

CONSTRUCTION AGREEMENT FOR UTILITY RELOCATIONS AND CERTAIN STREET IMPROVEMENTS WITHIN PUBLIC SPACE

This **CONSTRUCTION AGREEMENT FOR UTILITY RELOCATIONS AND CERTAIN STREET IMPROVEMENTS WITHIN PUBLIC SPACE** (this “**Agreement**”) is made as of the 8th day of April, 2014 (the “**Effective Date**”) among (i) Center Place Holdings LLC, a Delaware limited liability company (“**CP**”), (ii) the DISTRICT OF COLUMBIA, a municipal corporation (“**District**”), acting by and through the Director of the District of Columbia Department of Transportation (“**DDOT**”), as the agency of the District of Columbia designated as the State Transportation Department or “**STD**” under Title 23 of the Code of Federal Regulations, pursuant to his/her authority under D.C. Code § 50-921.04; and (iii) Capitol Crossing I LLC, a Delaware limited liability company; Capitol Crossing II LLC, a Delaware limited liability company; Capitol Crossing III LLC, a Delaware limited liability company; Capitol Crossing IV LLC, a Delaware limited liability company; and Capitol Crossing V LLC, a Delaware limited liability company (collectively, “**Owner Entities**” or “**Center Place**”).

RECITALS

R-1. Owner Entities are the fee owners of certain parcels of land and Airspace (hereinafter defined) bounded horizontally by Massachusetts Avenue, N.W., 2nd Street, N.W., E Street, N.W., and 3rd Street, N.W. in Washington, DC, (the “**Property**”), which the District, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“**Deputy Mayor**”) with the consent and concurrence of DDOT, conveyed to Owner Entities as designees of Center Place, subject to reservation by the District of certain exclusive and non-exclusive easements for construction, reconstruction, access, inspection, repair, operation, use, and maintenance of the Highway (as defined herein). The disposition of the Property to Center Place was approved by the Council of the District of Columbia pursuant to D.C. Law 18-257, effective October 26, 2010, the *Redevelopment of the Center Leg Freeway (Interstate 395) Act of 2010* (the “**Act**”).

R-2 The Property was conveyed to the Owner Entities pursuant to the Amended and Restated Agreement Regarding Property and Airspace Above I-395, dated as of September 9, 2011, as amended by the First Amendment to the Amended and Restated Agreement Regarding Property and Airspace Above I-395, dated December 3, 2012 (the “**Airspace Agreement**”), the five (5) Deeds dated December 3, 2012 and recorded on such date among the land records of the District of Columbia. FHWA (hereinafter defined) approved the conveyance of the Property subject to reservations of that certain Highway Easement, Non-Exclusive Easement, and District Access Easements (as defined in the Deeds), and in compliance with the requirements set forth in 23 CFR 710.405 governing the use of such Airspace (as defined below) in a manner so as not to impair the Highway or interfere with the free and safe flow of traffic thereon.

R-3 Prior to commencing construction on the Property pursuant to the Airspace Agreement, Center Place needs to relocate and upgrade certain utilities and make certain other improvements to the Public Space (as defined herein) that are required for the construction within and use of the Property and make certain street improvements within the public space of Massachusetts Avenue, N.W. between 2nd and 4th Streets, N.W., 2nd Street, N.W. between E and H Streets N.W., E Street, N.W. between 2nd and 3rd Streets, N.W., 3rd Street, N.W. between E and

H Streets, N.W., F Street, N.W. between 2nd and 3rd Streets, N.W., G Street, N.W. between 2nd and 3rd Streets, N.W., and H Street, N.W. between 2nd and 4th Streets, N.W.

R-4 Pursuant to the Declaration of Covenants, the purpose of this Agreement is to set forth the procedures, standards and conditions for the phases 1 through 4 of such work to be performed prior to the Commencement of Construction of the Deck, as defined in the Declaration.

R-5 Subject to the terms and conditions herein, DDOT has agreed to allow Center Place access to the Project Site (hereinafter defined) to undertake the phases 1 through 4 of the “early work” to be performed prior to the Commencement of Construction of the Deck.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree that the Property shall be held, sold, used, and conveyed subject to the following covenants, conditions, and restrictions:

ARTICLE I DEFINITIONS

1.1 Unless otherwise defined herein, all capitalized terms shall have the definitions set forth in this Article I of this Agreement.

1.1 “**Agents**” means collectively agents, employees, consultants, contractors,, subcontractors, invitees, guests and representatives.

1.2 “**Agreement**” means this Agreement, inclusive of all exhibits, attachments, and DDOT’s Standards and Guidelines incorporated herein.

1.3 “**Airspace**” means space located above and/or below a highway or other transportation facility’s established grade line, lying within the horizontal limits that have been approved as the right-of-way boundaries of the Highway under 23 CFR § 710.105(b).

1.4 “**Applying Professional Industry Standards**” shall mean the application of standards that certified professional and licensed engineers or architects would apply to making a decision or determination of like kind.

1.5 “**Approved Construction Plans and Specifications**” means the plans and specifications identified thereon as the “Early Works” and approved by DDOT on April 3, 2014, as modified by any Project Revisions approved by the Chief Engineer. The Approved Construction Plans and Specifications do not include construction drawings for Phase 5 of the “Early Works” or the improvements on the Property, which will be governed by a separate construction agreement entered into in accordance with the Declaration.

1.6 “**Baseline Schedule**” means that schedule for construction of the Project that is to be prepared by Center Place and approved by DDOT in accordance with Section 4.4 hereof, as the same may be modified pursuant to this Agreement.

1.7 “**Business Day**” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government (each, a “**Business Day**”).

1.8 “**CBE Agreement**” means that certain executed Certified Business Enterprise Utilization and Participation Agreement, dated as of March 2, 2012, governing certain obligations of the Center Place under D.C. Official Code §§ 2-218.01 *et seq.* regarding contracting, employment, development participation, and equity participation of certified business enterprises in the pre-construction and construction of the project contemplated under Airspace Agreement.

1.9 “**Chief Engineer**” means the Chief Engineer of DDOT appointed by the Director of the District Department of Transportation.

1.10 “**Construction Package**” means the Approved Construction Plans and Specifications, QMP and all other documents, drawings or approvals granted by DDOT as a part of this Agreement in connection with the Early Work.

1.11 “**Contract**” as used in the Gold Book shall mean this Agreement.

1.12 “**Contractor**” as used in the Gold Book shall mean Center Place.

1.13 “**Declaration of Covenants**” means the Declaration of Covenants dated December 3, 2012, among Center Place, the Owner Entities and DDOT, recorded in the land records of the District of Columbia as Instrument No. 2012129909.

