

EXCLUSIVE NEGOTIATION AGREEMENT

BETWEEN

THE CITY OF LONG BEACH

AND

PLENARY EDGEMOOR CIVIC PARTNERS

33658

THIS EXCLUSIVE NEGOTIATION AGREEMENT (this "ENA") is entered into this 5th day of January, 2015 ("Effective Date"), at Long Beach, California, by and among the CITY OF LONG BEACH, a California municipal corporation (the "City"), pursuant to a minute order adopted by the Long Beach City Council ("City Council") at its meeting on December 9, 2014, the CITY OF LONG BEACH, acting by and through its Harbor Department (the "Port"), pursuant to a minute order adopted by the Board of Harbor Commissioners ("BHC") at its meeting on December 8, 2014, and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a Delaware limited liability company (the "Preferred Proposer"), with reference to the terms, facts and intentions stated in the recitals below. The City and Preferred Proposer may sometimes be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

A. The City is, in both its municipal capacity and in its capacity as Successor Agency to the former Redevelopment Agency, the owner of two sites (collectively the "Project Site") that includes the current location of the Long Beach Civic Center mega-block, which is bounded by Broadway, Pacific Avenue, Ocean Boulevard, and Magnolia Avenue, as well as a separate site at Third Street and Pacific Avenue, which is a 0.89 acres site bounded by Pacific Avenue, Third Street, Cedar Avenue and adjacent to 245 W. Broadway. As currently designed, the mega-block includes City Hall, the Main Library, the Lincoln Park, the aboveground Broadway parking structure, the subterranean Lincoln Park parking structure, the Old Courthouse, and the Public Safety Building (not a part of the Project, as that term is defined below). The Project Site contains 15.87+/- gross acres created through the consolidation of six former traditionally scaled city blocks in the late 1960s and the separate site at Third Street and Pacific Street.

B. The City, for purposes of this ENA, includes the Port with respect to development of new headquarters for the Port. The Port, acting through the BHC, shall retain the right to (i) determine whether or not to participate in the Preferred Proposer's financing and/or ongoing operation and maintenance of the Project, (ii) value engineer the Port Headquarters and related shared facilities, and (iii) to separately approve its participation in the Project upon successful negotiations under this ENA.

C. On April 26, 2013, the City issued a Request for Qualifications ("RFQ") to interested parties to tender submissions and substantiate their qualifications to work with the City to design, build, finance, operate and maintain a new City Hall, Port Headquarters, Main Library, Lincoln Park and related public facilities (collectively the "Civic Center") and related private development ("Private Development"), all of which is to be located on the Project Site (collectively the "Project").

D. On October 22, 2013, the City selected three (3) qualified proposers ("Shortlisted Proposers") to respond to the issuance of a future request for proposals for the Project.

E. On February 28, 2014, the City issued a Request for Proposals ("RFP") to the Shortlisted Proposers to submit proposals for the development of the Project.

F. On December 9, 2014, the City selected the Preferred Proposer as the Shortlisted Proposer that submitted the best value proposal in the best interest of the City for the Project ("Preferred Proposal").

G. The City and the Preferred Proposer desire to enter into this ENA to establish the period during which the Parties shall negotiate the terms and conditions of the agreements to consummate the transactions contemplated in the RFP, as described in this ENA.

IT IS HEREBY MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:

1. INCORPORATION BY REFERENCE OF RFP

Preferred Proposer has been selected to enter into this ENA in accordance with that certain City of Long Beach Request for Proposals Number CM14-040 (the "RFP"), the provisions of which are expressly incorporated herein by reference and made a part of this ENA. Capitalized terms not otherwise defined in this ENA shall have the meaning given to them in the RFP. In the event of any inconsistency between the RFP and this ENA, the terms of this ENA shall govern.

2. NEGOTIATIONS

2.1. Negotiation Consistency

The Agreements (defined below) for the Project to be negotiated pursuant to this ENA shall be based upon and in substantial accord with all requirements of the RFP and Appendices, the Preferred Proposal and this ENA.

2.2. Good Faith Negotiations

2.2.1 The City and the Preferred Proposer agree during the Negotiating Period (defined below) to negotiate diligently and in good faith to prepare (i) a term sheet outlining, among other things, the Project's financial structure, development timeframes, risk allocations and costs ("Term Sheet"), (ii) an agreement setting forth the rights and obligations of the parties with respect to the conveyance of a leasehold and fee interest for the Civic Center and Private Development Sites, respectively, and the development of the Project, the timing and conditions to closing of the transaction, and the terms (and in some cases the final forms) of all documents necessary to close the transaction ("Global Executory Agreement"), and (iii) other agreements as deemed necessary by the Parties to implement the Project as contemplated by the Preferred Proposal (collectively the "Agreements"). The parties acknowledge and agree that the Port may decide to self-finance all or a portion of the Project and/or opt out of the provision of on-going operations and maintenance services by the Preferred Proposer, and the Preferred Proposer acknowledges that such a decision on the part of the Port does not affect the feasibility of the Project or the validity of the Preferred Proposal.

2.2.2 The obligation to negotiate in good faith requires the Parties to communicate with each other with respect to those issues for which agreement has not been reached, and in such communication to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence.

2.2.3 The City anticipates that following execution of this ENA, and through the Negotiating Period (defined below) and preparation of the Agreements, the City, as well as certain consultants and attorneys for the City, will devote substantial time and effort in reviewing documents, proposals, plans, and meeting with the Preferred Proposer, each other, and other necessary third parties. The City acknowledges that the Preferred Proposer will also expend substantial time and financial resources hereunder, and the Parties are willing to engage in all of these activities subject to the terms and conditions set forth in this ENA.

2.3. Exclusive Negotiations

During the Negotiating Period, the City and the Preferred Proposer shall work and negotiate exclusively with each other regarding the Agreements for development of the Project, and the City shall not entertain proposals from or negotiate with any other person concerning the Project. If negotiations with the

Preferred Proposer under this ENA are unsuccessful and do not lead to approval and execution of the Agreements within the Negotiating Period and, pursuant to the terms and conditions of this ENA, the City elects to terminate this ENA, the City reserves the right to subsequently negotiate with another Shortlisted Proposer for the development of the Project as provided in the RFP and/or seek to expand its list of Shortlisted Proposers.

2.4. Negotiation of the Agreements

2.4.1 The Parties acknowledge and agree that during the Negotiating Period, the Parties shall use their respective good faith efforts to negotiate and enter into the Agreements as described in the RFP and Appendices and this ENA.

2.4.2 The Parties further acknowledge and agree that during the Negotiating Period, the Parties shall use their respective good faith efforts to develop and enter into a final Agreement(s) which prescribes all obligations of the Parties for the Civic Center as described in the RFP and Appendices and as reflected in the Preferred Proposal.

2.4.3 The Parties further acknowledge and agree that during the Negotiating Period, the Parties shall use their respective good faith efforts to develop and enter into such other agreements as deemed necessary by the Parties to implement the Project.

2.5. Period of Negotiations

2.5.1 The Negotiating Period shall commence upon the Effective Date and continue for up to seventeen (17) months, as that period may be extended or upon achievement of the Performance Milestones, whichever occurs first, as provided for herein. The Parties agree to negotiate in good faith and conduct due diligence activities during the Negotiating Period and any extension thereof. If the Agreements have not been executed, prior to the expiration of the Negotiating Period, the Negotiating Period may be extended by the mutual written consent of the Preferred Proposer and the City to enable the City to: (i) determine whether it desires to enter into the Agreements; and, (ii) take any actions that might be necessary to authorize the City to continue negotiation of the Agreements.

2.5.2 If the City has not signed the Agreements by the expiration of the Negotiating Period and the Negotiating Period has not been extended in accordance with this ENA, then this ENA shall automatically terminate and be of no further force or effect, except as otherwise provided in this ENA.

2.5.3 The Negotiating Period shall include a multi-phase process in accordance with the Performance Milestones (defined below) as follows:

- (a) The Preferred Proposer shall conduct further due diligence, studies and analyses as the Preferred Proposer deems necessary or desirable to develop a Project Site master plan and a design of the Civic Center that can be presented for public outreach, relied upon for environmental clearance and presented to the Planning Commission and/or City Council for entitlement review.
- (b) The Preferred Proposer shall negotiate with the City for the principal terms of the DA for the Project as described in the RFP and Appendices and includes the timing and conveyance mechanisms for transferring development rights to the Preferred Proposer.
- (c) Concurrently with 2.5.3(a), the Preferred Proposer shall negotiate with the City the terms for the Agreement(s) as described in the RFP and Appendices.

- (d) Finalization of the negotiations between the City and the Preferred Proposer for the Agreements will conclude with fully executed Agreements to implement the Project, in accordance with the timing outlined in Exhibit A.

