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TRANSACTION TERMS SHEET FOR CIVIC CENTER

This Transaction Terms Sheet for Civic Center (this “**Terms Sheet**”) is executed as of July 28, 2015, 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 at its meeting on December 9, 2014, the CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners (the “**Port**”), pursuant to a minute order adopted by the Board of Harbor Commissioners at its meeting on July 27, 2015, and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a Delaware limited liability company (the “**Project Company**”), in accordance with that certain Exclusive Negotiation Agreement dated January 5, 2015 executed by and among the parties hereto and as amended from time to time (the “**ENA**”), and with reference to that certain Request for Proposals No. CM-14-040 for the Long Beach Civic Center (the “**RFP**”) and to the proposal (“**Preferred Proposal**”) submitted by Plenary Edgemoor Civic Partners as supplemented through subsequent written requests for clarification and written responses thereto culminating in the selection by the City and the Port of the Project Company as the Preferred Proposer on December 9, 2014.

The following constitutes the terms and conditions pursuant to which the City, as lessor, will enter into a long term Ground Lease (the “**Ground Lease**”) with [•]¹, as lessee, and pursuant to which the City and the Port will enter into a project agreement (the “**Project Agreement**”) with the Project Company (and/or its affiliate)² to design, build, finance, operate and maintain a new City Hall Building, a new Main Library and a revitalized Lincoln Park (collectively, the “**City Facilities**”), together with the City’s portion of certain Shared Facilities including the Loading Docks & Ramps, a Central Utility Plant & Utility Yard, a Civic Plaza and Shared Rooms on certain real property owned by the City to be more particularly described in the Project Agreement (the “**City Site**”) ³ and, subject to easements or other property rights, on the Port Site (defined below). Effective upon Project Closing, the City will enter into a long-term space leaseback (the “**Space Lease**”) in respect of [all or part of] the City Facilities between the [•]⁴, as landlord, and the City, as tenant, for use and occupancy of those Facilities.

The Project Agreement will also provide terms on which the Project Company will design, build and finance (construction only)⁵ a new Port Headquarters Building (including nearby underground parking structure) (i.e. the “**Port Facilities**”) that in conjunction with the City Facilities comprise the “**Project**”. The Port Facilities will be located on a portion of the Project Site to be owned by the Port and to be more particularly described in the Project Agreement (the “**Port Site**”) ⁶ and, subject to easements or other property rights, the City Site.

¹ PECP Note: the counterparty to the Ground Lease and the Space Lease will be either (a) the Project Company (under a COPs financing); or (b) the Joint Powers Authority (under a lease revenue bond financing).

² PECP Note: final corporate structure is still under review subject to further financial, legal and tax due diligence.

³ PECP Note: the Port’s underground parking (which forms part of the Port Facilities) will be located underneath the Civic Plaza. Also, the shared loading dock is located underneath the City Hall Building and the Central Utility Plant & Utility Yard is located beneath the Port headquarters building so easements or some similar mechanism will be required to define the Port Site and the City Site.

⁴ PECP Note: See footnote 1.

⁵ PECP Note: ongoing discussions with the Port about long-term O&M and lifecycle obligations.

⁶ PECP Note: See footnote 3.

The City and the Project Company will also negotiate one or more disposition and development agreements (the “**Conveyance Agreement(s)**”) for the disposition to the Project Company (or affiliate) of two parcels of certain real property owned by the City to be more particularly described in the Project Agreement (the “**Pacific Site**” and the “**Mid-Block Site**”, and together the “**Private Development Sites**”).

In addition, this Terms Sheet sets forth the terms of the proposed financing of construction of the Project pursuant to a long-term, tax-exempt financing for the City Facilities and a short-term construction financing for the Port Facilities. The Transaction Documents will be negotiated and finalized pursuant to the ENA. The Transaction Documents shall be subject to approval by the City and the Project Company. This Terms Sheet is intended to clarify the structure and major terms and conditions of the Project.

The proposed transaction structure for the Project shall be set out in a structure diagram to be mutually agreed upon by the parties and attached to the Project Agreement (the “**Transaction Structure**”).

The Project Agreement will set out rights, roles and responsibilities of the Port and the City in relation to their dealings with the Project Company under the Project Agreement and in relation to the Port Facilities and the City Facilities in accordance with the framework set out in Appendix 5 (*Port & City Rights Framework*). The Project Agreement will also provide for the payment of the costs associated with the City Facilities, Port Facilities and Shared Facilities in accordance with the framework set out in Appendix 6 (*Shared Facilities Framework*).

The Project Agreement may be executed in advance of the other Transaction Documents and the Financing Documents, and will specify the conditions precedent to the execution and/or effectiveness of the other Transaction Documents and the Financing Documents, including without limitation the Ground Lease and the Space Lease. Upon satisfaction of such conditions and the Project Closing, the Transaction Documents and the Financing Documents shall become effective and the City Site and the Port Site shall be made available by the City to the Project Company in accordance with the Ground Lease and other Transaction Documents in order to perform the Contract Services. The Project Agreement will set forth the terms, and in some cases (as Exhibits) the form, of certain Transaction Documents to be effective as of the Project Closing. The parties acknowledge that the Contract Date and Project Closing could potentially occur simultaneously as the result of the satisfaction of the conditions to Project Closing on or before the Contract Date.

This Term Sheet does not constitute a binding agreement among/between the parties, but rather represents the intent of the parties and the status of the transaction as of the date hereof⁷. Unless and until the Transaction Documents are executed by and among the parties thereto, the rights and obligations of the parties shall be limited to those set forth in the ENA. Further, the parties agree that no obligation to enter into the Transaction Documents shall exist and neither the Project nor the Transaction Documents shall be deemed to be approved until after (i) the City and Port have approved such documents, (ii) the proposed Project is reviewed in accordance with

⁷ PECP Note: the provisions set out in this Term Sheet will also be subject to review and comment by lenders' counsel.

the requirements of CEQA, and (iii) any additional conditions or changes to the Project based on the CEQA review have been resolved in a manner acceptable to the City, the Port and the Project Company.

1. The Project Agreement – General.

1.1 Parties. The parties to the Project Agreement will be the City, the Port and the Project Company.

1.2 Term. The term of the Project Agreement shall commence on the date of its execution (“Contract Date”) and continue until the Expiration Date or, if the Project Agreement is earlier terminated by either party in accordance with their respective termination rights under the Project Agreement, the Termination Date.

1.3 Coverage. The Project Agreement shall address, among other things (i) plan submittal and approval and the satisfaction of various other conditions to the Project Closing, (ii) the Project Closing, including the execution of the Ground Lease, the Space Lease, the Financing Documents and other agreements, (iii) the obligations of the Project Company regarding design, construction, financing and completion of the Project, and (iv) the obligations of the Project Company to operate and maintain the City Facilities and the Shared Facilities over the Operating Period, including the Broadway Garage and the Lincoln Garage (excluding any revenue collection systems or associated gates and access systems).