1.14 “**DDOT’s Standards and Guidelines**” means the D.C. Official Code §§ 10-1101.01 *et seq.*, Subtitle I of Title 9 of D.C. Official Code; and Title 24 of the District Municipal Regulations, and following documents issued by DDOT: Design and Engineering Manual (April 2009), the Gold Book, DDOT’s Temporary Traffic Control Manual (effective as of the date hereof), and the Streetlight Policy and Design Guidelines (February 2013), all as may be modified by the Approved Construction Plans and Specifications or otherwise as approved by DDOT.

1.15 “**Early Works**” means the work to be completed in accordance with the Approved Plans and Specifications.

1.16 “**Engineer of Record**” means STV, Inc., the engineer hired by Center Place for the Project.

1.17 “**Escrow and Post-Closing Security Agreement**” means the Escrow and Post-Closing Security Agreement, dated as of September 9, 2011, by and among Center Place, DMPED, and Commonwealth Land Title Insurance Company governing the terms and conditions of the holding and disbursement of deposits required for the project under the Airspace Agreement, as joined by Owner Entities pursuant to that certain Consent to Joinder to Escrow and Post Closing Security Agreement dated December 3, 2012 and amended by that certain First Amendment to Escrow and Post-Closing Security Agreement dated as of the date hereof.

1.18 “**FHWA**” means the Federal Highway Administration of the United States Department of Transportation.

1.19 “**FHWA Regulations**” means Title 23 of U.S.C.A. and the FHWA regulations set forth in Title 23 of the Code of Federal Regulations, and other laws and regulations pertaining to FHWA actions, together with the National Environmental Protection Act (including 23 CFR § 771.119), Section 106 of the National Historic Preservation Act, Section 4(f) of the FHWA Regulations, and all other federal and District of Columbia laws and regulations applicable to the disposal of the real property acquired, in whole or in part, using FHWA funds.

1.20 “**Final Acceptance**” means that Center Place has submitted all written documentation required under Section 4.7 of this Agreement required for the Chief Engineer to issue the Final Acceptance Certificate as well as the documentation that the Utility Companies have accepted the work performed on their behalf.

1.21 “**Final Acceptance Certificate**” means the document to be issued by DDOT in accordance with Section 108.09(B) of the Gold Book evidencing DDOT’s determination that Final Acceptance has occurred.

1.22 “**Final Acceptance Date**” means the date on which Final Acceptance is achieved, as indicated in the Final Acceptance Certificate.

1.23 “**First Source Agreement**” means that agreement dated March 28, 2006 governing certain obligations of the Center Place under D.C. Code §§ 2-219.01 *et seq.*, and Mayor’s Order 83-265 regarding job creation and employment generated as a result of the project contemplated under the Airspace Agreement (including this Project) and providing for an apprenticeship program for residents of the neighborhood of the project contemplated under the Airspace Agreement (including this Project).

1.24 “**GMP Contract**” means the Gross Maximum Price Contract to be executed by and between Owner Entities and the GMP Contractor governing the Work to be completed as part of the Project.

1.25 “**GMP Contractor**” means Balfour Beatty Construction DC, LLC.

1.26 “**Gold Book**” means District of Columbia Department of Transportation Gold Book for Highways and Structures 2013, with the exception of Sections 102-109 thereof, which are hereby replaced by the terms and conditions set forth on Exhibit 5 attached hereto. All capitalized terms used in the Gold Book shall have the meaning ascribed to them in Section 101 of the Gold Book except as otherwise provided herein.

1.27 “**Highway**” means that portion of Interstate 395, and its associated facilities, including, but not limited to, shoulders, on-ramps and off-ramps, spanning from E Street, N.W. to Massachusetts Avenue, N.W. and between 2nd Street, N.W. and 3rd Street, N.W. in Washington, DC.,

1.28 “**Laws**” means all applicable District of Columbia and Federal laws, codes, regulations, and orders (including FHWA Regulations), including, without limitation,

Environmental Laws (as defined in the Declaration of Covenants), laws relating to historical preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act, and (each, a “**Law**”).

1.29 “**MOT**” means that certain Maintenance of Traffic required by DDOT’s Standards and Guidelines and included in the Approved Construction Plans and Specifications.

1.30 “**Performance and Damage Deposit**” shall have the meaning ascribed to it in Section 5.4 of this Agreement.

1.31 “**Permits**” means all demolition, excavation, construction, and other permits, approvals, licenses, and rights required to be obtained from any governmental authority (other than DDOT, which approval is granted pursuant to this Agreement) and specifically including required approvals by the District Department of the Environment and the District Department of Consumer and Regulatory Affairs necessary to commence and complete construction, operation, and maintenance of the Project in accordance with the Approved Construction Plans and Specifications (each, a “**Permit**”).

1.32 “**Project**” means the undertaking of the Work under this Agreement.

1.33 “**Project Site**” means certain areas within Public Space on Massachusetts Avenue, N.W., 2nd Street, N.W., E Street, N.W., 3rd Street, N.W., F Street, N.W., G Street, N.W., and H Street, N.W. in Washington, DC identified on the Approved Construction Plans and Specifications.

1.34 “**Project Revisions**” means revisions to the Approved Construction Plans and Specification requested by the Engineer of Record and approved by the Chief Engineer under the process set forth in the QMP or in Section 2.7 below.

1.35 “**Public Space**” means the publically owned property located between the property lines on a street and includes, but is not limited to, the roadway, tree spaces, sidewalks and alleys.

1.36 “**QMP**” means the Quality Management Plan (Early Works Utility Relocation) attached hereto as Exhibit 2, which governs the communication procedures during the Work.

1.37 “**Resident Engineers**” means the resident engineers, inspectors, material technicians designated as representatives of the Chief Engineer, as set forth in the QMP. The Chief Engineer may designate additional engineers and/or inspectors or replace existing Engineers and/or Inspectors upon written notice to Center Place.

1.38 “**Surety**” means the corporation, partnership or individual, other than Center Place or GMP Contractor, executing a bond furnished by Center Place or GMP Contractor.

1.39 “**Significant Changes**” means a change in the character of the Work such that it differs materially in kind from that contained in the Approved Construction Plans and Specifications.

1.40 “**Subcontractor**” means any subcontractor of Center Place (other than the GMP Contractor) for the Work approved by the Chief Engineer, which approval shall not be unreasonably denied, delayed or withheld.

1.41 “**Substantial Completion**” means the satisfaction of the criteria set forth in Section 4.7 of this Agreement.

1.42 “**Substantial Completion Certificate**” means the document issued by the Chief Engineer in accordance with Section 4.7 of this Agreement evidencing the Chief Engineer’s determination that Substantial Completion has occurred.

1.43 “**Utility Agreements**” means those certain agreements between the Owner Entities and each Utility Company relating to a portion of the Work.

