

**STATE OF CONNECTICUT**  
**CONNECTICUT DEPARTMENT OF**  
**TRANSPORTATION**



**ADDENDUM NO. 2**  
**REQUEST FOR PROPOSALS FOR THE TRANSIT-ORIENTED DEVELOPMENT**  
**OF THE STAMFORD PARKING GARAGE**  
**(STOD71312)**

**DUE DATE:** September 24, 2012 AT 2 P.M. EST

**DESCRIPTION:** Stamford Transportation Center Parking Garage and Transit-Oriented Development

**SUBMITTAL LOCATION:** Connecticut Department of Transportation  
 Attn: Scott Hill, Manager of Bridges and Facilities  
 2800 Berlin Turnpike  
 Newington, CT 06111

**ADDENDUM NO. 2**  
**DATE: August 9, 2012**

The Connecticut Department of Transportation provides the following items as modifications to the Request for Proposals for the Transit-Oriented Development of the Stamford Parking Garage:

Section 2.0 Schedules – Subsection 2.1 RFP Schedule/Submittal Deadlines – Table 1

Table 1 is deleted in its entirety and replaced with this like-named Table 1. The modifications to Table 1 consisted of:

- a) Notification date of the one-on-one meeting dates to be scheduled by August 10, 2012;
- b) RFI/Comment Deadline revised to August 28;
- c) Mandatory Meeting with Connecticut Department of Labor concerning Prevailing Wage on August 20 @10 am - DOT Newington Training Center, 2780 Berlin Turnpike, Newington, CT;
- d) Mandatory one on one meeting to be scheduled the week of August 20, 2012 in Newington, CT

**Table 1 - Target RFP Schedule**

<b>Item</b>	<b>Deadline</b>
Release of RFP to Short-listed Proposers	7/13/2012
Proposer's Site Visit Period	7/19/2012 – 8/14/2012
Notification of One-on-one Meeting Dates	By 8/10/2012
Mandatory Meeting with the CT DOL – Prevailing Wage 10 am - DOT Training Center 2780 Berlin Turnpike Newington, CT	8/20/2012
Mandatory One-on-one Meetings	Week of 8/20/2012
<b>“RFI/Comment Deadline”</b>	8/28/2012
Final Date to Submit Request to Modify Team	8/14/2012
Department's Response to Request to Modify Team	8/24/2012
<b>“Addenda Deadline”</b>	9/5/2012
<b>“Proposal Due Date”</b>	2:00 p.m. EST 9/24/2012
Notification of Interview Dates	By 10/05/2012
Interviews	Week of October 15

Department's Requests for Proposal Clarifications & Responses (as needed including One-on-One Meetings as needed)	10/22 - 11/14(Tentative)
Notification of Preferred Proposer	By 11/30/2012
Negotiation Period	December 2012
Final Approvals of Development Agreement and intra-Proposer agreements	December 2012

Section 12.13 Compliance With Prevailing Wage Laws  
 Added to the end of the section is the following:

A mandatory meeting with all proposers is to be held on August 20, 2012 at the DOT Training Center, 2870 Berlin Turnpike Newington, CT 06111 at 10 am. To assist the proposers in preparing for the meeting the following document has been added to the SharePoint site:

"Quick Review of Connecticut's Prevailing Wage Requirements"  
 Revised for Contractors – February 2012  
 Prepared by the Connecticut Department of Labor

**Schedule 1 – DEVELOPMENT AGREEMENT**

Schedule 1 has been deleted in its entirety and replaced with this like-named Schedule 1. Schedule 1 begins on the next page.

Proposers are reminded that any Request for Information(s) RFIs to RFP No.:STOD71312, this Addendum or any other Addendum to this RFP must be submitted to CTDOT via its SharePoint site at: <http://sharepoint.jacobs.com/sites/CONNDOT/SitePages/Home.aspx>

**NOTE: THIS DOCUMENT INCLUDES THE FORM OF CERTAIN TERMS AND PROVISIONS TO BE INCLUDED IN A TRANSIT-ORIENTED DEVELOPMENT AGREEMENT. THESE TERMS AND PROVISIONS ARE SUBJECT TO MODIFICATION BY CTDOT TO ADDRESS THE PARTICULAR CIRCUMSTANCES OF A PROJECT OR AS CTDOT MAY OTHERWISE ELECT. PROVISIONS TO BE EXPANDED UPON IN THE FINAL VERSION OF THIS AGREEMENT ARE SET FORTH IN BRACKETS. THIS FORM HAS NOT YET BEEN APPROVED BY THE CONNECTICUT OFFICE OF POLICY AND MANAGEMENT, PROPERTIES REVIEW BOARD OR ATTORNEY GENERAL.**

**TRANSIT-ORIENTED DEVELOPMENT AGREEMENT**

**BETWEEN**

**STATE OF CONNECTICUT,  
acting by and through its  
Commissioner of Transportation**

**AND**

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**Dated as of \_\_\_\_\_, 2012**

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## TRANSIT-ORIENTED DEVELOPMENT AGREEMENT

THIS TRANSIT-ORIENTED DEVELOPMENT AGREEMENT ("Agreement") made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2012, by and between **STATE OF CONNECTICUT, acting by and through its Commissioner of Transportation** ("CTDOT"), and \_\_\_\_\_, a \_\_\_\_\_ ("Developer").

### RECITALS

A. The State of Connecticut owns (or has interests therein sufficient to enter into this Agreement) the land, together with the improvements thereon and appurtenances thereto, shown as Parcel A and Parcel B on the depiction attached hereto as Exhibit A (collectively, the "State Property"), subject to the Permitted Encumbrances (as hereafter defined).

B. The Stamford Transportation Center (the "Stamford Transportation Center"), with an address of 30 Station Place in Stamford, Connecticut, is located on part of the State Property.

C. The Stamford Transportation Center is an intermodal public transportation facility that includes a railroad station, a Metro-North, New Haven Line rail service, Amtrak intercity rail service, local CT Transit and Greyhound intercity bus services, taxis and other ground transportation services, a public waiting room/concourse area over the tracks, two interconnected parking structures consisting of approximately 1,900 total commuter parking spaces, multiple passenger boarding platforms, a dedicated taxi queue, corporate shuttle and bus transit depots, retail storefronts and a driveway between Atlantic Street and Washington Boulevard (such driveway, "Station Place").

D. The Stamford Transportation Center is currently operated on behalf of CTDOT through a contracted facility management agreement.

E. The two interconnected parking structures at the Stamford Transportation Center are: (i) a garage constructed in the 1980s with parking capacity for approximately 727 vehicles (the "Original Garage") and (ii) a garage constructed in 2004 with parking capacity for approximately 1,190 vehicles (the "2004 Garage").

F. Approximately 112 additional spaces for commuter parking are currently available on a surface parking lot on a portion of the State Property in proximity to the Stamford Transportation Center on South State Street (the "State Street Lot").

G. CTDOT has determined that (i) the Original Garage and the elevated pedestrian walkway connected thereto should be demolished (the "Demolition"); (ii) the Original Garage should be replaced by one or more garages located within one quarter mile of the Original Garage and containing 1,000 or more total parking spaces in a dedicated area for commuters

using the Stamford Transportation Center (the "Replacement Garage"); (iii) a new elevated pedestrian walkway should be constructed (the "New Pedestrian Bridge"); (iv) a new interoperable parking access and revenue control system should be installed in the 2004 Garage, the Replacement Garage and, if still to be used for Stamford Transportation Center commuter parking, the State Street Lot (the "PARCS"); and (v) Station Place should be modified to improve Stamford Transportation Center use, access, and circulation (the "Station Place Improvements").

H. During the period in which the Demolition, the construction of the Replacement Garage, the New Pedestrian Bridge and the Station Place Improvements and the implementation of the PARCS is taking place, the number of spaces for commuter parking for the Stamford Transportation Center must at all times be at least equal to the number of spaces currently available in the Original Garage, the 2004 Garage and the State Street Lot; accordingly, before any spaces may be taken out of service, an equal number of temporary replacement parking spaces within one-quarter mile of the Stamford Transportation Center, together with any necessary appurtenant improvements (such temporary parking spaces and improvements together, the "Temporary Parking") must be made available for commuter parking, which Temporary Parking must remain available until completion of the Replacement Garage, the New Pedestrian Bridge and the Station Place Improvements and the implementation of the PARCS.

I. The Demolition and the implementation and construction of the Replacement Garage, the New Pedestrian Bridge, the PARCS, the Station Place Improvements, and the Temporary Parking are each described in more detail in this Agreement and are collectively referred to in this Agreement as the "Garage Improvements".

J. CTDOT has determined that it will enter into a new contract with Developer or a Developer Affiliate for the operation and maintenance of the 2004 Garage, **[the State Street Lot,]** the Replacement Garage, the New Pedestrian Bridge and Station Place (collectively, the "Garage O&M").

K. To maximize benefits to commuters and the residents of the State, to maximize the use of mass transportation at the Stamford Transportation Center, to maximize the value of the site of the Original Garage and the other State Property, and to reduce the costs to the State of the Garage Improvements, CTDOT desires to implement the Garage Improvements as part of a transit-oriented development program consistent with Section 13b-79kk of the Connecticut General Statutes (the "TOD Legislation").

L. Pursuant to the TOD Legislation and through a competitive selection process, the State selected Developer to execute the Garage Improvements and design, construct, and operate certain other improvements on the State Property **[and on property owned/leased by Developer]**.

M. **[IF APPLICABLE In addition to the Garage Improvements, Developer will design, construct, and operate [\_\_\_\_\_], each as defined in this Agreement, on the State Property (the "State Property TOD Improvements") and the State, as provided in this**

**Agreement, will grant to Developer [insert any interests in State Property to be granted] to facilitate the State Property TOD Improvements].**

N. Developer is the [owner, contract purchaser or other arrangement, as applicable] of property (the "Developer Property"), which Developer Property is described on Exhibit B annexed hereto and made a part hereof.

O. Developer will design, construct, and operate [\_\_\_\_\_], each as defined in this Agreement, on the Developer Property ([the \_\_\_\_\_ and, together with the State Property TOD Improvements,] the "TOD Improvements").

P. The Garage Improvements and the TOD Improvements are collectively referred to as the "Project."

Q. CTDOT and Developer desire to, subject to the terms and conditions of this Agreement, work together to efficiently and effectively accomplish the Project.

NOW, THEREFORE, in consideration of the premises and mutual covenants and provisions herein contained and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

## ARTICLE I

### Definitions and Interpretation

1.1 Definitions. As used in this Agreement, the following terms shall have the following respective meanings:

*2004 Garage* is defined in the Recitals.

*Accumulated Records*, as used in Article XXI, means all working papers and other materials and information accumulated by Developer in performing its obligations under this Agreement, including documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

*Acts* is defined in Section 21.1.

*Administrative Notice to Proceed* is a notice from CTDOT to Developer, as described in Section 5.1(a).

*Affirmative Action Plan* means the plan and policy statement of Developer to promote affirmative action in its employment, hiring and promotion attached hereto as Exhibit C, or a successor plan acceptable to CTDOT.

*Agreement* means this Transit-Oriented Development Agreement, all recitals, exhibits, schedules and appendices hereto, and any and all supplements or amendments hereto or thereto.

*Applicable Laws* means all laws, statutes, ordinances, rules, regulations, orders or determinations of Governmental Authorities, including but not limited to Environmental Laws, common law, the State Contracting Requirements, the CTDOT Policies, federal and State prevailing wage laws, the state building code and the state fire safety code, applicable to the design, development, purchase, acquisition, disposition, equipping, construction, financing, leasing, maintenance, ownership, occupancy, possession, control, management, use or non-use or operation of any property, facility, structure or improvement forming part of the Project, the authorization, execution, delivery and performance by the parties of their respective obligations under this Agreement or the consummation of the transactions contemplated thereby, all after giving effect to the TOD Legislation and except as may be pre-empted by federal law (in which case the governing federal law shall be the Applicable Law).

*Available Funds* is defined in Section 4.7.

*Business Day* means each day on which state offices in the State of Connecticut are open for business.

*CEPA* means the Connecticut Environmental Policy Act (Section 22a-1a et seq. of the Connecticut General Statutes).

*Change in Control* is defined in Section 19.1.

*Change Notice* is defined in Section 7.4.

*Change Notice Proposal* is defined in Section 7.4.

*Change Order* is a written order from CTDOT directing Developer to make a change in Work, schedule or amount that has been issued in accordance with the process set forth in Article VII.

*Commence Work* means commencement by Developer of significant construction activities with respect to any of the Improvements (or a Subcomponent thereof), as contrasted with ceremonial groundbreaking activities.

*Commissioning* means the process of verification that systems perform as designated and as required by this Agreement and the Project Agreements, including assurances that the specified systems are installed properly and adjusted correctly, as described in Section 16a-38k of the Connecticut General Statutes for new construction of a State facility that is projected to cost \$5,000,000 or more, and for which all budgeted project bond funds are allocated by the State Bond Commission on or after January 1, 2008.

*Concept Plan* is defined in Section 4.8.

*Construction Contract* means an agreement between Developer and a Contractor for the construction of all or a portion of the Project.

*Contractor* means a general contractor or construction manager experienced in the construction of projects of a scope and nature similar to the Project (or the portion thereof for which such Contractor will be responsible) and financially able to meet its obligations under its Construction Contract, selected by Developer.

*CTDOL* is defined in Section 4.11.

*CTDOL Predetermination* is defined in Section 4.11.

*CTDOT* is defined in the first paragraph of this Agreement.

*CTDOT Guaranteed Substantial Completion Date* means each of (i) the date which is no later than thirty-six (36) months after the issuance of the Garage Improvements Notice to Proceed, by which the Garage Improvements are to be Substantially Completed, and (ii) each date by which a Subcomponent of the Garage Improvements is to be Substantially Completed, in each case in accordance with the PPS, as applicable.

*CTDOT Performance Criteria* means the minimum guidelines, specifications, construction standards, materials and characteristics by which the performance, workmanship, materials and functionality of the Garage Improvements will be evaluated by CTDOT, which are attached hereto as Exhibit D, Exhibit E, and Exhibit F.

*CTDOT Policies* is defined in Section 18.3.

*CTDOT Representative* means one or more individuals and/or entities, and any successor thereto, appointed by CTDOT to act on behalf of CTDOT to monitor the design and development of the Project as contemplated by this Agreement and the other Operative Agreements. The CTDOT Representative may, but is not required to, include an employee of CTDOT.

*Demolition* is defined in the Recitals.

*Demolition Plan* is a plan for the Demolition, to be submitted pursuant to Section 5.2(a).

*Design Submittals* is defined in Section 5.2.

*Designer* means each architect and/or professional engineer licensed in the State of Connecticut, with current design experience on major projects of comparable scope to the

Project, as may be selected by Developer as architect and/or engineer for all or a portion of the Project.

*Developer* is defined in the first paragraph of this Agreement.

*Developer Affiliate* means any Person that, directly or indirectly, controls, is controlled by, or is under common control with, Developer. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

*Developer Default* is defined in Section 20.1.

*Developer Parties* is defined in Section 21.1.

*Developer Property* is defined in the Recitals.

*Developer Team* means Developer, all Key Members and other Persons under the direction and control of Developer that are to provide services and/or materials in connection with the design and/or construction of the Project.

*Effective Date* is defined in Section 2.2.

*EIE* means the environmental impact evaluation prepared by CTDOT for the Project pursuant to CEPA, which sets forth CTDOT's determinations relative to environmental matters, and the conditions with respect thereto, by which the Project will proceed.

*Eligible Construction Contract* means a Construction Contract (a) pursuant to which the Contractor agrees to complete the Garage Improvements (or the Subcomponents thereof for which it is responsible) in accordance with the Final Plans and Specifications for a guaranteed maximum price; (b) pursuant to which the Contractor agrees to comply with all Applicable Laws, [**and (c)** \_\_\_\_\_].

*Eligible Costs* means that portion of Project Costs for the Garage Improvements on which the Available Funds may be spent.

*Environmental Laws* is defined in Section 16.1. Note: The defined terms that relate solely to Article XVI. Environmental Matters are defined in Section 16.1.

*Final Acceptance* is defined in Section 9.2.

*Final Plans and Specifications* is defined in Section 5.2.

*FOIA* is defined in Exhibit Q.

*Garage Improvements* is defined in the Recitals.

*Garage Improvements Notice to Proceed* is a notice from CTDOT to Developer with respect to Commencing Work on the Garage Improvements, as contemplated by Section 5.1(b).

*Garage Improvements PPS* means the progress and payment schedule for the Garage Improvements (or a Subcomponent thereof), prepared in accordance with the terms and conditions of Article VI.

*Garage Improvements Price* means \$\_\_\_\_\_, which constitutes the aggregate Project Costs for the Garage Improvements, as reflected in the Garage Improvements Schedule of Values, and includes: (i) all mobilization, installed equipment, materials incorporated into the Garage Improvements, labor and services relating to Developer's performance of its obligations under this Agreement with respect to the Garage Improvements (including all installed equipment and services provided by Project Providers and intellectual property rights necessary to perform the Garage Improvements); (ii) its performance of each and every portion of the Garage Improvement Work; (iii) payment of any and all duties, fees and royalties imposed with respect to any installed equipment, materials incorporated into the Garage Improvements, labor or services, including any private approvals or Governmental Approvals; and (iv) payment, as applicable, of any and all federal, state and local taxes, including any sales or use taxes, if applicable, arising out of Developer's or any such Project Provider's performance of the Garage Improvement Work, including any increases in any such taxes during the Term of this Agreement.

*Garage Improvements Schedule of Values* means the schedule of values of the Garage Improvements prepared by Developer and accepted by CTDOT. The preliminary Garage Improvements Schedule of Values is attached as Exhibit H.

*Garage O&M* is defined in the Recitals.

*Governmental Authority* means any and all federal, State or local governmental, administrative or judicial bodies, instrumentalities or agencies, including all political subdivisions of the State (including municipalities, taxing, fire and water districts and other governmental units).

*Governmental Permits* means all permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, Governmental Authorities, including those relating to traffic, environmental protection, wetlands, zoning, site approval, building and public health and safety, that are required for the development and operation of any part of the Project.

*Guaranteed Completion Date* means any of the Guaranteed Substantial Completion Dates or the Guaranteed Final Acceptance Dates, as applicable.

*Guaranteed Final Acceptance Date* means each date of Final Acceptance of any of the Improvements, or a Subcomponent thereof, as provided in the PPS.

*Guaranteed Substantial Completion Date* means any of the CTDOT Guaranteed Substantial Completion Dates or any of the TOD Improvements Guaranteed Substantial Completion Dates, as applicable.

*Improvements* means the Garage Improvements and the TOD Improvements together, and either separately.

*Indemnity Claims* is defined in Section 21.1.

*Insuring Party* is defined in Section 17.2.

*Lien* means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any agreement to give any of the foregoing), any conditional sale or other title retention agreement, and any lease in the nature thereof.

*Key Member* means a member of the Developer Team which will play a major role in the development of the Project, as shown on Exhibit J.

*Key Personnel* means any position, and the named Person(s) that occupy the most important positions and roles in connection with the successful development and implementation of the Project, as shown on Exhibit J.

*Liquidated Damages* is defined in Section 20.6.

*Material Developer Default* is defined in Section 20.8.

*New Pedestrian Bridge* is defined in the Recitals.

*Non-Conforming Work* means Work that is performed in a manner that is inconsistent with this Agreement and/or the applicable Project Agreements and Final Plans and Specifications then in affect.

*Non-Prevailing Wage Components* is defined in Section 4.11.

*Notice to Proceed* means, as applicable, the Administrative Notice to Proceed, the Garage Improvements Notice to Proceed, and/or the State Property TOD Notice to Proceed.

*Operative Agreements* means this Agreement and each other agreement between Developer and/or a Developer Affiliate and CTDOT that is contemplated by, or is entered into to give effect to the commitments of CTDOT and/or Developer under, this

Agreement, including an agreement pursuant to which Developer or a Developer Affiliate assumes responsibility for the Garage O&M.

*Original Garage* is defined in the Recitals.

*PARCS* means a parking and access revenue control system.

*Payment Certifications* is defined in Section 11.1.

*Permitted Encumbrances* means any encumbrances currently of record that affect title to the State Property, including certain easements and rights of way for railroad purposes.

*Person* means any natural person, corporation, partnership, limited liability company, association, trust, other business entity or governmental unit.

*PPS* is defined in Section 6.1.

*Preliminary PPS* is defined in Section 6.2.

*Prevailing Wage Components* is defined in Section 4.11.

*Project* is defined in the Recitals.

*Project Agreements* means the agreements that relate to the execution of the Project or any Subcomponent thereof and that are between any two or more of Developer, a Contractor, a Designer and any other Project Provider.

*Project Costs* means, for the applicable aspect of the Project, the design, development and construction costs of such aspect of the Project, including costs of site acquisition, costs of labor and materials and costs of accounting, legal, architectural, environmental, permitting and engineer fees.

*Project Executive* is defined in Section 4.2.

*Project Manager* is defined in Section 4.2.

*Project Property* means the State Property and the Developer Property together.

*Project Providers* is defined in Section 4.2.

*Project Warranties* is defined in Section 10.1.

*QMP* is the quality management plan as defined in Section 5.14.

*Record Drawings* is defined in Section 5.2.

*Record of Decision* is the public document from the Office of Policy and Management of the State determining that the EIE satisfies CEPA.

*Replacement Garage* is defined in the Recitals.

*RFP* is the Request for Proposals for the Project, numbered STOD71312 and dated July 13, 2012, as amended by addendum.

*Safety Program* means a program implemented by Developer for maintaining safe procedures and practices for the Project that satisfies the requirements of Section 5.8(b).

*Schematic Design Documents* is defined in Section 5.2.

*Stamford Transportation Center* is defined in the Recitals.

*State* means the State of Connecticut.

*State Contracting Requirements* is defined in Section 18.2.

*State Indemnified Parties* is defined in Section 21.1.

*State Property* is defined in the Recitals.

*State Property TOD Improvements* is defined in the Recitals.

*State Property TOD Notice to Proceed* is a notice from CTDOT to Developer that Developer is to commence the State Property TOD Improvements, as contemplated by Section 5.1(c).

*State Street Lot* is defined in the Recitals.

*Station Place* is defined in the Recitals.

*Station Place Improvements* is defined in the Recitals.

*Subcomponent* means a material, independent portion of the Improvements the completion of which is separately contemplated by the Project Agreements and on the PPS, and which CTDOT decides, in its discretion, may be subject to Substantial Completion and Final Acceptance independently of the other portions of the Improvements. For example, the New Pedestrian Bridge might be a Subcomponent of the Garage Improvements.

*Substantial Completion, Substantially Completed* and similar terms mean, with respect to the Garage Improvements, substantially completed in accordance with the CTDOT

Performance Criteria, the Record of Decision, and the Final Plans and Specifications as certified by the appropriate Designer, and all of the items described in Section 9.1(c) have occurred. **[The requirements for Substantial Completion of TOD Improvements to be determined based on the actual proposal selected.]**

*Substantial Completion Punchlist* is defined in Section 9.1.

*Temporary Parking* is defined in the Recitals.

*Temporary Parking Plan* is a plan for the Temporary Parking, to be submitted pursuant to Section 5.2(b).

*Term* is defined in Section 23.1.

*TOD Improvements* is defined in the Recitals.

*TOD Improvements Guaranteed Substantial Completion Date* means for the TOD Improvements and each Subcomponent thereof, the date for Substantial Completion thereof set forth on the applicable PPS.

*TOD Legislation* is defined in the Recitals.

*TOD Performance Criteria* means the minimum guidelines and specifications by which the performance, workmanship, materials and functionality of the TOD Improvements will be evaluated by CTDOT, which are attached hereto as Exhibit G. **[May be different for State Property TOD Improvements and off-site TOD Improvements.]**

*TPSMP* is defined in Section 5.2.

*Uncontrollable Circumstances* means any event which renders impossible, prevents, interrupts or delays the performance of an obligation of a party to this Agreement, if such event is beyond the reasonable control of such party and which, by the exercise of due diligence, such party would be unable to overcome, including: strikes, lockouts, sit-downs, riots, floods, explosions, earthquakes, fire, acts of the public enemy, wars, insurrections, changes in any Applicable Law, and the commencement and continued pendency of legal proceedings not brought by any party to this Agreement or any affiliate thereof and not based on any event or circumstance which constitutes a breach or default by such party of any obligations, covenants or agreements under this Agreement or which is otherwise within the reasonable control of such party, which legal proceedings restrain or enjoin the performance by such party of such obligation; provided that in no event shall a legal dispute between Developer and any Project Provider(s) or among Project Providers constitute an Uncontrollable Circumstance.

*VECP* is defined in Section 8.1.

*VECP Net Savings* is defined in Section 8.1.

*WBS* is defined in Section 6.1.

*Work* means all of the labor, materials and equipment necessary for Developer to complete the Project (and each Subcomponent thereof), in accordance with this Agreement.

*Work Product* is defined in Section 5.16.

1.2 Interpretation. (a) References to a "Section", "Sections", "Article" or "Articles" herein refer to this Agreement unless otherwise stated.

(b) Words importing the singular number mean and include the plural number and vice versa.

(c) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or index of schedules and exhibits appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

(d) Words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of this Agreement and not to any particular article, section, subsection, paragraph or clause hereof.

(e) A reference to "including" means including without limiting the generality of any description preceding such term, and for purposes of this Agreement the rule of *ejusdem generis* shall not be applicable to limit or restrict a general statement, followed by or referable to an enumeration of specific matters, to matters similar to, or of the same type, class or category as, those specifically mentioned.