2.5.4 Provided the Preferred Proposer has satisfied its obligations relative to the Performance Milestones, if the timeframes in the Performance Milestones are not satisfied or met timely without fault of the Preferred Proposer, the Negotiation Period shall be extended a reasonable time to allow satisfaction of the Performance Milestones. Similarly, if unforeseen circumstances arise which delay or prevent satisfaction of the Performance Milestones, where neither Party has any control over such unforeseen circumstances (e.g. Acts of God, third party litigation, strikes or other labor disputes, civil commotion, riots, etc.), excepting project financing, then the Negotiation Period shall be extended a reasonable time to allow the Parties to fully perform but only to the extent caused by the delay or where performance was prevented. In no event shall any extension of time granted under this Section 2.5.4 exceed ninety (90) days without City's written approval.

2.6. Costs Incurred During the Negotiating Period

Except as otherwise provided in this ENA, each Party shall be responsible for and bear their respective costs and expenses incurred during and as a result of performing their activities, obligations and negotiations pursuant to this ENA.

3. CONFIDENTIALITY

The Preferred Proposer acknowledges that the City will need sufficient, detailed information about the economic feasibility of the Project to negotiate and make informed decisions about the content and approval of the Agreements. The City will work with the Preferred Proposer to maintain the confidentiality of proprietary information subject to the requirements of the Public Records Act, California Government Code section 6250 *et seq.* (CPRA). The Preferred Proposer acknowledges and agrees that the City may share information provided by the Preferred Proposer of a financial and potential proprietary nature with third-party consultants who have been engaged to advise the City concerning matters related to this ENA and to the City Council members or members of the BHC as part of the negotiation and decision-making process. Information submitted to the City is a public record and may be subject to disclosure if requested by a member of the public. The Preferred Proposer shall familiarize itself with the CPRA, including consulting with legal counsel, regarding its requirements for disclosure of public records and applicable exemptions from such disclosure. If the Preferred Proposer claims an exemption from disclosure under the CPRA, it must identify the specific provision(s) of the CPRA providing an exemption from disclosure for each such item claimed as exempt from disclosure. The Preferred Proposer must also clearly identify, in writing and with specificity, all copyright, patent or trademark materials, trade secrets, or proprietary or confidential commercial or financial information claimed as exempt from disclosure under the CPRA (collectively, "Exempt Information").

Exempt Information shall remain the property of the Preferred Proposer. If a request is made under CPRA for disclosure of Exempt Information, the City will endeavor to provide the Preferred Proposer with reasonable timely notice of that request, in order that the Preferred Proposer will have the opportunity, under the CPRA, to seek protection from disclosure by a court of competent jurisdiction. The City shall not be, under any circumstances, responsible or liable to the Preferred Proposer, or any other person, for the disclosure of Exempt Information, whether such disclosure is required by law, by an order of a court, or as a result of inadvertence, mistake, or negligence on the part of the City or its elected or appointed officials, officers, employees, agents, contractors, representatives, or consultants.

The Preferred Proposer submitting claimed Exempt Information in connection with this ENA, by making such submittal of claimed Exempt Information, unconditionally agrees to indemnify, defend, and hold harmless the City and its elected or appointed officials, officers, employees, agents, contractors, representatives, and consultants, from and against any and all claims, damages, losses, liabilities, and expenses, including actual attorneys' fees and costs, including in-house legal counsel fees and costs, incurred by the City, in good faith, that arise out of, relate to, or result from the City's failure to disclose any claimed Exempt Information to any person making a request for such information. If the Preferred Proposer fails to

timely and diligently undertake indemnification of the City, it shall be deemed to have waived the right to claim exemption from disclosure under the CPRA; and after reasonable notice to the Preferred Proposer, the City may release the requested information in accord with applicable law.

4. PERFORMANCE MILESTONES

4.1. Satisfaction of Performance Milestones

During the Negotiating Period, the Preferred Proposer shall diligently pursue to completion the performance milestones and schedule set forth in Exhibit A ("Performance Milestones") in the manner and in the times set forth therein, and any additional Performance Milestones mutually agreed upon by the Parties. The Preferred Proposer shall consider in good faith during the Negotiating Period, any feasible additional Performance Milestones proposed by City that do not materially increase the Preferred Proposer's obligations, burdens or risks during the Negotiating Period. As Milestones are accomplished, the City shall consult with the Preferred Proposer to update and provide more detailed definition to the remaining Performance Milestones. The Preferred Proposer's compliance with the Performance Milestones shall not alter or reduce its obligations to comply with any other provision of this ENA.

4.2. Waiver or Extension of Performance Milestones

The City reserves the right, in its sole discretion, to waive or extend the times for performance of the Performance Milestones, including, without limitation, the right to condition such waiver or extension on additional Performance Milestones or other conditions required by the City in its sole discretion.

4.3. Monthly Progress Reporting

The Preferred Proposer shall submit to City written reports no later than the first day of each month during the Negotiating Period, setting forth a description of the status of the Preferred Proposer's compliance with the Performance Milestones.

5. OBLIGATIONS

5.1. Obligations of the Preferred Proposer

5.1.1 Subject to the City's performance of its obligations under this ENA, during the Negotiating Period, the Preferred Proposer shall comply with the requirements of the RFP and the Preferred Proposal which require, among other things, that Preferred Proposer diligently and in good faith use its best efforts, at the Preferred Proposer's sole cost to deliver the Project generally consistent with the Preferred Proposal, subject to Changes, by causing the following to occur:

- (a) Commence and complete its due diligence review and investigation of the Project Site;
- (b) Work cooperatively with the City to advance the development of the Project Site master plan and a Civic Center design;
- (c) Prepare and receive approval from the City for a Basis of Design document;
- (d) Prepare and complete the Project Site master plan and Civic Center design for entitlement approval processes, public outreach, and any required environmental review;
- (e) Negotiate with the City the principal terms of the Agreements;
- (f) Work cooperatively with the City to establish the financing structure;

- (g) Prepare and provide Schematic Design (defined as the industry standard for "schematic design") package for review and approval by the City;
- (h) Prepare and provide a complete financial model that shall include data book and user guide, assumptions, sources and uses, detailed cash flow model showing construction and operating period, complete financial statements, and summary outputs required by the RFP including payments by the City, based on Project Site master plan, Civic Center Detailed Design (defined as the industry standard for "design development") and a negotiated draft term sheet;
- (i) Prepare and provide a design-build fixed price based on Civic Center Detailed Design, a negotiated final Term Sheet and Agreements to the extent completed;
- (j) Negotiate the Agreements with the City for development of the Project, incorporating specific terms, including the City's and the Preferred Proposer's respective responsibilities, the economic parameters, financing, development standards and requirements, and a performance schedule, each on terms at least as favorable to the City as required by the Term Sheet; and,
- (k) Provide all studies, analysis, reports, and documentation required to obtain Planning Commission, City Council and other Project approvals including CEQA clearance as necessary.

5.1.2 During the Negotiating Period, the Preferred Proposer shall meet the Performance Milestones and schedule as prescribed in Section 4 of this ENA.

5.1.3 The Preferred Proposer shall not pay, or agree to pay, any fee or commission, or any other thing of value contingent on the entering into or subsequent to entering into this ENA, any other transaction document, or any other agreement with the City related to the Project, to any City employee or official or to any consultant hired by the City for purposes of the Project. By entering into this ENA, the Preferred Proposer certifies to the City that it has not paid, nor agreed to pay, any fee or commission, or any other thing of value contingent on the entering into or subsequent to entering into this ENA, any other transaction document, or any other agreement with the City related to the Project, to any City employee or official or to any contracting consultant hired by the City for purposes of the Project.

5.2. Obligations of the City

Subject to the Preferred Proposer's performance of its obligations under this ENA, during the Negotiating Period, the City shall use good faith efforts to:

5.2.1 Prepare and negotiate the Agreements exclusively with the Preferred Proposer for development of the Project pursuant to the RFP, this ENA and the Preferred Proposal;

5.2.2 Review the Preferred Proposer's submittals and determine consistency with the requirements of the RFP;

5.2.3 Provide the Preferred Proposer with documents in the City's possession that would assist the Preferred Proposer with the due diligence activities described in this ENA;

5.2.4 Respond on a timely basis to all submittals by the Preferred Proposer made pursuant to this ENA;

5.2.5 Cooperate and work with Preferred Proposer to establish a reasonable process and time schedule, within the Negotiating Period, for negotiation of the Agreements for the Project;

5.2.6 Perform duties as the CEQA lead agency for the Project including preparation of an Initial Study to determine level of CEQA analysis required by the Preferred Proposer, if any; and

5.2.7 Subject to Sections 6 and 7, meet the Performance Milestones and schedule as prescribed in Section 4 of this ENA.

5.3. Obligations Tolerated

In the event that one Party ("Prevented Party") is precluded from satisfying its obligations under this ENA by reason of the other party's ("Preventing Party") failure to satisfy its obligations under this ENA, the obligation of and time for the Prevented Party's performance shall be tolled until such time as the Preventing Party has satisfied every obligation under this ENA that precluded or prevented the other party's performance. The Prevented Party shall continue to perform all other obligations to the extent not precluded by the Preventing Party's conduct.