1.4 Project Company Obligations. The Project Company shall have the obligation to design, construct, finance, operate and maintain the City Facilities and the Shared Facilities. The Project Company shall have the obligation to design, construct and finance (construction only) the Port Facilities⁸. The Project Company shall have the right to perform its obligations under the Project Agreement by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations thereunder to one or more subcontractors, provided that such subcontracts shall not release or otherwise affect the liability of the Project Company to the City under the Project Agreement. The terms of the DB Contract and the FM Contract shall be subject to City approval, not to be unreasonably withheld. The Project Company’s obligations in respect of the Port Facilities under the Project Agreement will expire upon Final Completion of the Port Facilities, except to extent of any ongoing obligations on the part of the Project Company which will survive such expiration as agreed in the Project Agreement. [The Project Company’s construction obligations under the Project Agreement shall be guaranteed by the DB Contractor pursuant to a separate completion guaranty by the DB Contractor (the “DB Completion Guaranty”). The Project Company’s operations and maintenance obligations under the Project Agreement shall be guaranteed by the FM Contractor pursuant to a separate performance guaranty by the FM Contractor (the “FM Performance Guaranty”).] [PECP Note: open issue⁹]

1.5 Project Financing. The Project will be financed as follows:

⁸ PECP Note: See footnote 5.

⁹ PECP Note: the rights of the City in respect of the security packages provided by the DB Contractor and the FM Contractor will be regulated by the direct agreements.

1.5.1 City Facilities Financing.

(a) The City Facilities (and the City's portion of the Shared Facilities) will be financed with the City Facilities Financing comprising a combination of (i) equity capital provided by the Equity Members and (ii) tax-exempt senior lease revenue bonds or certificates of participation, the terms of which will be structured by the Project Company and the City in accordance with the Transaction Structure.

(b) The Equity Ratio in respect of the City Facilities Financing shall be greater than or equal to [fifteen] percent ([15]%).

(c) The Project Company will be required to provide evidence to the City as a condition to the City Facilities Financial Close that all Deferred Equity Amounts in respect of the City Facilities Financing are supported by irrevocable, on-demand letter(s) of credit issued by bank(s) or financial institution(s) rated single A or higher by Standard & Poor's (or equivalent rating from Moody's, Fitch or DBRS). Should there be any degradation of the bank(s) or financial institution(s) credit rating below single A by Standard & Poor's (or equivalent rating from Moody's, Fitch or DBRS), the Project Company must replace the irrevocable, on-demand letter(s) of credit within 30 days with irrevocable, on-demand letter(s) of credit issued by bank(s) or financial institution(s) rated Single A or higher by Standard & Poor's (or equivalent rating from Moody's, Fitch or DBRS), for the amount of the remaining Deferred Equity.

1.5.2 Port Facilities Construction Financing.

(a) The Port Facilities (and the Port's portion of the Shared Facilities) will be financed with the Port Facilities Construction Financing comprising short-term financing arranged by the Project Company.

(b) Project Company will provide construction management services in respect of the design and construction of the Port Facilities and financial management services in respect of the Port Facilities Construction Financing.

1.6 City Obligations. The City will have the obligation to:

(a) Demolish the Old Courthouse and deliver, free from Hazardous Substances and any obstructions (foundation systems, vaults, storage facilities, tunnels, etc.), the Old Courthouse Site so that it, and the rest of the City Site and the Port Site, can be made available to the Project Company to perform the Design-Build Work in accordance with the agreed schedule¹⁰ and otherwise achieve the construction milestones to be agreed and set out in the Project Agreement;

(b) Vacate the existing City Hall building and existing library and occupy the new City Hall Building and new Main Library (as the case may be) in

¹⁰ PECP Note: Demolition of Old Courthouse to be complete and Project Site made available by [June 1, 2016].

accordance with the agreed schedule once Occupancy Readiness of the relevant Facility is achieved;

(c) Not take or fail to take any of the following actions which negatively impact the value of the Private Development Sites:

- (i) Sell, lease or otherwise encumber any part of the sites;
- (ii) Introduce new, or exacerbate any existing, Hazardous Substance or otherwise contaminate any portion of the sites;
- (iii) Modify the zoning or take any action (or fail to take any action) that violates any law or regulation (including CEQA mitigation measures) governing the sites;
- (iv) Fail to properly maintain any part of the sites; or
- (v) Alter the physical conditions of the sites except as may be required to comply with the foregoing requirements,

And, subject to each party's right to terminate the Project Agreement for extended Other Relief Event under Section 5.3.4 (*Right of Termination for Extended Other Relief Event*), the City shall compensate the Project Company for diminution in the value of the Private Development Sites caused by a Relief Event or any act or omission of the City (in any capacity) between the date of this Terms Sheet and the date of conveyance of those sites to the Project Company (or its affiliate);

(d) Make the payments outlined in Section 2.1 (*Port Site Proceeds Amount*) and Section 2.2 (*Service Fee*); and

(e) Otherwise comply with its obligations under the Project Agreement.

1.7 Port Obligations. The Port will have the obligation to:

(a) Make the payment outlined in Section 2.3 (*Port Completion Payment*); and

(b) Otherwise comply with its obligations under the Transaction Documents.

1.8 Equity Interest and Transfer. Any equity sales, assignment or transfers with respect to the Project Agreement will be subject to the following restrictions:

(a) Plenary Group must maintain a controlling interest (equal to or greater than [51%] shareholding or limited liability company membership, a majority of seats and votes of the Board of Directors and a majority economic interest) in the

Project Company until the fifth anniversary of Final Completion of the Project, unless otherwise approved by the City in its absolute discretion;

(b) The Initial Equity Members must retain their investment until the first anniversary of Final Completion (but any Initial Equity Member may transfer its investment to any other Initial Equity Member prior to the first anniversary of Final Completion of the Project), unless otherwise approved by the City in its absolute discretion;

(c) The total number of unaffiliated shareholders or members of the Project Company shall not exceed five before the first anniversary of Final Completion of the Project or ten before the fifth anniversary of Final Completion of the Project, unless otherwise approved by the City in its absolute discretion; and

(d) Any equity sales/transfer, other than those permitted under subparagraphs (a) and (b) above, will be subject to the prior written consent of the City, such approval not to be unreasonably withheld or delayed.

In determining whether to give its consent to any sale, assignment or transfer under section 1.8(d) above, the City shall take into consideration the following factors: (i) the financial strength and integrity of the proposed transferee; (ii) the backgrounds and reputations of the proposed transferee (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on other projects); (iii) compliance with the City's conflict of interest requirements; and (iv) the ability of the Project Company to meet its obligations under the Project Agreement after the transfer.

The above restrictions on transfers do not apply in connection with the exercise of rights of the Senior Lenders under the Financing Documents in accordance with the Lenders' Direct Agreements.

1.9 Limitations on Assignment by Project Company. The Project Company shall not assign, transfer or otherwise dispose of any interest in the Project Agreement except:

(a) As security, substantially in a form approved by the City, acting reasonably, for any part of the Financing and provided the Senior Lenders enter into a Lenders' Direct Agreement;

(b) In connection with the exercise of rights of the Senior Lenders under the Financing Documents in accordance with the Lenders' Direct Agreement or the exercise by the City of its step-in rights under the Project Agreement; or

(c) Otherwise:

(1) Prior to the fifth anniversary of Final Completion of the Project, with the prior written consent of the City, which may be given or withheld in its absolute discretion; and

(2) After the fifth anniversary of Final Completion of the Project, with the prior written consent of the City, which will not be unreasonably withheld or delayed,

provided that in the case of a transfer or assignment under paragraphs (b) or (c) of this section, the transferee or assignee assumes all the obligations of the Project Company under the Project Agreement.

In determining whether to give its consent to any assignment, transfer or other disposition under section 1.9(c)(2) above, the City shall take into consideration the following factors: (i) the financial strength and integrity of the proposed transferee; (ii) the backgrounds and reputations of the proposed transferee (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on other projects); (iii) compliance with the City's conflict of interest requirements; and (iv) the ability of the Project Company to meet its obligations under the Project Agreement after the transfer.