1.44 “**Utility Consents**” means the letters attached hereto as Exhibit 3 provided by the Utility Companies consenting to that portion of the Work to be conducted on behalf of the applicable Utility Company.

1.45 “**Utility Companies**” means PEPCO, Washington Gas, DC Water, Comcast, Verizon, DC Net, and AT&T Level 3.

1.46 “**Work**” means the furnishing of all labor, materials, equipment, and incidentals necessary or convenient to the successful completion of the Early Works in accordance with all of the terms and conditions set forth herein.

1.47 All capitalized terms used but not defined in this Agreement shall have the meaning ascribed to them in the Declaration of Covenants or Deeds, as the case may be.

ARTICLE II CONSTRUCTION AGREEMENTS AND REQUIREMENTS

2.1 General; DDOT Approvals. The Parties agree that Center Place has designed and engineered the Project in accordance with this Agreement, the Utility Agreements, DDOT’s Standards and Guidelines, including all pertinent provisions of the Gold Book. DDOT has approved the Construction Package.

2.2 Construction Obligations. Center Place shall require the GMP Contractor to construct the Project in accordance with this Agreement, including the Construction Package, DDOT’s Standards and Guidelines (including the Gold Book) and all applicable Laws, at its sole cost and expense. The District assumes no responsibility for any understanding or representation concerning conditions of the Project Site made by any of its officers or agents prior to the execution of the Contract, unless such understanding or representation by the District is set forth in this Agreement (or the exhibits attached hereto) or the Airspace Agreement or agreements referenced therein or herein.

2.3 Traffic Controls. All Work requiring traffic control shall be undertaken in accordance with the Gold Book and the Approved Construction Plans and Specifications.

2.4 Times of Work. All work shall be performed between 7:00 am and 7:00 pm, Monday – Saturday, or as approved by the Chief Engineer and with appropriate permits. No such work may be undertaken on Sundays or holidays unless otherwise specified in the MOT or approved by the Chief Engineer.

2.5 Access to Public Space; Conditions. During the construction of the Project, Center Place shall have access to the Public Space needed to complete the Work in accordance with the Approved Construction Plans and Specifications. DDOT shall have the rights and remedies set forth in Article 7 if Center Place fails to strictly adhere to the requirements and limitations of this Agreement, including the MOT, the Baseline Schedule, and the Gold Book.

2.5.1 Center Place shall not have the right to access the Highway or to conduct any activity within the Highway without the prior written consent of the Chief Engineer and, if applicable, the approval or concurrence of FHWA; provided, however, that this provision (i) does not apply to the normal use of the Highway as permitted to the general public; and (ii) Center Place may enter the Highway without prior notice to DDOT in order to mitigate an emergency that constitutes an immediate health or safety hazard.

2.5.2 If Center Place fails to or fails to cause the GMP Contractor to maintain the Project Site in accordance with the Gold Book, the Chief Engineer may require the work to be done by others and the costs will be charged to Center Place.

2.6 Modifications to the Approved Construction Plans and Specifications, QMP, or MOT. Center Place and the GMP Contractor shall not modify, deviate from or otherwise not comply with the terms and conditions set forth in the Construction Package subject only to modifications made pursuant to the terms of the QMP or Section 2.6.2 below.

2.6.1 **Minor Changes in Work.** With the exception of Significant Changes, changes in the Work or the Approved Construction Plans and Specifications shall be submitted to Chief Engineer in accordance with the QMP.

2.6.2 **Significant Changes.** Significant Changes shall be subject to the requirements of DDOT's Standards and Guidelines, and the Chief Engineer's review and approval as follows:

- (a) In the event that Center Place would like to make a Significant Change to the Approved Construction Plans and Specifications, Center Place shall submit its request and applicable supporting materials (including any changes to the cost of Work) to the Chief Engineer for his review and approval. Within ten (10) Business Days of receipt of Center Place's request for a Significant Change, the Chief Engineer shall either provide his written consent to the proposed Significant Change or provide written notice that the requested Significant Change does not conform with DDOT's Standards and Guidelines. If the Chief Engineer does not respond within the foregoing ten (10) Business Day period, Center Place may send a second notice that conspicuously notes that the submission will be deemed approved by the Chief Engineer if the Chief Engineer does not respond within three (3) Business Days. If the Chief Engineer fails to respond within such three (3) Business Day period after a second notice, the requested Significant Change

will be deemed approved, but only to the extent that such Significant Change complies with the requirements of DDOT's Standards and Guidelines.

- (b) Any notice given by Center Place under this Section 2.6.2 shall contain a caption that is printed in at least 12-point bold face type in capital letters, and shall state: **"DDOT TO PROVIDE A WRITTEN RESPONSE WITHIN TEN (10) BUSINESS DAYS [or THREE (3) BUSINESS DAYS] AFTER THE DATE OF THIS NOTICE."** This caption must be prominently and conspicuously centered approximately three inches below the top of each page of Center Place's notice. The notice shall be delivered in the manner provided for in Section 8.2 of this Agreement. Any notice given by Center Place in accordance with the provisions of this Section 2.6.2 shall clearly state the intent and purpose of the notice, cite to this Section 2.6.2 under which the notice is given and clearly state Center Place's requested action from DDOT.

2.7 Alternations to Highway Structures and Access to Highway. Center Place shall not and shall cause the GMP Contractor to not alter, modify or otherwise interfere with the Highway Structures or make any modifications to the Highway Structures without the prior consent of the District, and if required by FHWA Regulations, the approval or concurrence of FHWA. Notwithstanding the foregoing, it is understood that the Approved Construction Plans and Specifications do not contain any alterations, modifications or additions to the Highway Structures.

2.8 GMP Contract.

2.8.1 **Compliance with Requirements.** Center Place shall use all commercially reasonable efforts to cause the GMP Contractor to comply with all of the terms and conditions of this Agreement and the GMP Contract, including, without limitation, the obligations to conduct the Work in accordance with the Approved Construction Plans and Specifications and DDOT's Standards and Guidelines.

2.8.2 **Qualified Personnel/Cooperation.** As outlined in the QMP, Center Place shall employ (and use commercially reasonable efforts to cause the GMP Contractor to employ) only those employees and subcontractors who will work together in harmony and who will cooperate with one another on the Project. Center Place shall enforce and require the GMP Contractor to enforce strict discipline, good order and harmony among its employees and its subcontractors and shall remove from the Project Site any person who is unfit for the work or fails to conduct himself in a proper and cooperative manner. If a Resident Engineer or the Chief Engineer requests removal of any person as unfit or as having behaved inappropriately, Center Place shall promptly comply.