6. ENTITLEMENTS, PERMITS AND APPROVALS

6.1. Preferred Proposer Responsibility

The Preferred Proposer will be responsible for obtaining all entitlements, permits, and approvals necessary for the development of the Civic Center and Private Development. Section 6.5 of the RFP outlines the necessary steps that the Preferred Proposer shall undertake to obtain final development approval. The Preferred Proposer shall have sole responsibility for obtaining all entitlements, permits, and approvals necessary for development of the Civic Center and the Private Development. The Preferred Proposer shall obtain all such entitlements, permits and approvals for the Civic Center prior to execution of the Agreements, but shall not be required to obtain all necessary entitlements, permits and approvals for the Private Development before execution of the Agreements.

6.2. Regulatory Approval Strategy

The Parties acknowledge that regulatory approvals and permits are required for development of the Project ("Regulatory Approvals"). Prior to taking any action to obtain Regulatory Approvals, the Preferred Proposer first shall present to the City for its approval, the basis upon which the Preferred Proposer proposes to obtain the required regulatory approvals (the "Regulatory Approval Strategy"). The City may suggest reasonable revisions or changes to the proposed Regulatory Approval Strategy, if any, which the Preferred Proposer shall consider in good faith. The Preferred Proposer agrees and acknowledges that maintaining professional working relations with each regulatory agency is critical to implementing the Project. Accordingly, the Preferred Proposer shall use its best efforts throughout the Negotiating Period and thereafter not to take any actions relating to the Project that would adversely affect the City's relationship with any regulatory agency.

6.3. Project Materials

The term "Project Materials" means all reports, studies, plans, drawings, analysis, financial plans, correspondence, legal documents (including subcontracts, legal opinions, any Internal Revenue Service ruling, and other documents related to financing structures) and similar documents prepared for or commissioned for the Project by the Preferred Proposer's architects, engineers, tax and legal advisors, and consultants ("Project Consultants"). The term "Intellectual Property" means any and all ideas, processes, trademarks, service marks, inventions, technology, computer programs, original works of authorship, designs, formulas, discoveries, patents, copy rights and all improvements, rights and claims related to Project. In the event of: (i) the Preferred Proposer's termination of this ENA in accordance with Section 16.2; (ii) any early termination of this ENA by the City as a result of a Preferred Proposer Event of Default; or (iii) expiration of this ENA occurring without the concurrent execution of the Agreements by the Parties, the Preferred Proposer

shall, within thirty (30) days of written notice from the City, and without cost to the City: (i) Satisfy all outstanding fees relating to the Project Materials and Intellectual Property that are then due and payable or will become due and payable for services relating to the Project rendered by any of the Project Consultants up to the date of withdrawal, abandonment, termination, or expiration, as prescribed above, and provide written evidence of such satisfaction to the City; (ii) assign to the City, by way of legally binding instruments, all of the Preferred Proposer's existing rights and interest in the Project Materials and Intellectual Property; and, (iii) deliver or have delivered from the appropriate parties all Project Materials and Intellectual Property to the City in their native file format.

The Preferred Proposer shall be permitted to disclaim any representations or warranties with respect to the Project Materials and Intellectual Property (other than the payment by the Preferred Proposer of the fees for the Project Materials and Intellectual Property); and at the request of the Preferred Proposer, the City shall provide the Preferred Proposer with a release from liability for future use of the Project Materials and Intellectual Property, in a form reasonably acceptable to the Preferred Proposer and the City. Provided that the City meets the foregoing obligation, the Preferred Proposer shall be deemed to waive and release the City from any claims of proprietary rights or interest by the Preferred Proposer in the Project Materials and Intellectual Property, and the Preferred Proposer agrees that the City may utilize any or all of the Project Materials and Intellectual Property for any purpose whatsoever, including pursuit of the same or a similar project with another party, including but not limited to, another developer.

7. RETENTION OF DISCRETION BY THE CITY

7.1. Retention of Discretion to Approve the Project

The Parties acknowledge and agree that the City is reserving the right to exercise discretion as to all matters which, by law, the City is entitled or required to exercise in its sole discretion, including, but not limited to, the approval of the Agreements, the approval of a comprehensive final development proposal for the Project, and approval of any and all plans, permits, financial plans and strategies, or any other acts or activities requiring the subsequent independent exercise of discretion by the City or any agencies or departments thereof. The Parties understand that the City has complete and unfettered discretion to reject and refuse final approval of the Agreements, in which instance all costs and expenses incurred by the Preferred Proposer shall be absorbed entirely by the Preferred Proposer, except that the Preferred Proposer shall still be entitled to payment as prescribed at Section 16.3.1.

7.2. Review and Approval of all Discretionary Actions

The negotiation of the Agreements is subject to approval of the City Council and the BHC at a duly noticed public hearing. The decisions of the City regarding the Agreements shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City is required to make by law, including all necessary findings and determinations required under CEQA, and state and local land use provisions. As to those matters, neither anything herein, or to be contained in the Agreements shall obligate the City to exercise its discretion in any particular manner, and any exercise of discretion required by law, other than abuse of discretion, shall not be deemed to constitute a breach of the City's duties under this ENA.

7.3. No Representation or Warranty

The Preferred Proposer agrees and acknowledges that the City has made no representation or warranty that the necessary Regulatory Approvals to allow for the development of the Project can be obtained. The preferred Proposer further agrees and acknowledges that although the Project is being developed, in part, for the City, the City officials, departments, boards, commissions or agencies (individually defined as "Regulatory Agency" and collectively as "Regulatory Agencies") responsible for the issuance of such required Regulatory Approvals, shall at all times, remain independent in its regulatory role, and that the City is entering into this ENA in its capacity as a landowner with a proprietary interest in the Project Site and not as a regulatory agency with certain powers. Accordingly, there is no guarantee or presumption that any of the Regulatory Approvals required for the development of the Project will be issued by the appropriate Regulatory Agency

and the City's status as a Regulatory Agency shall in no way limit the obligation of the Preferred Proposer to obtain approvals from any Regulatory Agencies which have jurisdiction over the Project. The Preferred Proposer hereby releases and discharges the City from any liability relating to the failure of any Regulatory Agency to issue any required Regulatory Approval.

8. CHANGES TO THE PROJECT

8.1 Changes by the City

The City may require modifications or changes to the Project ("Changes") from that described in the RFP and this ENA if such changes are in response to the request, guidance or requirements of the Regulatory Agencies (including the City), as a result of civic engagement, or if the City believes such changes to be in the best interests of the City or the Project. The City shall present the Changes (except for Changes resulting from civic engagement, which shall be tracked and compiled by Preferred Proposer) to the Preferred Proposer to incorporate into the Project. The City shall present to the Preferred Proposer a detailed description of each of the Changes. The City shall have the absolute and unfettered discretion to incorporate Changes into the Project for any reason. The terms and conditions of this ENA and any resulting Agreement(s) relating to the Project cost and schedule shall be equitably adjusted in accordance with any Changes the City requires or elects to incorporate into the Project.

8.2 Changes by the Preferred Proposer

The Preferred Proposer may propose modifications or changes to the Project ("Proposed Changes") from that described in the RFP and this ENA if such changes are in response to the request, guidance or requirements of the Regulatory Agencies (including the City), as a result of civic engagement, or if the Preferred Proposer believes such changes to be in the best interests of the City or the Project. The Preferred Proposer shall present the Proposed Changes to the City for approval. As part of any request for approval, the Preferred Proposer shall present a detailed description of each of the Proposed Changes and explain the reasons supporting such change. The City shall have the absolute and unfettered discretion to approve or disapprove the Proposed Changes for any reason. The terms and conditions of this ENA and any resulting Agreement(s) relating to the Project shall be adjusted in accordance with mutual agreements of the Parties relative to any Proposed Changes the City requires or elects to incorporate into the Project.

9. TEMPORARY PROJECT SITE ENTRY

The Preferred Proposer expressly agrees and acknowledges that irrespective of the execution of this ENA by the City, neither the Preferred Proposer nor any of its employees, officers, directors, agents, contractors, consultants, architects and engineers (collectively, "Agents") shall have the right to enter or access the Project Site until a separate agreement (proposed form of agreement attached as Exhibit B to this ENA) between the City and the Preferred Proposer is negotiated and executed by the Parties, which agreement shall memorialize the terms and conditions of any entry and access of the Project Site (including, but not limited to, insurance requirements and indemnification obligations) by the Preferred Proposer and its Agents.

