy shall contain a waiver of subrogation in favor of ADOT and the Indemnified Parties, using *Insurance Services Office* form CG 24 04 05 09 endorsement or its equivalent, except as described in DBA Section 19.04.
- (F) The policy shall provide that the insurance afforded the Design-Builder shall be primary and that any insurance carried by ADOT, its agents, officials, employees or the State of Arizona shall be excess and non-contributory insurance, as provided by ARS § 41-621(E), via *Insurance Services Office* for CG 20 01 04 13 or its equivalent.
- (G) The policy shall provide a deductible or self-insured retention not to exceed \$2,000,000 per occurrence.
- (H) This policy shall provide valuable papers insurance for the restoration of data, plans, and drawings with a limit of not less than \$25,000 per occurrence.

2 AUTOMOBILE LIABILITY INSURANCE

At all times during the performance of the Work, Design-Builder shall procure and keep in force comprehensive, business or commercial automobile liability insurance as specified below.

- (A) Each policy shall cover accidental death, bodily injury, and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are required for the performance of the Project.
- (B) Design-Builder shall be the named insured under its automobile liability policy. ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees shall be named as additional insureds using *Insurance Services Office* form CA 20 48 04 99 or its equivalent and subject to the provisions of DBA Section 19.03.
- (C) The policy shall contain a waiver of subrogation in favor of ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees, using *Insurance Services Office* form CG 04 44 endorsement or its equivalent except as described in DBA Section 19.04.
- (D) Design-Builder's policy shall have a limit per policy period of not less than \$1,000,000 combined single limit.
- (E) Each policy shall provide a deductible (but not self-insured retention) not exceeding \$2,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

3 POLLUTION LIABILITY INSURANCE

Design-Builder shall procure and maintain, or cause to be procured and maintained, contractor's pollution liability insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Design-Builder, its agents, representatives, employees or subcontractors.

- (A) Design-Builder's pollution liability policy shall cover losses caused by pollution conditions that arise from the operations of Design-Builder in the performance of its obligations under the Contract Documents, such covered losses to include:
- (1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
 - (2) Medical monitoring;

- (3) Property damage including physical injury to or destruction of tangible property, including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- (4) Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;
- (5) Non-owned disposal site coverage for specified sites (by endorsement) if Design-Builder is disposing of waste(s); and
- (6) Loss, clean-up costs and related legal expense because of a pollution condition arising from the named insured's goods, products, or waste during the course of transportation by a carrier to or from:
- (a) A job site where contracting services are being performed; or
- (b) A covered location, including loading or unloading of such goods, products or waste, which the insured becomes legally obligated to pay.
- (B) Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided that such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of covered operations.
- (C) The policy must include coverage for pollution losses arising out of completed operations.
- (D) The policy shall be written on an occurrence basis with no sunset clause.
- (E) Design-Builder shall maintain limits no less than \$10,000,000 per occurrence/\$10,000,000 aggregate.
- (F) The policy shall provide a deductible or self-insured retention not exceeding \$2,000,000 per occurrence.
- (G) The policy shall be endorsed as required hereunder to include ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds.
- (H) The policy shall contain a waiver of subrogation endorsement, as required hereunder, in favor of ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from Work performed by or on behalf of the Design-Builder.

4 UMBRELLA LIABILITY INSURANCE

Design-Builder shall procure, or cause to be procured and maintained, umbrella/excess liability insurance, on a following form basis, including coverage for all named and additional insureds, as follows:

- (A) Project Specific Limits of \$68,000,000 per occurrence/aggregate (where applicable) and applying over the commercial general liability, automobile liability (if any), and employer's liability insurance policies required in this Exhibit 14.
- (B) The insurance shall be maintained above the CGL policy and in accordance with Section 1 item (B)(4) of this Exhibit 14.

5 PROFESSIONAL LIABILITY INSURANCE

For the Lead Design Firm and its Professional Services Subcontractors, commencing on the date of issuance of NTP 1 with a retroactive date to the date that Professional Services are first rendered respecting the Project and until the conclusion of all Professional Services, Design-Builder shall procure and keep in force, or shall cause the Lead Design Firm to procure and keep in force, professional liability insurance as specified in subparagraphs (A) through (E) below.

(A) The insurance policy shall provide coverage of liability of the Lead Design Firm and all Subcontractors at all tiers under the Lead Design Firm performing the Professional Services arising out of any negligent act, error or omission in the performance of Professional Services for the Project, including for bodily injury or property damage.

(B) The insurance policy shall have a limit of not less than \$30,000,000 per claim and in the aggregate. The aggregate limit need not reinstate annually.

(C) The insurance policy shall provide a deductible or self-insured retention not exceeding \$1,000,000 per claim.

(D) The insurance policy shall be project-specific.

(E) The insurance policy shall specifically include an extended reporting period expiring no sooner than the earlier of:

(1) Eight years after the issuance date of Certificate of Substantial Completion or

(2) 10 years after issuance of NTP 2.

6 WORKERS' COMPENSATION INSURANCE AND EMPLOYERS' LIABILITY

At all times when Work is being performed by any employee of Design-Builder or any Subcontractor, Design-Builder shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation and employers' liability insurance for the employee in conformance with applicable Law. Design-Builder and/or the Subcontractors, whichever is the applicable employer, shall be the named insured on these policies.