(f) Any reference to "days" shall mean calendar days unless otherwise expressly specified.

(g) Any reference to any statute, law or regulation (including the TOD Legislation) includes all statutes, laws or regulations amending, consolidating or replacing the same from time to time, and a reference to a law or statute includes all regulations, codes or other rules issued or otherwise applicable under such law or statute unless otherwise expressly provided in such law or statute or in this Agreement. This rule of interpretation shall be applicable in all cases notwithstanding that in some cases specific references in this Agreement render the application of this rule unnecessary.

(h) Unless expressly stated to be at the discretion of a party, approvals, consents, waivers, acceptances, concurrences and permissions required to be given or made by either party hereunder shall not be unreasonably withheld, conditioned or delayed. In determining the

"reasonableness" of the granting or denial of any approval, consent, waiver, acceptance or concurrence of any party hereto, CTDOT shall be entitled to consider matters of public policy, as well as business and financial considerations.

(i) All notices to be given hereunder shall be given in writing (whether or not so specified in a particular provision of this Agreement) within a reasonable time unless otherwise specifically provided.

(j) Whenever any calculation or valuation may be made for any purposes hereunder and the method or manner of such calculation or valuation is not provided for in this Agreement, it shall be done in accordance with generally accepted accounting principles and engineering practices consistently applied or in such other manner as may be mutually agreed by the parties, unless otherwise required by Applicable Laws.

(k) CTDOT and Developer have participated in the drafting of this Agreement, and any ambiguity contained in this Agreement shall not be construed against CTDOT or Developer solely by virtue of the fact that either CTDOT or Developer may be considered the drafter of this Agreement or any particular part hereof.

(l) Each schedule and exhibit referred to in this Agreement shall be considered a part of this Agreement as if fully set forth herein.

(m) The use of any gender shall include all genders.

## ARTICLE II

### Scope of Agreement, Effective Date

2.1 Project. This Agreement sets forth the corresponding rights, privileges and duties of the parties with respect to the design, development and construction of the Project.

2.2 Effective Date. This Agreement shall become effective and bind the parties hereto when this Agreement has been fully executed and exchanged and upon the last of all of the following to occur:

(a) approval by the Secretary of the Office of Policy and Management of the State of the transactions contemplated in this Agreement;

(b) approval by the State Properties Review Board of any lease, sale or purchase of State land or facilities in connection with the transactions contemplated in this Agreement; and

(c) approval of this Agreement as to form, and, as applicable, as to substance, by the Attorney General of the State of Connecticut.

The first date on which all of the approvals described in (a), (b) and (c) of this Section 2.2 have been obtained and this Agreement has been fully executed shall be herein referred to as the "Effective Date."

CTDOT shall use reasonable efforts to obtain such approvals. Developer shall cooperate with CTDOT in its efforts to obtain all such approvals, including by providing CTDOT with any data, documents or information that CTDOT may reasonably determine to be necessary in obtaining said approvals and meeting with any State representatives, as requested by CTDOT.

### **ARTICLE III**

#### **TOD Findings**

3.1 Findings of Commissioner. In accordance with the TOD Legislation, the Commissioner of Transportation hereby: (i) finds that the Project meets transit supportive standards for land uses, built environment densities and walkable environments, in order to facilitate and encourage the use of the rail services; and (ii) finds that the Project shall result in the improvement of public transportation facilities.

### **ARTICLE IV**

#### **Pre-Construction Development Obligations**

4.1 Project Developer. In accordance with the TOD Legislation, CTDOT hereby designates Developer as the developer of the Project. Developer acknowledges that (i) the TOD Improvements must be located within one-half mile of the Stamford Transportation Center, (ii) the Replacement Garage must be located within one-quarter mile of the Stamford Transportation Center, and (iii) the Temporary Parking must be located within one-quarter mile of the Stamford Transportation Center.

4.2 Developer Team; Project Providers.

(a) The Developer Team for the Project is set forth on Exhibit J, including its Key Members and Key Personnel. Exhibit J also identifies the allocated roles and responsibilities of each member of its Developer Team. Developer shall provide immediate notice to CTDOT and the CTDOT Representative of any resignation, termination, reassignment or other departure from the Project of any Key Member or Key Personnel and a description of how Developer intends to fill the vacated position. Developer shall consult with the CTDOT Representative with respect to filling the role of any Key Member or Key Personnel for the Garage Improvements, and provide any requested information related to the proposed replacement, and any replacement must be acceptable to CTDOT in its discretion.

(b) Developer shall designate a Person as the single point of contact with whom CTDOT shall be authorized to confer with on all issues relating to the requirements of this Agreement (such Person herein referred to as the "Project Executive"). Developers shall also

designate a Person as the single point of contact with whom CTDOT shall be authorized to confer with on all issues relating to on-site implementation and management of the Project (such Person herein referred to as the "Project Manager"). The Project Executive and the Project Manager shall be included in the definition of Key Personnel.

(c) Developer shall diligently and expeditiously select and engage all Designers, Contractors, subcontractors, environmental consultants, and other professionals, consultants, suppliers, vendors, service providers and other members of the Developer Team (collectively the "Project Providers"), as may be necessary to achieve Substantial Completion and Final Acceptance of Improvements (or a Subcomponent thereof) by the applicable Guaranteed Completion Dates. Developer shall promptly notify the CTDOT Representative of any disputes with such Project Providers. Each Project Provider shall be duly qualified to perform the aspect of the Project for which it is retained, and shall have all proper licenses and approvals prior to its commencement of any Work. Each Project Provider shall provide the certification set forth in Section 19.1(e). Developer shall execute CTDOT's vendor form attached as Exhibit K. In addition to Key Members, any Contractor and Designer for any of the Garage Improvements [**or the State Property TOD Improvements**] must be acceptable to CTDOT in its discretion. CTDOT shall have the right to reject any other Project Provider for any of the Garage Improvements [**or the State Property TOD Improvements**] if it can establish that it has a reasonable basis for not allowing such Project Provider to be associated with the Project. Developer shall select, award and engage all Project Providers in accordance with all Applicable Laws (or cause all Project Providers to be selected, awarded and engaged in accordance with all Applicable Laws).

#### 4.3 Project Agreements.

(a) Developer shall include in each of the Project Agreements such applicable terms and conditions for the design, construction and development of the Project as are binding on Developer pursuant to this Agreement.

(b) Each of the Project Agreements for all or any part of the Garage Improvements [**or the State Property TOD Improvements**] to which Developer is a party shall (i) grant third party beneficiary status to CTDOT and the State and (ii) permit and acknowledge the assignment thereof by Developer to CTDOT without the need to obtain the consent from the other party or parties to such Project Agreement. If required by CTDOT, Developer shall obtain recognition agreements confirming this paragraph.

(c) Developer shall ensure that the applicable Project Agreements shall cause all Project Providers involved in the design of the Project to carry customary errors and omissions insurance, workers' compensation, and automobile and comprehensive general liability insurance, in amounts and in form consistent with other projects comparable to the Project and satisfying all Applicable Laws and any requirements of this Agreement, including Article XVII. All such policies for Project Providers for the Garage Improvements [**and/or the State Property TOD Improvements**] shall name CTDOT as an additional insured.

#### **4.4 Description of Garage Improvements.**

**[The Garage Improvements must comply with the CTDOT Performance Criteria, the Record of Decision, the requirements of the RFP, and the terms of the approved proposal. The Garage Improvements must include requirements for public safety; minimizing disruption to commuters; improved circulation for "Kiss and Ride" commuter and other rider drop offs; bicycle and pedestrian access to the Stamford Transportation Center; appropriate information on the location of available parking spaces for commuters; Developer participation in an extensive communication program with the public impacted by the Project; enhanced commuter, pedestrian and cyclist experience upon completion of the Project; weather protection for commuters during and after construction; unobstructed path of travel for commuters. If the Replacement Garage is located within a structure where there will be other parking or uses there must be a dedicated area for parking spaces exclusively under the control of CTDOT resulting in a net gain of at least 273 spaces over the existing CTDOT parking arrangements for commuters, with separate entrances and exits, available 24 hours per day, 365 days per year. The Garage Improvements must provide commuters with real-time information about the location of available parking spaces. The Replacement Garage must include an office space for management and security personnel. Construction of the Garage Improvements may not interfere with the continual, uninterrupted use of the 2004 Garage. Developer shall be responsible for the coordination of the Work of the various Project Providers. Developer must coordinate the Work with other construction projects in the area, whether by CTDOT or other parties, including those described on Exhibit I. The Garage Improvements must provide for charging stations for electric cars. Terms of this section are to provide for, to the extent necessary, a ground lease or other instrument by which CTDOT acquires sufficient interests in any part of the Developer Property on which the Garage Improvements shall be located. The Garage Improvements (other than the Temporary Parking) are expected to be owned by CTDOT. This section is also to address continuity of ownership and operation of the Garage Improvements at the end of any ground lease term or useful life of facilities. All Improvements on State Property shall be subject to and comply with the Permitted Encumbrances. All Improvements that involve work in or affecting the railroad right-of-way shall comply with Exhibit L hereto. The New Pedestrian Bridge must connect the Stamford Transportation Center directly to either a Replacement Garage constructed at the location of the Original Garage or to the 2004 Garage, and must satisfy the specifications set forth in the Performance Criteria.]**

#### **4.5 Description of TOD Improvements.**

**[The TOD Improvements must comply with the TOD Performance Criteria, the Record of Decision, the requirements of the RFP and the terms of the approved proposal, and shall be consistent with the local community environment. Terms of this section are to provide for, to the extent necessary, a ground lease or similar instrument by which Developer shall receive sufficient interests in any portion of the State Property on which State Property TOD Improvements are to be located. Any State Property TOD Improvements are expected to be owned by Developer during the term of such ground**

lease or similar instrument. This section is also to address continuity of ownership and operation of any State Property TOD Improvements at the end of any ground use term or useful life of facilities. If the Project is to include TOD Improvements on the same site as Garage Improvements, development of TOD Improvement cannot interfere with the use and operation of the garages and the transit improvements. All Improvements on State Property shall be subject to and comply with the Permitted Encumbrances. All Improvements that involve work in or affecting the railroad right-of-way shall comply with Exhibit L hereto. Any additional revenue streams to CTDOT shall be identified. The extent of CTDOT involvement with respect to TOD Improvements, including as to design, schedule, budget, construction, etc. will be dependent on the nature and characteristics of the actual proposal selected. Factors that will influence the level of involvement include, among others, physical relationship between TOD Improvements and Garage Improvements; location of TOD Improvements and proximity to Garage Improvements; whether TOD Improvements are located on State Property; the nature of the TOD Improvements; the timing of completing the TOD Improvements, both in absolute terms and relative to completion of the Garage Improvements; the source and method of financing the TOD Improvements; and the impact of the construction and operation of the TOD Improvements on public safety and the operation of the Garage Improvements. Various sections in this Agreement will vary in scope depending on these and other matters.]

4.6 Developer to Procure Applicable Permits. Developer shall have sole responsibility for obtaining Governmental Permits necessary for the completion of the Project, and for completing the Project in compliance with such Governmental Permits. Developer shall use due diligence to obtain such Governmental Permits. CTDOT shall have the right to approve, in its sole discretion, any and all conditions of approval or other agreements relating to the Governmental Permits for the Garage Improvements. CTDOT agrees to cooperate reasonably with Developer in Developer's pursuit of obtaining any Governmental Permits for the Garage Improvements **[and the State Property TOD Improvements]**, including, where necessary, being the applicant or co-applicant for a Governmental Permit, provided all expenses in connection therewith shall be for the account of Developer.

4.7 Schedule of Values and Project Costs.

(a) Developer has prepared and delivered to CTDOT the Garage Improvements Price and the Garage Improvements PPS, which includes a preliminary Garage Improvements Schedule of Values setting forth the expected Project Costs for the Garage Improvements (or Subcomponents thereof), which preliminary Schedule of Values is attached as Exhibit H. Such Garage Improvements Price and Garage Improvements PPS reflect Developer's best true, accurate and complete projection of the costs shown therein and of the costs necessary to complete the Garage Improvements, or Subcomponent, as applicable.

(b) CTDOT shall pay up to \_\_\_\_\_ (the "Available Funds") of the Eligible Costs, in accordance with Article XI hereof. Eligible Costs shall only include costs directly attributable to design and construction of the Garage Improvements. Eligible Costs shall

include only such Project Costs as are permitted under the Internal Revenue Code to be paid from the proceeds of tax-exempt bonds.

(c) Prior to commencing construction of any TOD Improvements, Developer shall prepare and deliver to CTDOT a project budget for such Improvements and evidence of how Developer shall pay the Project Costs for such Improvements, all of which must be acceptable to CTDOT.

(d) Developer shall pay the excess of (i) the actual Project Costs incurred in obtaining Final Acceptance of the Garage Improvements over (ii) the Available Funds, including any excess Project Costs resulting from Uncontrollable Circumstances, and shall pay all Project Costs for the TOD Improvements, and CTDOT shall have no responsibility for such amounts.

(e) Developer understands that CTDOT is exempt from state sales and use taxes for materials, equipment and work. To the extent permitted under Applicable Laws, Developer shall avail itself of CTDOT's tax exemption for the Garage Improvements and shall not charge CTDOT for any such taxes attributable to the Garage Improvements.

4.8 Concept Plan. Developer has completed a concept plan for the development of the Project, which is attached to this Agreement as Exhibit N (the "Concept Plan"). The Concept Plan may from time to time be otherwise modified or supplemented by further agreement of Developer and CTDOT. The development of the Project shall substantially conform to the Concept Plan. No change to the Concept Plan may be made without the consent of CTDOT.

4.9 Bonding Requirements. Performance bonds and labor and material payment bonds issued by a corporate surety licensed to do business in the State and satisfactory in amounts and form to Developer and, with respect to the Garage Improvements [**and the State Property TOD Improvements**], CTDOT, shall be provided in connection with each component of the Project. The bonds with respect to the Garage Improvements [**and the State Property TOD Improvements**] shall be in favor of both CTDOT and Developer and shall conform in all respects to the requirements imposed by all Applicable Laws. Developer shall pay all premiums for such bonds.

**4.10 Security for Developer Performance. [Developer will be required to provide one or more means of providing security and assurance of the completion of Developer's performance of the Garage Improvements, which must be satisfactory to CTDOT in its sole discretion. This section will detail the particular means of security to be provided by Developer. Possible examples include a letter of credit from an acceptable financial institution and/or an escrow of funds. Security and assurance for completion of the TOD Improvements to be determined based on the specifics of the Project. CTDOT's approval of Developer's security and assurance for any Improvements will be required before Developer may commence construction of such Improvements, including any State Property TOD Improvements.]**

#### 4.11 Prevailing Wage.

(a) Developer acknowledges that the State Department of Labor ("CTDOL") has made a predetermination (the "CTDOL Predetermination") that the following components of the Project are subject to the prevailing wage laws of the State: \_\_\_\_\_ (the "Prevailing Wage Components"). The components of the Project that are not included in the Prevailing Wage Components shall be referred to herein as the "Non-Prevailing Wage Components." Developer shall cause all Project Providers employing workers on the Prevailing Wage Components to pay a rate of wage on an hourly basis that conforms to the requirements of Section 31-53 of the Connecticut General Statutes.

(b) Developer acknowledges that the CTDOL Predetermination is based upon CTDOL's fact-specific analysis of the components of the Project. Developer further acknowledges that:

(i) in the event the facts underlying the CTDOL Predetermination change during development or construction, CTDOL could reclassify a Project component as a Prevailing Wage Component or a Non-Prevailing Wage Component; and

(ii) the CTDOL Predetermination would not be binding upon a court. Developer shall bear the risk that a court could determine that a Non-Prevailing Wage Component(s) is subject to the prevailing wage laws of the State.

### ARTICLE V

#### **Commencement and Prosecution of Design and Construction Work**

**[Note: The extent of the applicability of this entire section to the design and construction of the TOD Improvements will depend on the nature of the proposed TOD Improvements and whether on State Property or Developer Property.]**

#### 5.1 Notices to Proceed

(a) Administrative Notice to Proceed. On the earliest practicable date after the Effective Date, CTDOT will deliver the Administrative Notice to Proceed to Developer, authorizing Developer to proceed with preliminary design activities, procurement and other administrative tasks necessary to facilitate the start of the Garage Improvements.

(b) Garage Improvements Notice to Proceed. No later than 45 days after the Effective Date, CTDOT will issue the Garage Improvements Notice to Proceed. Receipt of the Garage Improvements Notice to Proceed shall authorize Developer to Commence Work on all aspects of the Garage Improvements only if Developer has otherwise satisfied all requirements of this Agreement that must be completed prior to Commencing Work. Such authorization shall also extend to other ancillary work, within the horizontal and vertical limits of the Garage

Improvements, if any, necessary to accommodate the future TOD Improvements. Developer is responsible for any and all costs related to the TOD Improvements.

(c) State Property TOD Notice to Proceed. CTDOT will issue the State Property TOD Notice to Proceed on the earliest practicable date after CTDOT's acceptance of a financing plan for the State Property TOD Improvements *[additional prerequisites to the State Property TOD Notice to Proceed will depend on the nature of the proposed State Property TOD Improvements and will be inserted here]*. Upon receipt of the State Property TOD Notice to Proceed, Developer agrees to promptly Commence Work on the State Property TOD Improvements and to proceed with and complete the development of the State Property TOD Improvements professionally, diligently and expeditiously as required by, and subject to the terms of, this Agreement.

## 5.2 Designs, Plans, Etc.

(a) Promptly following the Effective Date, Developer shall prepare a Demolition Plan for the Demolition based upon and consistent with the CTDOT Performance Criteria, the Record of Decision and all Applicable Laws. The Demolition Plan shall, without limitation, provide for and demonstrate measures for (i) protection of public safety; (ii) minimizing disruption to commuters; (iii) maintaining parking and access to the 2004 Garage; and (iv) protection of the 2004 Garage and adjacent property from damage.

(b) Promptly following the Effective Date, Developer shall prepare a Temporary Parking Plan for the provision of the Temporary Parking consistent with the Concept Plan, the CTDOT Performance Criteria, the Record of Decision, and all Applicable Laws. The Temporary Parking Plan shall, without limitation, demonstrate that: (i) the Temporary Parking will be in place and fully functional prior to taking spaces out of service, (ii) the Temporary Parking before Demolition and during construction of the Replacement Garage(s) is within the Acceptable Walking Distance (as defined in the RFP); (iii) the Temporary Parking provides the same number of temporary parking spaces as removed from use in the Original Garage, State Street Lot, and 2004 Garage; (iv) provision has been made to minimize disruption to commuters; (v) the necessary systems and procedures are in place for the collection of parking fees and remittance of the same to CTDOT; (vi) provision has been made for any alterations to the 2004 Garage necessary for continued operation during Demolition and the construction of the Project; (vii) provision has been made for relocation of ADA compliant spaces presently located within the Original Garage to the 2004 Garage prior to Demolition; and (viii) provision has been made for pedestrian access/egress at street level for users of the 2004 Garage to access the Stamford Transportation Center.

(c) Promptly following the Effective Date, Developer shall prepare a Traffic and Pedestrian Safety and Management Plan ("TPSMP") for all major construction elements maintaining pedestrian, bicycle, and vehicular traffic throughout construction. The TPSMP shall provide detailed provisions for traffic maintenance with acceptable and safe operating conditions for traffic and pedestrians.

(d) For the purposes of this Section 5.2(d), references to the Garage Improvements or the Improvements shall mean, except where explicitly provided otherwise, the Garage Improvements excluding the Demolition and the Temporary Parking.

(i) Promptly following delivery of the Administrative Notice to Proceed, and consistent with the PPS then in effect, Developer shall, based upon and consistent with the Concept Plan and the CTDOT Performance Criteria, cause the appropriate Designer to prepare schematic design documents (the "Schematic Design Documents") for each of the Improvements and Subcomponents, consistent with industry standards, which shall include drawings and other documents illustrating the scale and relationship of each major element of the Project. The Schematic Design Documents for the Garage Improvements **[and the State Property TOD Improvements]** shall be submitted to CTDOT and the CTDOT Representative in accordance with the PPS. The Schematic Design Documents for the Garage Improvements **[and the State Property TOD Improvements]** must be acceptable to CTDOT. Developer shall submit the Schematic Design Documents for the TOD Improvements on Developer Property to CTDOT in accordance with the PPS, which will be reviewed solely for consistency with the Concept Plan. The Schematic Design Documents shall, without limitation, (A) show the layout of the Replacement Garage(s) and any changes to the 2004 Garage, including the location of all parking spaces, including requirements for specialty spaces such as handicapped, van accessible, and electric recharging locations **[and in compliance with the memorandum of understanding between the City of Stamford and the State regarding parking and Intelligent Transportation Systems.];** (B) demonstrate how the New Pedestrian Bridge and Station Place Improvements maximize connectivity, commuter, taxi and bus access; improve the traffic flow on Station Place; and maintain access and connectivity for the 2004 Garage; and (C) demonstrate that the ten foot (10') easement located at the perimeter of the 2004 Garage is not impinged upon.

(ii) After completion and acceptance of the Schematic Design Documents for the Garage Improvements **[and the State Property TOD Improvements]**, or any Subcomponents thereof, Developer shall cause the appropriate Designer to prepare and submit for the Garage Improvements **[and the State Property TOD Improvements]**, or any Subcomponents thereof, consistent with industry standards and the CTDOT Performance Criteria, design submittals upon each of the following milestones: thirty percent (30%) of design; sixty percent (60%) of design; pre-final design stage; and final design stage (each a "Design Submittal"). The Design Submittals for the Garage Improvements **[and the State Property TOD Improvements]** shall be submitted to CTDOT and the CTDOT Representative in accordance with the PPS, and must be acceptable to CTDOT. Design Submittals shall be made as provided in Section 5.2 and as otherwise requested by CTDOT on seven (7) days' notice. All submittals are subject to review and release by CTDOT, the CTDOT Representative, if any, and others as required. Re-submittal for review and release of any of previously submitted Design Submittals may be required as appropriate to obtain release by CTDOT. CTDOT maintains the right to refuse and reject any submittal that does not comply with the CTDOT Performance Criteria and other requirements related to the preparation and content of Design Submittals. Refusal or rejection of Design Submittals will not constitute grounds for delays in the PPS. The basis for release of these Design Submittals will be that they meet all

CTDOT Performance Criteria and Agreement requirements in order for construction to begin and that they are consistent with previously released Design Submittals.

All Design Submittals shall be in English units and shall conform to the approved QMP submitted by Developer. All Design Submittals shall be provided in electronic format acceptable to CTDOT, as well as hard copy.

All Design Submittals shall consist of design documents which include separate plans for each individual discipline. Drawings which incorporate the work of multiple disciplines on the same sheets will be rejected.

(iii) The final Design Submittal shall include full construction documents (collectively, the "Final Plans and Specifications"), which shall be prepared in accordance with industry standards. The Final Plans and Specifications shall be consistent with the CTDOT Performance Criteria and shall include all drawings and specifications necessary to complete the construction from all applicable disciplines, including architecture, survey, traffic and transportation engineering, civil engineering, landscape architecture, mechanical engineering, plumbing, parking, lighting, geotechnical investigation and engineering, environmental, structural engineering, electrical engineering, fire protection and security. The final Design Submittal shall include an independent structural engineering consultant peer review of the proposed Improvements and a Statement of Special Instructions for construction. Acceptance of the Final Plans and Specifications by CTDOT will be in the form of a designation of "Released for Construction."

A submittal of Final Plans and Specifications may be executed for portions of the Garage Improvements as part of an early start of the construction. There is no limit to the total number of early start of construction Design Submittals that may be incorporated into the submittal of Final Plans and Specifications that Developer may execute, however Developer shall recognize the cumulative effect of the design work. Accordingly, Developer acknowledges that it is solely responsible for any/all additional Work necessary due to executing Final Plans and Specifications and early start of construction submissions that do not consider, or erroneously consider, the effect that they have on other Work, or that other Work could have on them. Developer shall include in the PPS all early start of construction Design Submittals. Developer shall also include within each submittal of Final Plans and Specifications a discussion of all related design and/or construction elements of the Garage Improvements.

Within thirty (30) days of acceptance from CTDOT of the Final Plans and Specifications of all items and segments of the Garage Improvements, Developer shall provide the Final Plans and Specifications (plans, specifications, reports, and calculations) organized and indexed in accordance with CTDOT's standards. All plans, specifications, and reports shall be signed and sealed by the professional engineer(s), surveyor(s), architect(s), and landscape architect(s) as applicable, who are registered in the State, and who are in responsible charge of each portion of the Garage Improvements. A written statement shall accompany the Final Plans and Specifications from Developer's quality control administrator indicating that the Final Plans and Specifications are in conformance with all requirements contained in the RFP and this

Agreement. **[Developer shall submit the Final Plans and Specifications for the TOD Improvements to CTDOT in accordance with the PPS, which will be reviewed solely for consistency with the Concept Plan.]**

(e) In order to obtain Final Acceptance of the Garage Improvements, or a Subcomponent thereof, Developer shall furnish to CTDOT two (2) sets of all documents used in construction ("Record Drawings"), an "as-built" ALTA/ACSM survey, drawn to A-2 standards, showing the as-built location of all buildings and improvements on the Project Property, and final "as-built" plans and specifications for the buildings and improvements, including all systems. Developer shall cause the applicable Contractor to identify any changes from the Final Plans and Specifications on the Record Drawings. *[The requirements for Final Acceptance and the extent of any requirement for Record Drawings for TOD Improvements will depend on the nature of the TOD Improvements and whether on State Property or Developer Property.]*

(f) Developer shall not Commence Work on the Demolition, nor Commence Work on any part of the Garage Improvements until (i) Developer has incorporated into its design and construction plans, specifications and other documents including the Demolition Plan, all CTDOT comments, if any, generated by CTDOT upon CTDOT's review thereof, (ii) Developer has received the Garage Improvements Notice to Proceed from CTDOT, and (iii) Developer has performed all of its obligations under this Agreement that are required to be performed prior to Commencing Work.

