

When Recorded, Return To:

City of Tempe Basket

**SECOND AMENDMENT TO ASSUMPTION AND
MODIFICATION AGREEMENT**

This Second Amendment to Assumption and Modification Agreement (“Second Amendment”) is entered into this _____ day of _____, 2016, by and between the City of Tempe, an Arizona municipal corporation (“City”) and Tellurian Development Company, an Arizona corporation (“Tellurian”).

RECITALS

A. City previously entered that certain Development Parcel Agreement (Business Park Parcel) [C2003-174C] dated as of July 2, 2009 and recorded on August 4, 2009 in the Official Records of Maricopa County Recorder of Arizona, as Instrument No. 2009-0722745 (the “Development Agreement”);

B. Tellurian and City are parties to that certain Assumption and Modification Agreement dated April 24, 2014 and recorded at 2014-0291011 on May 5, 2014, records of Maricopa County, Arizona and that certain First Amendment to Assumption and Modification Agreement dated April 2, 2015, and recorded at 20150278669 on April 23, 2015, records of Maricopa County, Arizona (collectively the “Assumption and Modification Agreement”);

C. The City and Tellurian desire to further amend the Assumption and Modification Agreement to provide for reimbursement of Tellurian’s construction of the Public Improvement (as defined hereinafter) pursuant to the terms of this Second Amendment.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.

2. In connection with its development of the Tellurian Properties (as defined in the Assumption and Modification Agreement), Tellurian will construct or install or cause to be constructed or installed, to the City’s satisfaction and at Developer’s sole cost and expense a traffic signal together with other improvements required by or related to the installation of the traffic signal at the intersection of East Rio Salado Parkway and South Rockford Drive (the “Public Improvement”).

3. Construction of the Public Improvement must be procured by Tellurian using a proper public procurement process and shall comply with any applicable advertisement and notification provisions of A.R.S. §§ 34-101 *et seq.* (“Public Procurement Laws”). Tellurian shall

be solely responsible for complying with Public Procurement Laws, including but not limited to, low bid, advertisement and notification provisions, and the Public Improvement must be constructed in accordance with the Public Procurement Laws. Tellurian will be solely responsible, at its own expense, to secure all necessary licenses, permits and approvals required in connection with construction of the Public Improvement.

4. Subject to the conditions set forth in this Second Amendment, in consideration of the public benefits that will accrue to the City from development of the Project on the Site and construction of and dedication to the City of the Public Improvement, the City will reimburse Tellurian, in accordance with the terms of this Second Amendment, for Tellurian's actual Reimbursable Costs (as defined below) incurred in the construction and/or installation of the Public Improvement up to a maximum amount of \$300,000 ("Reimbursement Limit"), Tellurian complete the Public Improvement on or before December 31, 2017. If the traffic signal is not constructed and dedicated to the City by this date, the City has no responsibility to make any payments pursuant to this Second Amendment.

5. The reimbursement amount will be public money paid by the City from Eligible Reimbursement Funds (as defined in Paragraph 6 below).

6. The City will make reimbursement up to the Reimbursement Limit from the City's general fund portion of the construction sales tax collected from the construction and installation of development on the Tellurian Properties pursuant to the Assumption and Modification Agreement generated after the date of this Second Amendment through and including June 30, 2019 ("Eligible Reimbursement Funds"). In order to determine the Eligible Reimbursement Funds, Tellurian must be able to separately track these funds and provide periodic reports to the City regarding same. For purposes of this Second Amendment, "Reimbursable Costs" means all reasonable costs actually incurred by Tellurian in connection with the governmental review, construction, installation, inspection and/or dedication of the Public Improvement, which costs shall include, but are not limited to actual "hard" costs of construction together with costs for or associated with: acquisition of rights-of-way; easement rights in favor of the City from unrelated third parties; engineers and other consultants fees and costs; all plan review and application fees of all applicable governmental authorities; construction permits and other required permits; project bonding and insurance; construction management, coordination, inspection and supervision; project bidding; environmental reports, title reports and other reports, studies and investigations specifically related to the Public Improvement; and other related costs and fees as approved by the City.

7. Within 45 days after the City's acceptance of the Public Improvement, the City must receive lien waivers and written documentation of all Reimbursable Costs that Tellurian believes qualify for reimbursement under this Second Amendment,, which documentation must include a certification by Tellurian of its compliance with Public Procurement Laws. After receipt of all of the aforementioned documentation, the City will begin making payments to Tellurian from Eligible Reimbursement Funds until either the Reimbursement Limit has been reached or all Reimbursable Costs have been repaid if the Reimbursable Costs are less than the Reimbursement Limit. Tellurian shall not submit any requests for reimbursement until after the Public Improvement is dedicated and accepted. Tellurian acknowledges that the City is only

required to make payments pursuant to this Second Amendment as long as it has Eligible Reimbursement Funds and it has received timely Reimbursement Costs requests. Notwithstanding any provision to the contrary, the City shall not be required to make any payments to Tellurian pursuant to this Second Amendment after December 31, 2019.

8. **GENERAL**

8.1 **Continued Effectiveness.** Except as amended hereby, the Development Agreement, as amended by the Assumption and Modification Agreement, shall remain in full force and effect. Nothing in this Second Amendment shall affect the continued effectiveness of the Development Agreement as to portions of the Property (as defined in the Development Agreement) other than the Tellurian Properties (as defined in the Assumption and Modification Agreement).

8.2 **Arizona Law.** This Second Amendment shall be governed by, and construed in accordance with, the laws of the State of Arizona.

8.3 **Captions.** The descriptive headings of the Articles and the Sections of this Second Amendment are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

8.4 **No Agency Created.** Nothing contained in this Second Amendment creates any partnership, joint venture, or agency relationship between the City and Tellurian. No term or provision of this Second Amendment is intended to be for the benefit of any person, firm, organization, or corporation not a party hereto, and no other person, firm, organization, or corporation may have any right or cause of action hereunder.

8.5 **Additional Documents.** City and Tellurian each agree to execute and deliver all documents and take all actions reasonably necessary to implement this Second Amendment.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to Assumption and Modification Agreement through their representatives duly authorized to execute this document and bind their respective entities to the terms and obligations herein contained on the day and year first written above.

SIGNATURE PAGES FOLLOW

City of Tempe,
an Arizona municipal corporation

By: _____
Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

Approved as to Form:

Judith R. Baumann, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this _____ day of _____, 2016, before me, personally appeared Mark W. Mitchell, who acknowledged himself to be the Mayor of the **CITY OF TEMPE**, an Arizona municipal corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

NOTARY SEAL:

TELLURIAN DEVELOPMENT COMPANY,
an Arizona corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by _____, as _____ of Tellurian Development Company, an Arizona corporation, for and on behalf of the corporation.

Notary Public