2.9 Permits and Responsibilities. Center Place shall, without expense to the District, be responsible for obtaining (or causing the GMP Contractor to obtain) any necessary licenses, certificates, and Permits, and for complying with any applicable Federal, State, and Municipal laws, codes, and regulations, in connection with the prosecution of the Work. Center Place shall be similarly responsible for all damages to persons or properties that occur as a result of Center

Place or the GMP Contractor's fault or negligence. Center Place shall take and use commercially reasonable efforts to cause the GMP Contractor to take proper safety, health and environmental precautions to protect the Work, the workers, the public, and the property of others. Center Place shall also be responsible for all materials delivered and Work performed until completion and acceptance of the Work, except for any completed unit of construction thereof which theretofore may have been accepted.

2.10 Community Engagement. With respect to the work performed as a part of the Project, Center Place shall comply with the Public Outreach Program Plan attached hereto as **Exhibit 4**.

ARTICLE III

Agreements with the Utility Companies

3.1 Agreements with Utility Companies. In connection with the Work, Center Place shall be responsible for coordination with the Utility Companies and their agents and obtaining from the Utility Companies releases in connection with the substantial completion of the Work. Center Place shall not direct the GMP Contractor to proceed with Work until all utilities within the Public Space have been located, disconnected or otherwise addressed in coordination with the Utility Companies.

3.2 Modifications to Utility Agreements. Center Place shall keep DDOT apprised of changes requested by the Utility Companies to the Work being completed on behalf of the Utilities Companies. DDOT shall have a right to approve any Significant Change requested by the Utility Companies in accordance with the process set forth in Section 2.6.2.

3.3 Utilities Acceptance of Work. As a part of documentation submitted during the inspections and to evidence achieving Substantial Completion and Final Acceptance, Center Place shall provide or submit evidence to DDOT of the Utility Companies' acceptance of the Work completed on their behalf.

ARTICLE IV

DDOT Inspections and Acceptance of Work

4.1 Authority.

4.1.1 **Chief Engineer**. The Chief Engineer has the primary authority for administration and engineering supervision of this Agreement. The Chief Engineer will decide any question, on behalf of DDOT, as to interpretation of this Agreement, including quality and acceptability of furnished materials, work performed, rate of progress and acceptable fulfillment of this Agreement's requirements. The Chief Engineer has authority to suspend Work wholly or in part due to Center Place's failure to correct conditions unsafe for workmen or the general public; for failure to carry out provisions of this Agreement; for such periods needed due to unsuitable weather; for conditions deemed unsuitable for prosecution of the Work; or for any condition in the public interest. The Chief Engineer, the Resident Engineers, or its representative has authority to reject any piece of equipment, staging, formwork or other appliance considered unsafe, improper, or inadequate; whether or not the Chief Engineer exercises this authority,

Center Place is not relieved of its responsibility for safe and proper execution of this Agreement. The Chief Engineer has the authority to require Center Place to replace any representatives, including staff, of Center Place or the GMP Contractor who is not performing to the satisfaction of the Chief Engineer.

4.1.2 **Resident Engineers.** Resident Engineers designated as representatives of the Chief Engineer, including private consultants, shall have authority to inspect all Work and furnished materials. Such inspection may extend to all or any part of the Work and to the preparation, fabrication or manufacture of the material to be used. In case of dispute between Center Place and Resident Engineer, the Resident Engineer has authority to reject Work and materials and to suspend Work until the Chief Engineer is able to resolve the case. Resident Engineers have no authority to alter, waive or add to this Agreement's requirements.

4.1.3 **Center Place Representative.** Sean Cahill shall be the sole point of contact for Center Place with DDOT for all matters relating to this Agreement.

4.2 Inspections During Construction.

4.2.1 Inspection and test of material and workmanship required by DDOT shall be made at reasonable times and at the Project Site, as set forth in the QMP, unless the Chief Engineer or authorized Resident Engineer determines that such inspection or test of material which is to be incorporated in the Work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Chief Engineer or an authorized Resident Engineer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the Gold Book and the Approved Construction Plans and Specifications. Any off-site inspection or test shall not relieve Center Place of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the District after acceptance of the completed Work at Substantial Completion. Center Place shall cause the GMP Contractor to provide DDOT reasonable access to all parts of the Project Site for the purpose of carrying out such inspections and testing.

4.2.2 Center Place shall or shall cause the GMP Contractor to replace any material and correct any workmanship found by the Chief Engineer or an authorized Resident Engineer not to conform to DDOT's Standards and Guidelines and the Approved Construction Plans and Specifications. Center Place shall or shall cause the GMP Contractor to promptly segregate and remove rejected material from the premises at GMP Contractor's expense.

4.2.3 Center Place shall furnish or shall cause the GMP Contractor to furnish all facilities, labor and material needed for performing such safe and convenient inspections and tests, as may be required by the Chief Engineer or an authorized Resident Engineer. All inspections and tests by the Chief Engineer or an authorized Resident Engineer shall be performed in such manner as not unnecessarily to delay the Work. Special, full size and performance tests shall be performed as described in the QMP.

4.2.4 Should it be considered reasonably necessary or advisable by the Chief Engineer or an authorized Resident Engineer at any time before acceptance of any portion of the Work, either in part or in its entirety, to make an examination of Work completed by removing or tearing out same, Center Place shall, on request promptly furnish or cause the GMP Contractor to furnish all necessary facilities, labor and material to do same; provided, however, in no event shall Center Place or the GMP Contractor be required to remove or tear out any portion of the Work completed and accepted by DDOT. If such Work is found to be defective or nonconforming in any material respect, due to the fault of Center Place, the GMP Contractor or a subcontractor, after acceptance of the Work, Center Place shall be responsible for all the expenses of such examination and of satisfactory reconstruction.

4.2.5 Center Place shall take no advantage of any error or omission in the Approved Construction Plans and Specifications or of any discrepancy between the Approved Construction Plans and Specifications and DDOT's Standards and Guidelines, and the Chief Engineer or an authorized Resident Engineer shall make such corrections and interpretations as may be deemed necessary for the satisfactory completion of the Work. On all plans, the calculated dimensions will govern in case of discrepancy over the scaled dimensions.

4.3 Project Schedule. Before commencing any Early Work, Center Place shall notify DDOT of Center Place's anticipated date of Final Acceptance. Such date shall be based on the Critical Path Method analysis of the Early Works and shall be the date identified in the GMP Contract for Final Acceptance and be used to develop the Baseline Schedule. Notwithstanding the foregoing, Center Place shall be permitted to undertake those pre-phase activities identified on Exhibit 1 hereto before Center Place identifies the anticipated date of Final Acceptance in accordance with this Section 4.3.