1.10 Proprietary Approvals. The design of the Project shall comply with the draft Basis of Design ("**BOD**") dated April 24, 2015 and last updated with drawings dated July 9, 2015 for the City Hall and Port buildings and July 17, 2015 for the Library and Park (to be further updated and finalized with any agreed changes), which is intended to include the basic design principles, concepts and requirements for the Project.

The Project Company shall submit a series of design submittals, including plans and specifications during the preliminary design phase (which will include both schematic and design development), leading up to the Fixed Price Proposal, which shall either conform to the approved BOD or deviate from the BOD as mutually agreed by the Parties under the ENA. The plans and specifications included in the Fixed Price Proposal shall form the Technical Requirements under the Project Agreement, as negotiated by the Parties.

The Project Agreement will provide for a further series of design submittals by the Project Company, including design development documents, as well as final plans and specifications, each of which shall conform to the Technical Requirements and each of which shall be subject to review and approval by the City in its proprietary capacity under the Project Agreement. The Project Agreement will include a progressive approval regime whereby the most recently City approved plans and specifications will supersede previously approved plans and specifications including the BOD and the Technical Requirements. The Project Company shall comply with the FM Requirements.

1.11 Regulatory Approvals. The Project Company shall be responsible for compliance with CEQA and any identified mitigation measures relating thereto, as well as the approved Site Master Plan, any land use entitlements, building permits, and any other Regulatory Approvals related to the Project. The Project Company shall not be responsible for compliance with CEQA and any identified mitigation measures relating thereto, as well as the approved Site Master Plan, any land use entitlements, building permits, and any other Regulatory Approvals related to the demolition and removal of the Old Courthouse or the preparation of the Old Courthouse site to be made available to the Project Company.

1.12 Closing Conditions. In addition to review and approval of detailed design and the facilities management plan by the City (as part of the Fixed Price Proposal referred to in the ENA), as a prerequisite to the Project Closing, the Project Company shall obtain all land use entitlements necessary to commence the Design Build Work and consummate the Financing. In addition, the Project Company shall fulfill a variety of other conditions including without limitation (i) the provision of certain specified Required Insurances, (ii) the representation that there is no pending litigation with respect to the Project Company, (iii) the approval (not unreasonably withheld or delayed) by the City of the City Facilities Financial Model, the DB Contract, and the FM Contract, (iv) the approval (not unreasonably withheld or delayed) by the Port of the Port Facilities Financial Model, the DB Contract, and (v) other conditions as specified in the Project Agreement.

1.13 Construction Security. As a condition of the Project Closing, the Project Company shall show evidence that the Construction Security is in place.

1.13.1 City Facilities Construction Security. The City's rights in respect of the City Facilities Construction Security will be governed by the City Facilities DB Direct Agreement. The City will not exercise (a) any rights of step-in, novation or other similar rights it may have under the City Facilities DB Direct Agreement; or (b) any of its rights as a beneficiary under the City Facilities Construction Security until:

- (i) the Project Agreement has been terminated in whole or in part relating to the City Facilities;
- (ii) the expiration of mutually agreed upon specified time period under the City Facilities Lenders' DB Direct Agreement in which the City Facilities Collateral Agent is required or entitled to either exercise or procure the exercise of rights of step-in, novation, transfer or any similar right;
- (iii) if the City Facilities Collateral Agent has exercised or procured the exercise of rights of step-in, novation, transfer or any similar right, the date of any step-out or similar event (howsoever defined) under any of the City Facilities Lenders' DB Direct Agreements has occurred; or
- (iv) the City Facilities Collateral Agent expressly surrenders its rights to exercise to employ any aspect of the City Facilities Construction Security.

1.13.2 Port Facilities Construction Security. The Port's rights in respect of the Port Facilities Construction Security will be governed by the Port Facilities DB Direct Agreement. The Port will not exercise (a) any rights of step-in, novation or other similar rights it may have under the Port Facilities DB Direct Agreement; or (b) any of its rights as a beneficiary under the Port Facilities Construction Security until:

- (i) the Project Agreement has been terminated in whole or in part relating to the Port Facilities;
- (ii) the expiration of a mutually agreed upon specified time period under the Port Facilities Construction Lenders' DB Direct Agreement in which the Port Facilities

Collateral Agent is required or entitled to either exercise or procure the exercise of rights of step-in, novation, transfer or any similar right;

(iii) if the Port Facilities Collateral Agent has exercised or procured the exercise of rights of step-in, novation, transfer or any similar right, the date of any step-out or similar event (howsoever defined) under any of the Port Facilities Construction Lenders' DB Direct Agreements has occurred; or

(iv) the Port Facilities Collateral Agent expressly surrenders its rights to employ or exercise any aspect of the Port Facilities Construction Security.

1.14 Project Closing Procedures. Execution and delivery of the closing documents shall be accomplished through a title company escrow, or other mutually agreed upon closing procedure, upon satisfaction of all closing conditions in accordance with the provisions of the Project Agreement. The Project Company shall pay all title premiums, transfer taxes (if any) and other third party costs of the Project Closing, including City Transaction Costs (in accordance with and as defined in the ENA).

1.15 Site. Access to, and possession of, the City Site and the Port Site shall be made available to the Project Company free and clear of liens and encumbrances, other than "Permitted Exceptions" to be agreed upon through a title review and approval process. The City Site and the Port Site shall be made available to the Project Company as of the Project Closing date in order for the Project Company to provide the Contract Services. The City shall convey to the Project Company for the limited purposes of access and construction a short-term license to enter and use the Port Site.

1.16 Hazardous Substances. Except as otherwise provided in the Project Agreement, the Project Company shall be responsible at its cost to remediate any Project Company Hazardous Substances on or under the City Site or the Port Site.

1.17 Defeasance of Existing Bonds. A private placement municipal bond and associated lease agreements were entered into by the City with Bank of America on August 1, 2010. The bond structure includes a lien on the existing City Hall building. As part of the Project, the Project Company shall defease the existing bonds on or before occupancy of the new City Hall Building. If the Occupancy Date of the City Hall Building occurs on a date that differs from an Existing Lease Payment Date, the balance of the principal and interest to be defeased by Project Company with respect to the First Project Company Existing Lease Payment is equivalent to the proportional number of days between the Occupancy Date of the City Hall Building and the next Existing Lease Payment Date compared to the number of days between the Existing Lease Payment Date prior to the Occupancy Date of the City Hall Building and the next Existing Lease Payment Date, calculated on the basis of a 360-day year consisting of twelve 30-day months. [PECP Note: PECP and City, along with respective advisors, are continuing to evaluate the optimal solution for the defeasance of the existing bonds, including raising defeasance funds at Project Closing or raising defeasance funds at or prior to occupancy of the new City Hall Building. Factors to be taken into account in the evaluation include the impact on (a) the amount of interest paid during construction; (b) future refinancing flexibility; and (c) interest rate risk.]

1.18 Prevailing Wage.

(a) The Project Company and all contractors and subcontractors of the Project Company shall pay not less than prevailing wage with respect to performance of the Contract Services.

(b) The Project Company shall cause the Design-Build Contractor to enter into a Project Labor Agreement with the unions anticipated to participate in the Project, and the Project Company shall bear any costs related to, or a result of, the Project Labor Agreement, including any administrative costs.