(g) CTDOT reserves the right to conduct over the shoulder reviews. Over-the-shoulder reviews are examinations by CTDOT of in progress Design Submittals during the design process. The over-the-shoulder reviews will be conducted in the Connecticut office of Developer or its Designer and in the presence of Developer's design personnel with the intent to minimize disruption of on-going design work. Formal assembly and submittal of drawings or other documents will not be required. The review may be of progress prints, computer images, draft documents, working calculations, draft specifications and reports, or other design documents. Developer shall schedule at least one over-the-shoulder review prior to each Design Submittal.

(h) Re-submittals of any Design Submittal may be required if deemed necessary by CTDOT, or by any Governmental Authority. Each re-submittal shall address all comments received from a prior submittal. Developer shall not be entitled to any additional compensation or time extension due to any re-submittal requirement by CTDOT or by any federal, state, or local agency.

(i) Developer may continue its design efforts, at its sole risk, during the design submittal or re-submittal review process. Such continuation in no way relieves Developer of the responsibility to incorporate CTDOT's, or other entities comments into the Design Submittals, nor does it entitle Developer to any additional compensation or time extension resulting from changes to the Design Submittals.

(j) Developer acknowledges and agrees that release of the Final Plans and Specifications shall be obtained from CTDOT and applicable local agencies prior to the issuance of an "Released for Construction" designation by CTDOT.

(k) Any acceptance by CTDOT of Schematic Design Documents, Design Submittals, Final Plans and Specifications and any other deliverables from Developer hereunder shall not be deemed approval of the quality or sufficiency of such deliverables, nor their compliance with the CTDOT Performance Criteria or Applicable Laws. Such acceptance by CTDOT shall not make CTDOT responsible in any way for the quality or sufficiency thereof, nor shall such acceptance constitute a waiver of any warranties or guaranties or release any party from liability for any errors or omissions.

### 5.3 Obligation to Construct Project.

(a) Developer agrees to proceed with and complete the development of the Project professionally, diligently and expeditiously as required by, and subject to the terms of, this Agreement. Developer shall conduct the Demolition and complete the other Garage Improvements in accordance with all Applicable Laws, the Record of Decision, the CTDOT Performance Criteria, the Garage Improvements Schedule of Values, the PPS and the Final Plans and Specifications and shall achieve Substantial Completion of the Garage Improvements, and each Subcomponent thereof, by the applicable CTDOT Guaranteed Substantial Completion Date, and Final Acceptance of the Garage Improvements, and each Subcomponent thereof, by the applicable Guaranteed Final Acceptance Date.

(b) Developer shall Substantially Complete each of the TOD Improvements in accordance with the TOD Performance Criteria, the Concept Plan, the Record of Decision, and all Applicable Laws [**other requirements dependent on specifics of the approved Project**], by the respective TOD Improvements Guaranteed Substantial Completion Date set forth in the PPS, and achieve Final Acceptance thereof by the applicable Guaranteed Final Acceptance Date set forth in the PPS.

### 5.4 Supervision and Construction Procedures.

(a) In connection with the Project, Developer covenants and agrees that:

(i) Developer will complete the Garage Improvements [**and State Property TOD Improvements**], free and clear of Liens or claims for Liens for materials supplied and/or labor or services performed in connection with the Project;

(ii) Developer will maintain the Project Property, including materials on site and construction in progress, in good repair and safe and secure condition at all times, taking into account the then present stage of construction, shall maintain the Project Property free of waste material and rubbish, and shall clear the Project Property of temporary structures, surplus material, equipment and tools used in connection with performance of each subcomponent of the Project prior to its final completion;

(iii) Developer shall maintain the Project Property to allow for pedestrian foot traffic around, and, if necessary, through the construction site at all times;

(iv) Developer shall ensure that the Project, as constructed, shall not encroach upon (A) any easement or right-of-way, or (B) any land of other parties;

(v) Developer shall promptly notify CTDOT and the CTDOT Representative in writing of all litigation or administrative proceedings threatened or commenced affecting the Project and/or the Project Property, or any part thereof, and all written complaints or charges made by any Governmental Authority affecting the Project and/or the Project Property or any part thereto;

(vi) Developer shall properly guard all areas affected by the Work to prevent any person or persons from being injured by it or by the condition of such areas, and shall in all respects comply with any and all Applicable Laws relating to the maintenance of danger signals, barriers, lights and similar safeguards respecting falling materials and in and about all excavations, protruding nails, hoists, openings, scaffolding, stairways, other parts of the Project and adjacent areas where the same are required;

(vii) Developer shall provide all required documentation by this Agreement or any of the other Operative Agreements to CTDOT and the CTDOT Representative in electronic form acceptable to CTDOT and the CTDOT Representative, as well as hard copy format;

(viii) Developer shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project;

(ix) Developer shall provide all telephone facilities, drinking water and sanitary facilities to be used by Developer, its Contractors and/or other Project Providers;

(x) Developer shall prepare and provide to CTDOT all reports from all of the disciplines set forth in Section 5.2(d)(iii), including the performance of all inspections, field and site explorations and testing work related thereto for the Garage Improvements **[and the State Property TOD Improvements]**, and update the reports to reflect the as-built condition thereof;

(xi) Developer shall be responsible to CTDOT for acts and omissions of Developer's employees, Designers, Contractors, Project Providers, and their agents and employees;

(xii) Developer shall arrange and be responsible to assure safe delivery of all materials, equipment, supplies and other items to the Project sites, including inspection, expediting, shipping, unloading, receiving, customs clearance and claims;

(xiii) Developer shall hold Project meetings no less frequently than bi-weekly, at which the Project Executive, the Project Manager, and other appropriate Project Providers shall meet with the CTDOT Representative and such other representatives of CTDOT as CTDOT shall elect; and

(xiv) Developer shall maintain communications with Metro-North Railroad and comply with all requirements of Metro-North Railroad regarding working on or about the railroad tracks and equipment, including as set forth in Exhibit L, and shall contact, and comply with any requirements of Connecticut Light and Power Company, or any other electrical provider, when performing any Work around high voltage power lines.

(b) Developer shall not be relieved of obligations to perform any Work in accordance with this Agreement by tests, inspections or approvals performed by persons other than Developer.

(c) Developer shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Project. Developer shall take all precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to: (1) all employees of Developer and the Project Providers performing the Work and other Persons who may be affected thereby; (2) the Project and materials and equipment to be incorporated therein; and (3) other property at or adjacent to the Project Property that may be affected by the Project. Developer shall give notices and comply with all Applicable Laws bearing on the safety of persons and property and their protection from damage, injury or loss.

(d) Notwithstanding any agreement with any Project Provider, Developer is solely responsible for the Project, and no portion thereof shall be unfinished or incomplete, and the Project milestones identified on the PPS shall not be delayed, due in whole or in part, to any disagreement between or among Project Providers or between any Project Provider and Developer.

5.5 Traffic Control. Developer shall provide, erect and maintain barricades, suitable and sufficient lights, pavement markings, signs and other traffic control devices as required to protect the Work and safety of the public. Barricades, warning signs, lights, temporary signals and other protective devices shall conform with the latest revision of the "Manual on Uniform Traffic Control Devices for Streets and Highways" published by the Federal Highway Administration and the latest revision of the Connecticut Supplement thereto. Further, prior to Commencing Work, Developer shall submit a TPSMP to the CTDOT Representative and the Office of State Traffic Administration for its review and approval.

5.6 Road Closures. Notwithstanding anything to the contrary in Section 5.4, Developer's Work shall not, except as absolutely necessary and as approved by CTDOT in advance, close access to Station Place without receiving prior approval from the CTDOT Representative. Developer shall provide at least 48-hour advance notice to the City of Stamford and the public of any proposed closing of Station Place. Further, Developer must obtain necessary approvals from the City of Stamford and provide a minimum of 48-hour advance notice to the public, unless a longer notice period is required by the City, of intended closure of any city road

related to the Project. Developer shall use reasonable efforts to minimize any periods in which Station Place must be closed and shall sequence its work in a manner that will minimize to the greatest extent practicable the need to close Station Place on weekdays between 6:00 a.m. and 10:00 p.m.

5.7 Stamford Transportation Center Access. Developer shall ensure that, throughout the construction of the Project, pedestrian access from the north and south entrances to the Stamford Transportation Center shall be maintained at all times, twenty-four (24) hours per day, 365 days per year, in a manner acceptable to CTDOT. **[Specific provisions to be added based on the specifics of the proposal.]**

5.8 Sanitary, Health and Safety Provisions.

(a) General Requirements. Developer shall observe all rules and regulations of federal, state and local health officials. Developer shall not require any worker to work in surroundings or under conditions that are unsanitary, hazardous or dangerous to health or safety. Developer shall conduct the Work to minimize obstruction to traffic, and the safety and convenience of the general public.

(b) Safety Program. Developer shall:

(i) As a condition to receiving the Administrative Notice to Proceed, deliver to CTDOT a written safety program for all of the Work, which shall be acceptable to CTDOT.

(ii) Identify the safety supervisor, who shall be the individual so designated in the Safety Program. The duty of such safety supervisor shall be to set up, to carry forward, and aggressively and effectively to maintain the Safety Program covering all phases of the Project.

(iii) Provide for weekly safety meetings for all employees, administered by the safety supervisor. CTDOT and the CTDOT Representative shall be advised in advance of the time and place of such meetings.

(iv) Stress safe practices by Developer's employees in all phases of construction, and provide and enforce the use of guards, helmets, goggles and other safety devices, and promulgate and enforce a drug free workplace program.

(v) Maintain all of the Project Property in a neat, orderly and safe condition at all times.

(vi) Ensure that at least one of Developer's employees qualified by a recognized authority to perform first aid shall be on duty at each work site during all working hours. Developer shall also establish and maintain adequate first aid facilities at locations close to all work areas, and mark such locations with signs of adequate size and composition.

(vii) Maintain an accurate record of, and report to CTDOT on exposure data (worker hours) and the number of accidents resulting in death, traumatic injury, occupational disease and damage to property, materials, supplies and equipment incidental to the Project. This material shall be submitted monthly, with all occupational injuries classified as to type and nature of injury.

(viii) Comply with all noise level requirements set forth in the Record of Decision.

5.9 Limitation on Work Hours. Developer shall comply with all Applicable Laws governing work hours.

5.10 Inspection and Testing.

(a) All material and every part of the Work on the Garage Improvements [**and the State Property TOD Improvements**] shall be subject to inspection and testing by Developer in accordance with the accepted QMP. This inspection and testing shall include the provision of Special Inspections as required by the State Building Code.

(b) All materials and every part of the Work on the Garage Improvements [**and the State Property TOD Improvements**] shall be subject to inspection and testing by CTDOT. CTDOT shall have the right, but not any obligation, to perform such inspections and testing. CTDOT shall be allowed access to all parts of the Project Property and shall be furnished with information and assistance by Developer as required to make complete and detailed inspections and to do any testing that it deems appropriate. Prior to the applicable Guaranteed Final Acceptance Date, Developer shall remove or uncover such portions of the finished Work on the Garage Improvements [**or the State Property TOD Improvements**], or a Subcomponent thereof, as applicable, as directed by CTDOT. After examination by CTDOT, Developer shall restore such Work to the standard required by this Agreement. If the Work exposed or examined is Nonconforming Work, uncovering, removing and restoring the Work shall be at Developer's expense. All inspections and all tests conducted by CTDOT are for the convenience and benefit of CTDOT. These inspections and tests do not constitute acceptance of the materials or Work tested or inspected, and CTDOT may reject or accept any Work or materials at any time prior to the applicable Guaranteed Final Acceptance Date, whether or not previous inspections or tests were conducted by CTDOT.

5.11 Nonconforming Work. Nonconforming Work shall be removed and replaced at Developer's expense and subject to CTDOT's approval. The fact that CTDOT may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work.

5.12 Damage or Destruction Prior to Completion.

(a) If, at any time prior to Final Acceptance thereof, any portion of the Improvements shall be damaged or destroyed by any event as to which Developer is required to maintain insurance in accordance with this Agreement, Developer, at no cost to CTDOT, shall commence and thereafter proceed as promptly as possible to repair, restore and replace such portion of the Improvements to the condition it was in prior to such casualty or similar event.

(b) Insurance proceeds paid on account of any damage or destruction to the Improvements shall be used to fund Developer's repair, restoration and replacement obligations under this Section to the extent available, but Developer's obligation to repair, restore and replace the Improvements shall not be limited to such insurance proceeds. Such insurance proceeds shall be used solely for the purpose of making payments from time to time as repair, restoration or replacement work progresses in amounts equal to the sum of the cost of labor and materials incorporated into and used in such work and builders', architects' and engineers' fees and other charges in connection with such work. Such insurance proceeds with respect to the Garage Improvements shall be received by CTDOT to the extent of the Available Funds then disbursed and, thereafter, disbursed by CTDOT in the same manner (and subject to the same limitations) as provided in Article XI with respect to Eligible Costs.

(c) If Developer fails to perform its obligations under this Section with respect to the Garage Improvements in a timely manner, CTDOT may provide notice of such failure to Developer. If Developer does not cure such failure within fifteen (15) days following such notice from CTDOT, CTDOT may perform such obligations and charge Developer therefor.

(d) Developer's obligations under this Section shall extend to any item purchased for permanent installation in, or for use during construction of, the Project regardless of whether CTDOT has title thereto under this Agreement.

5.13 Contractor/Project Provider Warranties. Developer shall obtain from all contractors and other Project Providers on the Garage Improvements [**and the State Property TOD Improvements**], and cause to be extended to cover CTDOT, prudent and customary representations, warranties, guarantees and obligations with respect to design, materials, workmanship, equipment installed, tools and supplies furnished by such Project Providers. All such representations, warranties, guarantees and obligations of the Project Providers shall be written so as to: (i) survive all CTDOT and Developer inspections, tests and approvals; (ii) run directly to and be enforceable by CTDOT; and (iii) run for the applicable warranty period commencing on the date of Final Acceptance. At CTDOT's request, Developer shall deliver to CTDOT duly executed copies of all agreements containing such representations, warranties, guarantees and obligations. Developer shall assign to CTDOT, at no additional cost, all of Developer's rights and interest in all warranties with respect to the Garage Improvements which were received by Developer which exceed the applicable Project Warranties.

5.14 Quality Management Plan.

(a) Developer shall establish and maintain procedures to assure the quality of all work in respect to the Project and Project components. The procedures shall apply to design,

construction, installation, procurement, testing and commissioning of the Project and Project components. The procedures shall be implemented by Developer as a Developer Quality Control and Quality Assurance Plan (the "QMP") and shall contain information as specified in Exhibit O. The QMP shall incorporate the Statement of Special Inspections attached hereto as Exhibit P. The QMP shall clearly designate the team of quality management personnel (the "Quality Management Team" including the independent quality assurance firm). The QMP shall be submitted to CTDOT for its acceptance within thirty (30) days of the Effective Date. After CTDOT notifies Developer in writing of its acceptance of the QMP, Developer shall not modify the QMP without the express written consent of CTDOT. Developer may propose changes to CTDOT, which may be accepted or rejected by CTDOT in its sole discretion.

(b) If Developer develops any design for any part of the Project or commences any construction or installation of the Project prior to CTDOT's approval of the QMP, all such design, construction and installation shall conform to the QMP.

(c) As to the Garage Improvements **[and the State Property TOD Improvements]**, CTDOT retains the right, but not the obligation, to direct the location and the timing of testing additional to that planned by Developer, which testing shall not exceed seven percent (7%) of the number of tests for each respective test type provided in the QMP.

(d) Developer shall require each Contractor and other Project Providers to adopt and adhere to a quality control plan, which shall be consistent with Developer's QMP. However, Developer shall remain reasonable for quality control for the entire Project.

#### 5.15 CTDOT Representative

(a) The CTDOT Representative shall represent CTDOT with respect to the day-to-day progress of the Project. Notwithstanding the preceding, Developer and its Project Providers shall not be relieved from full, direct and complete responsibility for the performance of the Project in a manner that is consistent with and in compliance with this Agreement; provided however, Developer shall be entitled to rely upon any day-to-day directions or decisions rendered by the CTDOT Representative to the same extent as if such directions or decisions had been rendered by CTDOT. Developer hereby acknowledges that the CTDOT Representative shall have the right, duty and authority to monitor and enforce, on behalf of CTDOT, the obligations, responsibilities and the commitments of Developer as more fully set forth in this Agreement.

(b) The CTDOT Representative shall have the right, but not the obligation, to observe and evaluate the work performed on the Garage Improvements and the State Property Improvements and to reject work which does not conform to the requirements of this Agreement. The CTDOT Representative shall have the right to enter the Project Property at all reasonable times and to inspect all work to determine the dates of temporary occupancy, partial completion, Substantial Completion and final completion of the Project and the Subcomponents thereof and to confirm that the Project is being performed in accordance with the requirements of this Agreement.

#### 5.16 Work Product.

(a) Developer shall not use the Final Plans and Specifications or the Project Agreements relating to the Garage Improvements for purposes other than the performance of this Agreement. After expiration or termination of this Agreement, Developer shall deliver all Final Plans and Specifications and Project Agreements relating to the Garage Improvement to CTDOT, and Developer shall be entitled to retain a copy.

(b) All Final Plans and Specifications and Project Agreements relating to the Garage Improvements, including all unfinished or partially completed work in the event this Agreement is terminated or suspended before completion for any reason, as well as all copyright rights therein (collectively the "Work Product"), shall become jointly owned by CTDOT and Developer.

(c) Developer hereby transfers to CTDOT, as part of the consideration for this Agreement, joint ownership of all of the Work Product, and Developer shall, whenever so requested by CTDOT, execute and deliver to CTDOT any agreement requested by CTDOT confirming the irrevocable transfer to CTDOT of joint ownership with Developer of the Work Product. Developer agrees not to assert, establish or authorize others (including any Project Providers) to assert or establish any claim to the Work Product.

(d) CTDOT shall have the right to immediate use of and access to the Work Product, and in the event of any suspension or termination of this Agreement, the right to possession of the Work Product.

The provisions of this Section shall survive the termination of this Agreement.

## ARTICLE VI

### Scheduling of Construction of the Project

6.1 Project Progress and Payment Schedule. Developer shall develop, coordinate with CTDOT, and update monthly a project progress and payment schedule ("PPS") as provided herein, which shall, among other things, provide that Substantial Completion of each component of the Project and all Work related thereto shall be achieved on or prior to the applicable Guaranteed Substantial Completion Date and Final Acceptance of each component of the Project and all Work related thereto shall be achieved on or prior to the applicable Guaranteed Final Acceptance Date. Developer shall prepare the PPS and all updates and other reports specified in this Article.

The PPS shall include a detailed description of the Work to be performed or provided by Developer and Project Providers. The PPS shall be a computerized precedence network plan which uses a Project Work Breakdown Structure ("WBS") acceptable to CTDOT for defining the scheduling hierarchy and providing for the planning and the execution of the Work. The PPS shall

be prepared using the most recent version of Primavera P6 software for Windows with CPM Scheduler module. It is also preferred, but not required, that Developer use Primavera Contract Manager for document control. Developer shall purchase for CTDOT's use, at Developer's sole cost and expense, within five (5) Business Days of execution of this Agreement two (2) original copies of the Primavera P6 software. Developer shall also provide maintenance programs upgrading such software through to Final Acceptance of all components of the Project, as such programs are released by the software vendors.

The durations and sequence of activities depicted in the PPS shall conform to all requirements and constraints described or referenced in this Agreement. The PPS shall also include activities for submission and review of required submittals. The durations of all CTDOT submittal reviews shall be a minimum of twenty-one (21) days from receipt of necessary information from Developer, unless otherwise specified in this Agreement.

6.2 Preliminary PPS. The preliminary PPS ("Preliminary PPS") having been prepared by Developer and approved by CTDOT is attached as Exhibit M to this Agreement (including electronic format). The Preliminary PPS provides a summary schedule for the entire Project and a detailed schedule for the first 120 days in accordance with the requirements of this Article VI and Section 6.3 of this Agreement. The Preliminary PPS also provides a cost allocation for the Garage Improvements portion in accordance with the requirements of the Article VI and Section 6.4 of this Agreement. The Preliminary PPS will be the basis for progress payments for the Garage Improvements during the first four (4) months after the Administrative Notice to Proceed. Only Work included in the detailed portion of the Preliminary PPS and that is covered under a Notice to Proceed is authorized to proceed under the Preliminary PPS.

6.3 PPS.

(a) The PPS shall provide information to CTDOT detailing and describing all activities required to complete the Work, their duration and location. The PPS will be consistent with the summary schedule for the Project set forth in the Preliminary PPS, but shall include detailed scheduling for the entire Project. Each activity shown on the PPS shall be described by its type, WBS element, duration, location where the activity will be performed and its relationship to other elements of the Work. Developer shall submit a hard copy and electronic format containing the above details for CTDOT approval.

(b) The PPS shall be prepared such that no activity has a duration of more than sixty (60) days without the consent of CTDOT, except for nonconstruction activities which shall not have a duration of more than seventy-five (75) days without the consent of CTDOT. The PPS shall be resource loaded and prepared such that each activity is a discreet work element employing a single resource, is capable of being measured and is provided with a sorting capability to the established WBS elements, performing organizations, dates, float and activity numbers. Design, installation and construction activities shall be scheduled separately; and preliminary and final design activities shall be scheduled separately.

(c) The WBS shall have separate sections for each of the primary goals of the Project including, with respect to the Garage Improvements, for Demolition, the Replacement Garage, the New Pedestrian Bridge, the PARCS, the Station Place Improvements, and the Temporary Parking. WBS shall further have subsections for each of the primary goals of the Project, which shall include categories for the required Designer services (including investigations/permitting/design/construction/administration); quality management; temporary facilities; and demolition/construction/activities. Each of the subsection categories shall be further allocated based upon milestone deliverables for the particular category task or phase of completion. Construction activities shall be allocated based upon Construction Specifications Institute format for each specification section related to the applicable improvements.

(d) Developer shall submit both hard copy and electronic version containing the above details for CTDOT approval. Developer must obtain CTDOT's approval of the PPS format, including the type of removable media to be used for schedule data submittal.

6.4 Allocation of the Garage Improvements Price. For the Garage Improvements portion of the schedule which includes all elements of the Garage Improvements, (the "Garage Improvements PPS"), Developer shall develop a cost breakdown of the complete Garage Improvements Price recognizing that the CTDOT payment obligation is limited to the Eligible Costs. The cost breakdown shall be shown in a manner similar to the WBS developed for the PPS and upon review and approval by CTDOT will be known as the Garage Improvements Schedule of Values.

The Garage Improvements Schedule of Values shall be allocated among the scheduled activities for the Garage Improvements PPS such that each activity has a price allocation that accurately indicates the cost of the activity. Developer's allocation of the Garage Improvements Schedule of Values shall be subject to the approval of CTDOT.

The Garage Improvements Schedule of Values will be subject to the following limitations:

(a) The payment for mobilization will be evenly distributed over the first thirty percent (30%) of the earned value of the Garage Improvements.

(b) The QMP shall be assigned a minimum value of two percent (2%) of the Garage Improvements Price. The payment for the QMP shall be evenly distributed from the Effective Date to Substantial Completion of the Garage Improvements.

6.5 PPS Review and Approval. Within 60 days of the execution of the Agreement, Developer shall prepare and submit to CTDOT the complete PPS for the Project addressing all required elements. The complete PPS submittal shall be signed by Developer and contain all information and reports required in this Article VI. CTDOT shall be allowed a minimum of twenty-one (21) Business Days to review the PPS. If CTDOT does not approve the initial proposed PPS, Developer shall promptly make any necessary revisions to the PPS and resubmit the PPS to CTDOT.

Approval of the PPS by CTDOT does not relieve Developer of the responsibility to achieve completion of the Work by the respective Guaranteed Completion Dates. If CTDOT approves the proposed PPS, it shall be used by Developer for the performance and completion of the Work and by both parties to this Agreement for monitoring and determining actual progress of the Work, determining payments to Developer for the Garage Improvements and evaluating time impacts to the critical path of those events for which an adjustment of time is allowed under Article VII. The PPS may not be amended or modified without the prior written consent of CTDOT.

Developer understands that no payment of Eligible Costs will be made for Garage Improvements Work performed that is not performed pursuant to an approved PPS. Developer further understands that any activity for the Garage Improvements PPS which is the subject of a proposed revision shall not be paid until CTDOT approves such proposed revision.

6.6 Proposed Revisions to the PPS. Developer shall prepare a proposed revised PPS in conjunction with significant changes in the sequence of the Project, significant changes to activity durations, Change Orders or as required by this Section. Developer shall at its own expense furnish such employees, materials, facilities and equipment and shall work such hours, including extra shifts, overtime operations, Sundays and holidays as may be necessary to ensure the prosecution and completion of the Work in accordance with the PPS.