10. BALLOT AND LEGISLATIVE MEASURES

The Preferred Proposer expressly agrees and acknowledges that it shall not initiate, promote, support or pursue, or authorize any other person or party to initiate, promote, support or pursue, any ballot or legislative measure relating to the Project without the prior consent of the City authorized by City Council action.

11. COMMUNITY OUTREACH PROGRAM

The Preferred Proposer shall present to the City for its approval, the Preferred Proposer's proposed plan for conducting outreach to various community groups and stakeholders for educating and soliciting input

from the public with respect to the Project, and for informing the City Council, the BHC and other Regulatory Agencies about the Project during the Negotiating Period ("Community Outreach Program"). The Community Outreach Program shall include a budget for publicizing the Project (i.e. mailers, brochures, and forums educating the public), along with the Preferred Proposer's strategy for publicizing the Project and for keeping the appropriate Regulatory Agencies apprised of the Project development status. The City may suggest reasonable revisions or changes to the proposed Community Outreach Program, if any, which Preferred Proposer shall consider in good faith. During the Negotiating Period, the Parties shall mutually agree upon the proposed Community Outreach Program, and no Party shall unreasonably withhold its consent to revisions or changes. The Preferred Proposer agrees and acknowledges that maintaining professional working relations with the City's constituents, the public and Regulatory Agencies, is critical to the City.

12. PROJECT PUBLICITY

12.1. Press Releases

Except as such Press Releases are part of the Community Outreach Program formulated, approved and executed pursuant to Section 11, during the Negotiating Period, the Preferred Proposer shall not issue, or authorize any other party to issue, any written press release, advertisement or other formal communication (individually and collectively, "Press Release") to any media outlet (including, but not limited to, newspapers, radio and television stations and web sites) relating to the Project (collectively, "Press Matters"), without the prior written consent of the City. The Preferred Proposer shall provide the City with a draft copy of any Press Release no less than five (5) business days prior to the proposed release of the Press Release. The City shall promptly review the Press Release and advise the Preferred Proposer of any comments by the end of the business day prior to the proposed release of the Press Release. If after review of the Press Release, the City reasonably believes that revisions or changes to the Press Release are advisable, the Preferred Proposer shall work with the City in good faith to incorporate appropriate revisions or changes into the Press Release. In the event the City reasonably believes that due to the nature of the Press Release, the Press Release cannot be revised or changed, irrespective of whether the Press Release may further the Preferred Proposer's interests, or if the City reasonably believes that such Press Release would adversely affect the City's interests, then the City shall have the absolute right to withhold its consent to release of all or any portion of the proposed Press Release.

12.2. Press Conferences

Except as such press conferences are part of the Community Outreach Program formulated, approved and executed pursuant to Section 11, during the Negotiating Period, the Preferred Proposer shall not hold any press conference relating to Press Matters without first extending an invitation to the City to have a City representative present at such press conference. The Preferred Proposer shall provide the City with no less than five (5) business days prior written notice of the date and time of any proposed press conference. Such notice shall also state in detail the purpose of the press conference and the topics to be discussed at such press conference ("Conference Summary"). The City agrees to promptly review the Conference Summary and advise the Preferred Proposer of any comments by the end of the business day two (2) days prior to the press conference. If after review of the Conference Summary, the City reasonably believes that revisions or changes to the Conference Summary are advisable, the Preferred Proposer shall work in good faith with the City to incorporate such revisions or changes to the Conference Summary. In the event the City reasonably believes that irrespective of whether the press conference may further the Preferred Proposer's interests, such press conference would adversely affect the interests of the City, then the City shall have the absolute right to withhold its consent to the Preferred Proposer holding the press conference. The Preferred Proposer shall make reasonable efforts to schedule the press conference to accommodate the schedules of staff designated by the City to attend the press conference.

13. TRANSACTION COSTS

13.1. Definition of Transaction Costs

The expenses (collectively, the "Transaction Costs") reasonably incurred by the City during the Negotiation Period directly and solely related to the Project shall include, but are not limited to, time spent on the Project by the City staff, the services of real estate and economic consultants (including, without limitation, experts within the City that are paid by the City), construction management services, and legal services (including, without limitation, costs for the City Attorney's office and outside counsel). The Transaction Costs shall also include, without limitation, costs reasonably incurred by the City for negotiating the Agreements and any other transaction documents; costs related to environmental review under CEQA; costs related to pursuit of entitlements for which the City is required to be a co-permittee or co-applicant including, if necessary, any legislative process pursued to obtain legislative authorization for the Project; costs of preparing materials to be submitted to the City for a determination of the Project's fiscal feasibility; costs of preparing legislative reports, findings and resolutions related to approval of the Project by the City; and costs related to the review of any architectural design or drawings, plans and specifications.

13.2. Payment of Transaction Costs

The Preferred Proposer shall pay the City for the Transaction Costs after financial close and within thirty (30) days after the City delivers to the Preferred Proposer a separate invoice for the payment of the Transaction Costs, including reasonable supporting documentation ("City Invoice"). The Preferred Proposer may include the Transaction Costs in the overall financing structure for the Project. In order to assist with the financing, the City will provide the Preferred Proposer with an estimate of the Transaction Costs within a reasonable time prior to financial close of the Project.

13.3. Acknowledgements

The Parties acknowledge that the payment paid to the City by the Preferred Proposer is exempt as a "source of income" within the meaning of California Political Reform Act (pursuant to California Government Code section 87103.6). The Parties further acknowledge that the City reserves the full and sole discretion and authority to determine which consultants, contractors, or employees shall be hired to advise the City on the Project, and to direct and evaluate such work and to establish the amount of compensation paid.

14. INDEMNITY

To the maximum extent allowed by law, each of the Preferred Proposer and the City (as applicable, the "Indemnifying Party") shall indemnify, protect, defend and hold harmless the other Party, its council, boards, commissions, elected officials, officers, employees, representatives, members, consultants, and agents (collectively, "Indemnified Parties") from and against any and all losses, liabilities, damages, claims, demands, obligations, causes of action, proceedings, awards, fines, judgments, penalties, or costs and expenses (including attorneys' fees and costs, court costs, experts' and witness' fees, and other costs and fees of litigation) arising out of, related to or resulting from, in whole or in part, out of or in connection with: (i) the Indemnifying Party's breach or failure to comply with any of its obligations contained in this ENA, including any obligations arising from compliance with or failure to comply with applicable laws, including all applicable federal and state labor requirements including, without limitation, the requirements of California Labor Code section 1770 *et seq.* or, (ii) the Indemnifying Party's acts, errors, or omissions and/or willful misconduct with respect to the obligations of the Indemnifying Party, its officers, employees, representatives, members, consultants and agents under this ENA, the Agreements or the Project (collectively "Claims" or individually "Claim"). If Preferred Proposer receives the Stipend and the Termination Payment, then the City shall have no indemnification obligations hereunder.

If a court of competent jurisdiction determines that a Claim was caused by the sole negligence or willful misconduct of Indemnified Parties, the Indemnifying Party's costs of defense and indemnity shall be: (i) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (ii) reduced by the percentage of willful misconduct attributed by the court to the Indemnified Parties.

In addition to the Indemnifying Party's duty to indemnify, the Preferred Proposer shall have a separate and wholly independent duty to defend the Indemnified Parties at the Indemnifying Party's expense by legal

counsel approved by the Indemnified Parties, from and against all Claims, and shall continue this defense until the Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of the Indemnifying Party shall be required for the duty to defend to arise.

The Indemnified Parties shall notify the Indemnifying Party of the existence of any Claim that they reasonably become aware of or to which the Indemnifying Party's indemnification obligations would apply and shall give the Indemnifying Party a reasonable opportunity to defend the same at its sole cost and expense with counsel of its own selection, subject to the Indemnified Parties' reasonable approval. If the Indemnifying Party, within a reasonable time after written notice, fails to defend the Indemnified Parties, the Indemnified Parties shall have the right, but not the obligation, to undertake the defense of, and compromise and settlement of (exercising reasonable business judgment) the Claim on behalf, for the account, and at the risk and expense of the Indemnifying Party.

15. REAL ESTATE COMMISSIONS

The City has not engaged a broker, agent, or finder in connection with this transaction. As such, the City will not be responsible for any Claims by a broker, agent or finder, and the Preferred Proposer agrees to defend, indemnify, protect and hold the City harmless from any and all Claims, including all defense costs and attorneys' fees, by any broker, agent, or finder retained by the Preferred Proposer.