1.19 Construction of Improvements. Promptly after Project Closing, the Project Company shall commence and complete the Design-Build Work in accordance with an agreed upon schedule of performance and as part of the Technical Requirements to be contained in the Project Agreement. The Project Company's obligations will be subject to Relief Events provisions as described in this Terms Sheet and set forth in the Project Agreement. The City shall provide, at the cost of the Project Company, electricity and water to the Project Site during the construction period and the Project Company shall complete at its cost the infrastructure and other off-site improvements described in the Technical Requirements, or subsequently approved construction documents, in accordance with the schedule of performance.

1.20 Construction Standards and Warranties. The Project Company shall monitor and supervise construction of the Project in accordance with customary best practices, which shall be identified with specificity in the Project Agreement. In addition, the Project Company shall obtain for its own benefit and for the benefit of the FM Contractor (in respect of the City Facilities) and for the benefit of the Port (in respect of the Port Facilities) from the DB Contractor, subcontractors, and suppliers specific warranties and guarantees of workmanship and materials in accordance with the Project Agreement¹¹.

1.21 Change Orders. Subject to the other provisions in the Term Sheet, the Project Agreement shall include provisions for the initiation and payment of change orders for the Project, including without limitation unilateral change orders in respect of the Port Facilities by the Port (including its Board of Harbor Commissioners or Chief Executive, as applicable) and the financing by Project Company of change orders initiated by the Port.

[**PECP Note:** Project Agreement to include provisions for a Design Requirement Change Allowance Account and an FF&E Allowance Account].

1.22 Certain Design-Build Period Obligations subject to Availability of Funds. The Project Company shall have no obligation to perform any work or incur any increased costs of performing the Design-Build Work as a result of design requirement changes by the City and Relief Events for which the Project Company is entitled to compensation relief from the City, unless and until: (a) subject to Paragraph 1.21 above, the parties have agreed upon a scope, price and schedule for the performance of the additional work; and (b) the City has provided written

¹¹ PECP Note: It is noted that the Port has specific warranty requirements which are yet to be provided but which will be set out in the Project Agreement.

assurances acceptable to the Project Company (acting reasonably), that funds necessary to pay the cost of performing such work will be available in the amounts agreed.

1.23 Monitoring of Work. Throughout the period of construction (at any reasonable time and with reasonable notice), the City and the Port, as applicable (each in its proprietary capacity) shall have the right through its representatives and agents to enter the City Site and Port Site, monitor the work and investigate any irregularities in the work or other issues relating to construction. During any such site visit, the City, the Port and all representatives of the City and the Port shall comply with the Project Company's site-specific health and safety plan and shall not interfere with the Project Company's performance of the Design-Build Work. The costs of any such monitoring or investigation shall be borne by the City or the Port, as applicable, unless such monitoring or investigation reveals a material failure of the work to comply with the Project Agreement or Applicable Law, in which event the Project Company will bear all reasonable costs and expenses of such monitoring and investigation. In the event that any requested monitoring or investigation causes a material delay in the construction schedule (and does not reveal a material failure of the work to comply with the Project Agreement or Applicable Law), the Scheduled Occupancy Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested monitoring or investigation and relief event provisions will apply.

1.24 Substantial Completion. "Substantial Completion" shall occur in respect of a Facility only when all of the following conditions have been satisfied in respect of that Facility, as determined by the Independent Building Expert, except to the extent that any or all of such conditions have been waived by the City:

(a) Physical Completion. Construction of the Facility is physically complete and all Design-Build Work pertaining to the Facility, except the Commissioning Tests and Punch List Items, is complete and in all respects is in compliance with the Project Agreement;

(b) Project Equipment. The Project Equipment in respect of the relevant Facility is installed such that the Project Equipment is ready for use and defect free, except for Punch List Items;

(c) Safety and Security Systems. The security and safety systems in respect of the relevant Facility are functional in accordance with the requirements set forth in the Project Agreement; and

(d) Utilities. All Utilities in respect of the relevant Facility are specified or required under the Project Agreement to be arranged for by the Project Company are connected and functioning properly.

The Project Company shall give the City at least 30 days' prior written notice of the expected date of Substantial Completion.

1.25 Commissioning. The Project Company shall comply with the Commissioning requirements to be set out in the Project Agreement and otherwise in compliance with Applicable Law and shall, as provided therein:

- (a) Prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests;
- (b) Include Commissioning criteria for achieving LEED NC Gold Certification for the Project;
- (c) Conduct Commissioning activities during design and construction;
- (d) Perform Commissioning Tests necessary to demonstrate Occupancy Readiness; and
- (e) Conduct Commissioning Tests during the Commissioning Fine Tuning Period.

1.26 Final Completion. "Final Completion" in respect of a Facility shall occur when all of the following conditions have been satisfied:

- (a) Occupancy Readiness. The Project Company has achieved Occupancy Readiness in respect of the City Facilities or the Port Facilities (as the case may be);
- (b) Punch List Items Completed. All Design-Build Work, including all Punch List Items in respect of the City Facilities or the Port Facilities (as the case may be), is complete and in compliance with the Project Agreement;
- (c) [PECP Note: Other items such as deliverable materials, equipment warranties and manuals, record drawings etc. to be set out in the Project Agreement].

The Project Company shall achieve Final Completion of each Facility within [120] days after the Occupancy Date of such Facility.

1.27 Occupancy Readiness Conditions. The following conditions shall constitute the "Occupancy Readiness Conditions" in respect of each Facility, each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Occupancy Readiness and establish the Occupancy Date for the Facility in question:

- (a) Substantial Completion. Substantial Completion has occurred;
- (b) Ready for Use. The Facility in its entirety is ready for use for its intended purpose, except for Punch List Items;
- (c) Architect Letter. The Architect has issued a letter of confirmation to the Independent Building Expert indicating that all buildings and systems forming part of the Facility are ready for use, except for Punch List Items, and to the best of its knowledge have been designed and built in accordance with the Project Agreement;

(d) No Encumbrances. There are no Encumbrances registered or recorded on the City Site or the Port Site (as the case may be) other than those agreed upon pursuant to the Project Agreement;

(e) Successful Commissioning. The Project Company has completed Commissioning the Facility in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the Occupancy Date);

(f) Certificate of Occupancy. A temporary or final certificate of occupancy has been issued for the Facility by the Fire Marshal or other relevant authority having jurisdiction;

(g) Governmental Body Readiness Confirmations. All other governmental bodies having jurisdiction have confirmed (and issued all pertinent Regulatory Approvals or other documents in respect thereof) that all buildings and structures forming part of the Facility are ready for occupancy;

(h) Required Operating Period Insurance. The Project Company has obtained and submitted to the City certificates of insurance for all Required Operating Period Insurance in respect of the Facility as specified in the Project Agreement;

(i) Operation Procedures Plan. The Project Company has delivered to the City a reasonable operation procedures plan in respect of the Facility; and

(j) Master Maintenance Plan. The Project Company has delivered to the City a reasonable master maintenance plan in respect of the Facility.

(k) Relocation Costs and Plan. PECP will be responsible for the City's and Port's relocation costs as the same will be described in the Project Agreement and Relocation Plan.

1.28 Punch List Items.

1.28.1 Punch List. The Independent Building Expert, in consultation with the City and the Port and the Project Company (in respect of each of the City Facilities) and with the Port and the Project Company (in respect of the Port Facilities), shall, prior to inspection of each Facility to determine whether that Facility has met the Occupancy Readiness Conditions, prepare a list of all Punch List Items (the "**Punch List**") identified at that time and an estimate of the cost and time for rectifying such Punch List Items. The Punch List shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Independent Building Expert's opinion:

(a) The Project Company can complete the Facility before the relevant Final Completion Deadline, and with no or minimal interference to the occupancy and use of the Project; and

(b) Would represent, to perform or complete, in the aggregate a total cost of not more than 1.0% of the relevant portion of the price payable under the City Facilities DB Contract or the Port Facilities DB Contract (as the case may be) (unless the City or the Port, as the case may be, determines that a higher percentage is acceptable).