CTDOT shall retain the right to direct Developer to submit a proposed revision of the PPS if, in CTDOT's opinion, the number or type of changes made in a monthly update exceeds the level of changes reasonably expected for normal schedule maintenance. The revised PPS shall meet all requirements specified in this Article VI; provided, however, that any such revision shall not substantially delay the progress rate, or at all delay achievement of the Guaranteed Substantial Completion Date or the Guaranteed Final Acceptance Date for the Garage Improvements, or change the Available Funds allocated to any previously scheduled activity without the express written consent of CTDOT. No change to the Guaranteed Substantial Completion Date or the Guaranteed Final Acceptance Date for the Garage Improvements may be made other than pursuant to Article VII.

If CTDOT approves the proposed revision, it shall become the new PPS. If CTDOT does not approve the proposed revision, Developer shall submit a further revised proposed revision satisfactory to CTDOT. In this event, if a dispute ensues, Developer may upon notification to CTDOT, in the interim while the dispute is pending, amend or modify the PPS to correspond to the resources and rates of production to be used by Developer, but only for the purpose of Developer's scheduling of its effort. Developer understands that no payment will be made for Garage Improvements Work performed that is not performed pursuant to the last-approved PPS. Developer further understands that any activity for the Garage Improvements which is the subject of a proposed revision shall not be paid until CTDOT approves such proposed revision. The final resolution of any dispute shall be reflected in the PPS, and, if necessary, Developer shall propose a recovery schedule.

6.7 Review by CTDOT. Developer shall produce and CTDOT shall review all submittals within the time periods set forth in the CTDOT Performance Criteria. CTDOT's review

of or comment upon or lack of review of or comment upon any submittals does not relieve Developer from its obligation to construct the Project in accordance with this Agreement. Review or release by CTDOT of any of the Project Agreements shall not relieve Developer of any of its obligations under this Agreement. The PPS shall take into account CTDOT's review time.

6.8 Representations. Review of the PPS and updates by CTDOT shall not constitute a representation by CTDOT that the Work can be completed as shown on the PPS or updates. The PPS and updates constitute a representation by Developer as to how it envisions the Work to be accomplished and all information and data provided by Developer must be an accurate representation of actual performance and sequencing of the Work.

6.9 Orderly Progression of Work. Developer shall at all times schedule and direct the Project so that it provides an orderly progression of the Work to completion within the specified time for completion and in conformance with the PPS and revisions approved by CTDOT.

6.10 Updates. Developer shall review and update the progress of the Work for the Project each month for the duration of the Project. A PPS update meeting will be held each month in conjunction with progress payment review by CTDOT and shall be attended by Developer, Contractor, relevant Project Providers as well as the CTDOT Representative and designees. Actual progress of the previous month will be recorded and future activities will be reviewed. Developer shall update the PPS monthly and provide such updated PPS to CTDOT a minimum of 5 Business Days prior to the PPS update meeting. The PPS monthly update shall include:

- (a) Actual physical percent of completion;
- (b) Proposed revisions to logic and changes in activity durations;
- (c) Projected future start and completion dates;
- (d) Delays affecting completion of the Project;
- (e) Amount of progress payment earned by Developer for the Garage Improvements;
- (f) Any changes to means, methods or sequence by Developer in the preceding period. Each change must be identified and described including an explanation for the reason(s) for the change;
- (g) A detailed report describing all maintenance modifications to the PPS;
- (h) Narrative Progress Summary per Section 6.11 of this Agreement; and
- (i) Additional Information per Section 6.12 of this Agreement.

6.11 Progress Summary. Developer is responsible for having information and data at each monthly update meeting to provide the verifications set out above. As a part of the monthly

updating process, Developer shall prepare for CTDOT's approval a narrative progress summary describing the physical progress during the report period, plans for the forthcoming report period, potential delays and problems and their estimated effect on performance and overall completion and an explanation of corrective action taken or proposed. Developer shall submit six (6) copies of the narrative progress report and the related documentation described in Section 6.12 of this Agreement to CTDOT no later than five (5) Business Days before each update meeting.

6.12 Additional Information. Copies of the following information shall also be provided by Developer to CTDOT for CTDOT review and approval at the monthly update meeting:

- (a) Sixty (60) day computer look ahead tabular listing and barchart schedule sorted by WBS element and activity start dates.
- (b) A report which shows Developer's actual versus planned progress
- (c) A copy of the approved PPS from which the monthly reports were prepared.
- (d) An updated submittal register detailing all submittals for the succeeding ninety (90) days.
- (e) A milestone summary barchart or time scaled logic diagram will be produced containing at least fifty (50) but no more than one hundred (100) of the key intermediate milestones and activities for the Project. The purpose of this schedule is to provide an easy to review snapshot of the Project and make it easier for CTDOT to assess overall progress. This summary schedule will be a roll-up from the detailed PPS
- (f) A copy of the electronic schedule data necessary to recalculate the schedule and independently produce reports using the software provided by Developer.
- (g) Any additional information, including but not limited to reports, as may be requested by CTDOT.
- (h) Developer must obtain CTDOT approval for the format of each report.

6.13 Recovery Schedule. If (i) Developer falls fifteen (15) days behind on any critical path activity shown on the PPS for two or more successive updates, or (ii) it otherwise becomes apparent that the Project or a component thereof may not be completed as scheduled and CTDOT provides notice to Developer to such effect, then Developer shall prepare and submit a proposed revised PPS. The revised PPS shall be prepared in accordance with Section 6.6 and shall include Developer's proposed plan to regain lost schedule progress and to achieve Substantial Completion and Final Acceptance of each component of the Project in accordance with the requirements of this Agreement. Developer shall immediately begin to implement the proposed recovery schedule while it is being reviewed by CTDOT. After CTDOT approves the recovery schedule, it will become a part of the PPS. The proposed revised PPS shall include a narrative demonstrating the

resources to be employed to meet the proposed revised PPS. Developer's cost (including any additional labor costs) to analyze, revise and to incorporate any schedule modification shall be paid for by Developer. Developer will prepare and submit the revision to the PPS and proposed recovery schedule within ten (10) days after the submittal of the monthly PPS update.

CTDOT and its representatives shall review the recovery schedule and submit written comments to Developer within ten (10) days of receipt of the recovery schedule submittal. If Developer has not submitted a satisfactory recovery schedule as required, CTDOT may suspend progress payments on the Garage Improvements. Notwithstanding any payment not made pursuant to Article XI, Developer shall continue to meet all requirements of this Article VI.

## ARTICLE VII

### CONTRACT CHANGES

#### 7.1 Developer Requests for Change in Amount of Available Funds.

Developer may request a change in the amount of the Available Funds only for an increase in Project Costs for the Garage Improvements caused by a CTDOT initiated adjustment pursuant to Section 7.3(b) or for an increase in Project Costs for the Garage Improvements caused by a breach by CTDOT of this Agreement. Any such request shall be made in the form of a Change Notice Proposal which meets all the requirements of, and shall be addressed by CTDOT according to, Section 7.4(b). No Change Order increasing the Available Funds under this Section 7.1 as a result of a breach by CTDOT of this Agreement shall be considered by CTDOT unless Developer submits a Notice to CTDOT within seven (7) days of obtaining knowledge of the breach by CTDOT giving rise to the increase in Project Costs.

#### 7.2 Developer Requests for Change in the PPS and Guaranteed Dates.

##### (a) Changes to the PPS

(i) PPS for the TOD Improvements. **[Any right of CTDOT with respect to Developer's ability to change the PPS for the TOD Improvements will depend on the nature of the proposed TOD Improvements and whether on State Property or Developer Property.]**

(ii) Garage Improvements PPS. Except as provided in Section 7.2(b), Developer may request a time adjustment to the Garage Improvements PPS only in accordance with all of the requirements of this Article VII.

##### (b) Changes in Guaranteed Completion Dates

(i) Guaranteed Completion Dates for the TOD Improvements. **[Any right of CTDOT with respect to Developer's ability to change the PPS for the TOD**

**Improvements will depend on the nature of the proposed TOD Improvements and whether on State Property or Developer Property.]**

(ii) Guaranteed Completion Dates for the Garage Improvements.

(A) Developer may request a time adjustment to any of the Guaranteed Completion Dates applicable to the Garage Improvements only for delays caused by a CTDOT initiated adjustment, an Uncontrollable Circumstance, or a breach by CTDOT of any obligation under this Agreement. Any such request shall be made in the form of a Change Notice Proposal which meets all the requirements of, and shall be addressed by CTDOT according to, Section 7.4(b).

(B) No adjustments to the Guaranteed Completion Dates pursuant to this Article VII shall be allowed if the event did not directly affect the critical path indicated in the PPS.

(C) A Guaranteed Completion Date shall not be extended for any reason, notwithstanding any other provision of this Agreement, more than three (3) months.

(D) No Change Order claiming an extension of a Guaranteed Completion Date under this Section 7.2 as a result of a breach by CTDOT of this Agreement shall be considered by CTDOT unless Developer submits a notice to CTDOT within seven (7) days of obtaining knowledge of such breach by CTDOT giving rise to the request for an extension.

7.3 Certain Bases for Adjustment.

(a) Uncontrollable Circumstances.

(i) The Guaranteed Completion Dates may be extended as a result of the existence or occurrence of an Uncontrollable Circumstance only if such event results in a demonstrable change in the duration of the critical path set forth in the PPS.

(ii) In addition to the Change Notice required by Section 7.4, no Change Order resulting from an Uncontrollable Circumstance shall be issued unless, Developer shall, within ten (10) Days of the termination of an Uncontrollable Circumstance submit a Change Notice Proposal as provided in Section 7.4. If the Change Notice Proposal is not received by CTDOT within the time limits identified in the preceding sentence, the critical path shall be considered unaffected by the occurrence or existence of the Uncontrollable Circumstance, and Developer shall forfeit all rights to an adjustment to the applicable Guaranteed Completion Dates.

(b) CTDOT Initiated Adjustments. CTDOT may, at any time and from time to time, order adjustments to scope of the Garage Improvements and/or the Garage Improvement PPS pursuant to a Change Order. CTDOT may issue a Change Order at any time regardless of whether it has issued a Change Notice.

(c) Acceleration. Notwithstanding any other provisions herein, in the event of a request for an extension of a Guaranteed Completion Date under Section 7.2 of this Agreement for which an extension is allowable under Section 7.2, regardless of the provision of this Agreement under which such extension arises, CTDOT shall have the right, in its sole discretion, to decide whether to permit the extension or relief or to require Developer to implement a recovery schedule which does not include any time extension or relief. At CTDOT's request and Developer's expense, Developer shall prepare and submit to CTDOT with its Change Notice Proposal requesting a time extension or relief at least two alternative proposals setting forth the proposed cost of additional Work to implement the recovery schedule, both with and without a time extension or relief. If CTDOT elects to implement the recovery schedule, as proposed by Developer or as may be negotiated by the parties, in lieu of an extension of the affected Guaranteed Completion Date or relief, CTDOT shall issue a Change Order pursuant to Section 7.4(d) adjusting the amount of the Available Funds to account for additional costs which shall be limited to those costs set forth in Section 7.4(b)(i) resulting from all steps necessary to accelerate the Work and implement the recovery schedule.

(d) Developer-Caused Delays. Notwithstanding any other provision of this Agreement, Developer shall not be entitled to any increase in the amount of the Available Funds or a change in the PPS (including, without limitation, a Guaranteed Completion Date) due to any cost incurred or delay caused, in full or in part, by reason of the fault or negligence or act or failure to act of Developer, any Project Provider, or any other Person for whom Developer may be responsible.

7.4 Change Order Process. All changes to the Agreement initiated by Developer pursuant to this Article VII must be made through the Change Order process set forth in this Section 7.4.

(a) Change Notice. In the event that CTDOT determines to make a change in the Work, CTDOT may issue a notice to Developer advising Developer of same (a "Change Notice"). Developer shall sign the Change Notice acknowledging receipt thereof within two (2) Business Days after receiving it from CTDOT and forward a signed copy to CTDOT. Within fourteen (14) days after receipt of a Change Notice, Developer shall consult with CTDOT (at no charge to CTDOT) concerning the estimated cost and impact on the Garage Improvements Price and/or the PPS of implementing the change set forth in the Change Notice.

(b) Change Notice Proposal. Within fourteen (14) days following the issue of a Change Notice, Developer shall, at Developer's own cost and expense, submit to CTDOT a detailed Change Notice Proposal for the Work described in the Change Notice (a "Change Notice Proposal"). The Change Notice Proposal shall include a report, including (x) any projected modification of the amount of the Available Funds occasioned by such change, including a detailed identification, pursuant to this Section 7.4, of the direct change in costs of labor, equipment,

materials and supplies, and indirect costs of overhead and profit of the Contractors and Project Providers, (y) any modification to the PPS (including, without limitation, to a Guaranteed Completion Date) or any other schedule, and (z) the potential effect of such change on Developer's ability to comply with any of its obligations hereunder, including the Project Warranties and the CTDOT Performance Criteria. All Change Notice Proposals shall be in a form acceptable to the CTDOT Representative.

(i) Cost Breakdown Categories. When directed by CTDOT to calculate Change Notice Proposal pricing based on cost breakdown categories, Developer's Change Notice Proposal shall include only the following costs, and no others:

- (A) labor, including social security and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
- (B) materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- (C) rental of machinery and equipment, exclusive of hand tools, whether rented from Developer or others;
- (D) premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- (E) the differential in supervision and field office personnel directly attributable to the change;
- (F) changes directly attributable to the charges of consultants, including but not limited to engineers, architects, surveyors, testing laboratories, or others as may be authorized by CTDOT; and
- (G) a fee of ten percent (10%) applied to the total costs of (a)-(f) of this Section, which fee shall be the aggregate adjustment available to Developer for the Contractors and Project Providers for overhead and profit.

(ii) Unit Price Basis. When directed by CTDOT to calculate Change Notice Proposal pricing on the unit price basis, Developer must obtain CTDOT's approval of Developer's source or development of the unit prices and quantities.

(iii) Time and Materials Basis. When directed by CTDOT to calculate Change Notice Proposal pricing on a time and materials basis, Developer shall propose payment for only those costs actually incurred on a time and materials basis and shall be limited to an amount of ten percent (10%) of the total time and materials as the aggregate available for the Contractors and Project Providers for overhead and profit. Any Change Notice Proposal reflecting adjustments in labor costs shall attach certified payroll records for the applicable Persons. Any Change Notice

Proposal reflecting adjustments in the costs of materials shall include copies of applicable invoices, with all required CTDOT documentation.

(iv) Lump Sum Price Agreement. Notwithstanding anything to the contrary in this Section x.3.3, Developer and CTDOT may agree on a lump-sum price for a Change Order at any time after CTDOT issues a Change Notice. In this event, Developer shall submit a Change Notice Proposal to CTDOT containing the agreed lump-sum price and CTDOT may issue a Change Order containing the same.

(v) No Unspecified Costs Allowed. Developer shall not be paid for costs associated with a Change Order beyond those listed in a Change Order Notice and described in this Section 7.4(b).

(c) Failure to Agree on Change. CTDOT and Developer shall use their best efforts to agree upon any extension to the PPS and/or the costs, if any, of any change, in advance of Developer's performance of the applicable Work. If Developer and CTDOT fail to agree on such extension and/or costs, CTDOT may in its sole discretion withdraw the Change Notice, or issue a Change Order, pursuant to Section 7.4(d), directing Developer to perform all or part of the Work set forth in CTDOT's Change Notice notwithstanding the failure to agree upon all or a portion of the schedule and/or costs associated with the additional Work. In the event of such a failure to agree on the costs associated with the additional Work, CTDOT may direct Developer to proceed (i) on a time and materials basis; or (ii) where quantities cannot be agreed upon but unit prices can, on a unit price basis. In the event CTDOT issues a Change Order directing Developer to proceed on a time and materials basis, Developer shall be entitled to payment for only those categories of costs described in Section 7.4(b)(i)(A)-(F), which are actually incurred on a time and material basis and which are supported by time sheets and other appropriate documentation. When Work is to be performed under this Section, Developer must demonstrate to CTDOT's satisfaction that the Work is being performed in an efficient and prudent manner.

(d) CTDOT Issuance of Change Order. Within a reasonable time after Developer and CTDOT successfully negotiate a Change Notice Proposal or they fail to agree thereon, as set forth in Section 7.4(c), CTDOT may issue a Change Order directing Developer to perform the Work set forth in the relevant Change Notice. Upon receipt of a Change Order, Developer shall promptly sign and return the Change Order to CTDOT, adjust the PPS (to the extent approved by CTDOT in the Change Order) and any other exhibits and schedules requiring adjustment to indicate the effect of the Change Order and proceed with the Work pursuant to the Change Order. Developer shall not make any changes in the Work (including such changes that have no net cost effect on the Available Funds) without first receiving a Change Order from CTDOT.

7.5 No Other Relief Regarding Time, Price. Except as otherwise provided in this Article VII, Developer shall not be relieved of any of its obligations under this Agreement, including its obligation to meet the milestones represented by the Guaranteed Completion Dates, nor shall the Available Funds be increased or a Guaranteed Completion Date be extended for any reason including the occurrence or existence of any event or condition constituting an Uncontrollable Circumstance, and Developer agrees to be responsible for and to pay for any costs

related or incidental to the occurrence or existence of any event or condition constituting an Uncontrollable Circumstance.

## **ARTICLE VIII**

### **Value Engineering**

#### **8.1 Proposed Value Engineering.**

Developer may prepare and submit one or more value engineering cost proposals ("VECP") for cost sharing engineering changes to the Garage Improvements which each will result in a net reduction of the Garage Improvements Price of at least \$100,000. CTDOT may also direct Developer to prepare and submit a specific VECP. CTDOT, in its sole discretion, may reject or propose modifications to any VECP submitted by Developer and Developer shall have no recourse for such rejection or modification.

The net savings to the Garage Improvements ("VECP Net Savings") means the difference between the Garage Improvements Price and the estimated cost to perform the Garage Improvements according to the VECP, after subtracting Developer's and CTDOT's implementation costs (including additional QMP costs) and CTDOT's engineering review, analysis and oversight work attributable to the change proposal. Developer's implementation costs shall not include profit. Although operations and maintenance cost reductions are expressly excluded from the VECP Net Savings, each VECP submitted by Developer shall include a life cycle cost analysis. Developer is encouraged to submit VECPs with a significantly lower life cycle cost, consistent with the intended functions of a particular facility. Any costs incurred by Developer for VECP efforts are recoverable only as an element of VECP accepted by CTDOT, and not otherwise

#### **8.2 Sharing of Savings.**

The VECP Net Savings shall be shared by Developer and CTDOT based upon which party originates the idea that is subsequently developed into a VECP. For VECP based on ideas originated by Developer, the Available Funds shall be reduced by an amount equal to fifty percent (50%) of VECP Net Savings. For VECP based on ideas originated by CTDOT, the Available Funds shall be reduced by an amount equal to seventy-five (75%) of VECP Net Savings.

#### **8.3 Description of VECP.**

- (a) The VECP shall include the following:
  - (i) A description of the proposed change(s).
  - (ii) A description of the difference between the existing Agreement requirements and that proposed, the comparative advantages and disadvantages of each, a justification for alteration of an item's function or characteristics, and the effect of the change on the item's performance.

(iii) A list and analysis of the Agreement requirements that must be changed if the VECP is accepted, including any suggested specification or drawing revisions.

(iv) A separate, detailed cost estimate for (a) the affected portions of the existing Agreement requirements and (b) the VECP.

(v) A description and estimate of costs CTDOT may incur or save in implementing the VECP over a twenty (20) year period.

(vi) A statement of the time by which a Change Order accepting the VECP must be issued in order to avoid impacting the critical path and to achieve the maximum cost reduction.

(b) Developer shall submit VECP to CTDOT for review. CTDOT's review shall be completed within thirty (30) days of the date the VECP is received unless CTDOT notifies Developer of a delay and an expected decision date. If CTDOT does not review or respond to the VECP within thirty (30) days or by such expected decision date, whichever is later, the VECP transmitted shall be deemed rejected. CTDOT shall not be liable for any delay in acting upon VECP for any reason whatsoever.

(c) If a VECP is rejected or modifications thereto are required by CTDOT, CTDOT shall notify Developer in writing. Developer may withdraw any VECP, in whole or in part, prior to a decision by CTDOT.

8.4 Acceptance or Rejection of a VECP. If a VECP is accepted by CTDOT, either in whole or in part, CTDOT will issue a Change Order pursuant to the provisions of this Agreement. If a VECP is rejected by CTDOT, such rejection shall not entitle Developer to a claim against CTDOT under this Agreement.

## **ARTICLE IX**

### **COMPLETION AND ACCEPTANCE**

#### 9.1 Substantial Completion.

(a) To achieve Substantial Completion with respect to the Garage Improvements, and any Subcomponent thereof which has been previously approved by CTDOT as eligible for a separate Substantial Completion, Developer shall provide written notice to CTDOT and the CTDOT Representative when the following have occurred:

(i) Developer has completed the Improvements (or applicable Subcomponent), except for minor punchlist items, which punchlist items shall not include any items relating to safety or compliance with State building code or fire code;

(ii) Developer has developed and submitted a punchlist of such minor items remaining to be completed (the "Substantial Completion Punchlist");

(iii) Developer has reaffirmed that the Improvements (or applicable Subcomponent) has been designed, constructed and/or installed in accordance with the requirements of this Agreement;

(iv) Developer has reaffirmed that the Improvements (or applicable Subcomponent), may be utilized without damage to the Project Property or the Project, or any other property on or off the Project Property, and without injury to any Person;

(v) Developer has ensured that the required testing contemplated by Article XII for the PARCS has been satisfactorily completed; and

(vi) That all necessary Commissioning activities have been conducted.

Such notice shall be accompanied by each of the following:

(vi) Certification by the applicable Designers and Contractors that the Improvements have been completed in substantial compliance with the Final Plans and Specifications;

(vii) Copies of the applicable certificates of occupancy and other Governmental Permits required for Substantial Completion;

(viii) Final Commissioning report for the Improvements;

(ix) All applicable operating guides and manuals for the Improvements; and

(x) The Final Report of Special Inspections in accordance with Exhibit P.

(b) As promptly as is practicable after receipt of Notice and other items required pursuant to Section 9.1(a), CTDOT shall advise Developer in writing of any additional or remaining Nonconforming Work in respect to the Garage Improvements (or Subcomponent), of which it then has knowledge. Developer shall, at its own cost and expense, correct such Nonconforming Work. CTDOT shall also review all submittals from Developer in order to confirm that all requirements for Substantial Completion have been met, and shall promptly notify Developer of any unsatisfied requirements for Substantial Completion.

(c) Substantial Completion of the Garage Improvements, and the Work with respect thereto, shall be deemed to have occurred when all of the following have occurred:

(i) All Nonconforming Work or other unsatisfied requirements specified in Section 9.1(b) has been corrected;

- (ii) Developer has received all Governmental Permits required to be obtained by Developer, including the required certificate(s) of occupancy;
- (iii) The Substantial Completion Punchlist in respect of the Garage Improvements has been approved by CTDOT;
- (iv) All other materials submitted under Section 9.1(a) have been reviewed and approved by CTDOT;
- (v) All authorities having jurisdiction over the Garage Improvements have given their approval of the Garage Improvements for use for its intended purpose;
- (vi) The Garage Improvements are fully operational and available to be utilized by the public and CTDOT without further disruption for their intended purposes; and
- (vii) The PARCS is fully operational in accordance with the CTDOT Performance Criteria.

## 9.2 Final Acceptance.

(a) Promptly after achieving Substantial Completion of the Garage Improvements, or any Subcomponent thereof, Developer shall perform all Work remaining with respect thereto, including completing all punchlist items, and shall satisfy all other of its obligations under this Agreement with respect to such Garage Improvements (or Subcomponents), including ensuring that they have been properly adjusted and tested.

(b) Final acceptance ("Final Acceptance") of the Garage Improvements, or any Subcomponent thereof, shall be deemed to have occurred when all of the following have occurred:

(i) All CTDOT Performance Criteria shall have been fully satisfied, all requirements for Substantial Completion have been fully satisfied and all Liquidated Damages and other payments owed pursuant to this Agreement shall have been paid;

(ii) CTDOT shall have received all documents (including but not limited to title documents and as-built drawings), specifications, test data and other technical information required hereunder for CTDOT to confirm that operation of the Garage Improvements may commence;

(iii) All special tools purchased by Developer as provided herein shall have been delivered to CTDOT and all replacement spare parts shall have been purchased for delivery to CTDOT free and clear of liens;

(iv) All Developer's and Project Providers' personnel, supplies, equipment, waste materials, rubbish and temporary facilities shall have been removed from the applicable portion of the Project Property and such portion shall be in neat and clean condition;

(v) Developer shall have delivered to CTDOT a certification to the effect that Developer claims no additional charges or adjustments from CTDOT;

(vi) The Substantial Completion Punchlist items shall have been completed to the reasonable satisfaction of CTDOT and all of Developer's other obligations under this Agreement with respect to the Garage Improvements (or such Subcomponent) shall have been satisfied in full or waived, and CTDOT shall have delivered to Developer a notice of Final Acceptance to the effect of the foregoing; and

(vii) The PARCS has performed to CTDOT's satisfaction in connection with all PARCS requirements pursuant to Article XII.

**[Requirements for Final Acceptance with respect to TOD Improvements, including State Property TOD Improvements, shall be determined based on the actual proposal selected.]**

(c) No action or inaction by CTDOT or Developer required or permitted under this Section 9.2 shall affect a Guaranteed Completion Date or relieve Developer of its obligation to achieve Final Acceptance by the applicable Guaranteed Completion Date.

(d) The occurrence of the Guaranteed Final Acceptance Date shall not relieve Developer from any of its continuing obligations hereunder.