16. DEFAULT AND REMEDIES

16.1. Default

16.1.1 Preferred Proposer's Events of Default. The occurrence of any of the following (each, a "Preferred Proposer Event of Default") shall constitute a default by the Preferred Proposer after the expiration of the applicable cure period, if any:

- (a) Failure to pay any sums due hereunder when due within thirty (30) days after written notice by the City has been given to the Preferred Proposer;
- (b) Failure of the Preferred Proposer to comply with the obligations set forth in Section 5.1 or the terms and conditions set forth in any written notice of default delivered by the City to the Preferred Proposer as a result of the failure by the Preferred Proposer to abide by the terms and conditions of this ENA, including without limitation its obligations set forth in Section 5.1 or failure by the Preferred Proposer to negotiate Agreements with principal terms at least as favorable to the City as required by the Term Sheet;
- (c) Except for those obligations and performance schedules set forth in Sections 2.5 and 18.13, which shall not have a cure period, failure to perform or abide by any other provision of this ENA, if such failure is not cured within thirty (30) days after notice has been given to the Preferred Proposer by the City. If the Preferred Proposer Event of Default cannot reasonably be cured within thirty (30) days, the Preferred Proposer shall not be in default of this ENA if the Preferred Proposer commences to cure the Preferred Proposer Event of Default within the thirty (30) day period and diligently and in good faith continues to seek to cure the Preferred Proposer Event of Default; provided, however, that in no event shall such cure period exceed ninety (90) days;
- (d) Either: (i) the filing by the Preferred Proposer of a petition to have the Preferred Proposer adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by the Preferred Proposer for the

benefit of creditors; or, (ii) the filing by or against the Preferred Proposer of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of the Preferred Proposer or any substantial part of Preferred Proposer's assets; and

- (e) A "Change of Control" of the Preferred Proposer which means the sale, disposal or other transfer of more than 50% of the ownership interests, or the controlling interest with power to vote, in the Preferred Proposer (other than to any other owner of the Preferred Proposer or any subsidiary or affiliate of any owner of the Preferred Proponent, including any fund or investment company having a common manager with such owner or its affiliates) without the consent of the City.

16.1.2 The City's Events of Default. Abandonment of the Project by the City during such time that the Preferred Proposer is not then in default of its obligations under this ENA or failure to perform or abide by any provision of this ENA, if such failure is not cured within thirty (30) days after notice has been given to the City by the Preferred Proposer, shall each constitute a "City Event of Default"; provided, however, that if the City Event of Default cannot reasonably be cured within thirty (30) days, the City shall not be in default of this ENA if the City commences to cure the City Event of Default within the thirty (30) day period and diligently and in good faith continues to seek to cure the City Event of Default.

16.2. Termination

Notwithstanding the Negotiating Period hereinabove set forth, except for those obligations and performance schedules set forth in Sections 2.5 and 18.13, which shall not have a cure period, any Party may terminate this ENA if the other Party has materially defaulted in its obligations set forth herein or in the RFP, and the terminating Party has provided the defaulting Party with written notification of such determination, and the defaulting Party has failed or refused to cure the same. The written notification shall set forth the nature of the actions required to cure such default if curable. The defaulting Party shall have thirty (30) days, or such lesser period as is otherwise prescribed in this Section 16, from the date of the written notification to cure such default. If such default is not cured within the prescribed period, the termination shall be deemed effective. Upon thirty (30) days written notice to the other Party, the City and the Preferred Proposer shall also have the right to terminate this ENA in the event that either Party, in its sole discretion, determines that (i) an impasse has been reached in the negotiation of the Agreements or (ii) the Project is not feasible. Upon the termination of this ENA, the obligations set forth in Section 6.3 shall apply and the City may exercise any or all of the options set forth in Section 16.3.2 and may immediately move forward with the negotiation and execution of an exclusive negotiation agreement with another party. The Preferred Proposer shall be entitled to a Termination Payment (as defined in Section 16.3.1) if the City exercises its right to terminate this ENA and the Preferred Proposer is not then in default of its obligations set forth in Section 5.1, or elsewhere in this ENA.

16.3. Remedies

16.3.1 Exclusive Remedies of Preferred Proposer. The Preferred Proposer's exclusive remedies for a City Event of Default under this ENA shall be:

- (a) Terminate this ENA in accordance with the terms of Section 16.2;
- (b) Receive the Stipend as provided in the Stipend Policy in the RFP; and
- (c) Receive a termination payment ("Termination Payment") from the City as provided in this section. If the termination occurs after each of the following Performance Milestones but prior to the next stated Milestone, the

Termination Payment shall be equal to the actual out-of-pocket cost incurred by the Preferred Proposer not to exceed the following maximum amounts:

- (i) After Execution of the Term Sheet: \$250,000;
- (ii) After Project Site Plan Review Submittal: \$400,000;
- (iii) After Schematic Design Submittal: \$1,000,000;
- (iv) After receipt of fixed price Proposal and Detailed Design (+/- 50% design development): \$2,000,000; or
- (v) After the Preferred Proposer executes the Agreements: \$3,500,000.

The City shall pay the Termination Payment to the Preferred Proposer within thirty (30) days after the Preferred Proposer satisfies its obligations under Section 6.3. In no event shall Preferred Proposer be entitled to a Termination Payment if Preferred Proposer is in default of its obligations under this ENA, including without limitation its obligation to negotiate Agreements on terms at least as favorable to the City as required by the Term Sheet. In no event shall the Termination Payment exceed Preferred Proposer's actual costs incurred in connection with the Project as of the date of the termination of this ENA.

Except for the Termination Payment and Stipend, in no event shall the Preferred Proposer have the right, and the Preferred Proposer expressly waives the right, to seek monetary damages of any kind (including but not limited to actual damages, economic damages, consequential damages, lost profits, or any other damages under Section 14) from the City for a City Event of Default under this ENA or any action related to this ENA, nor shall the Preferred Proposer have any other right or remedy against the City, including any action for specific performance, the filing of a *lis pendens*, or otherwise.

16.3.2 The City's Remedies. If a Preferred Proposer Event of Default remains uncured or is deemed to be an incurable default, the City, at its option, may: (i) terminate this ENA upon written notice to the Preferred Proposer as provided above; (ii) seek to recover from the Preferred Proposer any funds due and owing to the City; (iii) seek to enforce the Preferred Proposer's indemnity obligations; and/or, (iv) enforce the obligations set forth in Section 6.3. The foregoing remedies are not exclusive, but shall be cumulative with any remedies now or later allowed by law.

17. CITY REQUIREMENTS

17.1. Conflict of Interest

The Preferred Proposer, by executing this ENA, certifies that, at the time the Preferred Proposer executes this ENA, the Preferred Proposer does not perform services for any other person or entity which would create a conflict, whether monetary or otherwise, as between the interests of City and the interests of that other person or entity. And, the Preferred Proposer shall obtain similar certifications from its employees, advisors, contractors and consultants. Similar certifications shall be made in the Agreement(s).

17.2. Prevailing Wages

The Preferred Proposer agrees that all public work (as defined in California Labor Code section 1720) performed pursuant to this ENA (the "Public Work"), if any, shall comply with the requirements of California Labor Code sections 1770 *et seq.* The City makes no representation or statement that the Project, or any portion thereof, is or is not a "public work" as defined in California Labor Code section 1720.

17.3. Nondiscrimination

17.3.1 In connection with performance of this ENA and subject to applicable rules and regulations, the Preferred Proposer shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. The Preferred Proposer shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17.3.2 It is the policy of the City to encourage the participation of disadvantaged, minority and women-owned business enterprises in the City's procurement process, and the Preferred Proposer agrees to use its best efforts to carry out this policy in its use of consultants, advisors and contractors to the fullest extent consistent with the efficient performance of this ENA. The Preferred Proposer may rely on written representations by consultants, advisors and contractors regarding their status. The Preferred proposer shall report to the City the names of all consultants, advisors and contractors hired by the Preferred Proposer for the Project and information on whether or not they are a disadvantaged, minority or women-owned business enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

17.4. Equal Benefits

Unless otherwise exempted in accordance with the provisions of the City's ordinances, this ENA is subject to the applicable provisions of the Equal Benefits Ordinance ("EBO"), section 2.73 *et seq.* of the Long Beach Municipal Code, as amended from time to time.

17.4.1 During the performance of this ENA, the Preferred Proposer certifies and represents that the Preferred Proposer will comply with the EBO. The Preferred Proposer agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a contract with the City of Long Beach, the Preferred Proposer will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Long Beach's Equal Benefits Ordinance may be obtained from the City of Long Beach Business Services Division at 562-570-6200."

17.4.2 The failure of the Preferred Proposer to comply with the EBO will be deemed to be a material breach of this ENA.

17.4.3 If the Preferred Proposer fails to comply with the EBO, the City may cancel, terminate or suspend this ENA, in whole or in part, and monies due or to become due under this ENA may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

17.4.4 Failure to comply with the EBO may be used as evidence against the Preferred Proposer in actions taken pursuant to the provisions of Long Beach Municipal Code section 2.93 *et seq.*

17.4.5 If the City determines that the Preferred Proposer has set up or used its contracting entity for the purpose of evading the intent of the EBO, the City may terminate this ENA on behalf of the City. Violation of this provision may be used as evidence against the Preferred Proposer in actions taken pursuant to the provisions of Long Beach Municipal Code section 2.93 *et seq.*

17.5. Advertising

The Preferred Proposer shall not use the name of the City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City manager or designee.