1.28.2 Minimal Impact on Facility Operations: The Punch List in respect of a Facility shall contain the schedule for completion and rectification of the Punch List Items. In determining the relevant time for rectifying Punch List Items, the Project Company shall schedule the completion and rectification of Punch List Items so as to minimize, to the extent reasonably possible, any impairment of Facility user's use and enjoyment of the relevant Facility and any disruption of the FM Services.

1.28.3 Waiver of Occupancy Readiness Requirements. The City may, in its absolute discretion, waive any Occupancy Readiness Condition, and the failure to meet any such requirement shall constitute a Punch List Item.

1.28.4 Rectification of Punch List Items. The Project Company shall complete and rectify all Punch List Items in respect of a Facility within [120] days of the Occupancy Date for that Facility, or such other period as the Independent Building Expert may specify in the Punch List. The Project Company acknowledges and agrees that the completion and rectification of Punch List Items may require work outside of normal working hours in order to accommodate the efficient operation and use of the relevant Facility.

1.28.5 Failure to Rectify Punch List Items. In the event that the Project Company fails to complete and rectify the Punch List Items specified in the Punch List within the time period specified pursuant to Section 1.28.4 (*Rectification of Punch List Items*):

(a) In respect of the City Facilities:

(1) the City may withhold from the Service Fee a holdback amount that is [150]% of the amount estimated by the Independent Building Expert to complete and rectify the Punch List Items (to the extent then outstanding); and

(2) the City may engage other qualified contractors to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of the Project Company, and the City may deduct such cost from the holdback amount set forth above; and

(b) In respect of the Port Facilities:

(1) the Port may withhold from the Port Completion Payment, a holdback amount that is [150]% of the amount estimated by the Independent Building Expert to complete and rectify the Punch List Items (to the extent then outstanding); and

(2) the Port may engage other qualified contractors to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of the Project Company, and the Port may deduct such cost from the holdback amount set forth above.

Upon completion and rectification of the Punch List Items pursuant to this subsection, the City (in respect of the City Facilities) and the Port (in respect of the Port Facilities) shall release to the Project Company the then remaining amount of the holdback.

1.29 Appointment of Independent Building Expert. The parties shall jointly agree upon an “**Independent Building Expert**”, who shall monitor and inspect Project construction and shall determine and certify (among other things) achievement of Substantial Completion, Final Completion and Occupancy Readiness. The Independent Building Expert shall be the mediator for the purposes of any non-binding mediation relating to the interpretation of:

- (a) the Project Agreement as it relates to design development matters and construction matters generally;
- (b) the design and whether any Performance Standards are being complied with and interpretation of the intent of the Performance Standards;
- (c) any proposed Design Requirement Change and delays in construction of the Project resulting from such Design Requirement Change; and
- (d) the cost impact associated with any proposed Design Requirement Change.
- (e) Any communications by the Independent Building Expert in his or her capacity as mediator shall be inadmissible in any other proceeding, whether in Court or otherwise.

1.30 Timely Achievement of Occupancy Readiness.

1.30.1 City Facilities. The obligation of the City to pay Service Fee will commence on the Initial Occupancy Date as provided in Section 2.2.1 (*Service Fee Payment Obligation*). The Project Company acknowledges, accordingly, that any delay in achieving Occupancy Readiness beyond the Scheduled Occupancy Date will result in a loss of Service Fee payments to which the Project Company would otherwise have been entitled during the period of delay.

1.30.2 Port Facilities. The obligation of the Port to pay the Port Completion Payment will commence on the Occupancy Date of the Port Facilities as provided in Section 2.3 including holdback provisions (*Port Completion Payment*).

1.30.3 Longstop Date. Failure of the Project Company to achieve Project Occupancy Date by the Longstop Date will constitute a Project Company Default under Section 1.35(e) (*Default by Project Company*).

1.31 Post-Occupancy Facilities Management. Commencing upon the Initial Occupancy Date, the Project Company shall operate, maintain, repair, replace and manage the City Facilities which are occupied by the City in accordance with the FM Requirements on a 7 day/24 hour basis. The City shall have the right to deduct from the Operating Fee¹² component of the Service Fee the amounts set forth in Appendix 2 (Service Fee Deductions) hereto for failure to provide such agreed upon services according to the performance standards/indicators defined in the Project Agreement.

[COLB Note: Add provision for retention and employment by Project Company of existing custodial and engineering staff to operate and maintain City Hall and the Library¹³.]

1.32 Changes in FM Services. At any time during the term of the Project Agreement, the City may request the Project Company to implement specified changes in the services provided to the Project. Similarly, the Project Company may request changes in such services that do not diminish or negatively impact the operational capacity of the Project or impair the quality and level of services originally agreed upon. After the preparation by the Project Company of a detailed analysis of the economic and other implications of such change, the parties shall negotiate in good faith and seek to agree upon the amount of cost savings or cost increases resulting from such change and the appropriate sharing of any cost savings or increase as a condition to the implementation of any such change. Failing such agreement, the existing terms for delivery of FM Services shall remain in full force and effect.

1.33 Capital Modifications. The Project Agreement shall include provisions for “Capital Modifications” occurring after the Occupancy Date in respect of a Facility that do not affect FM Services in various circumstances and which in all events shall be subject to mutual agreement. In the case of such modifications requested by the City, the cost thereof shall be borne by the City pursuant to the provisions set out in Section 5.3 (*Other Relief Events*). To the extent such modifications are requested by the Project Company or are the necessary result of a Project Company default, the cost thereof shall be borne by the Project Company.

1.34 Step-In Rights. In the event of any uncured default on the part of the Project Company under the Project Agreement, the City shall have the right to be substituted for the Project Company with respect to any material subcontracts entered into by the Project Company with respect to performance of its obligations, which will include the Project Company’s contracts with DB Contractor and, in the case of the City only, FM Contractor, each of which thereupon shall be required to attorn to the City under the DB Contract, the FM Contract or such other material contract, and in each case subject to the City also accepting responsibility for the Project Company’s obligations thereunder. In the event of an emergency or other specified circumstances of an emergency nature (“Adverse Interim Circumstances”), the City shall have the foregoing “Step-In Rights” for the period during which the Project Company shall have refused or failed to administer a material subcontract in a manner that resolves or substantially mitigates such Adverse Interim Circumstances. To the extent that the Adverse Interim Circumstances leading to the City exercising its step-in rights arise as a result of any

¹² PECP Note: note that the Operating Fee includes the equity service component and operating costs of Project Company.

¹³ PECP Note: City to provide further details for consideration by PECP.

breach by the Project Company of its obligations under the Project Agreement, then the Project Company shall pay the City the amount of all costs and expenses reasonably incurred by the City in exercising its step-in rights. In all other cases, the City will compensate the Project Company for any loss suffered as if such circumstances constituted an Other Relief Event affecting the Project Company. The Project Agreement shall provide for permanent step-in rights so that the City may each assume responsibility for ongoing services in the event of uncured Project Company Event of Default.