4.3.1 **Compliance with the Baseline Schedule.** Center Place acknowledges and agrees that time is of the essence in completing the Project. Center Place shall complete the Work in accordance with the time lines set forth on the Baseline Schedule. Any time Center Place falls more than twenty (20) working days behind the Baseline Schedule, Center Place shall promptly upon written notice from the Chief Engineer provide a recovery plan indicating a remedy to the noted delay including but not limited to an increase in work force, equipment and working hours in order to demonstrate the Project will be completed in accordance with the time periods stated the Baseline Schedule.

4.3.2 **Progress Reports.** Center Place shall or shall cause the GMP Contractor to submit a progress schedule update every month. The monthly progress schedule update shall reflect the progress achieved by Center Place in the previous month. The Resident Engineer will review the monthly progress schedule update within ten (10) calendar days and return comments to Center Place for inclusion in the subsequent month's progress schedule update. Should the Resident Engineer determine that Center Place has failed to update the schedule in accordance with the Baseline Schedule; the schedule update shall be returned for revision by Center Place.

4.4 Submission of Test Results and Reports. Center Place shall or shall cause the GMP Contractor to supply the reports and the results of tests of the Work and Project Site conditions as required under the QMP and the Gold Book.

4.5 Failure to Abide by Terms of Agreement; QMP; Approved Construction Plans, Progress Schedule. If Center Place or the GMP Contractor, at any time, fails to maintain the Project Site properly in conformance with the terms of this Agreement (including, without limitation to, the QMP, Approved Construction Plans and Specifications and Baseline Schedule), the Chief Engineer will immediately notify Center Place of such noncompliance. If Center Place fails to commence or the GMP Contractor fails to commence repair, beyond mobilization, of the unsatisfactory maintenance within Twenty-Four (24) hours of receipt of such notice, the Chief Engineer shall have the remedy set forth in Section 7.3 below.

4.6 Acceptance of the Work by the District. Acceptance of the Work by the Chief Engineer or an authorized Resident Engineer will be made as promptly as practicable after completion and inspection of all Work required by this Agreement and in accordance with the QMP and the Gold Book. Acceptance shall be final and conclusive, except as regards to latent defects, fraud, or gross negligence, or as regards the District's rights under any warranty or guaranty provided for herein.

4.7 Substantial Completion. Center Place shall achieve Substantial Completion on or before the Substantial Completion Date as defined in the Baseline Schedule or approved updates, adjustments and modifications thereto, and subject to the requirements set forth in Section 108.09(A) of the Gold Book.

4.8 Final Acceptance. Center Place shall achieve Final Acceptance on or before the Final Acceptance Date as defined in the Baseline Schedule, subject to adjustment in accordance with this Agreement, and subject to the requirements set forth in Section 108.09(B) of the Gold Book.

4.9 As-Builts. Center Place shall provide the District with as-builts in accordance with Section 108.15 of the Gold Book.

ARTICLE V

Construction Security and Warranties

5.1 Performance Bond.

5.1.1 Center Place shall require the GMP Contractor to obtain Performance Bond in the form of Form No. DC 12 2640-7 to the Gold Book in an amount equal to 100 percent of the GMP Contract price. The District of Columbia shall be listed as a co-obligee on the Performance Bond.

5.1.2 If there is an Event of Default (under the GMP Contract) by the GMP Contractor, Center Place promptly shall notify the Surety providing the Performance Bonds and enforce its rights thereunder. If Center Place fails to enforce its rights under the Performance Bond, the District shall have the right, as the co-obligee, to request enforcement of the Performance Bond pursuant to the terms therein.

5.2 Payment Bonds. Prior to the commencement of the Work, Center Place shall secure or cause the GMP Contractor to secure, a payment bond in an amount of one hundred percent (100%) of the total amount payable by the terms of the GMP Contract and provide evidence of the same to DDOT.

5.3 Surety Company. The bonds may be obtained from any Surety company authorized by the U.S. Treasury Department as acceptable sureties on Federal Bonds and authorized to transact business in the District of Columbia by the Administrator, Insurance Administration, Department of Consumer and Regulatory Affairs.

5.4 Performance and Damage Deposit. As additional security under this Agreement, Center Place previously delivered to the Escrow Agent pursuant to that certain Escrow and Post-Closing Agreement a Letter of Credit in the amount of one million dollars \$1,000,000 (“**Performance and Damage Deposit**”). The District shall be entitled to draw upon the Performance and Damage Deposit prior to the issuance of the Certificate of Final Acceptance upon an Event of Default pursuant to Section 7.4.1 in accordance with the terms and conditions of the Escrow and Post-Closing Agreement.

5.5 Latent Defects. Center Place shall be responsible for any latent defects in the Work.

5.6 Warranty. Upon Substantial Completion, Center Place shall deliver or cause the GMP Contractor to deliver warranties for the Work for the benefit of the District, which warranties shall extend for two years from the date of Substantial Completion.

ARTICLE VI

Insurance

6.1 Center Place shall procure and maintain, and cause the GMP Contractor to procure and maintain, during the entire period of performance under this Agreement, the types of insurance specified in Section 6.4 below. Center Place shall submit a certificate of insurance giving evidence of the required coverage prior to commencing Work. All insurance shall be written with companies licensed by the District of Columbia’s Department of Insurance, Securities and Banking.

6.2 Center Place shall require the GMP Contractor and all other Subcontractors to carry the insurance required herein; provided, however, Center Place may, at its option, provide the coverage for any or all Subcontractors (other than the GMP Contractor), and if so, the evidence of insurance submitted shall so stipulate.

6.3 All insurance provided by Center Place and the GMP Contractor as required by this Article, except comprehensive automobile liability insurance shall set forth the District as an additional named insured. In no event shall Work be performed until the required certificates of insurance have been furnished. The insurance shall provide for thirty (30) days prior written notice to be given to the District in the event coverage is substantially changed, canceled or non-

renewed. If the insurance provided is not in compliance with all the requirements herein, the District maintains the right to stop Work until the proper evidence is provided.

6.4 During the performance of the Work, Center Place shall maintain the following insurance in satisfaction of the requirements of Section 6.1 above:

6.4.1 **Commercial General Liability Insurance.** \$1,000,000 limits per occurrence, including coverage for Explosion, Collapse and Underground (XCU) and Incidental Pollution coverage, District added as additional insured.

6.4.2 **Automobile Liability Insurance.** \$1,000,000 per occurrence combined single limit.

6.4.3 **Worker's Compensation Insurance.** According to the statutes of the District of Columbia, including Employer's Liability, \$100,000 per accident for injury, \$100,000 per employee for disease, \$500,000 policy limit disease; if Work is on or near navigable waterways, USL&H coverage (federal statutory limits) must be included.

6.4.4 **Umbrella/Excess Liability Insurance.** \$25,000,000 limits per occurrence.