17.6. Audit

The City shall have the right at all reasonable times during the Negotiating Period and for a period of five (5) years after termination or expiration of this ENA to examine, audit, inspect, review, extract information from and copy all books, records, accounts and other documents of the Preferred Proposer relating to this ENA.

18. GENERAL PROVISIONS

18.1. Limitation on Effect of ENA

This ENA shall not obligate either the City or the Preferred Proposer to enter into the Agreements. By execution of this ENA, the City is not committing itself to or agreeing to approve the Agreements, undertake disposition or lease of any property related to the Project, or undertake any other acts or activities relating to the subsequent independent exercise of discretion by the City. This ENA is merely an agreement to conduct a period of exclusive negotiations diligently and in good faith in accordance with the terms of this ENA, reserving for subsequent City Council and BHC action the final discretion and approval regarding the Agreements and associated approvals, and all proceedings and decisions in connection therewith. Until and unless the Agreements are signed by the Preferred Proposer and approved and executed by the City, no agreement, drafts, actions, deliverables or communications arising from performance of this ENA shall impose any legally binding obligation on any Party to enter into or support entering into the Agreements or be used as evidence of any oral or implied agreement by either Party to enter into any other legally binding document.

18.2. Applicable Law; Venue

The laws of the State of California shall govern the interpretation and enforcement of this ENA. The Superior Court of the County of Los Angeles shall be the site and have jurisdiction for the resolution of all such actions.

18.3. Acceptance of Service of Process

In the event that any legal action is commenced by the Preferred Proposer against the City, service of process on the City shall be made by personal service upon the City in such other manner as provided by law. In the event that any legal action is commenced by the City against the Preferred Proposer, service of process on the Preferred Proposer shall be made by personal service upon the Preferred Proposer or in such other manner as may be provided by law, and shall be valid whether made within or without the State of California.

18.4. Rights and Remedies are Cumulative

Except as otherwise expressly stated in this ENA, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

18.5. Notices, Demands and Communications Between the Parties

Written notices, demands, and communications between the City and the Preferred Proposer shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal

Express that provides a receipt showing date and time of delivery; or, (iii) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City: Patrick H. West
Office of the City Manager
City of Long Beach
333 West Ocean Blvd., 13th Floor
Long Beach, CA 90802

With copy to: Charles Parkin
Office of the City Attorney
333 West Ocean Blvd., 13th Floor
Long Beach, CA 90802

To the Preferred Proposer: Plenary Edgemoor Civic Partners
10100 Santa Monica Blvd., Suite 410
Los Angeles, CA 90067
Attn: Stuart Marks

Notices personally delivered, sent by United States mail or delivered by document delivery service shall be deemed effective upon receipt. Notices sent solely by mail in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

18.6. Non-liability of Agency Officials and Employees

No member, official, employee, consultant, agent or contractor of the City shall be personally liable to the Preferred Proposer in the event of any default or breach by City or for any amount which may become due to the Preferred Proposer, or upon any obligations prescribed by the terms of this ENA.

18.7. Interpretation

The terms of this ENA shall be construed in accordance with the meaning of the language used and in accord with Section 18.14. The part and paragraph headings used in this ENA are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this ENA.

18.8. Waivers and Amendments

All waivers of the provisions of this ENA must be in writing and signed by the appropriate officials/authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate officials/authorities of the City and the Preferred Proposer.

18.9. Counterparts

This ENA may be executed in counterparts, each of which, after all the Parties hereto have signed this ENA, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

18.10. Successors

This ENA shall be binding upon and shall inure to the benefit of the successors of each of the Parties hereto.

18.11. Severability

In the event any section or portion of this ENA shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this ENA.

18.12. Time is of the Essence

Time is of the essence for each of the Parties' obligations under this ENA.

18.13. Assignment

This ENA shall not be assignable without the prior written consent of the City, who shall have the sole discretion to consent or not to consent to any proposed assignment. Any attempted assignment without the approval of the City shall be void.

18.14. Construction

The provisions of this ENA should be liberally construed to effectuate its purposes. The language of all parts of this ENA shall be construed simply according to its plain meaning and shall not be construed for or against either Party, as each Party has participated in the drafting of this document and had the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

18.15. Several Obligations

Except where specifically stated in this ENA to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this ENA shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this ENA.

18.16. Attorneys' Fees

If any legal proceeding (lawsuit, arbitration, etc.), including an action for declaratory relief, is brought to enforce or interpret the provisions of this ENA, the prevailing Party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the Parties to fully compensate for all attorney fees, paralegal fees, costs and expenses paid or incurred in good faith by the prevailing Party.

18.17. Authority

The individuals executing this ENA represent and warrant that they have the authority to enter into this ENA and to perform all acts required by this ENA, and that the consent, approval or execution of or by any third-party is not required to legally bind either Party to the terms and conditions of this ENA.

18.18. Survival

The provisions of this Section 18 and Sections 3, 6.3, 14 and 16.3 shall survive the termination of this Agreement.

18.19. Entire Agreement

This ENA contains the entire understanding and agreement of the Parties, and supersedes all prior agreements and understandings, oral and written, between the Parties. There have been no binding promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature, except as stated in this ENA. This ENA may be altered, amended or modified only by an instrument in writing, executed by the Parties to this ENA and by no other means. Each Party waives its future right to claim, contest or assert that this ENA was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and the Preferred Proposer have signed this ENA on the date first written above.

The City:

CITY OF LONG BEACH, acting by and through its City Council

By: T.B.M.L. EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.
Patrick H. West
City Manager Assistant City Manager

Dated: 12/19/14

APPROVED AS TO FORM
12.19, 2014
CHARLES PARKIN, City Attorney
By: [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

The Port:

CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners

By: [Signature]
Jon Slangerup
Chief Executive Officer

Dated: 12/18/14

APPROVED AS TO FORM
12/18, 2014
CHARLES PARKIN, City Attorney
By: [Signature]
PRINCIPAL DEPUTY CITY ATTORNEY

The Preferred Proposer:

PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a Delaware limited liability company

By: [Signature]
S. MARKS

Dated: 12/19/2014

EXHIBIT A
PERFORMANCE MILESTONES

Performance Milestone	Completion Date (no later than)
Temporary Access Agreement: The Preferred Proposer must sign an agreement to gain temporary access to the Project Site. Agreement should include a schedule showing when the Preferred Proposer intends to access and work on site during the ENA period.	2 weeks from Effective Date
Draft Community Outreach Plan: The Preferred Proposer shall provide the City with a draft Community Outreach Plan for review and comment by the City.	2 weeks from Effective Date
Regulatory Approval Strategy: The Preferred Proposer shall submit to City a written basis upon which the Preferred Proposer will obtain required regulatory approvals.	2 weeks from Effective Date
Community Outreach Plan: The Preferred Proposer and the City shall agree upon a Community Outreach Plan for implementation during the Negotiating Period.	8 weeks from Effective Date
Draft Term Sheet: The City will provide the Preferred Proposer with draft Term Sheet(s) for the Agreements.	8 weeks from Effective Date
Preferred Proposer Due Diligence: The Preferred Proposer must complete Project Site due diligence, including review and approval of: (i) Preliminary Title Report and Underlying Documents; (ii) soils condition, both environmental and geotechnical; and (iii) other additional studies deemed necessary to satisfy the Preferred Proposer as to the condition of the Project Site, the allocation of risk, environmental review and Project Site Plan Review.	8 weeks from Effective Date
Draft Basis of Design Submittal: The Preferred Proposer to develop a draft Basis of Design document developed in close consultation with the City.	8 weeks from Effective Date
Financing Documents, if required: The Preferred Proposer prepares documents for the financing structure and submits them to the City.	8 weeks from Effective Date
Basis of Design Approval: The City to approve a Basis of Design document developed by the Preferred Proposer in close consultation with the City.	10 weeks from Effective Date
Pre-Application Meeting: The Preferred Proposer to meet with the City staff to review project plans in order to streamline internal Project Site Plan Review process.	12 weeks from Effective Date
Execute Term Sheet: The City and the Preferred Proposer to negotiate to completion and execute the Term Sheet.	14 weeks from Effective Date
Approval of Non-Profit Financing Corporation, if required: The City approves the financing structure.	16 weeks from Effective Date
Project Site Plan Review Submittal: Upon completion of Due Diligence, the Preferred Proposer shall (i) develop a Project Site master plan for the Project; (ii) develop a design of the Civic Center and other Private Development to be built in first phase; (iii) a draft Tentative Tract Map (as needed), and (iv) submit for Project Site Plan Review in accordance with Chapter 21.25 of the Municipal Code.	16 weeks from Effective Date
Complete Initial Study: As the lead agency, the City shall prepare an Initial Study that will determine the level of analysis required to obtain CEQA clearance.	28 weeks from Effective Date
Completion of Site Plan Review: The Preferred Proposer to coordinate with the internal City staff to respond to requests for additional information in order to complete the Project Site Plan Review process in timely manner.	28 weeks from Effective Date
Draft Global Executory Agreement: The City to provide the Preferred Proposer with first draft of the Global Executory Agreement including form of Closing Documents.	28 weeks from Effective Date