## **ARTICLE X**

### **PROJECT WARRANTY**

#### 10.1 Project Warranties.

(a) Developer's warranties in respect of the Garage Improvements (the "Project Warranties") are as follows: Developer warrants to CTDOT that the Garage Improvements shall be fit for their intended purposes, that materials incorporated into the Garage Improvements and equipment installed under this Agreement shall be of good quality and new, that all Work shall be free from defects and that all Work shall meet all of the requirements of this Agreement. Developer shall furnish satisfactory evidence that it has met the Project Warranties. Work not conforming to the Project Warranties, including substitutions not properly approved and authorized, shall be considered Nonconforming Work. Each Warranty shall be for a period not less than one-year, or otherwise provided by suppliers. Without limitation, nothing in this Article X shall limit the warranties required for PARCS under this Agreement.

(b) Developer shall promptly correct Work rejected by CTDOT for failing to conform to the Project Warranties, whether observed before or after the Final Acceptance Date and whether or not fabricated, installed or completed. Developer shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for CTDOT's expenses made necessary thereby.

(c) For all of the Garage Improvements (and Subcomponents thereof), Project Warranties shall not commence until Final Acceptance thereof. Notwithstanding the forgoing provisions of this Article X, if this Agreement is terminated in accordance with Article XX, Project Warranties in respect of the Work terminated under this Agreement which was completed by Developer prior to such termination shall be deemed to commence on the effective date of such termination.

(d) If at any time within one year after the date on which the Project Warranties commenced with respect to the Garage Improvements (or any Subcomponent thereof), any portion thereof is found to be not in accordance with the Project Warranties, Developer shall correct it by a mutually agreeable deadline after receipt of written notice from CTDOT to do so unless CTDOT has previously given Developer a written acceptance of such condition.

(e) In addition to the Project Warranties in this Article X, Developer shall provide the warranties contained in Section 5.13, without in any way derogating Developer's own representations and warranties (including Project Warranties), the CTDOT Performance Criteria and Developer's other obligations with respect to all of the Work.

(f) Upon receipt from CTDOT of a Notice of failure of any of the Work to satisfy any warranty from a Project Provider, Developer shall be responsible during the Project Warranty period for enforcing or performing any warranty repairs or replacements and shall have the deficient Work retested and conformed to the requirements of this Agreement. CTDOT's rights under this paragraph shall commence at the time such warranty from a Project Provider is furnished and shall continue until the expiration of Developer's relevant Project Warranties. Until expiration of the Project Warranties, the cost of any equipment, material, labor (including re-engineering) or shipping shall be for the account of Developer if such cost is covered by such a Project Warranty and Developer shall be required to replace or repair Nonconforming Work, equipment, material or workmanship furnished by any Project Providers.

(g) Commencing on the expiration of each of the Project Warranties, CTDOT may enforce warranties from Project Providers directly against such Project Providers, but Developer shall provide reasonable assistance to CTDOT in enforcing such representations, warranties and guarantees, when and as reasonably requested by CTDOT.

(h) When any curative action is required by Developer pursuant to its Project Warranties, or any warranty from a Project Provider which Developer is responsible to enforce, Developer and CTDOT shall so agree on an appropriate remedy immediately upon notice by CTDOT to Developer. If Developer does not use its best efforts to proceed to complete said remedy within the time agreed to, or should Developer and CTDOT fail to reach such an agreement within twenty-four (24) hours in the case of an emergency or within thirty (30) days in any other case, CTDOT, after notice to Developer, shall have the right to perform, or have performed by third parties, the necessary remedy and the costs thereof shall be borne by Developer.

## **ARTICLE XI**

## **Payments to Developer and Financial Controls**

### 11.1 Disbursement of Available Funds.

(a) Subject to the provisions of this Section 11.1, the Available Funds shall be disbursed for the reimbursement of Eligible Costs from time to time. Reimbursements will be made within forty-five (45) days following receipt and approval by CTDOT of a progress payment request to pay Eligible Costs, but only to the extent incurred and when due and payable. Disbursements of Available Funds shall be made based on an approved progress payment request as further described in Section 11.2 and Article VI of this Agreement.

(b) The State shall not be obligated to:

(i) make disbursements more frequently than once per month or in amounts less than \$100,000.

(ii) make a disbursement if:

(A) any Developer Default or any event that, with the passage of time or giving of notice would constitute a Developer Default, shall have occurred and be existing;

(B) the unpaid balance of the Garage Improvements Price is greater than the amount of the Available Funds not yet disbursed to Developer, the parties agreeing that Developer is to fund from its financing sources other than CTDOT such difference before CTDOT is required to make any further advances of the Available Funds;

(C) as of the date of disbursement, the total amount disbursed by CTDOT for Project Costs equals or exceeds the Available Funds;

(D) any portion of the Garage Improvements, whether or not completed, shall have been damaged or destroyed by casualty and not restored;

(E) any order or notice shall have been made by, or received from any Governmental Authority stating that any portion of the Project is or will be in violation of Applicable Laws;

(F) there are any Liens of record relative to labor or material provided by or to the Project; or

(G) if CTDOT or the CTDOT Representative has determined that the Work for which payment is requested has not been performed as required.

(c) As part of the progress payment submission, Developer shall deliver the following certifications describing, in detail sufficient for independent verification ("Payment Certifications"):

(i) Certification that the Work and/or material for which request for payment has been made is in conformity with the applicable Final Plans and Specifications, the Garage Improvements Schedule of Values, the Garage Improvements PPS and all Applicable Laws; that such Work has been performed in a prudent manner and in compliance with the requirements of this Agreement; and that Developer holds title to all such materials included in the invoice;

(ii) certification to CTDOT of all newly stored, stored materials and all adjustments for stored materials incorporated into the Garage Improvements in the then immediately preceding month; and

(iii) certification to CTDOT from the Contractor and Developer setting forth the estimated amount of the remaining Project Costs through final completion of the Garage Improvements, and the Subcomponent being funded, if applicable.

(d) Any invoice for reimbursement shall be subject to authorization for payment by the Comptroller of the State of Connecticut pursuant to Chapter 34 of the Connecticut General Statutes. Any such invoice and reimbursement shall remain subject to audit and later adjustment by CTDOT, the Connecticut State Auditors of Public Accounts, and other representatives of the State, but the pendency of any such audit shall not delay the payment of any invoice that is otherwise proper and complete at the time of submission by Developer.

(e) Prior to making any disbursement of the Available Funds, CTDOT and the State each reserves the right to ensure to its reasonable satisfaction that all workers and suppliers to the Project are being paid in accordance with all Applicable Laws.

11.2 Progress Payments. Payment to Developer of the Available Funds shall be made as follows:

(a) No payments shall be made to Developer without Developer having previously obtained CTDOT's approval of a Preliminary PPS or the PPS and cash flow as provided in Article VI. Additionally, when a proposed revision to the PPS is due, no progress payments shall be made for activities which are the subjects of the proposed revision until the proposed revision has been approved by CTDOT.

(b) Following the PPS update meeting referenced in Article VI, Developer shall prepare and submit to the CTDOT Representative a preliminary draft of the progress payment request. Developer shall revise the preliminary draft of the progress payment request in accordance with any objection or recommendation of CTDOT that is consistent with the requirements of the Agreement. The revised draft request for payment shall be submitted to CTDOT with all required documents in accordance with this Section 11.2.

(c) No earlier than the fifth (5th) Business Day following submission of the preliminary draft of the progress payment, Developer shall submit an original invoice and six (6) copies to CTDOT for (i) approved materials to which it holds title which were obtained and properly stored by Developer during the then immediately preceding month; (ii) the Work performed thereunder in the then immediately preceding month; and (iii) any changes directed by CTDOT pursuant to Article VII. Developer shall calculate each such invoice based upon the actual physical progress of the Work (with each activity's value multiplied by its percentage completion) to determine an earned value to be submitted to CTDOT for review. To determine current period progress and the amount due for payment, the previous invoice's earned value progress will be subtracted from the current earned value progress. The invoice shall be accompanied by all of the required information for the Payment Certification as described in Section 11.1(c). Prior to, or at the time of submission, all progress claimed shall have been reviewed with CTDOT at the monthly meeting as described in Section 6.8 or as part of the preliminary draft progress meeting.

(d) Payments shall be made as determined by the allocation of the Available Funds to the completed or partially completed activities as set forth in the PPS for the Garage Improvements. All invoices shall describe the relative completion of activities as described in the PPS for the Garage Improvements and the related payments which are then due in accordance with such schedule, as of the end of the preceding calendar month. Subject to the terms of this Article, Developer shall be paid the amount due in accordance with the actual progress of the Work and associated allocations for activities shown on the PPS for the Garage Improvements, for the net change of approved materials to which it holds title and which were either obtained and properly stored or removed from storage to incorporate into the Work in the then immediately preceding month according to this Section 11.2, less the any retainage due (as described in Section 11.3) and any amount (determined in the reasonable judgment of CTDOT) related to any portion or portions of the Work not completed or not in conformity with the requirements of this Agreement during such preceding calendar month in accordance with such PPS.

(e) As payment is made for the Work and materials, including stored materials, associated with the Garage Improvements, CTDOT shall gain and Developer shall provide clear title to the Work and materials, not subject to any mechanics' or materialmen's lien or any other lien or obligation of Developer. Within ten (10) days of CTDOT's request, Developer shall provide such proof of title to any materials to be transferred to CTDOT.

(f) In order for any of the items of stored materials to qualify for payment prior to being incorporated into the Project, the item of stored material must be: (a) clearly and separately identified in the PPS for the Garage Improvements; (b) stored on the State Property or at another location acceptable to CTDOT; and (c) subject to CTDOT's inspection and accessible for such inspection upon CTDOT's request. Payment for stored materials does not relieve Developer of responsibility for the material. When it is incorporated into the Project, the stored material must meet all requirements of this Agreement. Notwithstanding any payment already made for stored materials, in the event CTDOT's inspection of such stored materials reveals any discrepancy between what CTDOT observes and the PPS or invoice providing the basis for such payment,

CTDOT shall promptly notify Developer. CTDOT may withhold amounts equivalent to the amount paid for such stored materials from subsequent progress payments until Developer cures such discrepancy.

(g) Not later than seven (7) Business Days after receipt by CTDOT of each invoice and the related Payment Certification, CTDOT shall determine whether the Work has been performed as described by Developer. CTDOT shall promptly notify Developer concerning any invoiced amount which is disallowed and any Work which was not performed in accordance with the Agreement (all such Work and invoiced amounts in respect thereof shall not be paid until otherwise agreed).

(h) Failure by CTDOT to pay any amount in dispute shall not alleviate, diminish or modify in any respect Developer's obligations to perform hereunder, including Developer's obligation to achieve Substantial Completion of the Garage Improvements and Final Acceptance of the Garage Improvements by the respective Guaranteed Completion Dates, and Developer shall not cease or slow down its performance hereunder on account of any such amount.

### 11.3 Retainage.

CTDOT shall withhold from each payment to be made to Developer pursuant to this Article, an amount equal to two and one half percent (2.5%) of such payment. All amounts withheld pursuant to this Section shall be held by CTDOT until after the Final Acceptance Date for the Garage Improvements, unless CTDOT otherwise elects.

### 11.4 **[Include project-specific provisions addressing financing of the TOD Improvements.]**

### 11.5 Financial Controls, Audits.

(a) In view of the fact that a substantial portion of the Project will be paid for with public funds, Developer understands and acknowledges the necessity of stringent financial controls and auditing procedures designed to verify, document and reconcile all costs and expenses of the Garage Improvements and all uses of public funds, and agrees to comply with all requirements of Applicable Laws relating to the maintenance of books and records, financial reporting, financial controls and auditing.

(b) Developer agrees that, with respect to the Project and any allocation of costs or expenses among the Garage Improvements and the TOD Improvements, it shall comply with, and shall require each of the Project Providers to comply with, the following accounting and record keeping requirements:

(i) maintenance of complete accounting records and controls (including detailed support for all cost allocations), on an "open book basis" whereby, during normal business hours, the State Comptroller, the State Auditors of Public Accounts and CTDOT, and their respective representatives, can review, copy, verify and audit all

records and other financial data relating to the Garage Improvements and the allocation of costs and expenses among the Garage Improvements and the TOD Improvements, or for any proper purpose, including verification of performance pursuant to this Agreement and the other Operative Agreements, conformance to the approved budgets, compliance with all Applicable Laws, and reconciliation and verification of the proper expenditure of the Available Funds;

(ii) arrangements for access to and sharing of all such records and data stored in electronic form; and

(iii) maintenance of all such books and records for a minimum period of three (3) years following completion of the Project or until any related audit, litigation or claim is resolved, whichever is longer.

(c) Developer shall maintain and make available to CTDOT and the Connecticut Auditors of Public Accounts all books and records required in order for such State Auditors of Public Accounts to perform the duties and functions assigned to such Auditors pursuant to Chapter 23 of the Connecticut General Statutes. In the event that either CTDOT or the Auditors of Public Accounts determine that there has been an improper payment or an overpayment by CTDOT to Developer, including any improper payment or overpayment resulting from any improper allocation of costs and expenses to the Garage Improvements, Developer shall, upon written request setting forth the basis for such determination by CTDOT or the Auditors of Public Accounts, reimburse CTDOT within thirty (30) days of receiving such request for such improper payment or overpayment. The determinations of the Auditors of Public Accounts with respect to such matters shall be binding and conclusive as between the parties for purposes of this Agreement, absent manifest error.

(d) In addition to the rights set forth in subsection (c) of this Section 10.5, the Attorney General of the State, the Connecticut State's Attorney and CTDOT, and their respective representatives, may, at reasonable hours, inspect and examine all of the parts of Developer's and Developer Affiliates' plants and places of business which, in any way, are related to, or involved in, the performance of this Agreement.

## **ARTICLE XII**

### **PARCS**

#### **12.1 Software and Documentation.**

Developer shall develop, install, implement and otherwise provide all PARCS software and all user and operator manuals and documentation of, for and related to the PARCS software as described in and pursuant to Exhibit E hereof. PARCS shall satisfy all testing described in Exhibit E.

12.2 Assignment of Rights.

Developer shall assign to CTDOT all of its right, title and interest, including all copyright, patent rights, and other intellectual property rights, throughout the world, in all PARCS software and all user and operator manuals and documentation of, for and related to the PARCS software and updates and modifications thereto. Developer agrees to execute such other documents as may be prepared by CTDOT and which are necessary, in the reasonable opinion of CTDOT, to confirm and/or perfect this assignment.

12.3 Licenses.

Developer shall provide or cause to be granted to CTDOT in a form acceptable to CTDOT all licenses necessary for the construction, installation and operation of the PARCS.

**ARTICLE XIII**

**[include other project-specific Articles as applicable, such as reciprocal easement rights, CIOA, maintenance and operation, security, takebacks, labor, etc.]**

**ARTICLE XIV**

**Revenues from and Operation and Maintenance of Replacement Garage, 2004 Garage[, and State Street Lot]**

**14.1 [To include project-specific provisions whereby, by virtue of a separate agreement, Developer or a Developer Affiliate shall be responsible for Garage O&M for a term ending three years after Final Acceptance of the Garage Improvements, and CTDOT will be entitled to all parking revenues. That agreement shall provide garage rules and regulations, hours of operation (which shall be 24 hours per day, 365 days per year), maintenance requirements, management fee, etc.; shall ensure a process for any commuter to reach an individual for assistance, when needed; and, to the extent necessary to preserve the tax-exempt status of the bonds providing the Available Funds shall satisfy the requirements of a "qualified management agreement" under the Internal Revenue Code.]**

**ARTICLE XV**

**Temporary Parking Arrangements**

**15.1 [Section to include project-specific provisions whereby Developer shall be responsible to provide for the necessary Temporary Parking. Temporary Parking is to be in the same number of spaces as those taken out of service. For Temporary Parking on Developer Property, CTDOT may require an easement. All Temporary Parking Revenues shall be for the benefit of CTDOT. Temporary Parking must continue until Final Acceptance of the Garage Improvements. In the event of termination of this Agreement,**

**such Temporary Parking must continue to be available to CTDOT for such time as is reasonably necessary for replacement parking acceptable to CTDOT to be put in place.]**

## **ARTICLE XVI**

### **Environmental Matters**

16.1 Definitions. For purposes of this Article the following terms shall have the following respective meanings:

"DEEP" means the Connecticut Department of Energy and Environmental Protection.

"Environmental Conditions" means circumstances with respect to soil, surface waters, groundwaters, sediment, air and similar environmental media, both on-site and off-site of the Project Property, that could require remedial action and/or that may result in claims and/or demands by and/or liabilities to third parties, including, but not limited to governmental entities. Environmental Conditions shall also include such circumstances discovered after the Closing.

"Environmental Laws" means any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental, health, safety, building, land use, and local government concerns as may now or at any time hereafter be in effect. Such laws include, but are not limited to, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act, the Occupational Safety and Health Administration and Regulations, the Comprehensive Environmental Response, Compensation, and Liability Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide Fungicide and Rodenticide Act, the Clean Water Act, the Safe Drinking Water Act, and all similar State of Connecticut laws, including but not limited to Title 22a of the Connecticut General Statutes and the Remediation Standard Regulations from Sections 22a-133k-1 through 22a-133k-3 of the Regulations of Connecticut State Agencies, all as in effect or as may be amended.

"Environmental Notice" means any summons, citation, directive, order, claim, litigation, pleading, investigation, proceeding, judgment, letter or any other written or oral communication from the United States Environmental Protection Agency, DEEP, or any other federal, state or local agency or authority, or any other entity or any individual, concerning any intentional or unintentional act or omission which has resulted in or which may result in the Release of any Hazardous Material into the environment including, the surface water, groundwater, soil, air or other environmental media, or other

violation or alleged violation of environmental laws and shall expressly include the imposition of any lien pursuant to any federal, state or local environmental laws, ordinances or regulations.

"Environmental Reports" means certain reports regarding the Environmental Condition of the State Property, and provided to Developer by CTDOT.

"Existing Environmental Compliance Liability" means any or all environmental permits, approvals, consents, stipulations, licenses, registrations, certificates and authorizations which are required by law, ordinance and regulation and any and all environmental regulatory compliance requirements applicable to the Project Property or the business operations occurring thereon, or originating therefrom, as of or prior to the Closing, which may result in claims and/or demands by and/or liabilities to third parties including, but not limited to, governmental entities.

"Hazardous Substances" means and includes, without limitation, any toxic, hazardous, or radioactive substances or materials, and any biomedical waste as defined in Section 22a-207 of the Connecticut General Statutes, and any oil or petroleum, chemical liquid, solid, liquid or gaseous products, or hazardous waste, as defined by Section 22a-448 of the Connecticut General Statutes, or other pollutants and substances, whether or not naturally occurring, including, without limitation, asbestos, radon and methane gas, generated, used, treated, stored or disposed of, or otherwise deposited in, handled at, or located on or under, the Project Property, including without limitation, the surface and subsurface waters of the Project Property. For purposes of the Agreement, "Hazardous Substances" shall also include: (i) any materials, the generation, use, treatment, storage or disposal of which would cause a person producing such material to become a hazardous waste generator, or any part of the Project Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring such person or the Project Property within the ambit of, the Resource Conservation and Recovery Act of 1976, ("RCRA") 42 U.S.C. Section 6901 et seq., or regulations promulgated thereunder, as the same may be amended from time to time, or any similar state law or regulation or local ordinance; (ii) any materials, the generation, use, treatment, storage or disposal of which could cause a Release or threatened Release of hazardous substances from the Project Property within the meaning of, or otherwise bring any part of the Project Property within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, ("CERCLA") 42 U.S.C. Section 9601 et seq., or regulations promulgated thereunder, as the same may be amended from time to time, or any similar state law or regulation, including, but not limited to, activities constituting "a spill" as defined in Section 22a-452c of the Connecticut General Statutes, or any similar local ordinance; (iii) any materials, the generation, use, treatment, storage or disposal of which would cause the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq., or the Clean Air Act, 42 U.S.C. Section 7401 et seq., or regulations promulgated thereunder, as all such Acts or regulations may be amended from time to time, or any similar state laws, regulations or local ordinances, (iv) any material defined as "asbestos" pursuant to Parts 1910 or 1926 of Title 29 of the Code of Federal Regulations; (v) any materials

regulated pursuant to the Toxic Substances Control Act of 1976, 42 U.S.C. Sections 2601 et seq., or regulations promulgated thereunder, as the same may be amended from time to time, or any similar state law or regulation or local ordinance; or (vi) any substances in, on or under the Project Property which may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

"LEP" shall mean a Connecticut Licensed Environmental Professional, licensed under the Connecticut General Statutes Section 22a-133v and the regulations promulgated thereunder.

"Notice of Completion" shall mean: (i) for parcels subject to the Transfer Act, written confirmation by the DEEP that it has approved the completed investigation and remediation of applicable parcels within the Project Property, or has approved the final "verification" as such term is used in Section 22a-134(19) of the Connecticut General Statutes by an LEP pursuant to the Transfer Act and the Remediation Standard Regulations and subject to any audit by the DEEP or notice that such audit will not occur with respect to such verification, and (ii) for all other parcels within the Project Property, written confirmation by an LEP retained by CTDOT that Site Remediation Measures are complete.

"RAP" means, collectively, a Phase I and/or Phase II environmental site assessment, and if recommended by such assessments, a remedial action plan to manage Site Remediation Measures to be prepared by Developer consistent with policy, guidelines and regulations issued by DEEP under the Transfer Act (as applicable), the RSRs, customary professional environmental practice and this Agreement.

"Release" means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, disposing, seeping, infiltrating, draining or dumping. This term shall be interpreted to include both the present and past tense, as appropriate.

"Remediation Standard Regulations," or "RSRs," shall mean the Regulations of Connecticut State Agencies Sections 22a-133k-1 to 22a-133k-3 and 22a-133q-1 et seq., as may be amended.

"Site Remediation Measures" means (i) for State Property efforts of Developer, or its Project Providers or agents, which are made, designed, initiated, or maintained to ensure that Environmental Conditions comply with Environmental Laws, including the Transfer Act and the Remediation Standard Regulations as applicable, and may include, without limitation, investigation, site monitoring, containment, clean-up, transport, removal, disposal, restoration and other remedial efforts of any kind; and (ii) for Developer Property, efforts of Developer, or its Project Providers or agents, which are made, designed, initiated, or maintained to ensure that Environmental Conditions comply with Environmental Laws, including the Transfer Act and the Remediation Standard

Regulations as applicable (and where RSR compliance is not specifically required by law, by way of example, non-Transfer Act parcels, Site Remediation Measures are implemented consistent with the remediation criteria established by the RSRs in the sole discretion of an LEP retained by CTDOT), and may include, without limitation, investigation, site monitoring, containment, clean-up, transport, removal, disposal, restoration and other remedial efforts of any kind.

"Transfer Act" means the Connecticut Transfer Act, Sections 22a-134 et seq., of the Connecticut General Statutes, as it may be amended from time to time.

#### 16.2 Environmental Site Assessment and Remedial Action Plan.

(a) Developer shall prepare, using an LEP acceptable to CTDOT, (i) RAP(s) relating to the State Property by \_\_\_\_\_, and (ii) one or more RAPs relating to the Developer Property in accordance with the PPS. Each RAP shall, at a minimum, evaluate the degree and extent of contamination on and originating from the applicable site and propose Site Remediation Measures for all identified "areas of concern," "potential areas of concern" and "recognized environmental conditions" as may be identified in the RAP(s). CTDOT shall have the right, but not the obligation, to oversee all aspects of preparing and implementing the RAP(s) for the State Property, including reviewing and approving work plans, collecting samples (for which it may take "splits"), and reviewing and approving drafts of the RAP(s) for the Developer Property (at least one of which shall be prepared for review and approved prior to issuing a final version). To assist CTDOT in its oversight, CTDOT may retain an LEP, the costs, fees and disbursements for which shall be reimbursed directly by Developer. CTDOT or its LEP may also consult with DEEP on any environmental matter, including the draft RAP(s), which comments of DEEP, if any, shall be considered and included in the final RAP(s), a copy of which shall be provided to CTDOT immediately upon issuance.

16.3 Transfer Act and Remediation Obligations. Developer shall implement the RAPs (where Site Remediation Measures are required or recommended) and shall assume all liabilities, duties and responsibilities imposed by or arising from such implementation, including the Transfer Act for which compliance is required for applicable parcels. Developer shall comply with the Transfer Act and this Agreement until a Notice of Completion is issued. Such compliance shall include, but not be limited to, preparing and implementing Site Remediation Measures, and preparing for review and acceptance by CTDOT, the applicable forms (Form(s) I, II, III or IV) and, where required, an Environmental Condition Assessment Form in connection with the transfer of any property comprising a part of the Project Property requiring compliance with the Transfer Act, where applicable, Developer being in each instance the "Certifying Party" on such forms. Upon approval by CTDOT, such forms shall be executed by Developer within five (5) Business Days and returned to CTDOT to be held in escrow until the closing. Developer shall pay all initial and subsequent fees associated with the Transfer Act, prepare and implement the RAPs, and perform any Site Remediation Measures as may be required on the Project Property under the Transfer Act and this Agreement.

#### 16.4 Representations and Covenants.

(a) Developer hereby represents and warrants that Developer has been provided certain information regarding the Environmental Condition of the Project site. Developer also represents and warrants that Developer will cause an LEP acceptable to CTDOT to prepare and implement a RAP. The information to be submitted by and on behalf of Developer including those documents referred to in this paragraph is hereinafter referred to as the "Investigations".