1.35 Default by Project Company. Default by Project Company under the Project Agreement shall include, subject to specified cure periods, the following (each, a **“Project Company Event of Default”**):

- (a) Any material Project Company breach that is not remedied or in the process of being remedied and diligently pursued within 30 days (or such longer period as agreed between the parties) after notification by the City per remedial procedures in the Project Agreement;
- (b) Any Project Company bankruptcy related event;
- (c) Any abandonment of or discontinuance of the Project by the Project Company for a period in excess of 30 days (other than pursuant to a right to suspend performance under the Project Agreement);
- (d) Failure to commence the Design-Build Work within 90 days after Project Closing;
- (e) Failure of the Project Occupancy Date to occur on or before the Longstop Date;
- (f) Any breach of assignment limitations expressed in the Transaction Documents and/or the Financing Documents;
- (g) Any breach of the Project Company limitations on change of control, ownership, merger and/or amalgamation provisions in the Transaction Documents;
- (h) Any failure by the Project Company to take appropriate timely action if the City notifies the Project Company of any potential or existing public health and/or safety emergency event due to the Project Company’s failure to fulfill its obligations under the Project Agreement in any material respect;
- (i) If the Project Company accumulates an agreed upon maximum in Deductions or more in any [12] consecutive month period; or
- (j) Any uncured material default by the Project Company under the Ground Lease or the Space Lease.

1.36 Default by the City. Default by the City under the Project Agreement shall include, subject to specified cure periods, the following (each, a “**City Event of Default**”):

(a) After the appropriation of funds by any means for the purpose of payment, failure to pay the Service Fee, the Port Site Proceeds Amount or any other payment due to the Project Company by the City by the due date subject to cure periods set forth in the Project Agreement or Financing Documents;

(b) During any period following an appropriation of funds by any means for the purpose of paying a Termination Payment, a failure by the City to pay such Termination Payment on the due date for payment under the Project Agreement; or

(c) Except as provided in the paragraphs above, a breach, or series of breaches, by the City of any term, obligation, covenant or undertaking to the Project Company or any representation or warranty made by the City to the Project Company in the Project Agreement being incorrect when made, which has a material and adverse effect on the Project Company.

1.37 Default by the Port. Default by the Port under the Project Agreement shall include the following (each, a “**Port Event of Default**”):

(a) After the appropriation of funds by any means for the purpose of payment, failure to pay the Port Completion Payment or any other payment due to the Project Company by the Port within [45] days of the due date subject to cure periods set forth in the Project Agreement or Financing Documents;

(b) Except as provided in the paragraphs above, a breach, or series of breaches, by the Port of any term, covenant or undertaking to the Project Company or any representation or warranty made by the Port to the Project Company in any Transaction Document being incorrect when made, which has a material and adverse effect on the Project Company.

1.38 Remedies Upon Default.

1.38.1 Project Company Event of Default. In the event of an uncured Project Company Event of Default, the City shall have the right to terminate the Project Agreement and shall be entitled to pursue all rights and remedies available under [California law as specifically set out in the Project Agreement].

1.38.2 City Event of Default and Port Event of Default. In the event of a City Event of Default or a Port Event of Default, the Project Company shall have the right to terminate the Project Agreement.

1.39 Termination. The Project Agreement shall afford the parties the following termination rights:

(a) In the event of an Uninsurable Force Majeure Event, either party may terminate the Project Agreement pursuant to Section 4.2.6 (*City and Project*

Company Termination Right) below. Upon such termination, the City shall pay compensation to the Project Company in accordance with Appendix 3 (Compensation on Termination) Item 2 (*No Fault Termination by the City or the Project Company*); all rights to payments and other rights of either party accrued through the date of termination shall remain enforceable, but otherwise neither party will have any further right against, or obligation to, the other party;

(b) In the event of a Project Company Event of Default, the City shall have the right (subject to the Lenders' Direct Agreements) to terminate the Project Agreement if the Project Company does not cure within the specified cure period (unless it is diligently pursuing a cure). This right of the City to terminate the Project Agreement is in addition, and without prejudice, to any other right which the City may have in connection with a Project Company Event of Default, including City Step-In Rights. As noted above, if the City so terminates the Project Agreement prior to the Final City Occupancy Date, the City shall pay the Project Company the applicable Termination Payment in accordance with Appendix 3 (Compensation on Termination) Item 3(a) (*Termination by the City for Project Company Event of Default Prior to the Occupancy Date*) and if the City so terminates the Project Agreement after the Final City Occupancy Date, the City shall pay the Project Company the applicable Termination Payment in accordance with Appendix 3 (Compensation on Termination) Item 3 (b) (*Termination by the City for Project Company Event of Default After the Occupancy Date*);

(c) In the event of a City Event of Default or a Port Event of Default, the Project Company may terminate the Project Agreement (subject to any specified cure periods under the Project Agreement) and will be entitled as its exclusive remedy to payment by the City of the applicable Termination Payment in accordance with Appendix 3 (Compensation on Termination) Item 1 (*Termination by Project Company for City Event of Default, Port Event of Default or Termination by the City for its Convenience*).

(d) If (1) an Other Relief Event occurs, and (2) a period of 365 days elapses after the date on which notice thereof is first delivered by the Project Company pursuant to Section 3.2 (*Procedures Upon the Occurrence of a Relief Event*) during which the City or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, then either party may, by notice to the other party, terminate the Project Agreement, in which case the City shall pay compensation to the Project Company in accordance with Appendix 3 (Compensation on Termination) Item 2 (*No Fault Termination by the City or the Project Company*); provided, however, that the City's right to terminate the Project Agreement under this subsection shall not be effective unless an appropriation of funds has been made for the purpose of the City making the applicable Termination Payment due under this Section.

The obligation of the City to make a Termination Payment under the Project Agreement shall, in all cases, be absolutely subject in all respects to, and contingent upon, the City Council making an appropriation of funds for the purpose of making such Termination Payment to the Project Company. Notwithstanding anything in this Terms Sheet or the Project Agreement to the contrary, in the event of the failure of the City Council to appropriate moneys to pay a

Termination Payment (the “**Non-Appropriated Termination Payment**”), there shall be no contractual obligation of the City to pay such Non-Appropriated Termination Payment that exists or may be enforced; such contractual payment obligation shall arise only if and when any such amounts have been appropriated by the City Council. Accordingly, the Project Company shall have no right or remedy to enforce payment of any Non-Appropriated Termination Payment, and nothing in this Terms Sheet or the Project Agreement shall be construed as providing the Project Company, directly or indirectly, with any such right or remedy; no such right or remedy shall arise unless and until such time as any such amounts have been appropriated by the City Council.

The Project Agreement will contain provisions for the transfer to the City and the Port (as applicable) of assets, contracts and documents relating to the City and Port Facilities as well as transitional arrangements for handing over the City and Port Facilities and the City Site and Port Site to the City and Port (as applicable).

1.40 Termination for Convenience. In its discretion and for its convenience at any time, but only following the making of an appropriation of funds for the purpose of making the applicable Termination Payment calculated pursuant to Appendix 3 (Compensation on Termination) Item 1 (*Termination by Project Company for City Event of Default, Port Event of Default or Termination by the City for its Convenience*), the City shall have the right to terminate the Project Agreement for convenience by notice to the Project Company.

1.41 Ground Lease and Space Lease Considerations in Project Agreement Termination. In the event of termination of the Project Agreement for any reason, if the Senior Debt under the City Facilities Financing remains outstanding, the Ground Lease and the Space Lease shall continue to remain in full force and effect in accordance with the Financing Documents.