Performance Milestone	Completion Date (no later than)
Schematic Design Submittal: The Preferred Proposer submits a complete Schematic Design package for review by the City.	28 weeks from Effective Date
Schematic Design Approval: The City will review and comment on the submittal to guide Detailed Design by the Preferred Proposer.	30 weeks from Effective Date
Execute Global Executory Agreement: The City and the Preferred Proposer execute the final version of the Global Executory Agreement.	8 weeks from PC Approval
Preliminary Official Statement, if required: The Preferred Proposer to submit the Preliminary Official Statement ("POS") and any subordinated debt disclosure documents to the City.	44 weeks from Effective Date
Approval of POS, if required: The City approves the POS, financing structure and other offering documents and authorizes transaction.	48 weeks from Effective Date
Fixed Price Proposal and Detailed Design Submittal: The Preferred Proposer to submit to the City a fixed price proposal and Detailed Design of Civic Center to be used in negotiation of the Agreements, including: <ul style="list-style-type: none"> • Updated full financial model • Fixed price design-build proposal • Detailed design package • Detailed construction schedule 	12 months from Effective Date
Planning Commission (PC) Approval: The City and the Preferred Proposer to coordinate public hearing by Planning Commission to consider certifying CEQA, approve the Tentative Tract Map (as needed), and approving the entitlements.	8 weeks from Completion of Site Plan Review
Preferred Proposer Execution of the Closing Documents: The Preferred Proposer to execute the Closing Documents (as applicable).	8 weeks from PC Approval
City Council and BHC Hearing: The City to coordinate a hearing before the City Council and the BHC to confirm PC approval (as necessary) and approve execution of the Closing Documents.	8 weeks from PC Approval
City Execution of the Agreements: The City to execute the Closing Documents.	1 week from City Council Hearing
Total Commercial Close Timeline:	17 months
Financial Close: Execution of required financing documents.	4 weeks after City Execution of Closing Documents

EXHIBIT B

FORM OF ACCESS AGREEMENT

ACCESS AND DUE DILIGENCE AGREEMENT

This Access and Due Diligence Agreement ("Agreement") is entered into as of the day of _____, 20__ (the "Effective Date"), by and between the CITY OF LONG BEACH ("City"), and _____, a _____ ("Preferred Proposer"), with respect to the following facts and intentions:

A. The City and the Preferred Proposer have executed that certain Exclusive Negotiating Agreement dated as of _____ ("ENA") pursuant to which the City and the Preferred Proposer shall negotiate the terms and conditions of the future development of certain real property defined in the ENA as the "Project Site".

B. The "Property" which is the subject of this Agreement shall be the "Project Site" as defined in the ENA.

C. The City has agreed to permit the Preferred Proposer to enter the Property to examine, inspect and perform investigations on the Property to evaluate the physical and environmental condition of the Property and to perform other investigations and inspections, but only on the terms and conditions set forth below.

NOW, THEREFORE, The City and the Preferred Proposer agree as follows:

1. **Investigation Period.** For purposes of this Agreement, the term "Investigation Period" means the period from the Effective Date until the earlier of (i) receipt by the City of written notice from the Preferred Proposer to the City terminating this Agreement, which decision shall be made in the Preferred Proposer's sole discretion, (ii) the Preferred Proposer's completion of the Investigations (as defined below), as determined by the Preferred Proposer in its sole discretion, (iii) the termination of the ENA, (iv) the date of written notice from the City to the Preferred Proposer terminating this Agreement, which notice may be given in the City's sole discretion or, (v) the closing of the transaction contemplated pursuant to the ENA.

2. **Limited Access.** The City grants a license to the Preferred Proposer and its agents, contractors, engineers, surveyors, attorneys, and employees (collectively, "Consultants") during the Investigation Period (as defined below) to enter onto the Property and make such reasonable investigations, studies and tests as the Preferred Proposer deems necessary or advisable. The Preferred Proposer shall conduct all such investigations, studies and tests strictly in accordance with the following procedures:

2.1. To conduct and make any and all customary studies, tests, examinations and inspections, or investigations (collectively, the "Inspections") of or concerning the Property (including without limitation, engineering, environmental, and feasibility studies and surveys, including topographical surveys); provided, however, that the Preferred Proposer shall not contact or test groundwater without the specific written consent of the City;

2.2. To confirm any and all matters which the Preferred Proposer may reasonably desire to confirm with respect to the Property;

2.3. To ascertain and confirm the suitability of the Property for the Preferred

Proposer's intended use; and

2.4. To review all due diligence materials, if any, with respect to the Property as delivered or made available by the City to the Preferred Proposer. The Preferred Proposer agrees to immediately deliver the foregoing due diligence materials and other Confidential Information (as defined below) to the City upon the termination of this Agreement.

2.5. The Preferred Proposer Investigations shall be conducted during normal business hours, unless the City otherwise approves in writing, which approval may be given or withheld in the City's sole discretion. The Preferred Proposer shall provide to the City a notice (which may be sent via email) of the Preferred Proposer's intent to enter the Property at least three (3) days prior to the intended date of entry, which notice shall include a general description of the activities to be conducted.

2.6. A representative of the City shall have the right, but not the obligation, to be present during the Preferred Proposer Investigations.

2.7. Neither the Preferred Proposer nor its Consultants shall take any action which interferes with the use, occupancy or enjoyment rights of any tenants or occupants of the Property or of such tenant's or occupant's employees, contractors, customers or guests. Neither the Preferred Proposer nor the Preferred Proposer Representatives shall injure or otherwise cause bodily harm to Seller, or the guests, agents, invitees, contractors and employees or any Agreementnt or occupant of the Property or their guests or invitees.

3. Indemnity by The Preferred Proposer. The Preferred Proposer shall indemnify, hold harmless and, if requested by the City (in the City's sole discretion), defend (with counsel approved by the City) the City, together with the City's affiliates, parent and subsidiary entities, successors, assigns, partners, managers, employees, officers, elected officials, counsel, representatives, and agents (collectively, including the City, "the City's Indemnified Parties"), from and against any and all damages, liabilities, losses, demands, actions, causes of action, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, including the cost of in-house counsel and appeals) (collectively, "Losses") arising from or related to the Preferred Proposer's or any of its Consultants entry onto the Property, and any Inspections or other matters performed by or for the Preferred Proposer with respect to the Property.

4. Confidentiality. All information made available by the City to the Preferred Proposer or its Consultants in accordance with this Agreement, all information obtained by the Preferred Proposer or its Consultants in the course of its Inspections and the results of all tests, surveys, studies, investigations and assessments conducted or obtained by the Preferred Proposer (collectively, "Confidential Information") shall be treated as confidential information by the Preferred Proposer, and the Preferred Proposer shall not divulge or disclose, and shall cause its Consultants to not divulge or disclose, such information to any third parties, except (a) as required by law, or (b) to the Preferred Proposer's lenders, attorneys and accountants who need to know such information for the sole purpose of evaluating the Preferred Proposer's intended use of the Property and who are advised not to divulge such information. If required by law to disclose any Confidential Information, the Preferred Proposer shall promptly deliver written notice to The City (at the address listed below) of such fact. Within two (2) business days following the City's written request, the Preferred Proposer shall provide the City with the names of the persons to whom any Confidential Information has been communicated in accordance with this paragraph. The Preferred Proposer shall be liable for any breach of this paragraph by it or any of its Consultants. All Confidential Information shall be held by the Preferred Proposer in strict confidence solely for the purpose of assisting the Preferred Proposer in assessing the suitability of the Property for the Preferred Proposer's intended use. In providing any such Confidential Information to the Preferred Proposer, the Preferred Proposer acknowledges and agrees that the City makes no representation or warranty, express, written, oral, statutory, or implied, and all such representations and warranties are hereby expressly excluded. The Preferred Proposer shall not in any way be entitled to rely

upon the accuracy of such information. Notwithstanding anything in this Agreement to the contrary, the Preferred Proposer agrees that the covenants, restrictions and agreements of the Preferred Proposer contained in any confidentiality agreement executed by the Preferred Proposer prior hereto shall survive the execution of this Agreement and shall not be superseded hereby.