ARTICLE VII Remedies and Termination

7.1 Cease and Desist for Safety, Public Welfare, or Interference of Traffic. In the event that Center Place violates any covenant of this Agreement that the Chief Engineer determines, after Applying Professional Industry Standards, impairs or interferes with the free flow of traffic (except as provided in the MOT) or creates a hazard to the public welfare or safety of the Project Site (or Highway), the Chief Engineer may issue a notice to immediately cease and desist its use of the Property to the extent the use generates such conditions, and Center Place shall promptly act to cease the use or correct the offending condition that is deemed by the Chief Engineer to be an impairment to or interference with the operation of the Project Site or Highway.

7.2 Contractor's Progress. The approved Baseline Schedule shall use the critical path method and indicate all major work activities. This schedule shall serve as the primary determination of contractor's progress and Center Place's progress compliance with this agreement. The Baseline Schedule shall be maintained in accordance with the QMP.

7.3 Damage to Public Space Improvements within Project Site or Highway. In the event that any portion of the public space improvements outside the Project Site or the Highway are destroyed or damaged by Center Place, the GMP Contractor, or any subcontractor during the performance of the Work, Center Place shall, at its sole cost and expense: (a) as directed by the Chief Engineer immediately cause the repair such damage or restore such property to a condition that in the Chief Engineer's sole opinion is at least equal to the condition that existed prior to such damage; or (b) immediately pay the reasonable costs incurred by DDOT to repair such damage or restore such property to a condition that, in the Chief Engineer's sole opinion, is at least equal to the condition that existed prior to such damage and any reasonably documented out-of-pocket costs incurred by DDOT resulting from disruption of the traffic operations. The

Chief Engineer shall make the final determination regarding whether Center Place or DDOT will repair or restore the Project Site or Highway, such decision and determination to be exercised Applying Professional Industry Standards. In addition to the foregoing remedies, DDOT may enjoin Work being performed on the Project Site until such time as such default is cured.

7.3.1 Liquidated Damages for Failure to Achieve Substantial Completion by Date on Baseline Schedule. If the GMP Contractor fails to achieve Substantial Completion of the Work by the scheduled date of Substantial Completion on the Baseline Schedule (as such date may be modified in accordance with the terms of this Agreement) Center Place shall pay or cause the GMP Contractor to pay the District liquidated damages, not as a penalty, in the amount of five thousand dollars (\$5,000) per calendar day for the first thirty (30) calendar days and seven thousand five hundred dollars (\$7,500.00) per calendar day thereafter until Substantial Completion is achieved. The liquidated damages provided for herein shall be District's exclusive damage remedy for Center Place's failure to complete the Work on or before the date of Substantial Completion therefor, but such damages shall in no way limit District's entitlement to damages for any other injury, damage or loss, other than for delay, for which Center Place or the GMP Contractor may be responsible pursuant to the terms of this Agreement or applicable law.

7.4 Other Events of Default. While no notice and cure is required to allow DDOT to act pursuant to Sections 7.1, 7.2, and 7.3 above, a default under those sections shall constitute an "Event of Default" on the part of Center Place, as will a failure by Center Place in the performance of any other material obligation, term, or provision under this Agreement, if such default shall continue uncured for thirty (30) days after receipt of written notice of such default, provided that such thirty (30)-day period shall be extended to the extent required to complete such cure so long as Center Place has commenced to cure such default within such thirty (30)-day period and thereafter diligently prosecutes such cure to completion. If any Event of Default occurs, DDOT shall have the following rights and remedies:

7.4.1 Cure the Event of Default at Center Place's sole cost and expense in which event Center Place shall pay to DDOT an amount equal to DDOT's actual, reasonably documented out-of-pocket costs for such cure (including any costs associated with the disruption of the traffic operations) within ten (10) Business Days after demand therefor. Any such sums not paid by Center Place within ten (10) Business Days after demand shall bear interest at the rate of ten percent (10%) per annum or the highest rate permitted by applicable law, if less, until paid;

7.4.2 Pursue specific performance of Center Place's obligations hereunder;

7.4.3 Pursue any and all other remedies available at equity and law; or

7.4.4 Terminate this Agreement; provided, however, in the event that DDOT elects to terminate this Agreement, DDOT shall not have the right to pursue the remedies set forth in Sections 7.4.2 and 7.4.3 above, but shall have the right to pursue reimbursement of costs pursuant to Section 7.4.1 above.

7.5 DDOT Draws on Performance and Damage Deposit. In the event that DDOT elects to conduct Work or repair damage to the Project Site or Highway pursuant to Sections 7.2 or 7.3.1 above and Center Place does not reimburse DDOT within thirty (30) days of a demand

for payment from DDOT for costs incurred by DDOT, DDOT may draw upon the Construction Security. Any amounts not required to cover costs incurred by DDOT shall continue to be held in escrow pursuant to the Escrow and Post-Closing Agreement.

ARTICLE VIII Miscellaneous

8.1 Term. Unless terminated earlier, this Agreement shall terminate and be of no force and effect upon Final Acceptance.

8.2 Notices.

8.2.1 Any notices given and submissions made under this Agreement shall be in writing and delivered by certified mail, return receipt requested, postage pre-paid, by hand, or by reputable private overnight commercial courier service, to the Parties at the following addresses:

DDOT:

District Department of Transportation
55 M Street, S.E., Suite 700
Washington, DC 20003
Attention: Director

With copies to:

District Department of Transportation
Infrastructure Project Management Administration
55 M Street, S.E., Suite 700
Washington, DC 20003
Attention: Chief Engineer

District Department of Transportation
Infrastructure Project Management Administration
55 M Street, S.E., Suite 700
Washington, DC 20003
Attention: Ali Shakeri, PE, Program Manager

District Department of Transportation
55 M Street, S.E., 7th Floor
Washington, DC 20003
Attention: General Counsel

The Office of the Attorney General for the District of Columbia
441 4th Street, N.W.
Suite 1010S
Washington, DC 20001
Attention: Deputy Attorney General, Commercial Division

CENTER PLACE:

Center Place Holdings LLC
c/o Property Group Partners LLC
20 Westport Road
PO Box 717
Wilton, Connecticut 06897-0870
Attention: David B. Shepherd

and

Center Place Holdings LLC
c/o Property Group Partners LLC
609 Fifth Avenue, 6th Floor
New York, New York 10017
Attention: Jeffrey I. Sussman

and a copy (which shall not constitute notice) to:

Arnold & Porter LLP
555 12th Street, N.W.
Washington, DC 20004
Attention: Amy Rifkind

8.2.2 Notices served upon Center Place or the District in the manner aforesaid shall be deemed to have been received for all purposes hereunder on the date of actual delivery or refusal thereof. If notice is tendered under the terms of this Agreement and is refused by the intended recipient thereto, the notice shall nonetheless be considered to have been received and shall be effective as of the date provided in this Agreement.