1.42 Design Requirement Change Made at City Discretion.

1.42.1 General. The City shall have the right, but not the obligation, to make Design Requirement Changes in respect of a Facility at any time prior to the Occupancy Date of that Facility (including the full or partial removal of the Port Facilities) at its discretion for any reason whatsoever, so long as such Design Requirement Change does not contravene the limitations set out in Section 1.44 (*Restrictions on City-Directed Design Requirement Changes, Capital Modifications and FM Services Change*). The design and construction costs resulting from any such Design Requirement Change made at the City’s direction under this section shall be paid by the City during the Design-Build Period first from the City’s Design Requirement Change Allowance Account, and then by the City directly as provided in Section 1.42.4 (*Available Funds*). Any related operation, maintenance, repair and replacement costs shall be borne by the City through an adjustment to the Service Fee. Any such Design Requirement Change and any related change in the terms and conditions of the Project Agreement (including changes to the Scheduled Occupancy Date, Longstop Date and the Expiration Date) shall be reflected in a Change Order. The Project Company’s obligation to perform the work related to a Design Requirement Change is conditioned on the availability of funds as provided in Section 1.22 (*Certain Design-Build Period Obligations Subject to the Availability of Funds*).

To the extent the Scheduled Occupancy Date has been extended pursuant to a Design Requirement Change Order, no later than twenty (20) days following the Occupancy Date, the Parties shall calculate the extent to which the Project Company was left in a better or worse position as a result of each such extension of the Scheduled Occupancy Date and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to Section 2.6 (*Private Payment Test*)) or the City (as relevant) shall reimburse the other Party so as to ensure that the Project Company is left in a no better and no worse position.

1.42.2 Allowance Account for City Directed Design Requirement Changes. The Project Company may establish, not later than 30 days after the commencement of construction of the Project and as part of the consideration for the City's obligation to pay the Service Fee, an allowance account (the "**City Design Requirement Change Allowance Account**") in the amount of \$[•]¹⁴. Amounts on deposit in the City Design Requirement Change Allowance Account shall be used to pay the cost of any Design Requirement Changes that the City may direct pursuant to Section 1.42.1 (*Allowance Account for City Directed Design Requirement*), and not for any other purpose. The value of such City-directed work shall be determined either on a negotiated lump sum basis in accordance with Section 2.7 (*Negotiated Lump Sum Pricing of Additional Work*) or subject to Cost Substantiation in accordance with Section 2.8 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*). All such work shall be deemed Design-Build Work hereunder, and the Project Company shall perform the work in accordance with the Project Agreement.

1.42.3 Unused City Design Requirement Change Allowance Account. On and after the Final City Occupancy Date, any amounts remaining in the City Design Requirement Change Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the City, to the costs of City-directed Capital Modifications, to the payment of the Service Fee¹⁵, or to any other cost or expense for which the City is responsible under the Project Agreement. If the Project Agreement is terminated prior to the Final City Occupancy Date, any amounts remaining in the City Design Requirement Change Allowance Account at such time shall be applied in accordance with the Financing Documents.

1.42.4 Available Funds. The City shall pay the Project Company directly an amount equal to the amount by which the costs of City-directed Design Requirement Changes exceed the amount remaining in the City Design Requirement Change Allowance Account, and the Project Company's obligation to implement a City-directed Design Requirement Change, where the costs thereof will exceed the amounts remaining in the City Design Requirement Change Allowance Account to the extent such allowance has already been utilized, is conditioned on the availability of funds as provided in Section 1.22 (*Certain Design-Build Obligations Subject to Availability of Funds*).

1.43 Partial Termination – Port Facilities. The City shall have the right to partially or fully remove the Port Facilities from the Project at any time prior to the Occupancy

¹⁴ PECP Note: No allowance is currently accounted for in PECP's Proposal so there would need to be an adjustment to the City's proposed payment obligations [open issue re Port participation].

¹⁵ PECP Note: Subject to bond counsel review.

Date of the Port Facilities under Section 1.42 (*Design Requirement Change Made at City Discretion*). The City would be responsible for all costs of the Project Company in respect of such change including the cost of any additional land use entitlement and permitting, increased cost of or schedule impacts to Design Build Work in respect of the City Facilities, finance breakage costs in respect of the Port Facilities Construction Financing, Project Contractor Breakage Costs and other reasonable costs.

1.44 Restrictions on City-Directed Design Requirement Changes, Capital Modifications and FM Services Changes. The City shall not at any time during the Term require, and the Project Company may refuse to implement, a Change Order (relating to a City-Directed Design Requirement Change or a Design Requirement Change made due to a Relief Event), a Capital Modification or an FM Services Change which:

- (a) Would be contrary to Applicable Law;
- (b) Would render any policy of Required Insurance void or voidable unless the City agrees to provide replacement insurance or other security reasonably satisfactory to the Project Company;
- (c) Would cause the revocation of any governmental approval required for the Project Company to perform its obligations under the Project Agreement, and such governmental approval would not, using reasonable efforts, be capable of amendment or renewal;
- (d) Would require a new governmental approval for the Project Company to perform its obligations under the Project Agreement, which governmental approval could not reasonably be expected to be obtainable, using reasonable efforts by the Project Company or the City, as applicable; or
- (e) Would materially and adversely affect the risk allocation and payment regime under the Project Agreement with respect to the Design-Build Work or the FM Services, unless the material and adverse effects of such a Change Order on the Design-Build Work or the FM Services (as the case may be) are remedied by the City to the Project Company's reasonable satisfaction.

1.45 Dispute Resolution. The Project Agreement will set out dispute resolution procedures on the basis of non-binding mediation.

2. Project Agreement – Service Fee and Other Payments.

2.1 Port Site Proceeds Amount. At City Facilities Financial Close, the City will pay to the Project Company an amount equal to the Port Site Proceeds Amount, which amount shall be deposited to the City Facilities Disbursement Account and subject to security in favor of the City Facilities Collateral Agent.

2.2 Service Fee.

2.2.1 Service Fee Payment Obligation. From and after the Initial Occupancy Date and through the Termination Date, the City shall pay the Service Fee to the Project Company as compensation for the Project Company's performance of the Contract Services in accordance with Appendix 1 (Payment Mechanism).

2.2.2 Service Fee Payments Where the Occupancy Date Occurs Prior to Scheduled Occupancy Date. The City's obligation to pay the Service Fee in Section 2.2.1 (*Service Fee Payment Obligation*) applies notwithstanding that the Initial Occupancy Date or any other Occupancy Date occurs prior to the Initial Scheduled Occupancy Date or other Scheduled Occupancy Date (as the case may be). [PECP Note: PECP and the City to give further consideration to the impact of early completion on the City Facilities Financing and any potential adjustment to the amount of the Service Fee.]

2.3 Port Completion Payment. Upon the Occupancy Date of the Port Facilities, the Port will pay to the Project Company the Port Completion Payment (which will be a fixed amount to be agreed), subject to the provisions, including holdback provisions, set out in Section 1.28.5(b) (*Failure to Rectify Punch List Items*).

2.4 Limitation on Payments. Other than the payments expressly provided for in the Project Agreement, the Project Company shall have no right to any further payment from the City or the Port in connection with the Contract Services or otherwise in connection with Contract Services.

2.5 Appropriation. The Service Fee, any Termination Payment and all other City payment obligations under the Project Agreement are subject to appropriation. The City will covenant to appropriate each year the payment of Service Fee and the Project Company will have the right to sue the City to appropriate Service Fee payments. The Project Agreement will also contain provisions setting out the Project Company's rights in the event that any payments due to the Project Company are not appropriated or not paid, once appropriated, including the right to suspend performance of the FM Services and terminate the Project Agreement.