5. Property Documents. The City has previously made, or will make, available to the Preferred Proposer and its Consultants for their review, certain items and information pertaining to the Property (collectively referred to as the "Property Documents"). The Property Documents have been and shall be made available (to the extent made available) to Preferred Proposer without representation or warranty by, or recourse against, the City, it being agreed that the Preferred Proposer shall not rely on such documents and shall independently verify the truth, accuracy and completeness of said information and/or items contained therein. The Property Documents shall not include any internal memoranda or correspondence of the City relating to the Preferred Proposer's intended use of the Property (i.e., strategy or negotiation oriented memoranda or correspondence), documents which constitute attorney work product or which are subject to the attorney-client privilege.

6. Investigation Documents. On or prior to the expiration of the Investigation Period pursuant to Section 1, the Preferred Proposer agrees to deliver to the City, without any representation or warranty whatsoever, copies of any and all reports, studies, environmental audits, environmental assessments, or other documents or information prepared by or for the Preferred Proposer or obtained by or for the Preferred Proposer with respect to the Property, at no cost or expense to the City. Any such reports, studies, environmental audits, environmental assessments, or other documents or information prepared by the Preferred Proposer or its Consultants shall contain language, to be pre-approved by the City in advance, enabling the City to rely on the contents of same. Notwithstanding the foregoing, the Preferred Proposer shall not be required to deliver to City any information, reports or analyses that are developed by the Preferred Proposer based on information it obtains from its due diligence of the Property and which contain financial, marketing, land planning or trade secret information or other information that is proprietary or confidential to the Preferred Proposer.

7. Restrictions. Notwithstanding anything in this Agreement to the contrary, the City shall have the right in its sole and absolute discretion, without limitation, to disapprove any and all entries, surveys, tests (including, without limitation, a Phase II environmental study of the Property), investigations and other matters that in the City's sole judgment could result in any injury to the Property or breach of any contract, or expose the City to any Losses or violation of applicable law, or otherwise adversely affect the Property or the City's interest therein, and the Preferred Proposer shall obtain the City's prior written consent to any such entries, surveys, tests, investigations or other matters that are invasive on the Property. The Preferred Proposer shall use best efforts to minimize disruption to operations at the Property in connection with the Preferred Proposer's or its Consultants' activities pursuant to this Agreement. No consent by the the City to any such activity shall be deemed to constitute a waiver by the City or assumption of liability or risk by the City. The Preferred Proposer hereby agrees to promptly restore, at the Preferred Proposer's sole cost and expense, the Property to the same condition existing immediately prior to the Preferred Proposer's exercise of its rights pursuant to this Agreement.

8. Insurance. The City shall have no liability, responsibility or duty of care to the Preferred Proposer or to any of its Consultants on the Property. The Preferred Proposer acknowledges that the Preferred Proposer and its Consultants enter and occupy the Property at their own risk. Prior to accessing the Property pursuant to this Agreement, the Preferred Proposer shall maintain and cause its Consultants to maintain the following insurance coverages:

8.1. Workers Compensation Insurance. Insurance to protect the Contractor and its subcontractors from all claims under California Workers Compensation and Employers Liability Acts, including Long Shoreman's and Harbor Workers Act. Such coverage shall be

maintained, in the type and amount, in strict compliance with all applicable State and Federal statutes and regulations.

8.2. Commercial General Liability Insurance. Commercial general liability insurance for bodily injury (including death), personal injury, property damage, owned and non-owned equipment, blanket contractual liability, completed operations, explosion, collapse, underground excavation and removal of lateral support covering Contractor's performance, which coverage shall be at least as broad as Insurance Services Office (ISO) Occurrence form CG 0001, and with a limit in an amount of not less than Two Million Dollars (\$2,000,000). If insurance with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

8.3. Automobile Liability Insurance. Insurance to protect against claims arising from death, bodily or personal injury, or damage to properties resulting from actions, failures to act, operations of equipment of the insured, or by its employees, agents, and consultants or by anyone directly or indirectly employed by the insured. The amount of insurance shall not be less than two Million Dollars (\$2,000,000) combined single limit per acts of coverage applied to bodily and personal injury and property damage. Coverage shall include all owned, non-owned and hired vehicles.

8.4. General Provisions. The above insurance coverages shall be subject to the City's reasonable approval. The City shall be provided with copies of the certificate of insurance evidencing the above insurance coverages. The City shall be named as the additional insured on the commercial general liability and automobile liability insurance policies. Each policy of insurance shall require thirty (30) days advance written notice to the City of any change or cancellation of insured. The above insurance coverage shall be primary as respects the interest of the additional insured, include a cross liability and severability of interest endorsement, a waiver of any and all transfer rights of recovery (subrogation) against the additional insured. In addition, the above insurance requirements shall not limit the indemnification obligations of the Preferred Proposer.

9. Purchaser Actions; Comply with Law. The Preferred Proposer shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Inspections or other matters performed by the Preferred Proposer with respect to the Property, and all equipment, materials and substances generated, used or brought onto the Property pose no material threat to the safety of persons or the environment and cause no damage to the Property or other property of the City or other persons. The Preferred Proposer shall conduct itself on the Property according to, and all of the Preferred Proposer's tests, inspections, examinations and studies performed pursuant to this Agreement shall be performed in compliance with, all applicable laws and regulations. Without limiting the previous sentence, the Preferred Proposer shall deal with any hazardous materials and substances at the Property in such a manner that fully complies with all applicable environmental laws and regulations.

10. Termination. This Agreement shall automatically terminate without further notice or execution of any documentation by the City and/or the Preferred Proposer upon the date of termination of the ENA (the "Termination Date"). The term "Investigation Period" shall mean the date commencing with the Effective Date and ending on the earlier of (a) the Termination Date or (b) the date this Agreement is terminated by the City in accordance with this paragraph. Notwithstanding the foregoing to the contrary, the City may terminate this Agreement at any time for any reason (or for no reason whatsoever) in the City's sole discretion by delivering written notice to the Preferred Proposer (at the address above).

11. No Additional Rights Granted. The Preferred Proposer acknowledges and agrees that the City's execution of this Agreement shall in no way constitute a binding contract related to the Property or an obligation to enter into or to negotiate the Agreements (as defined in

the ENA), and no such agreement shall exist unless and until a separate contract has been executed by the City and the Preferred Proposer. The Preferred Proposer acknowledges it has no interest in the Property whatsoever.

12. General Provisoins.

12.1. Applicable law; Venue. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The Superior Court of the County of Los Angeles shall be the site and have jurisdiction for the resolution of all such actions.

12.2. Notices, Demands and Communications Between the Parties. Written notices, demands, and communications between the City and the Preferred Proposer shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery; or, (iii) by mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To City: Patrick H. West
Office of the City Manager
City of Long Beach
333 West Ocean Blvd., 13th Floor
Long Beach, CA 90802

With copy to: J. Charles Parkin
Office of the City Attorney
333 West Ocean Blvd., 13th Floor
Long Beach, CA 90802

To the Preferred Proposer:

With copy to:

Notices personally delivered, sent by United States mail or delivered by document delivery service shall be deemed effective upon receipt. Notices sent solely by mail in the manner provided above shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

12.3. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and in accord with paragraph 12.9, below. The part and paragraph headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

12.4. Counterparts. This Agreement may be executed in counterparts, each of which, after all the Parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

12.5. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of each of the Parties hereto.

12.6. Severability. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may

be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

12.7. Time is of the Essence. Time is of the essence for each of the Parties' obligations under this Agreement.

12.8. Assignment. This Agreement shall not be assignable without the prior written consent of the City, who shall have the sole discretion to consent or not to consent to any proposed assignment. Any attempted assignment without the approval of the City shall be void.

12.9. Construction. The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against either Party, as each Party has participated in the drafting of this document and had the opportunity to have their counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

12.10. Several Obligations. Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

12.11. Attorneys' Fees. If any legal proceeding (lawsuit, arbitration, etc.), including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of Parties to fully compensate for all attorney fees, paralegal fees, costs and expenses paid or incurred in good faith by the prevailing Party.

12.12. Authority. The individuals executing this Agreement represent and warrant that they have the authority to enter into this Agreement and to perform all acts required by this Agreement, and that the consent, approval or execution of or by any third-party is not required to legally bind either Party to the terms and conditions of this Agreement.

12.13. Survival. The provisions of this Section and Sections 3, 4, 6 and 8 shall survive the termination of this Agreement.

12.14. Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties, and supersedes all prior agreements and understandings, oral and written, between the Parties. There have been no binding promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature, except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

IN WITNESS WHEREOF, the City and the Preferred Proposer have entered into this Agreement as of the date first written above.

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