The workers' compensation insurance policy shall contain the following endorsements:

(A) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of Design-Builder and all Subcontractors working on or about the Site or otherwise engaged in the Work.

(B) An endorsement extending the policy to cover the liability of the insureds under the *Federal Employer's Liability Act* only if performing railroad related work;

(C) A voluntary compensation endorsement;

(D) An alternative employer endorsement;

(E) An endorsement extending coverage to all states operations on an "if any" basis; and

(F) Coverage for United States *Longshore and Harbor Workers' Compensation Act* and *Jones Act* claims, as may be appropriate and required.

The employers' liability insurance policy shall contain the following endorsements:

(A) The policy shall have a limit of not less than \$1,000,000 each accident, \$1,000,000 disease - employee and \$1,000,000 disease – policy.

(B) The policy shall contain a waiver of subrogation endorsement, as required hereunder, in favor of ADOT, the Indemnified Parties, the State of Arizona, and its departments, agencies, boards, commissions,

universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Design-Builder.

7 SUBCONTRACTORS' INSURANCE

(A) Design-Builder shall cause each Subcontractor to provide commercial general liability insurance that complies with DBA Section 19, with limits of at least \$2,000,000 per occurrence/\$2,000,000 aggregate. For any Subcontractor undertaking work with an estimated contract value of \$5,000,000 or more, the commercial general liability limits shall be supplemented with an umbrella/excess liability insurance policy with a minimum limit of \$5,000,000, when the Subcontractor's insurance broker is unable to provide the required limits, on a following-form basis, unless the Subcontractor is specifically covered by Design-Builder-provided liability insurance. Design-Builder shall cause each such Subcontractor that provides such insurance to include ADOT and each of the Indemnified Parties as additional insureds under such Subcontractor's liability insurance policies. Such commercial general liability insurance shall be Project-specific or renewed annually using Design-Builder's corporate program. A Subcontractor may satisfy the project specific requirement via *Insurance Services Office* form CG 25 03 and CG 20 37 endorsements to a corporate commercial general liability policy.

(B) Design-Builder shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business or commercial automobile liability insurance meeting the requirements as specified below.

(1) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(2) Each such Subcontractor shall be the named insured under its respective automobile liability policy.

(3) Each policy shall have a combined single limit per policy period of not less than \$1,000,000.

(4) Each policy shall include ADOT and each of the Indemnified Parties as additional insureds.

(C) ADOT shall have the right to contact the Subcontractors directly to verify the above coverages, if Design-Builder does not provide verification of such Subcontractor coverage as and when required under DBA Section 19.

EXHIBIT 15 NON-DISCLOSURE AGREEMENT

**Phoenix – Casa Grande Highway (I-10)
SR 202L (Santan/South Mountain) to Gila River Bridge**

INFORMATION ACCESS AND NON-DISCLOSURE AGREEMENT

I acknowledge that as a contactor/consultant of a short-listed Proposer on the Project or the Design-Builder, I have been granted access to sensitive/confidential ADOT information, and it is expected that I will meet the requirements of all applicable State of Arizona and ADOT policies, standards, and procedures for accessing, managing and handling this information. As such, I agree to the following conduct and restrictions. I will:

- (A) Only access sensitive/confidential information and files in electronic format in the separate secure folder on the Website/PMIS for which I have been given specific authority through the ADOT POC/ADOT;
- (B) Not discuss, divulge, copy, release, sell or loan any ADOT information;
- (C) Not misuse or carelessly handle ADOT information;
- (D) Not release or disclose ADOT information to unauthorized personnel;
- (E) Not attempt to print, download, store, send and delete any ADOT information;
- (F) Safeguard my user password(s) and any other security mechanism(s) that controls my access to ADOT information;
- (G) Protect all ADOT information in accordance with applicable state laws; and
- (H) Report immediately any event that creates reasonable suspicion that an information system or computerized data may have been compromised or that measures put in place to protect the information system or computerized data may have failed (e.g., data breach, computer infection, data theft) to the ADOT POC.

I understand that this agreement is subject to the laws of the State of Arizona and applicable rules and regulations.

By signing below, I confirm that I have read this agreement, understand it, and agree to comply with its terms and conditions.

Proposer/Design-Builder: _____	Employer: _____
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Firm: _____	Date: _____
Date: _____	

1 EXHIBIT 16 ADOT CONSULTANTS

No.	ADOT Consultant
1.	HDR Engineering, Inc.
2.	TYPSA, Inc.
3.	DEIH
4.	Infenix, LLC
5.	JE Fuller Hydrology/Geomorphology, Inc.
6.	Kenneth A. Smith Consulting, LLC
7.	KT Consulting Management LLC
8.	Kuniklo Corporation
9.	Lagartija Communications
10.	Rider Levett Bucknall Ltd
11.	T2 UES, Inc.
12.	Tam Consulting Services LLC
13.	Terracon
14.	Geomechanics Southwest, Inc.
15.	CLJ Construction Consulting, LLC.
16.	Civil Solutions Engineering & Management, LLC
17.	Consultant Engineering, Inc.

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