8.2.3 Center Place and the District (acting by and through DDOT) shall each have the right to change their respective addresses for the purposes of this Section 8.1 by providing written notice thereof to the other Party as required under this Section 8.1.

8.3 Indemnification. Center Place shall (and shall cause the GMP Contractor and any Subcontractor to) indemnify, defend, and hold the District of Columbia harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against the District (or agents, officers, directors, employees, consultants, contractors, and representatives thereof) in connection with, arising out of, in response to, or in any manner relating to the Project or any violation of Law by Center Place, the GMP Contractor or any Subcontractor other than as arising from any action or

inaction of the District or its agents, officers, employees, consultants, contractors or representatives thereof. Center Place shall have the right to defend any claims with counsel of its choice; provided, however, that if any such claims are brought against the District of Columbia, the Attorney General for the District of Columbia (“AG”) shall have the right to approve such counsel in advance, which approval shall not be unreasonably withheld or delayed (it being agreed that it shall not be unreasonable for the AG to withhold its consent in the event representation by such counsel proposed by Center Place, the GMP Contractor, or any Subcontractor would present an ethical conflict of interest for the District of Columbia, as determined by the AG for the District of Columbia in his or her sole absolute discretion).

8.3.1 CBE and First Source Requirements and Reports.

8.3.2 **CBE Requirements.** Center Place shall comply with the CBE Agreement in connection with the completion of the Project.

8.3.3 **First Source Requirements.** Center Place shall comply with the First Source Employment Agreement in connection with the completion of the Project.

8.3.4 **Reports.** Center Place shall provide copies of all reports submitted to Department of Small and Local Business Enterprises under the CBE Agreement and Department of Employment Services under the First Source Agreement simultaneously to DDOT and DMPED. Such reports shall be given no less than on a quarterly basis.

8.4 Non-Discrimination. Center Place: (1) shall not discriminate in any manner based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation of any employee or applicant for employment in violation of under §2-1401.11 of the District of Columbia Human Rights Act (D.C. Law 2-38; D.C. Code §2-1402.11) and (Title VII of the Civil Rights Act of 1964); (2) shall include a similar clause in every subcontract, except subcontracts for standard commercial supplies or raw materials, and (3) shall, along with all Subcontractors, post in a conspicuous place, available to employees and applicants for employment, a notice setting forth the provisions of the nondiscrimination clause set forth under 4 DCMR § 4-1103 (set out in Section 251 of the District of Columbia Human Rights Act (D.C. Code Anno. Section 1-2522); (4) shall not exclude any person from participation in or deny the benefits of any of Center Place’s programs or activities on the basis of race, color, national origin, sex, age, and disability, including the selection and retention of Subcontractors, under Title VI of the Civil Rights Act of 1964, 49 C.F.R. Part 21, 28 C.F.R. section 50.3 and other related statutes. Pursuant to the Rehabilitation Act of 1973 (for Federal and federally-assisted projects), DC Human Rights Act of 1977 for District of Columbia-funded projects, and the Americans With Disabilities Act, Center Place and all Subcontractors agree not to discriminate against any handicapped person who is qualified to perform the job. Center Place also agrees to take affirmative action to hire, advance, and treat handicapped people without discrimination.

8.5 FHWA Approvals. The Work to be performed by Center Place under this Agreement, as described in the Approved Construction Plans and Specifications, is to be

performed within the Public Space outside of boundaries of the right-of-way governed by Title 23 of the Code of Federal Regulations and, therefore, falls within DDOT's local jurisdiction under D.C. Official Code § 50-921.04 and does not require submission for FHWA approval under Title 23 of the Code of Federal Regulations. In the event that the scope of the Work is modified to include work within the Highway or the airspace associated therewith, such modification will be subject to receipt of all required FHWA approvals.

8.6 Limitations of Agreement. This Agreement is not intended to be, nor shall it be construed as, the "Construction Agreement" required under Declaration, which will be subject to future agreement of Center Place, the Owner Entities, and DDOT, which approval will be granted in accordance with the Declaration in DDOT's sole discretion and after receipt of all required FHWA approvals. The process for DDOT's approval of "Significant Changes" under Section 2.6.2 of this Agreement is a negotiated term for this Agreement only and shall not apply to any approvals to be granted by DDOT under the Declaration or any future "Construction Agreement."

8.7 Conflicts. All requirements of this Agreement (including its exhibits) and applicable DDOT's Standards and Guidelines are equally binding. In case of discrepancy or conflict among any of this Agreement, the Construction Package, or DDOT's Standards and Guidelines, the Chief Engineer shall be promptly notified in writing of any conflict, error, discrepancy, or omission, apparent or non-apparent. The Chief Engineer shall resolve any error, discrepancy or omission in his sole discretion by applying the following order of priority (with #1 being of the highest priority):

- (1) This Agreement (exclusive of exhibits);
- (2) Gold Book (as modified by Exhibit 5)
- (3) Approved Construction Plans and Specifications;
- (4) DDOT's Standards and Guidelines;
- (5) QMP; and
- (6) Applicable Laws.

8.8 Transfer. Unless otherwise provided by law, neither this Agreement nor any interest herein may be transferred or assigned by Center Place to any other party without the written consent of the Chief Engineer. Any attempted transfer or assignment not authorized by DDOT shall constitute a breach of this Agreement and the District may for such cause terminate the right of Center Place to proceed with the Work.

8.9 Waiver. No waiver of any breach of any provision of this Agreement shall operate as a waiver of such provision or of this Agreement or as a waiver of subsequent or other breaches of the same or any other provision of this Agreement; nor shall any action or non-action by the Chief Engineer be construed as a waiver of any provision of this Agreement or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Chief Engineer in writing.

8.10 Force Majeure. Neither the District nor Center Place, as the case may be (or any of their respective successors-in-interest), shall be considered in default under this Agreement

with respect to their respective obligations under this Agreement in the event of forced delay in the performance of such obligations due to force majeure. In the event of the occurrence of any such force majeure event, the time or times for performance of the obligations of the District or of Center Place shall be extended for the period of the force majeure; provided, however that: (i) the Party seeking the benefit of this Section 12.1 shall have first notified, within ten (10) days after it becomes aware of the beginning of any such force majeure event, the other Party in writing of the cause or causes thereof, with supporting documentation, and requested an extension for the period of the forced delay; (ii) in the case of a delay in obtaining any approvals or Permits required to be obtained pursuant to this Agreement, Center Place must have filed complete applications for such approvals by the dates required in this Agreement and shall have hired an experienced expeditor to monitor and expedite the approval process; and (iii) the Party seeking the delay must take reasonable actions to minimize the delay. If either Party requests any extension of the date of completion of any obligation hereunder due to force majeure, it shall be the responsibility of such Party to reasonably demonstrate that the delay was caused specifically by a delay of a critical path item of such obligation.