(b) In connection with its environmental obligations hereunder, Developer shall report to CTDOT every six (6) months from the date of this Agreement, on the status of compliance with all Environmental Laws and on the completion of its obligations hereunder, or provide detailed information concerning such items which have not been completed, the reason for not completing them, and an estimated date by which such tasks will be completed.

(c) Except as described in the Investigations and information supplied or to be supplied to CTDOT by Developer, Developer has no knowledge after due investigation of (i) the presence of any Hazardous Substances on the Project Property including the surface or subsurface waters thereof, or (ii) any spills, releases, discharges or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Project Property or any adjacent properties, including but not limited to any contiguous real estate which has been included in the description of the Project Property within the past three (3) years, or (iii) any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring off the Project Property as a result of any construction on or operation or use of the Project Property.

(d) Developer hereby covenants that it shall comply with all Applicable Laws with regard to Hazardous Substances.

(e) Developer hereby represents, warrants and certifies that Developer is in compliance with all Environmental Laws.

(f) In connection with the construction on or operation or use of the Project Property, Developer represents after making due inquiry of its Project Providers and any other persons as Developer deems appropriate, that, as of the date of this Agreement, it has no knowledge of any failure to comply with any applicable local, state or federal Environmental Laws, or administrative or judicial orders relating to the generation, use, recycling, reuse, sale, storage, handling, transport or disposal of any Hazardous Substances. Developer hereby covenants and agrees that any and all environmental remediation or other related work required to maintain the Project Property in or restore the Project Property to full compliance with all Environmental Laws, shall be performed in accordance with the laws and procedures established or enforced by the DEEP, the U.S. Environmental Protection Agency or other governmental agency having jurisdiction over such environmental remediation or other work.

(g) Developer agrees to immediately notify CTDOT if Developer becomes aware of (i) any condition of the Project Property or adjacent property which could create liability under Environmental Laws, for Developer, the Project Property or CTDOT, or (ii) any lien, action,

notice of violation, or administrative or judicial enforcement action concerning an Environmental Law, and Developer or the Project Property. This provision specifically includes the creation of any lien pursuant to Section 22a-452a of the Connecticut General Statutes or any similar federal laws or regulations. At its own cost, Developer will take all actions which are required by law to clean up any Hazardous Substances, affecting the Project Property, including removal, containment or any other remedial action required by appropriate governmental authorities.

(h) Developer assumes all obligations of compliance with all Environmental Laws imposed by federal, state and local authorities that affect the Project Property or any business or other activity conducted thereon or therewith.

16.5 Indemnity. Developer hereby agrees, unconditionally, absolutely and irrevocably, to indemnify, defend and hold harmless the State Indemnified Parties (including the DEEP) against and in respect of:

(a) any loss, liability, cost, injury, expense or damage of any and every kind whatsoever (including, without limitation, court costs and attorneys' fees and expenses) which at any time or from time to time may be suffered or incurred in connection with any inquiry, charge, claim, cause of action, judgment, administrative order, judicial order, demand or lien made or arising directly or indirectly or in connection with, with respect to, or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release on, or into, the Project Property, or from the Project Property into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Substances, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Environmental Laws, whether now known or unknown, including without limitation:

(i) any costs, fees or expenses incurred in connection with the removal, remediation, encapsulation, containment or other treatment, or disposal of Hazardous Substances, from or on the Project Property;

(ii) any loss or damage resulting from or due to the imposition of a lien against the Project Property;

(iii) any reasonable attorneys' fees, engineer's fees, and/or charges of any contractor or expert retained or consulted in connection with any inquiry, claim or demand, including without limitation, any costs incurred in connection with compliance with such inquiry, claim or demand;

(b) any loss, liability, cost, expense or damage (including, without limitation, court costs and attorneys' fees and expenses) suffered or incurred as a result of, arising out of or in connection with any failure of Developer or the Project Property to comply with all applicable Environmental Laws, including, but not limited to, any violation of, or any liability arising under, any provision of law administered by the DEEP, the U.S. Environmental Protection

Agency, and any litigation, proceeding or governmental investigation relating to such compliance or non-compliance;

(c) any loss, liability, cost, damage or expense (including, without limitation, court costs and attorneys' fees and expenses) directly or indirectly arising from any claim, action, demand, cause of action or damage relating to, or in connection with, any personal injury concerning or relating to the presence of asbestos or other Hazardous Substance, in or on the Project Property or the removal of such asbestos or other Hazardous Substance from the Project Property; or,

(d) any loss, liability, cost, injury, damage claim, penalty or any other expense of any and every kind whatsoever (including, without limitation, court costs and attorneys' fees and expenses) arising in connection with the Transfer Act. By execution of this Agreement, Developer also specifically waives all claims and rights to impose strict liability or claims for damages against CTDOT and the other State Indemnified Parties pursuant to Section 22a-134b of the Connecticut General Statutes.

The provisions of any and all indemnifications or other obligations set out in this Article shall survive the termination of this Agreement and shall continue to be the liability, obligation and indemnification of Developer, and shall be binding upon Developer forever.

#### 16.6 General

(a) The parties recognize that present Environmental Conditions may exist on the Project Property that could require remedial action. Developer agrees that it is acquiring its interest in the Project Property "AS IS", "WHERE IS" and "AS SHOWN" and on and after the Effective Date, it is Developer's obligation to indemnify and hold CTDOT and State Indemnitees harmless for any claims and, at its sole cost and expense, to remediate any and all Environmental Conditions of the Project Property and to comply or ensure compliance with governmental and court and administrative orders with respect to such on-site and off-site Environmental Conditions. Such obligations, and any liability that Developer may have for any breach thereof, shall survive the termination of this Agreement and shall include Environmental Conditions discovered after the termination of this Agreement. In the event Developer is notified by a third party or governmental entity or discovers the existence of any Environmental Condition, the result of which may require remedial action, Developer shall, at its sole cost and expense, on or after the Effective Date, proceed with due diligence to take all action necessary to eliminate the Environmental Condition in a manner and to standards that shall be acceptable to the applicable governmental agency.

(b) Developer shall ensure that if CTDOT desires to attend or to participate in any proposed meetings with DEEP, that CTDOT is provided with advance notice of such meetings, and other project meetings as the parties may otherwise mutually agree upon in connection with the Site Remediation Measures, the RAP or compliance with the Transfer Act.

(c) CTDOT has provided Developer with copies of any and all reports concerning Environmental Conditions on the State Property that CTDOT has in its possession or control, including the Environmental Reports. Developer shall not rely on the Environmental Reports for any reason or purpose whatsoever.

16.7 CEPA. CTDOT has prepared the EIE, posted the document for public review and comment and obtained the Record of Decision from the Office of Policy and Management. Developer shall mitigate any environmental impacts noted in the Record of Decision that are caused by the Project.

## ARTICLE XVII

### Insurance

17.1 Insurance Requirements. At all times during the Term of this Agreement, Developer shall, at its sole cost and expense, maintain in full force and effect, for the benefit of CTDOT and Developer, the types and amounts of insurance set forth below, on and subject to the terms of this Article:

(a) Commercial General Liability Insurance. Commercial General Liability Insurance for damages arising out of bodily injury or death or damage to property incurred in connection with the Project or this Agreement. The limit shall not be less than one million dollars (\$1,000,000) for damages arising in any one occurrence, and, subject to that limit per occurrence, an aggregate limit of two million dollars (\$2,000,000) for damages arising during the policy period. Such coverage shall be written on an occurrence basis and include the following:

- (i) Products and Completed operations hazard coverage;
- (ii) Contractual Liability covering this Agreement, subject to the terms of the applicable policy;
- (iii) Personal Injury Coverage;
- (iv) Independent Contractors;
- (v) Premises and Operations; and
- (vi) Broad Form Property Damage.

This insurance shall be written on a 1998 ISO Commercial General Liability form (CGOOI4 Form) or the equivalent, and expressly provide that the general aggregate limit of liability applies on a per location or per project basis.

(b) Comprehensive Automobile Liability. Automobile Liability Insurance covering owned, non-owned and hired vehicles in accordance with all Applicable Laws, including the

automobile insurance laws of the State of Connecticut and other states where Developer maintains its principal place of business. The limit shall not be less than one million dollars (\$1,000,000) per occurrence for damages arising out of bodily injury, death or property destruction. Such coverage shall be written on an occurrence basis.

(c) Workers' Compensation Insurance. Workers' Compensation in each case with statutory benefits and Employer's Liability of not less than one million dollars (\$1,000,000) for all employees each accident/injury/disease. Developer shall continue such insurance as required by Applicable Laws now or hereinafter in effect, including the U.S. Longshore and Harbor Workers' Compensation on an "if any" basis.

(d) Umbrella Liability. Umbrella Liability Insurance that shall provide excess coverage over the primary commercial general liability, employer's liability and automobile liability coverages as set forth in subsections 17.1(a), 17.1(b) and 17.1(c) above. Such coverage shall be no less broad than such primary coverages and shall be written on an occurrence basis with limits of not less than fifteen million dollar (\$15,000,000) per occurrence and in the aggregate for bodily injury and property damage.

(e) Builders Risk and Casualty Insurance.

(i) During the period of any construction, Developer shall maintain a completed value "all risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form in an amount not less than 100% of the replacement cost of any such construction.

(ii) Developer shall also keep all improvements insured throughout the term against loss or damage to the improvements by fire, windstorm, tornado, hail and against loss or damage by such other, further or additional risks as may now or hereafter be embraced by an "all risk" form of insurance policy and shall include earthquake coverage, if available at commercially reasonable rates, with an earthquake demolition rider and provide coverage against such other insurable perils which are insured against by owners of comparable buildings. The amount of such insurance shall not be less than 100% of the full replacement cost (insurable value) of the improvements (as reasonably determined by Developer) without reduction for depreciation. The determination of the full replacement cost thereof shall be adjusted annually to comply with the requirements of the insurer issuing such coverage. Absent such annual adjustment, each policy shall contain inflation guard coverage insuring that the policy limit will be increased over time to reflect the effect of inflation. Developer also shall maintain, or require the Contractor to maintain, or, at all other times, require its Project Providers to maintain, replacement cost property coverage and equipment breakdown coverage (also known as boiler and machinery coverage) insuring the personal property and fixtures in or comprising the Improvements (including all HVAC equipment, and all generators and mechanical equipment). Each insurance policy of the type described in this Section 17.1(e) shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any coinsurance provisions) or a waiver of any co-insurance

provisions, all subject to CTDOT's approval; likewise, any deductible under the foregoing policies shall be subject to the prior written approval of CTDOT, providing that none of such approvals shall be unreasonably withheld, conditioned or delayed.

(iii) As used in clause (ii) above, the term "demolition" means, as a result of damage from earthquake, all costs and expenses of razing the Improvements, carting of debris from the facilities, filling holes and excavations, clearing the site and leaving the site in a clean, safe and level condition.

(iv) CTDOT shall be named as a loss payee under all insurance maintained under this Section 17.1(e).

(v) The failure of the parties to agree on what is customarily insured against by owners of comparable buildings or the replacement cost of any improvements, fixtures or personal property or any other matter which is the subject of this Section 17.1(e), shall not relieve Developer (and/or its Project Providers, as applicable) of its and/or their obligations to maintain insurance hereunder. Subject to that condition, the parties also agree that, in the event any dispute shall arise as to the types or amounts of coverage that are required to be maintained hereunder, then Developer shall maintain insurance with at least the same coverages and at least at the policy amounts as were in effect immediately prior to such dispute, until such dispute is resolved. Either party may subject any such dispute for resolution under Section 20.9(a).

(vi) Notwithstanding anything herein contained to the contrary, Developer (and/or its Project Providers, as applicable) shall at all times provide agreed amount property coverage with a waiver of coinsurance. In the event of a change occurs in co-insurance requirements applicable to any locations by statute or by an insurance service organization recognized by the State of Connecticut, or any similar body, the policies furnished by Developer (and/or its Project Providers, as applicable) shall comply with such changes.

(f) Flood Insurance. If, at any time during the Term of this Agreement it is determined that all or a portion of the Improvements are located within an area designated as a Special Flood Hazard Area, Developer shall obtain and maintain flood insurance with respect to such Improvements continuously during the Term in an amount equal to the full insurable value of such Improvements.

(g) Terrorism Risk Insurance. To the extent commercially available, Developer shall maintain Terrorism Risk Insurance during the Term in such amount as is reasonably satisfactory to CTDOT, as defined by the Terrorism Risk Insurance Act of 2002.

(h) Errors and Omissions. To the extent that Developer, each Contractor and any Project Providers and/or any of Developer's representatives provide any architectural, engineering or design services under or in connection with this Agreement, each person and

entity providing such services shall be duly licensed and maintain Errors and Omissions coverage at such party's sole cost and expense, in an amount not less than \$5,000,000 per occurrence. In the case of any engineer, architect or other design professional, each such policy must be kept in effect for a period of seven (7) years after completion of the project on or for which any such services are rendered; otherwise the professional involved shall maintain such coverage for a period for at least three (3) years following completion of its work hereunder; provided however, in no case shall any such party be required to purchase an Errors and Omissions policy for a period longer than ten (10) years. If coverage is procured by any professional on a claims made basis, the retroactive date must be the date of the professional's commencement of any work under or pursuant to this Agreement or the date of commencement of the aspect of the Project to which such work relates, whichever is earlier.

(i) Railroad Protection Liability. When work is required on, over or under the right of way of any railroad company, Developer shall provide, with respect to the operations that it and its Project Providers perform under the Agreement, Railroad Protective Liability Insurance for and on behalf of the railroad company (and additional railroad companies using the line, as may be required) as named insured, and the State shall also be named as additional insured, providing for coverage limits of (1) not less than two million dollars (\$2,000,000) for all damages arising out of any one accident or occurrence, in connection with bodily injury or death and/or injury to or destruction of property; and (2) subject to that limit per accident, a total (or aggregate) limit of at least six million dollars (\$6,000,000) for all injuries to persons or property during the policy period. If such insurance is required, Developer shall obtain and submit the minimum coverage indicated in this paragraph to CTDOT prior to the commencement of rail related work and/or activities and shall maintain coverage until the work and/or activities is/are accepted by CTDOT.

(j) Valuable Papers and Records. Developer shall secure and maintain a Valuable Papers Insurance Policy at no direct cost to CTDOT, until the Final Plans and Specifications have been finalized and, to the extent required by this Agreement, accepted by CTDOT. This will assure CTDOT that all records, papers, maps, statistics, survey notes, all tracings, design documents and other data or documents will be reestablished, recreated or restored if made unavailable by fire, theft, or any other cause. Developer shall retain in its possession duplications of all products of its work under this Agreement, if and when it is necessary for the originals to be removed from its possession during the time that this policy is in force. This policy shall provide coverage in the amount of Seventy-five Thousand Dollars (\$75,000) when the insured items are in its possession, and in the amount of Twenty Thousand Dollars (\$20,000) regardless of the physical location of the insured items.

(k) Other. Developer shall maintain such other insurance and in such amounts as from time to time may be required by CTDOT during the Term.

## 17.2 Insurance Underwriting and Other Requirements.

(a) All insurance maintained by Developer pursuant to this Agreement shall be written by insurance companies licensed to do business in the State or, if not so licensed, by

companies that are approved by the Connecticut Insurance Department, and all such companies otherwise shall be acceptable to CTDOT. As of the Effective Date, the following types of insurers are deemed acceptable by CTDOT: (i) an insurer rated A- or higher by A.M. Best and (ii) listed as a financial category VIII or higher by A.M. Best. All other insurers (including captive insurers and modified self- insurance programs) are subject to CTDOT approval.

(b) Each policy of insurance maintained pursuant to this Agreement shall be written to provide at least those coverages provided under standard forms therefor as have been approved the State's Insurance Commissioner. Each such policy also shall not be subject to cancellation unless notice is given to CTDOT, in the manner set forth in this Agreement for providing official notice to CTDOT, at least thirty (30) days prior to the date of cancellation, except ten (10) days for non-payment of premium. All insurance certificates required to be provided to CTDOT hereunder shall evidence the insurers' agreement to the foregoing on the face thereof.

(c) All insurance required hereunder shall be written on an "occurrence" (as opposed to "claims made") basis, except for errors and omissions insurance, which may be maintained on a "claims made" basis as provided in subparagraph 17.1(h) above.

(d) All products and completed operations coverage required to be maintained by Developer and any Contractor or any other Project Providers shall continue to be maintained for at least three (3) years following final acceptance of their work.

(e) Notwithstanding any other provision of subparagraphs (a), (b), or (c) of Section 17.1 to the contrary, any Person required to maintain insurance thereunder or in accordance therewith (herein, individually, an "Insuring Party") shall be deemed to be in compliance with said paragraphs even if such Insuring Party's insurance policy(ies) are not written for amounts specified in such subparagraphs (other than worker's compensation insurance), provided such Insuring Party carries Umbrella Liability insurance for any differences in the amounts specified therefor and the policy(ies) for such Umbrella Liability insurance follow(s) the form of such Insuring Party's primary coverages.

(f) The State, CTDOT and its officers, agents and employees shall be named as additional insureds under any and all coverages maintained pursuant to subparagraphs (a), (b) and (d) of Section 17.1 above (other than worker's compensation insurance) as well as any umbrella or excess liability insurance which provides coverage over and above such insurance.

(g) Nothing herein shall preclude any Insuring Party from procuring and maintaining, at such party's sole cost and expense, such additional insurance coverage as such Insuring Party deems desirable or appropriate.

(h) Except as otherwise specifically provided to the contrary in this Article XVII any insurance required to be maintained by any Insuring Party by this Agreement may be obtained by means of any combination of primary and umbrella coverages and by endorsement and/or rider to a separate or blanket policy and/or under a blanket policy in lieu of a separate policy or

policies, provided that such Insuring Party shall deliver a certificate of insurance of any said separate or blanket policies and/or endorsements and/or riders evidencing to CTDOT that the same complies in all respects with the provisions of this Agreement, and that the coverages, and the protection afforded CTDOT and the State thereunder are at least equal to the coverages and protection which would be provided under a separate policy or policies.

17.3 Adjustment. Except as otherwise required by Section 17.1(e), on the fifth (5th) anniversary of the Effective Date and every fifth (5th) anniversary thereof thereafter, Developer shall cause the insurance coverage described in Section 17.1 to be adjusted such that the insurance coverage for the policies described in Section 17.1 will be in amounts as would be customarily maintained at that time, provided that no reductions in coverage shall be permitted without the prior written consent of CTDOT, which consent shall not be unreasonably withheld or delayed.

17.4 Evidence of Insurance.

(a) Prior to the Effective Date and not less than ten (10) days prior to the renewal date of any such insurance, Developer shall provide to CTDOT insurance certificates evidencing such insurance, together with "additional insured" and "loss payee" endorsements, as applicable, and together with a Form ACORD 25 or a successor form approved by CTDOT. Developer's Commercial General Liability coverage maintained pursuant to Section 17.1(a), shall be endorsed to include CTDOT, the State and its officers, agents and employees as additional insureds pursuant to a 1997 ISO Additional Insured Form CG 20 10 or an endorsement providing equivalent coverage to CTDOT with respect to their ongoing and completed operations. All additional insurance coverage afforded to CTDOT and the State shall apply as primary insurance and shall not be in excess of any insurance that may be maintained by CTDOT or the State. As soon as possible after issuance or renewal of any of the insurance required to be maintained under this Agreement, Developer shall provide CTDOT with copies of the pertinent insurance policies or certificates evidencing the same, including all endorsements thereto.

(b) Approval of any insurance by CTDOT shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In addition to and not in lieu of the foregoing, Developer shall provide to CTDOT, within five (5) Business Days following CTDOT's written request for same, complete copies of the aforesaid binders or insurance policies, as the case may be. In providing such policies, Developer may redact provisions of the policy it considers proprietary.

17.5 Project Providers. Developer shall either include all Project Providers as insured under the policies of insurance required hereunder, or, except in the event of an emergency or other unusual or special condition where it is prudent not to do so, require the Project Providers to procure and maintain the insurance types and at levels that are commercially reasonable given such party's activities at the site. Any such insurance by any Project Provider with respect to the site or personal property on the site shall include an endorsement waiving the insurer's rights of subrogation against CTDOT and the State and any of its officers, agents and employees. Any such Project Provider's liability insurance shall name CTDOT, the State and its officers, agents

and employees as an additional insured and shall deliver to CTDOT certificates evidencing such insurance, together with "additional insured" endorsements and together with Form ACORD 25 or a successor form approved by CTDOT.

17.6 Insurance by CTDOT. In the event Developer fails to provide, maintain, keep in force or deliver or furnish to CTDOT the insurance required by this Agreement or evidence of the renewal thereof, CTDOT, in addition to its other rights and remedies contained in this Agreement on account of such failure, shall be authorized (but not required) to procure such insurance, and Developer shall pay all amounts advanced by CTDOT therefor, together with interest at the legal rate then applicable for contract debts in the State, until paid in full, upon demand by CTDOT. CTDOT shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though CTDOT has caused the insurance to be placed with such insurer pursuant to this Section.

17.7 Waiver of Subrogation. Any liability or casualty insurance set forth in Sections 17.1(a) through (d) above carried by Developer with respect to the Improvements or personal property on the site shall include an endorsement denying to the insurer rights of subrogation against CTDOT and the State and its officers, agents and employees.

17.8 Maintaining the Insurance; Payment of Deductibles. etc. Developer shall not nor shall it permit any Contractor or other Project Provider to take any action that would invalidate, in whole or in part, the insurance required to be maintained under Section 17.1. If Developer, any Contractor or other Project Provider takes any action that could or does invalidate such coverage, then Developer shall promptly use commercially reasonable efforts to eliminate that condition or circumstance. Developer and the Project Provider's shall be fully and solely responsible for and thus shall pay any and all costs and expenses as a result of any and all coverage deductibles under any policy(ies) of insurance maintained by them. Developer and the Project Providers shall assume and pay all costs and billings for premiums and audit charges earned and payable under all insurance that is required of it under Section 17.1. Each insurance policy shall state that the insurance company shall agree to investigate and defend the insured against all claims for damages, even if groundless.

17.9 No Limitation as to Developer's Liabilities. Developer expressly understands and agrees that any coverages and limits furnished by Developer shall in no way limit Developer's liabilities and responsibilities specified within this Agreement or under Applicable Laws.

17.10 No Contribution by CTDOT. Developer expressly understands and agrees that any insurance or self-insurance programs maintained by CTDOT and/or the State shall be in excess of any and all insurance maintained by Developer, any Contractor and all other Project Providers and shall not contribute to any insurance maintained by any such parties under or with respect to the Project Agreements or this Agreement, or any of their activities at the same, whatsoever.

17.11 No Waiver. The failure of CTDOT, at any time or from time to time, to enforce the provisions of this Article concerning insurance coverage shall not constitute a waiver of those

provisions nor in any respect reduce any obligation of Developer to indemnify, defend and hold harmless the State Indemnified Parties pursuant to this Agreement. This Section 17.11 shall survive the expiration or termination of this Agreement.

17.12 No Release. Neither the expiration or termination of this Agreement, nor anything in this Agreement, shall relieve Developer, any Contractor or any other Project Providers from (a) any obligations relating to insurance claims based on actions or events occurring prior to the expiration or termination of this Agreement, or (b) any liability it or they have or may have to the State or CTDOT should any of them have failed, during the Term of this Agreement, to maintain any insurance required by or under this Article. In addition, the expiration or termination of this Agreement shall not (x) abrogate the terms and conditions on and subject to which any insurance is, has been or was to be maintained by Developer, any Contractor or other Project Providers hereunder during the Term of this Agreement or any other period (including, but not limited to, Developer's obligations to pay deductibles in connection with any claims), or (y) affect the parties' respective rights to the proceeds of any insurance which is subject to this Article.

17.13 No Defense of Sovereign Immunity. Unless required otherwise by CTDOT, each Insuring Party and its insurers providing the coverages described in Sections 17.1(a) and 17.1(d) shall waive sovereign immunity as a defense and shall not use the defense of sovereign immunity in the adjustment of claims or in the defense of any suit brought against any of them or any State Indemnified Parties, unless, and then only if and when, approved in writing by the State, which approval may be withheld in its sole and absolute discretion.

## ARTICLE XVIII

### Compliance With Laws; State and CTDOT Requirements

18.1 Compliance with Laws Generally. With respect to the development of the Project and the performance of its obligations under this Agreement and the Operative Agreements, Developer shall comply at all times with all Applicable Laws. In connection with all contracts and subcontracts with respect to the Project entered into by Developer, Developer shall require compliance by the other parties to such contracts and subcontracts with all Applicable Laws.

18.2 State Contracting Requirements. Notwithstanding anything in this Agreement to the contrary, with respect to the development of the Project and the performance of its obligations under this Agreement and each Operative Agreement, Developer shall comply at all times with the additional contracting requirements of the State of Connecticut set forth in attached Exhibit Q ("State Contracting Requirements"). For purposes of Exhibit Q, Developer shall be deemed a "contractor," this Agreement and each Operative Agreement shall be deemed a "contract," and "State" shall mean CTDOT or, as applicable, other State of Connecticut agencies.

18.3 CTDOT Requirements. Developer shall comply at all times with

(a) the policies enumerated in "Connecticut Department of Transportation Policy Statement Policy No. *F&A-IO* Subject: Code of Ethics Policy," dated June 1, 2007, a copy of which is attached hereto as Exhibit R;

(b) Connecticut Contract/Agreement Provisions entitled "Specific Equal Employment Opportunity Responsibilities", dated March 3, 2009, attached hereto as Exhibit S; and

(c) the regulations of the United States Department of Transportation (Title 49, Code of Federal Regulations, Part 21) issued in implementation of Title VI of the Civil Rights Act of 1964, as amended, 78 Stat. 252, 42 U.S.C. §§ 2000d to 2000-4, and Appendix "CR," a copy of which is attached hereto as Exhibit T. The policies, regulations and provisions referenced in subsections (a), (b) and (c) are the "CTDOT Policies."

18.4 Inconsistency. In the event of any inconsistency between the requirements of the State Contracting Requirements or the CTDOT Policies and the requirements of Applicable Laws, the requirements of Applicable Laws shall govern.

## ARTICLE XIX

### Representations, Warranties and Covenants

19.1 Representations and Warranties of Developer. Developer hereby represents warrants and covenants as follows:

(a) Developer is a \_\_\_\_\_ duly organized and validly existing under the laws of the State of \_\_\_\_\_, and it has all requisite power and authority, and all necessary licenses and permits to own its property and carry on its business as now being conducted and as contemplated by this Agreement, and to enter into and perform its obligations under this Agreement.

(b) There are no actions, suits, proceedings, inquiries or investigations pending, or to the best knowledge of Developer, threatened against or affecting Developer, any Key Member or any member, partner or shareholder of Developer or a Key Member, nor any managers or principal officers in any forum which involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or which, in any way, would adversely affect the validity or enforceability of this Agreement or the ability of Developer to perform its obligations under this Agreement.

(c) The execution and delivery by Developer of this Agreement and the other Operative Agreements and the compliance by Developer with all of the provisions hereof (i) are within the authority and powers of Developer, and (ii) to the best knowledge of Developer, will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, articles of organization, operating agreement or other instrument to which

Developer is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or Governmental Authority having jurisdiction over Developer or any of its activities or properties.

(d) No event of default has occurred and no condition exists with respect to Developer that would constitute a default under this Agreement or any of the Operative Agreements or which, with the lapse of time or with the giving of notice or both, would become an event of default under this Agreement or any of the Operative Agreements.

(e) Neither Developer, nor, to Developer's knowledge, any of its managers or principal officers, contractors or subcontractors, Project Providers or any person associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor or any position involving the administration of federal or State funds:

(i) is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Governmental Authority;

(ii) has, within the three (3)-year period immediately preceding the Effective Date, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract for a Governmental Authority, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, tax evasion, or violating federal or state criminal tax laws;

(iii) is presently indicted for or otherwise criminally or civilly charged by a Governmental Authority with commission of any of the offenses enumerated in Subsection (ii) of this Section; and

(iv) has, within the three (3)-year period immediately preceding the Effective Date, had one or more transactions for a Governmental Authority terminated for cause for default.

Developer shall include, or shall cause to be included, in each Project Agreement, assignment and/or license agreement, and purchase order relating to the Project the aforementioned certification from the parties thereto.

(f) Developer shall maintain its legal existence, will not dissolve, liquidate or wind up its affairs, and will not dispose of all or substantially all of its assets.

(g) Neither the organizational documents of Developer nor any Applicable Laws in any way prohibit, limit or otherwise affect the right or power of Developer to enter into and perform all of the terms and conditions of this Agreement and the transactions contemplated hereby, and Developer is not a party to or bound by any material contract, agreement, indenture,

trust agreement, note, obligation or other instrument which would prohibit or limit the same. No consent, authorization or approval of, or other action by, and no notice to or filing with any Governmental Authority or other person, including any member, partner or shareholder of Developer, is required for the proper execution, delivery and performance by Developer of this Agreement or any of the transactions contemplated hereby, except for such approvals as have already been obtained.

(h) The execution and delivery of this Agreement by Developer have been duly and validly authorized by all necessary **[corporate]** action, and this Agreement and each of the Operative Agreements is a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

(i) Developer shall maintain financial resources, including contributed or accumulated capital, sufficient to meet its obligations, including its obligations under this Agreement and each of the Operative Agreements, as the same become due.

(j) Prior to the completion of the Project, without the consent of CTDOT in its sole discretion, (i) there shall be no Change in Control of Developer, and (ii) Developer and each Developer Affiliate that is a party to any Operative Agreement shall remain affiliates. For this purpose, "Change in Control" shall mean a change in ownership or control of Developer (direct or indirect) following which Developer is no longer controlled by \_\_\_\_\_.

(k) All documents, information and materials provided to CTDOT by or on behalf of Developer (including the proposal for the Project) were on the date provided and on the Effective Date, true, correct and complete in all material respects.

(l) This Agreement has been entered into by Developer following its own independent investigation, examination and due diligence with respect to the subject matter hereof without any representation or warranty (whether express or implied, in fact or in law) by or on behalf of CTDOT.

(m) Developer did not employ any person, other than bona fide employees, advisors, and consultants working solely for Developer to solicit or secure this Agreement, nor has Developer paid or agreed to pay any person or party any fee, commission, percentage, brokerage fee, finder's fee, success fee, gift, kickback or any other consideration contingent upon or resulting from the execution of this Agreement or any other Operative Agreement.

(n) Developer has filed all federal, state and local tax returns which it is required to file and has paid or caused to be paid to the respective taxing authorities all taxes as shown on such returns or on any assessments received by it to the extent that such taxes have become due, or has filed a sales tax security bond with respect to same. Developer knows of no proposed material tax assessment against Developer, and Developer is not obligated by any other agreement, tax, treaty, instrument or otherwise to contribute to the payment of taxes owned by any other person or party. All material tax liabilities are adequately provided for or reserved against on the books of Developer.

(o) Developer has (i) paid all applicable workers' compensation second injury fund assessments concerning all previous work done by Developer in the State; (ii) paid all applicable unemployment compensation contributions concerning all previous work done in the State; and (iii) has not be cited for non-compliance with or violations of the Occupational Health and Safety Administration regulations.

(p) Developer shall provide an opinion letter from its Connecticut legal counsel confirming matters set forth in this Article, which legal opinion shall be substantially in the form set forth in Exhibit U attached hereto.

(q) Developer has implemented and shall maintain the Affirmative Action Plan.

(r) Developer shall comply with CTDOT's Small Business Enterprise requirements of 5%, as more particularly described on Exhibit V.

(s) Developer shall adhere to CTDOT's voluntary partnering specifications as more particularly described on Exhibit W hereto.

19.2 Title to Materials, Equipment, Tools and Supplies. Developer warrants that it owns and has good and marketable title (or shall at such time) to all materials, equipment, tools and supplies furnished by it and its Project Providers that become part of the Garage Improvements or are purchased by Developer for the operation, maintenance or repair thereof, free and clear of all liens and encumbrances.

(a) Title to all of said materials, equipment, tools and supplies which shall have been delivered to the Project Property and become part of the Garage Improvements shall pass to CTDOT upon the sooner of (i) incorporation into the Garage Improvements or (ii) payment by CTDOT to Developer under Article XI of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, Developer shall retain sole care, custody and control of and responsibility, liability and risk for said materials, equipment, tools and supplies and shall exercise due care with respect thereto until the applicable Final Acceptance. Such transfer of title shall in no way affect CTDOT's rights as set forth in any other provision of this Agreement.

(b) For the purpose of protecting CTDOT's interest in all materials, equipment, tools and supplies with respect to which title has passed to CTDOT but which remain in possession of another party, Developer shall take or cause to be taken all steps necessary under the laws of the appropriate jurisdiction(s) to protect CTDOT's title and to protect CTDOT against claims by other parties with respect thereto.

## ARTICLE XX

### Defaults and Remedies

20.1 Default by Developer. (a) The occurrence of any one or more of the following

events constitutes a default by Developer under this Agreement (a "Developer Default"):

(i) failure by Developer to promptly provide all required deliverables necessary for the generation of the applicable Notices to Proceed, or to Commence Work with respect to the Garage Improvements, or any Subcomponent thereof, within ninety (90) days following delivery of the applicable Notice to Proceed to Developer, or to promptly, professionally, diligently and expeditiously proceed to design, plan, construct and complete the Project in accordance with this Agreement and the PPS, if such failure shall continue for more than thirty (30) days after notice of such failure is given to Developer by CTDOT;

(ii) without limiting clause (i) above, failure by Developer to achieve Substantial Completion of the Garage Improvements or any Subcomponent thereof by the applicable CTDOT Guaranteed Substantial Completion Date, or to achieve Final Acceptance of the Garage Improvements or any Subcomponent thereof by the applicable Guaranteed Final Acceptance Date, or to achieve Substantial Completion or Final Acceptance of any of the TOD Improvements by its respective Guaranteed Completion Date;

(iii) failure by Developer to observe or perform any other material covenant, agreement, condition or provision of this Agreement or any Operative Agreement, if such failure shall continue for more than thirty (30) days after notice of such failure is given to Developer by CTDOT; provided, however, that Developer shall not be in default with respect to such matters that are susceptible of cure but cannot be reasonably cured within thirty (30) days, so long as Developer has promptly commenced such cure and diligently proceeds in a reasonable manner to complete the same thereafter;

(iv) Developer or any Key Member admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for itself or for a substantial part of its property;

(v) a trustee or receiver is appointed for Developer or any Key Member or for a substantial part of its property and it is not discharged within ninety (90) days after such appointment; or

(vi) bankruptcy, reorganization, receivership, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any federal or state bankruptcy law, or similar law for the relief of debtors, are instituted by or against Developer or any Key Member, and, if instituted against Developer or any Key Member, are allowed against it or are consented to by it or are not dismissed within ninety (90) days after such institution.

(b) In the event that Developer wishes to avail itself of the extended cure rights provided in clause (a)(iii) of this Section in circumstances in which cure is possible, but cannot

be completed within thirty (30) days of the date of notice of default, Developer shall promptly furnish to CTDOT a written statement specifying the actions undertaken or to be undertaken to cure such default, and thereafter, upon the written request of CTDOT, shall promptly provide such additional or updated information with respect to such actions as CTDOT may reasonably request. Nothing in this paragraph relieves Developer from the requirement set forth in clause (a)(iii) of this Section to commence promptly such cure and diligently proceed in a reasonable manner to complete the same thereafter.

20.2 Remedies Generally. If a Developer Default occurs, CTDOT shall be entitled to pursue its rights and remedies pursuant to this Agreement or any other Operative Agreement or as may otherwise be available in law or equity.

20.3 Equitable Remedies. (a) Developer acknowledges and agrees that in securing the covenants and agreements of Developer in this Agreement, CTDOT shall be acting on behalf of and is vested with the public rights and interests of the citizens of the State; that the terms and provisions of this Agreement are therefore unique matters of public interest; that the nature of the required performance by Developer is unique and cannot be replaced by any substitute performance; that it is essential to the preservation and betterment of the public welfare that Developer perform and discharge its obligations hereunder; and that the agreement of CTDOT with regard to its obligations under this Agreement is in consideration not only of the covenants and agreements of Developer in this Agreement but also the economic and other benefits, direct and indirect, to the State expected to result from the Project as set forth in the TOD Legislation and in the recitals to this Agreement.

(b) In light of the foregoing circumstances, Developer agrees that CTDOT shall be entitled to specific performance, injunctive and other equitable relief for any breach of the covenants of Developer in this Agreement. Developer further specifically acknowledges and agrees that, consistent with applicable rules of procedure and case law and the most common use of terms therein, the injury to CTDOT from any such breach is real, specific, immediate and irreparable.

20.4 Right to Complete Garage Improvements. If (i) Developer has not Commenced Work with respect to the Garage Improvements or any Subcomponent thereof within ninety (90) days following delivery of the applicable Notice to Proceed to Developer, or (ii) Developer has failed to obtain Substantial Completion of the Garage Improvements or a Subcomponent thereof by the applicable CTDOT Guaranteed Substantial Completion Date, or Final Acceptance thereof by the applicable Guaranteed Final Acceptance Date, then the State shall have the right, but not the obligation, to terminate the development rights of Developer pursuant to this Agreement, to enter the State Property and the Developer's Property to the extent necessary or appropriate to complete the Garage Improvements or the applicable Subcomponent, and to utilize, without charge or fee, the Project Agreements, the Component Plans, and the Governmental Permits to complete or cause to be completed, the Garage Improvements or such Subcomponent. If the Garage Improvements are located in whole or in part on Developer Property, CTDOT will receive an easement on the Effective Date allowing it to exercise its rights under this Section. For purposes of effectuating CTDOT's rights under this Section and as security for Developer's

performance of its obligations under this Agreement, Developer hereby assigns, transfers, sets over and delivers unto CTDOT, all of Developer's right, interest and claim in and to the agreements with the Designers for the Garage Improvements, the Construction Contracts for the Garage Improvements, and any other Project Agreement applicable to the Garage Improvements to which Developer is a party, the Final Plans and Specifications for the Garage Improvements and (to the extent assignable) Governmental Permits for the Garage Improvements, as the same may be entered into or revised from time to time, and, to the fullest extent permitted by law, hereby appoints CTDOT its true and lawful attorney in its name or in the name of CTDOT to enforce all rights of Developer hereunder assigned to CTDOT, and to take any and all actions and commence and pursue all proceedings necessary, legal or otherwise, to enforce said rights. In the event that CTDOT exercises its rights under this Section, Developer shall not be released from liability for any damages caused by the applicable Developer Default, including any increase in Project Costs directly attributable to Developer's failure to perform its obligations, and the costs of the State's enforcement of its rights under this Section. **[Right of CTDOT to complete State Property TOD Improvements upon Developer Default to be determined based on specifics of selected proposal.]**

20.5 Liquidated Damages. (a) If Substantial Completion of any of the Garage Improvements is not achieved by the CTDOT Guaranteed Substantial Completion Date, Developer understands and agrees that such delay will cause CTDOT to suffer substantial losses and damages which cannot be measured, including loss of revenue incidental to the operation of the Stamford Transportation Center parking garages and other parts of the Project, additional engineering, legal, accounting and administrative costs, reduced public confidence and adverse public relations. Developer agrees to pay CTDOT as liquidated damages ("Liquidated Damages") for such delay \$9,725.00 per calendar day, through the date of Substantial Completion for each day occurring after such CTDOT Guaranteed Substantial Completion Date through the date of Substantial Completion of the Garage Improvements. Developer and CTDOT agree that the Liquidated Damages are a reasonable estimate of CTDOT's losses, which shall become immediately due and owing upon their occurrence.

(b) Any Liquidated Damages or payment pursuant to subsection (a) of this Section 20.5 payable by Developer may, at CTDOT's election, be deducted from any amounts owed to Developer by CTDOT. Permitting Developer to continue and finish the Garage Improvements or any part thereof after the applicable CTDOT Guaranteed Substantial Completion Date, shall not act as a waiver of these Liquidated Damage provisions.

(c) Developer acknowledges and agrees that because of the unique nature of the Project and the unavailability of a substitute thereof, it is very difficult to determine with precision the amount of damages for delay that will be incurred by CTDOT as a result of Developer's failure to achieve Substantial Completion of the Garage Improvements by the CTDOT Guaranteed Substantial Completion Date. It is understood and agreed by Developer that any Liquidated Damages payable in accordance with this Section are in the nature of liquidated damages and not a penalty and represent a reasonable estimate of fair compensation for the damages for delay that may reasonably be anticipated from such failure.

20.6 Right to Cure. If Developer shall default in the performance of any covenant herein and Developer shall not cure the same within the applicable cure period, or in the event such default is susceptible to cure but not within the applicable cure period, should Developer fail to commence to cure said default within the applicable cure period and thereafter diligently pursue cure to completion, then, in addition to all other remedies, CTDOT shall have the right, but not the obligation, without terminating this Agreement, to perform the same for the account and at the expense of Developer, and the cost thereof shall be immediately due from Developer upon demand by CTDOT, with interest at the legal rate then applicable for contract debts in the State. CTDOT's action hereunder shall not be deemed a waiver or a cure of Developer's default.

20.7 Termination. (a) In addition to and not in limitation of any other rights or remedies under this Agreement or otherwise available in law or equity, in the event of a Material Developer Default, CTDOT may terminate this Agreement and any or all Operative Agreements effective fifteen (15) days (or such longer period as CTDOT shall elect) following notice of termination from CTDOT to Developer, unless such Material Developer Default is cured by Developer during such period.

(b) A "Material Developer Default" means a Developer Default that is either (i) described in clauses (i), (ii), (iv), (v) or (vi) of Section 20.1(a), (ii) involves a material violation of Applicable Laws, including the TOD Legislation, or provisions of this Agreement included in order to ensure compliance with Applicable Laws, including the TOD Legislation, or (iii) described in clause (ii) of Section 20.1(a) and in the reasonable judgment of CTDOT otherwise materially and adversely affects the interests of CTDOT with the result that the successful and timely completion of the Garage Improvements or the Project is jeopardized.

(c) Upon termination hereof, Developer shall secure the site and leave it in the condition as directed by CTDOT in its termination notice to Developer, including leaving the State Property in neat and clean condition, with all supplies, equipment, waste materials, rubbish and temporary facilities of Developer or any Project Provider removed, and shall vacate the State Property by the date set forth in the termination notice.

20.8 Dispute Resolution. (a) The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement or any of the Operative Agreements promptly by negotiation. Any party may give the other party written notice of any dispute not resolved in the normal course of business, specifically referring to this Section. The receiving party shall promptly submit to the other a written response. The notice and the response shall each include a statement of the party's position and a summary of arguments supporting that position. If deemed appropriate, the parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. The parties agree that all reasonable requests for relevant information made by one party to the other will be honored. It is the goal of the parties to attempt to negotiate resolutions within thirty (30) days of the date a dispute arises. Thereafter, subject to the other terms and conditions of this Agreement and all Applicable Laws, any party may bring an action pursuant to Section 20.8(b). All negotiations pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and the FOIA. The parties

shall continue to perform under this Agreement while any such dispute is pending.

**[Further dispute resolution procedures may be added prior to finalizing this Agreement.]**

(b) The parties agree that the Superior Court of the State of Connecticut for the judicial district of Hartford (and, in the event of appeal, the appropriate appellate courts of the State of Connecticut) shall be the sole and exclusive jurisdiction and venue for any dispute or disagreement arising under or related to this Agreement that cannot be resolved pursuant to Section 20.9(a); provided, however, that (i) to the extent applicable, the sole and exclusive means for the presentation of a claim against CTDOT under or in connection with this Agreement or any of the Operative Agreements shall be in accordance with Chapter 53 of the Connecticut General Statutes, (ii) nothing in this Article shall be deemed to constitute an assent by CTDOT to a grant of permission to sue by the Claims Commissioner pursuant to Chapter 53 of the Connecticut General Statutes (as the same may otherwise be applicable); and (iii) nothing in this Article shall be deemed to constitute a waiver by the State of its sovereign immunity.

**ARTICLE XXI**

**Indemnification**

21.1 (a) Developer shall, at its sole cost and expense, indemnify, defend and hold harmless CTDOT, the State, all boards, commissions, offices, departments, councils, institutions, agencies and any other entity thereof, and their officers, representatives, agents, servants, employees, successors and assigns ("State Indemnified Parties") from and against any and all liabilities, penalties, fines, damages, losses, settlements, orders, decrees, liens, debts, charges, executions, interest, costs and expenses, including but not limited to, attorneys' and other professionals' fees, and court costs arising, directly or indirectly, in connection with suits, claims, actions, demands, investigations and proceedings, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum (collectively, "Indemnity Claims") arising, directly or indirectly, from acts of commission or omission (collectively, the "Acts") of Developer or any Key Member, Contractor, Designer or other Project Provider, or any of their respective members, directors, officers, shareholders, partners, managers, principal officers, representatives, servants, consultants, employees, affiliates, or any one of them, or any other Person with whom Developer is in privity of oral or written contract and Developer intends for such other Person to perform under this Agreement or any of the Operative Agreements or Project Agreements in any capacity (the "Developer Parties"), under or pursuant to the performance of its or their obligations under this Agreement, the Operative Agreements or the applicable Project Agreement, or arising from the design, development, construction or operation of any of the Garage Improvements or TOD Improvements, or otherwise arising under this Agreement or any of the Operative Agreements or Project Agreements. Developer shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. Developer's obligations under this section to indemnify, defend and hold harmless against Indemnity Claims includes Indemnity Claims concerning confidentiality of any part of or all of Developer's proposal for the Project or Developer's Accumulated Records, any intellectual property rights, other proprietary rights of any person or

entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in connection with the Project.

(b) Developer shall reimburse the State Indemnified Parties for any and all damages, if any, to the real or personal property of any of the State Indemnified Parties caused by the Acts of Developer or any Developer Parties. Developer and CTDOT shall give prompt notice to the other of any such Indemnity Claims.

(c) The rights provided in this Section for the benefit of the State and CTDOT shall encompass the recovery of reasonable attorneys' and other professionals' fees expended in pursuing a Indemnity Claim against a third party.

(d) The Contractor shall not be responsible for indemnifying or holding the State Indemnified Parties harmless from any liability arising due to the negligence of the State Indemnified Parties or any other person or entity acting under the direct control or supervision of the State or CTDOT.

(e) Developer's obligations under this Section shall remain fully in effect and binding in accordance with the terms and conditions of this Agreement, without being lessened or compromised in any way, even where Developer is alleged or is found to have merely contributed in part to the Acts giving rise to the Indemnity Claims and/or where any of the State Indemnified Parties is alleged or is found to have contributed to the Acts giving rise to the Indemnity Claims.

(f) Developer shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the Term, as part of its obligations under Article XVII hereof, sufficient general liability insurance to satisfy its obligations under this Article. The State Indemnified Parties shall be entitled to recover under such insurance policies even if a body of competent jurisdiction determines that there has been contributory negligence by a State Indemnified Party.

(g) The rights provided in this Section for the benefit of the State Indemnified Parties shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing an Indemnity Claim against a third party.

(h) The indemnities contained in this Section shall survive the transactions contemplated hereby and the termination and the expiration of this Agreement, and shall not be affected in any way by the absence of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under any insurance policies maintained by Developer pursuant to the terms of this Agreement.

**ARTICLE XXII**

**Notices**

22.1 Any notice, communication, request or reply made by either party to the other must be made in writing and shall be effectively given if addressed to the party to be notified and deposited with the US Postal Service using certified or registered mail, postage prepaid with return receipt requested, or shipped by a recognized overnight delivery service, or delivered in person or sent by facsimile transmittal (with transmission confirmation). A notice shall be effective, unless otherwise stated in this Agreement, (a) three (3) Business Days after it is deposited with the US Postal Service, (b) one (1) Business Day after being sent by recognized overnight delivery service, (c) upon delivery if delivered in person with written receipt confirmation, and (d) the date of receipt of a facsimile transmission confirmed by telephonic acknowledgment or the first Business Day thereafter if transmitted other than on a Business Day or after 5:00 p.m. Stamford, Connecticut time. For purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

To CTDOT: Connecticut Department of Transportation  
2800 Berlin Turnpike  
PO Box 317546  
Newington, CT 06131-7546  
Attn: Commissioner  
Facsimile: (860) \_\_\_\_\_

with a copy to: Shipman & Goodwin LLP  
One Constitution Plaza  
Hartford, CT 06103  
Attn: Attorney Mary Jo Andrews  
Facsimile: (860) 251-5213

To Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

Each party shall have the right to change the place or person to which notices shall be sent by delivering a notice to the other party in the manner provided above in this Section.

22.2 To the extent that CTDOT or the CTDOT Representative is required to approve, accept or reject within an identified period of time any items submitted by Developer, if CTDOT fails to notify Developer of its approval, acceptance or rejection within such period of time, Developer shall provide notice to CTDOT and the CTDOT Representative of such failure, and CTDOT shall have an additional three (3) Business Days to provide such approval, acceptance or rejection. If neither CTDOT nor the CTDOT Representative, as applicable, responds in such additional three (3) Business Day period, CTDOT will be deemed to have approved or accepted such item.

## **ARTICLE XXIII**

### **General Provisions**

23.1 **Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until full performance by the parties of their obligations hereunder, or unless sooner terminated in accordance with the provisions hereof.

23.2 **Severability.** If any term or provision of this Agreement or its application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforced to the fullest extent possible by law.

23.3 **Construction.** The laws of the State of Connecticut shall govern the validity, performance and enforcement of this Agreement without reference to conflicts of law provisions.

23.4 **Confidentiality.** Any information required to be submitted to CTDOT, or requested by CTDOT, pursuant to this Agreement or any Operative Agreement that Developer considers confidential, financial information given in confidence, intellectual property or a trade secret or otherwise considers exempt from disclosure pursuant to Section 1-210(b) of the Connecticut General Statutes shall be labeled as such on submission to CTDOT, and delivered together with an explanation and rationale for such exemption. The rationale and explanation shall be stated in terms of the prospective harm to the competitive position of Developer that would result if the identified material were to be released. Developer shall state the reasons it believes the material is legally exempt from release pursuant to FOIA, and affirmatively state that such information has not otherwise been made available such that it is already public. The final administrative authority to release or exempt any or all material so identified rests solely with CTDOT; subject to adjudication by the Freedom of Information Commission should Developer's request be challenged. Developer agrees to indemnify, defend and hold harmless CTDOT and each of its officers, employees, consultants, counsel and agents from all costs, damages and expenses incurred in connection with refusing to disclose any material which Developer has designated as a trade secret, or commercial or financial information submitted in confidence. CTDOT shall not be liable for disclosure or release of information when authorized or required by law.

23.5 No Waiver. A failure by any party to enforce or require compliance with any provisions of this Agreement at any time during the Term of this Agreement shall in no way affect the validity of this Agreement, or any portion hereof, and shall not be deemed a waiver of the right of any party thereafter to enforce any and each such provision.