8.11 Applicable Law; Forum for Disputes. This Agreement shall be governed by, interpreted under, construed, and enforced in accordance with the laws of the District, without reference to the conflicts of laws provisions thereof. The District and Center Place irrevocably submit to the jurisdiction of the courts of the District of Columbia for purposes of any suit, action, or other proceeding arising out of this Agreement or any transaction contemplated hereby. The District and Center Place irrevocably and unconditionally waive any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts of the District of Columbia, and hereby further waive and agree not to plead or claim in any such court that any such action, suit, or proceeding brought in any such court has been brought in an inconvenient forum.

8.12 No Third-Party Beneficiaries. Nothing contained in this Agreement is intended, or shall be construed, to confer upon any party other than the District (acting by and through DDOT), Center Place, and their respective successors and permitted assigns, any right or benefit under or by reason of this Agreement.

8.13 Waiver of Right to Trial By Jury. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION: (i) ARISING UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF; OR (ii) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE WORK RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 8.13 WITH ANY COURT AS WRITTEN

EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY

8.14 Further Assurances. Each Party agrees, upon the written request of the other Party and without further consideration, to execute and deliver or cause to be executed and delivered such other instruments, agreements, and documents, and to take such other actions, as may reasonably be required to implement or effectuate the provisions this Agreement.

8.15 Anti-Deficiency Limitations on District's Authority; Unauthorized Acts. Though no financial obligations on the part of District are anticipated, Center Place acknowledge that the Director (and his employees, agents, and designees), as officials of the District, are not authorized to make any obligation in advance or in the absence of lawfully available appropriations and that the District's authority to make such obligations is and shall remain subject to the provisions of (i) the Federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1350, 1351; (ii) D.C. Official Code Section 47-105; (iii) District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) Section 446 of the District of Columbia Home Rule Act. Center Place acknowledge and agree that any unauthorized act by the Director, Chief Engineer, the Resident Engineers, or any other employees, agents, and designees of DDOT (and all other District employees, officials, and agents) is void.

8.16 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future Laws, such provisions shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never constituted a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

8.17 Time is of the Essence. Time is of the essence with respect to all matters set forth in this Agreement

8.18 No Construction Against Drafter. This Agreement has been negotiated and prepared by the District and Center Place and their respective attorneys and, should any provision of this Agreement require judicial interpretation, the court interpreting or construing such provision shall not apply the rule of construction that a document is to be construed more strictly against one Party.

8.19 Business Day. In the event that the date for performance of any obligation under this Agreement falls on other than a Business Day, then such obligation shall be performed on the next succeeding Business Day.

8.20 Modifications and Amendments. None of the terms or provisions of this Agreement shall be changed, waived, modified, released, or amended except by an instrument in writing executed by each of Center Place and the Director (or other duly authorized official of

the District), and approved by OAG for legal sufficiency. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

8.21 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which together constitute one and the same instrument.

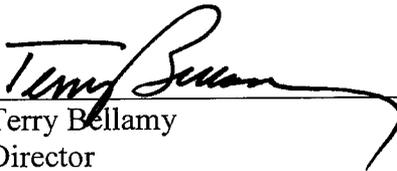
8.22 Recordation. This Agreement shall not be recorded among the Land Records and is and shall be binding upon the Property and shall run with the land until released pursuant to the terms of this Agreement.

8.23 Entire Agreement. This Agreement shall be the entire agreement between the parties with respect to the planning and undertaking of the Work.

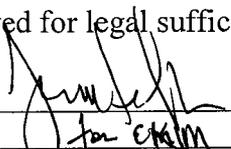
IN WITNESS WHEREOF, DDOT has, on this _____ day of April, 2014, caused this Agreement to be executed, acknowledged and delivered by Terry Bellamy, Director of the District of Columbia Department of Transportation, for the purposes therein contained.

DDOT:

DISTRICT OF COLUMBIA,
acting by and through the District of
Columbia Department of Transportation

By: 
Terry Bellamy
Director

Approved for legal sufficiency

By: 
Name: for CKM

Office of the Attorney General for the District of Columbia

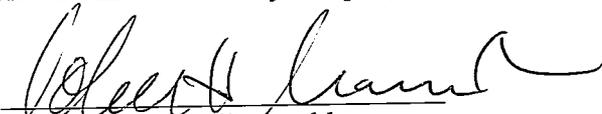
- Exhibit 1** Pre-Phase Work
- Exhibit 2** Quality Management Plan
- Exhibit 3** Utility Consents
- Exhibit 4** Public Outreach Program Plan
- Exhibit 5** Gold Book Sections 102-109 Modifications

IN WITNESS WHEREOF, the undersigned have executed this Construction Agreement For Utility Relocations and Certain Street Improvements Within Public Space as of the date first written above.

CAPITOL CROSSING I LLC,
a Delaware limited liability company

By: 
Name: Robert H. Braunohler
Title: Vice President

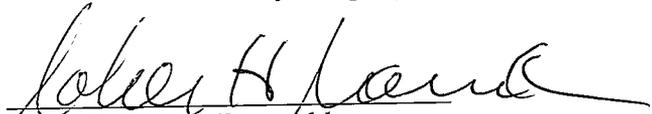
CAPITOL CROSSING II LLC,
a Delaware limited liability company

By: 
Name: Robert H. Braunohler
Title: Vice President

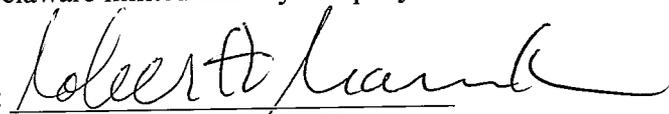
CAPITOL CROSSING III LLC,
a Delaware limited liability company

By: 
Name: Robert H. Braunohler
Title: Vice President

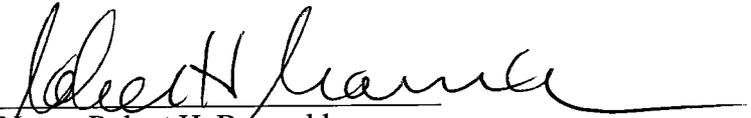
CAPITOL CROSSING IV LLC,
a Delaware limited liability company

By: 
Name: Robert H. Braunohler
Title: Vice President

CAPITOL CROSSING V LLC,
a Delaware limited liability company

By: 
Name: Robert H. Braunohler
Title: Vice President

CENTER PLACE HOLDINGS, LLC

By: 
Name: Robert H. Braunohler
Title: Vice President