23.6 Assignment. Neither party shall transfer, assign, pledge or encumber its interest in this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, delayed or conditioned; provided that CTDOT may assign this Agreement to another agency or instrumentality of the State without Developer's consent. Any such prohibited transfer, assignment, pledge or encumbrance shall be void and of no force or effect.

23.7 Appointment of Agent for Service of Process. The Secretary of the State of the State of Connecticut (including any successor thereto) is hereby appointed by Developer as its agent for service of process for any action arising out or as a result of this Agreement, such appointment to be in effect throughout the life of the Agreement including any supplements hereto and all renewals thereof, if any, and six (6) years thereafter, except as otherwise provided by any Applicable Laws.

23.8 Counterparts. This Agreement may be signed in counterpart copies, all of which, taken together, shall constitute but one and the same document.

**23.9 Sovereign Immunity; Police Power. Developer acknowledges that the State of Connecticut reserves all immunities and defenses arising out of its sovereign status, including under the Constitution of the State of Connecticut and the Eleventh Amendment of the United States Constitution, and that no waiver of any such immunities or defenses shall be implied or otherwise deemed to exist by reason of its entering into this Agreement, by any express or implied provisions hereof, or by any actions or omissions to act by CTDOT or the State, whether taken pursuant to this Agreement or otherwise. In addition, Developer acknowledges that nothing herein is in derogation of or restricts the State of Connecticut's police powers.**

23.10 Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

23.11 Entire Agreement. This Agreement and the other Operative Documents constitute the entire agreement among and between CTDOT and Developer and supersede all prior negotiations, representations or agreements between or among them regarding the Project.

23.12 Attorneys' Fees. Except as otherwise expressly provided in this Agreement, if any party asserts a claim under this Agreement against a party, or defend a claim asserted by

another party under this Agreement, each party shall bear its own costs incurred in asserting or defending said action. Nothing in this provision shall be deemed to be a waiver of sovereign immunity. CTDOT, on the one hand, and Developer, on the other hand, each shall be responsible for the fees and disbursements of their own counsel in connection with the negotiation, preparation and execution of this Agreement and the other Operative Documents.

23.13 Successors. This Agreement extends to, binds and inures to the benefit of the parties hereto and their successors and permitted assigns.

23.14 Modifications. This Agreement may not be altered, modified, changed, terminated or discharged except in accordance with the terms of an instrument in writing signed by the parties hereto.

23.15 Survival. All representations, warranties, covenants and agreements set forth in this Agreement shall survive the execution and delivery hereof and the Effective Date.

23.16 No Third Party Beneficiaries. This Agreement is for the exclusive benefit of the parties hereto and no rights of third party beneficiaries are created hereby, except that (without intending to create any third party beneficiary rights in favor of any group or individual) it is recognized that CTDOT is entering into this Agreement to achieve the public benefits contemplated by the TOD Legislation.

23.17 Not a Joint Venture. This Agreement shall not be construed as creating a joint venture, agency or partnership relationship by or between CTDOT and Developer.

23.18 Precedence. In the case of any inconsistency between the provisions of this Agreement and the provisions of the TOD Legislation, the provisions of the TOD Legislation shall govern.

23.19 Time of the Essence. Time is of the essence with respect to Developer's obligations under this Agreement.

23.20 Tax-Exempt Bonds. Developer acknowledges that the Available Funds represent the proceeds of tax-exempt bonds and that the use of Garage Improvements, or portions thereof, financed with tax-exempt bonds must at all times comply with the applicable tax-exempt bonding requirements of the Internal Revenue Code, including the private activity limitations, and other Applicable Laws. The Garage Improvements shall not be constructed or operated in any manner that would cause a violation thereof.

23.21 Community Outreach. Developer shall participate with CTDOT in connection with community outreach initiatives to local residents and commuters to explain the aspects and progress of the Project, including participating with CTDOT in any programs, presentations, meetings, press releases and similar undertakings.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

STATE OF CONNECTICUT,  
by its Commissioner of Transportation

By: \_\_\_\_\_  
James Redeker  
Commissioner of Transportation  
Pursuant to Section 13b-79kk of the  
Connecticut General Statutes  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved:  
STATE PROPERTIES REVIEW BOARD

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

OFFICE OF POLICY AND MANAGEMENT

By: \_\_\_\_\_  
Benjamin Barnes  
Secretary

Approved as to form and, as applicable, as to substance:  
ATTORNEY GENERAL, STATE OF CONNECTICUT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A**  
**State Property Description**

**EXHIBIT B**  
**Developer Property Description**

**EXHIBIT C**  
**Affirmative Action Plan**

**EXHIBIT D**

**Replacement Garage, New Pedestrian Bridge and Station Place Performance Criteria**

[See RFP Schedule 2]

**EXHIBIT E**  
**PARCS Performance Criteria**

**[See RFP Schedule 3]**

**EXHIBIT F**

**Operation and Maintenance Performance Criteria**

**[See RFP Schedule 4]**

**EXHIBIT G**  
**TOD Performance Criteria**

**EXHIBIT H**  
**Preliminary Schedule of Values**

**EXHIBIT I**

**Other Construction in Area**

**[See RFP Section 10.4.3]**

**EXHIBIT J**  
**Developer Team**

**EXHIBIT K**  
**CTDOT Vendor Form**

## EXHIBIT L

### NOTICE TO CONTRACTOR – WORK ON RAILROAD PROPERTY

Developer acknowledges that work to be accomplished under this Agreement is to be performed on Railroad territory, which consists of territory operated by Metro-North Commuter Railroad. Developer's work must be accomplished simultaneously with ongoing daily railroad operations. Such operations include, but are not limited to, the passage of trains, storage of trains, flagging, inspection, repair, construction, reconstruction, and maintenance of the railroad right-of-way and facilities.

Developer is advised that the Railroad controls all activity in the respective right-of-way, and the Department expects that these conditions may cause delays and possibly a complete suspension of construction activity. If Developer is delayed or suspended in the completion of the work by railroad operations, Developer will be entitled to a time extension for every day that he can demonstrate that the delays affected a completion date under this Agreement. This extension of time will be considered non-compensable and Developer will not be entitled to any additional compensation for damages incurred for all direct and indirect costs including, but not limited to, all delay and impact costs, and inefficiencies.

Developer shall be responsible for the coordination of the work of its various Contractors and other Project Providers. Developer shall coordinate, or cause its Contractor to coordinate, its operations with those of the Railroad company in carrying out railroad force account work.

The employees of Developer, its Contractor and all Project Providers who will be entering the jobsite within Railroad territory, must undergo a Railroad safety training class, of approximately one hour, offered by Metro-North Railroad. Developer is responsible for insuring that all employees on the jobsite have been trained.

Developer must make its own arrangements with the Railroad company for the use of Railroad equipment or changes in Railroad facilities made solely to facilitate Developer's operations.

#### Developer Requirements for Work Affecting the Railroad

Developer shall comply with the following:

1. All matters requiring Railroad company approval or coordination shall be directed to:

**Metro North Railroad**  
**525 Water Street, 3<sup>rd</sup> Floor**  
**Bridgeport, CT 06604**

2. In general, unless otherwise authorized by the Railroad company, operations directly over or adjacent to the operating right-of-way will be performed in small durational windows of time approved by the Railroad, with railroad protective services. Coordination with the Railroad is Developer's responsibility.
3. While reasonable efforts are made to accommodate the Project needs, track outages cannot be guaranteed. Track outages are dependent on many circumstances, including weather, availability of protective personnel, conflicts with other projects and unforeseen operating problems. Therefore, no claims may be made against Metro-North for delays due to unavailability of track and/or power outages. Further, outages are granted on the basis of what is deemed necessary for construction, not merely the convenience of Developer, its Contractor or other Project Providers.
4. Any hours shown for track outages are not the actual time the tracks will be out of service. Time should be allowed for de-energizing and re-energizing power facilities.
5. Metro-North Railroad employees, unless specifically designated otherwise, will perform all work involving rail, ties, and other track components on active tracks. The contractor may not remove abandoned track (out of service) unless given prior written approval from the Railroad company.
6. Because Developer shall assume that the wires and rails of the Railroad will be energized at all times, Developer shall require all of its employees and those of any Contractor or other Project Provider, to sign a form similar to the following form, and furnish the Railroad with one original copy.

**WARNING OF DANGER FROM ELECTRIFIED WIRES AND STRUCTURES  
TO ALL PERSONS COMING NEAR ELECTRIFIED WIRES AND STRUCTURES**

Notice is hereby given that contact, direct or indirect, with any of the electrified wires or structures of this Company is apt to result in serious injury or death and you are warned to avoid all such contact.

Dated

Job  
AFE No.  
Title

RECEIPT

I have this day received and carefully read the warning or danger from electrified wires and structures issued by you, which was attached to this receipt.

Signed \_\_\_\_\_

Occupation \_\_\_\_\_

Date \_\_\_\_\_

In the presence of

Witness \_\_\_\_\_

Job  
AFE No.

**EXHIBIT M**  
**Preliminary PPS**

**EXHIBIT N**  
**Concept Plan**

**EXHIBIT O**  
**QMP Requirements**

**EXHIBIT P**  
**Statement of Special Instructions**

**EXHIBIT Q**  
**ADDITIONAL STATE CONTRACTING REQUIREMENTS**

**1. State's Rights of Inspection and Audit; Maintenance of Records**

- (a) All services performed by and material supplied by the Contractor under this Contract shall be subject to the inspection and approval of the State at all times, and the Contractor shall furnish all information concerning such material and services as may be requested by the State.
- (b) The Contractor shall maintain, and shall require each of its subcontractors to maintain, accurate and complete records, books of account and other documents that delineate the nature and extent of the State's, Contractor's, and, in the case of each subcontractor, the applicable subcontractor's, performance hereunder. The Contractor shall maintain all of its records (whether stored in electronic or other form) that in any way pertain or relate to this Agreement and/or the actual or alleged performance and/or lack of performance by any party hereunder (individually and collectively, "Records") at the Contractor's address provided on the first page of the body of this Agreement or such other location as is approved in writing in advance by the State.
- (c) The Contractor agrees to make all of its Records available for inspection and/or examination by the State and its Representatives (herein defined as the State's authorized agents, representatives, officers and employees) during reasonable hours. The State and its Representatives also shall have the right, at reasonable hours, to inspect and examine all of the part(s) of the Contractor's and its subcontractors' plant(s) and/or place(s) of business which, in any way, are related to, or involved in, the performance of this Agreement and/or any contract (including, but not limited to, any subcontract) hereunder to ensure compliance with the same. Except in the case of suspected fraud or other abuse or in the event of an emergency, the State will give the Contractor at least twenty-four (24) hours notice of any intended inspections or examinations.
- (d) At the State's request, the Contractor shall provide the State and its Representatives with hard copies of or electronic media containing any data or information in the possession or control of the Contractor which pertains to the State's business or this Agreement, at no cost to the State.
- (e) The Contractor agrees that it will keep and preserve or cause to be kept and preserved all of its Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be supplemented, extended and/or renewed, and any holdover period, as applicable.
- (f) The Contractor also agrees that it will require each subcontractor to maintain all of its Records until three (3) years after the expiration or earlier termination of its contract or other agreement, as the same may be supplemented, renewed and/or extended.
- (g) If any litigation, claim or audit is started before the expiration of said three (3) year periods, such records shall be (and shall be required to be) retained until all litigation, claims or audit findings have been resolved.
- (h) In the event that this Agreement constitutes a grant agreement, and the Contractor is a public or private agency other than another state agency, the Contractor shall provide for an audit

acceptable to the State, in accordance with the provisions of Connecticut General Statutes § 7-396a.

- (i) The Contractor shall incorporate this Section including this subsection (i) verbatim into any contract or other agreement it enters into with any subcontractor.

## **2. Promotion**

Except as otherwise expressly provided in the Contract, or specifically authorized in writing by the State on a case by case basis, Contractor shall have no right to use, and shall not use, the name of the State of Connecticut, CTDOT or their respective officials, agencies, or employees or the seal of the State of Connecticut or its agencies:

- (i) in any advertising, publicity, promotion; or
- (ii) to express or to imply any endorsement of Contractor's products or services; or
- (iii) in any other manner (whether or not similar to uses prohibited by subparagraphs (i) and (ii) above), except only to manufacture and deliver in accordance with this Contract such items as are hereby contracted for by the State.

In no event may the Contractor use the State Seal in any way without the express written consent of the Secretary of State.

## **3. Confidentiality**

All data provided to Contractor by the State or developed internally by Contractor with regard to the State will be treated as proprietary to the State and confidential unless the State agrees in writing to the contrary. Contractor agrees to forever hold in confidence all files, records, documents, or other information as designated, whether prepared by the State or others, which may come into Contractor's possession during the term of this Contract, except where disclosure of such information by Contractor is required by other governmental authority to ensure compliance with laws, rules, or regulations, and such disclosure will be limited to that actually so required. Where such disclosure is required, Contractor will provide advance notice to the State of the need for the disclosure.

## **4. Freedom of Information Act**

The State is a "public agency" for purposes of the Connecticut Freedom of Information Act ("FOIA"). Accordingly, this Contract and any correspondence, documents or other information delivered to the State in connection therewith will be considered public records and will be subject to disclosure under FOIA. Under General Statutes §1-210(b), FOIA includes exemptions for "trade secrets" and "commercial or financial information given in confidence, not required by statute", but only the particular information falling within one of these exemptions can be withheld by the State if the State receives a FOIA request that encompasses such information. In particular, Contractor should be aware that:

- (i) the State has no obligation to notify the Contractor of any FOIA request received by the State;
- (ii) the State may disclose materials claimed to be exempt if in its judgment such materials do not appear to fall within a statutory exemption;
- (iii) the State may in its discretion notify Contractor of FOIA requests and/or of complaints made to the Freedom of Information Commission concerning items for which an exemption has been claimed, but the State has no obligation to initiate, prosecute or defend any legal proceeding or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to an FOIA request;

- (iv) Contractor will have the burden of establishing the availability of any FOIA exemption in any such legal proceeding; and
- (v) in no event shall the State or any of its officers, directors, or employees have any liability for the disclosure of documents or information in the State's possession where the State, or such officer, director, or employee, in good faith believes the disclosure to be required under FOIA or other law.

## **5. Subpoenas**

In the event the Contractor's records are subpoenaed pursuant to Connecticut General Statutes § 36a-43, the Contractor shall, within twenty-four (24) hours of service of the subpoena, notify the person designated for the State in Section 4 of this Agreement of such subpoena. Within thirty-six (36) hours of service, the Contractor shall send a written notice of the subpoena together with a copy of the same to the person designated for the State in Section 4 of this Agreement.

## **6. Americans with Disabilities Act**

This clause applies to those Contractors which are or will become responsible for compliance with the terms of the Americans with Disabilities Act of 1990 during the term of the Contract. Contractor represents that it is familiar with the terms of this Act and that it is and will remain, and that all services rendered by it under the Contract will be provided, in compliance with the law. Failure of the Contractor to satisfy this standard either now or during the term of the Contract as it may be amended will render the Contract voidable at the option of the State upon notice to the Contractor. Contractor warrants that it will hold the State harmless from any liability which may be imposed upon the State as a result of any failure of the Contractor to be in compliance with this Act.

## **7. Non-Discrimination Covenants**

- (a) For purposes of this Section, the following terms are defined as follows:
  - i. "Commission" means the Commission on Human Rights and Opportunities;
  - ii. "Contract" and "contract" include any extension or modification of the Contract or contract;
  - iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
  - iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
  - v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
  - vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
  - vii. "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
  - viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
  - ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who

are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

- x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Connecticut General Statutes § 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Connecticut General Statutes § 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

- (b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as they relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.

- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

#### **8. Documentation Supporting Non-Discrimination Covenants**

Pursuant to Connecticut General Statutes §§ 4a-60(a)(1) and 4a-60a(a)(1), every contractor is required to provide the State with a non-discrimination certificate for all State contracts regardless of type, term cost or value. The appropriate form must be submitted to the awarding State agency prior to contract execution. Copies of "nondiscrimination certification" forms that will satisfy the statutory requirements may be found on the web site of the Office of Policy and Management at [www.ct.gov/opm](http://www.ct.gov/opm). The applicable certification form must be signed by an authorized signatory of the Contractor (or, in the case of an individual contractor, by the individual).

## **9. Executive Orders**

- (a) This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill promulgated June 16, 1971 concerning labor employment practices, and, as such, this Contract may be canceled, terminated or suspended by the State Labor Commissioner for violation of or noncompliance with said Executive Order No. Three or any State or federal law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a party to this Contract. The parties to this Contract, as part of the consideration hereof, agree that said Executive Order No. Three is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to contract performance in regard to nondiscrimination until the Contract is completed or terminated prior to completion.
- (b) The Contractor agrees, as part consideration hereof, that this Contract is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. Three, and that it will not discriminate in its employment practices or policies, will file all reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner.
- (c) This Contract is subject to the provisions of Executive Order No. Seventeen of Governor Thomas J. Meskill promulgated February 15, 1973, concerning the listing of employment openings and, as such, this Contract may be canceled, terminated or suspended by the contracting agency or the State Labor Commissioner for violation of or noncompliance with said Executive Order No. Seventeen, notwithstanding that the Labor Commissioner may not be party to this Contract. The parties to this Contract, as part of the consideration hereof, agree that Executive Order No. Seventeen is incorporated herein by reference and made a part hereof. The parties agree to abide by said Executive Order and agree that the contracting agency and the State Labor Commissioner shall have joint and several continuing jurisdiction in respect to Contract performance in regard to listing all employment openings with the Connecticut State Employment Service.
- (d) This Contract is subject to the provisions of Executive Order No. 16 of Governor John G. Rowland promulgated August 4, 1999 concerning violence in the workplace and, as such, the Contract may be canceled, terminated or suspended by the State for violation of or noncompliance with said Executive Order No. 16. The parties to this Contract, as part of the consideration hereof, agree that said Executive Order No. 16 is incorporated herein by reference and made a part hereof. The parties agree to abide by such Executive Order.
- (e) Pursuant to Governor M. Jodi Rell's Executive Order No. 7C, paragraph 10, promulgated July 13, 2006, concerning contracting reforms, Contractor shall comply with the certification requirements of Connecticut General Statutes §§ 4-250 and 4-252, and Governor M. Jodi Rell's Executive Order No 1, for all personal service agreement contracts with a value of \$50,000 or more in a calendar or fiscal year by executing and filing the respective certifications with OPM. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth.

## **10. Disclosure of Consulting Agreements**

Pursuant to Connecticut General Statutes § 4a-81, the chief official of the Contractor, for all contracts with a value to the State of fifty thousand dollars or more in any calendar or fiscal year, shall attest in an affidavit as to whether any consulting agreement has been entered into in connection with such contract. Such affidavit shall be required if any duties of the consultant included communications concerning business of such State agency, whether or not direct contact with a State agency, State or public official or State employee was expected or made. As used herein "consulting agreement"

means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information or (C) any other similar activity related to such contract. Consulting agreement does not include any agreements entered into with a consultant who is registered under the provisions of Chapter 10 of the general statutes as of the date such affidavit is submitted in accordance with the provisions of Connecticut General Statutes § 4a-81.

#### **11. Gift and Campaign Contribution Certifications**

If this Contract has a value of \$50,000 or more in any calendar or fiscal year and is for (a) a project for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or public work, (b) services, including, but not limited to, consulting and professional services, (c) the acquisition or disposition of any real or personal property, (d) goods and services, including, but not limited to, the procurement of services under a purchase of services agreement (POS) or personal services agreement (PSA), (e) transaction involving information technology, (f) a lease, (g) a licensing agreement or other arrangement, or (h) any governmental functions that relate to any of the foregoing, the Contract shall not become effective until the requirements of Executive Orders 1 and 7C of Governor M. Jodi Rell and § 4-252 of the Connecticut General Statutes, as amended, have been satisfied, including the delivery of the certification of the Contractor with respect to gifts and lawful campaign contributions and other matters required thereunder, which form of certificate is available on the Web site of the Office of Policy and Management at [www.ct.gov/opm](http://www.ct.gov/opm). If this is a multi-year Contract, then, so long as the Contract remains in effect, the Contractor shall provide the State with an annual update of the aforesaid certification on each anniversary of the effective date of such Contract.

#### **12. Termination For Cause**

Pursuant to paragraph 6(a) of Executive Order No. 7C of Governor M. Jodi Rell, Contractor acknowledges and agrees that the State may terminate this Contract for cause. For purposes of this provision, the term "for cause" means: (1) a violation of the State ethics laws (Chapter 10 of the Connecticut General Statutes) or Connecticut General Statutes § 4a-100, or (2) wanton or reckless disregard of any State contracting and procurement process by any person substantially involved in such contract or State contracting agency.

#### **13. Contractor Certification**

The Contractor certifies that the Contractor has not been convicted of bribery or attempting to bribe an officer or employee of the State, nor has the Contractor made an admission of guilt of such conduct which is a matter of record.

#### **14. Retaliation Prohibition**

Pursuant to Connecticut General Statutes § 4-61dd, a large state contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the large state contractor in retaliation for such employee's disclosure of information to any employee of the contracting State or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of Connecticut General Statutes § 4-61dd(a). Each violation shall be a separate and distinct offense and

in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor. As used in Connecticut General Statutes § 4-61dd, a "large state contract" means a contract between an entity and a state or quasi-public agency having a value of five million dollars or more and (2) "large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

## **15. Compliance with State Ethics Laws**

- (a) Contractor acknowledges that by doing business with or seeking to do business with the State it is subject to certain provisions of the Code of Ethics for Public Officials of the State of Connecticut (the "Code of Ethics") applicable to current or prospective state contractors. Contractor acknowledges receipt and review of the "Guide to the Code of Ethics for Current or Potential State Contractors" as currently posted on the Web site of the Office of State Ethics [www.ct.gov/ethics](http://www.ct.gov/ethics) and agrees to comply with all provisions of the Code of Ethics applicable to Contractor as a current or potential state contractor.
- (b) Pursuant to Connecticut General Statutes § 1-101qq and Public Act 10-01, the authorized signatory to this Contract also expressly acknowledges that the Contractor has received the following State Elections Enforcement Commission's notice advising state contractors of State campaign contribution and solicitation prohibitions (hereinafter, the 'Summary'), and that said signatory and the Contractor's other key employees have been provided with, read and understand the Summary and agree to comply with the provisions of the State's ethics laws. Further, the Contractor shall incorporate and include the Summary in all contracts with any subcontractor or consultant working or assisting the Contractor under this Contract whenever any work or assistance being provided by any subcontractor or consultant hereunder properly may be considered as being provided pursuant to a "large state construction or procurement contract" as defined in § 1-101mm(3) of the Connecticut General Statutes. The Contractor shall require in said contracts that the key employees of any subcontractor or consultant affirm that they have read and understand the Summary and agree to comply with the provisions of the State's ethics laws. Contractor shall supply such affirmations to the State promptly.

### **NOTICE TO EXECUTIVE BRANCH STATE CONTRACTORS AND PROSPECTIVE STATE CONTRACTORS OF CAMPAIGN CONTRIBUTION AND SOLICITATION BAN**

This notice is provided under the authority of Connecticut General Statutes 9-612(g)(2), as amended by P.A. 10-01, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined below):

#### **Campaign Contribution and Solicitation Ban**

*No state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee;*

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee

authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly** solicit contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor* or *principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

### **Duty to Inform**

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

### **Penalties for Violations**

Contributions or solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil penalties—Up to \$2000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and the possible consequences of their violations may also be subject to civil penalties of up to \$2000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties—Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5000 in fines, or both.

### **Contract Consequences**

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, made or solicited in violation of the above prohibitions, shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State will not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, [www.ct.gov/seec](http://www.ct.gov/seec). Click on the link to "Lobbyist/ Contractor Limitations."

### **Definitions:**

"State contractor" means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. "State contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state

government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Prospective state contractor" means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100. "Prospective state contractor" does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a state contractor or prospective state contractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has managerial or discretionary responsibilities with respect to a state contract, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

"State contract" means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

"State contract solicitation" means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

"Managerial or discretionary responsibilities with respect to a state contract" means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

"Dependent child" means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

"Solicit" means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any

such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

"Subcontractor" means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty-first of the year in which the subcontract terminates. "Subcontractor" does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

"Principal of a subcontractor" means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.

**Tangible Personal Property.** Developer shall comply with the provisions of section 12-411b of the Connecticut General Statutes as follows:

(a) through the Term, Developer shall collect and remit to the Department of Revenue Services (DRS) any State use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by Developer in the same manner as if Developer were engaged in the business of selling tangible personal property for use in the State and had sufficient nexus under the provisions of Chapter 219 to be required to collect State use tax;

(b) a customer's payment of State use tax to Developer relieves the customer of liability for the use tax;

(c) Developer shall remit all State use taxes collected from customers in accordance with applicable Legal Requirements;

(d) Developer is not liable for use taxes billed by them but not paid to them by a customer; and

(e) if Developer shall fail to remit use taxes collected on behalf of customers by the date specified in clause (c) above, it shall be subject to the interest and penalties provided under Chapter 219 of the Connecticut General Statutes.

**EXHIBIT R**

**CTDOT Policy Statement No. F&A - 10**

**EXHIBIT S**

**Specific Equal Employment Opportunity Responsibilities**

**EXHIBIT T**  
**U.S. DOT Regulations**

**EXHIBIT U**  
**Developer's Counsel Opinion Letter**

**EXHIBIT V**

**CTDOT Small Business Enterprise Requirements**

**EXHIBIT W**  
**Voluntary Partnering Specifications**