2.6 Private Payment Test. Where any amounts are due from the Project Company to the City under the Project Agreement, then the Project Company has the right to receive a lesser Service Fee on the next payment date (or lesser Termination Payment in the case of termination of the Project Agreement), instead of making a payment for such amount to the City¹⁶. In the tax & non-arbitrage certificate in respect of the transaction, the Project Company will covenant not to make such payment and the City would covenant not to accept such payment, if such payment would cause the private payment or security test to be met¹⁷. The parties will further covenant not to do anything that would jeopardize that tax exemption on the City Facilities Financing.

2.7 Negotiated Lump Sum Pricing of Additional Work. The Project Agreement may obligate the City to pay for certain additional costs resulting from Relief Events

¹⁶ PECP Note: a similar concept may also need to apply to any amounts owing to the Port (subject to bond counsel opinion).

¹⁷ PECP Note: See footnote 16.

and otherwise as more specifically provided therein. It is the expectation of the parties, in general, that the City will pay for such costs on a lump sum basis, and that the lump sum price will be negotiated in advance of the Project Company's performance of the work. For example, if a Change in Law Event occurs, as required under Section 5 (*Change in Law Events and Other Relief Events*), the parties will assess the impact of the Change in Law Event, take all appropriate mitigation steps, determine any necessary Capital Modifications and operating changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Project Company shall furnish the City with all information reasonably required by the City regarding the Project Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Project Company's actual costs of performance shall not be subject to Cost Substantiation as defined and set forth in the Project Agreement unless after-the-fact Cost Substantiation with respect to all or a portion of the Project Company's actual costs was agreed to by the parties in establishing the lump sum price.

2.8 Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation. [COLB Note: Provisions to be negotiated and addressed in Project Agreement.] [PECP Note: Both PECP and the Port have proposed provisions for cost substantiation and are being reviewed with the intention of agreeing on a set of provisions for inclusion in the Project Agreement.]

2.9 Port Affordability Limit. The Port has an affordability limit of \$206,000,000. The Project Company and the Port agree to work together to not exceed that limit.

3. Project Agreement – Relief Event Procedures.

3.1 Relief Events Generally

3.1.1 Extent of Relief Available to Project Company. If a Relief Event occurs, the Project Company may seek relief from its obligations and extensions of time, may claim compensation, and may exercise a termination right under the Project Agreement, as and to the extent provided therein.

3.1.2 Mitigation Given Effect. Any relief to which the Project Company is entitled on account of Relief Events shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its general duty to mitigate under the Project Agreement.

3.1.3 Applicable Law Compliance. Nothing in this section shall be interpreted as relieving the Project Company of its obligation, following any and all Relief Events, to perform its obligations under the Project Agreement in compliance with Applicable Law.

3.2 Procedures upon the Occurrence of a Relief Event.

3.2.1 Notice and Written Report. In order to assert an entitlement based on the occurrence of a Relief Event, the Project Company shall give notice of the occurrence of the Relief Event to the City as soon as practicable, and in any event within ten Business Days of

the date the Project Company has knowledge that the Relief Event has caused or is likely to cause an entitlement under the Project Agreement. The Project Company's notice shall include a written report:

- (a) Describing the Relief Event and the cause thereof, to the extent known;
- (b) Stating the date on which the Relief Event began and its estimated duration;
- (c) Explaining the mitigation measures that the Project Company is taking or planning to take to minimize the impact of the Relief Event;
- (d) Summarizing the consequences of the Relief Event and the expected impact on the performance of the Project Company's obligations under the Project Agreement; and
- (e) Indicating the nature and scope of the Project Company's potential entitlement to relief.

3.2.2 Updates. The Project Company shall provide the City with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in subsection 3.2.1 (*Notice and Written Report*) above. In particular, the Project Company shall notify the City as soon as the Relief Event has ceased and of the time when performance of its affected obligations can be resumed.

3.2.3 Submittal of Relief Request. The Project Company shall submit to the City a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within [30] days after the notice referred to in Section 3.2.1 (*Notice and Written Report*) above. If the specific relief cannot reasonably be ascertained within such [30]-day period, the Project Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

3.2.4 Delay in Notification. If any Relief Event notice or any required information is submitted by the Project Company to the City after the dates required under this section, then the Project Company shall be entitled to relief provided due to the occurrence of the Relief Event except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

3.2.5 Multiple and Overlapping Claims. The Project Company may make multiple but not duplicative claims with respect to a Relief Event.

3.2.6 Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of a Relief Event and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 3.3 (*General Duty to Mitigate*), below.

3.2.7 Resumption of Performance. Promptly following the occurrence of a Relief Event, the Project Company shall use all reasonable efforts to eliminate the cause thereof and resume performance of the Project Agreement.

3.2.8 Project Company Information. The City shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert a Relief Event claim.

3.2.9 City Response. Within [30] days after receipt of a relief request by the Project Company pursuant to Section 3.2.3 (*Submittal of Relief Request*) above, the City shall issue a written determination as to the extent, if any, to which it disagrees or concurs with the Project Company's request, and the reasons therefor.

3.2.10 Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of a Relief Event shall be duly evidenced in writing in accordance with the terms of the Project Agreement. Either party may refer any dispute to non-binding mediation subject to the dispute resolution procedures agreed to in the Project Agreement.

3.3 General Duty to Mitigate.

3.3.1 Mitigation by the Project Company. In all cases where the Project Company is entitled to receive any relief from the City or exercise any rights, including the right to receive any payment, costs, damages or extensions of time, whether on account of Relief Events or otherwise, the Project Company shall use all reasonable efforts to mitigate such amount required to be paid, or the length of the extension of time required to be granted, by the City to the Project Company under the Project Agreement. Such mitigation measures shall include compliance with all procedures and other requirements necessary to obtain any available waiver or exemption from taxes that would otherwise be borne directly or indirectly by the City. Upon request from the City, the Project Company shall promptly submit a detailed description, supported by all such documentation as the City may reasonably require, of the measures and steps taken by the Project Company to mitigate and meet its obligations under this subsection.

3.3.2 Mitigation by the City. In all cases where the City is entitled to any compensation, costs or damages from the Project Company, but not in any other cases, the City shall use all reasonable efforts to mitigate such amount, provided that such obligation shall not require the City to: (a) Take any action which is contrary to public interest, as determined by the City in its discretion; (b) Undertake any mitigation measures that might be available arising out of its status as a governmental body, but which measure would not normally be available to a private commercial party; or (c) alter the amount of Deductions it is entitled to make in accordance with the payment mechanism.

The City shall have no obligation to mitigate, implied or otherwise, except as set forth in this subsection or otherwise as expressly provided in the Project Agreement. Upon request by the Project Company, the City shall within a reasonable period of time submit a detailed description, supported by all such documentation as the Project Company may reasonably

request, of the measures and steps taken by the City to mitigate and meet its obligations under this subsection.

4. Project Agreement – Insurable and Uninsurable Force Majeure Events.

4.1 Insurable Force Majeure Events¹⁸.

4.1.1 Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Insurable Force Majeure Event, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction, and in compliance with Applicable Law, and otherwise in accordance with the terms of the Project Agreement.

4.1.2 No Performance Relief. Schedule Relief. The Project Company shall not be relieved from its obligation to perform the Contract Services, notwithstanding the occurrence of an Insurable Force Majeure Event. With respect to schedule relief:

(a) The Scheduled Occupancy Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Insurable Force Majeure Event; and

(b) The occurrence of an Insurable Force Majeure Event shall not operate to extend the Expiration Date, and accordingly shall not extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee.

4.1.3 No Compensation Relief. If an Insurable Force Majeure Event occurs:

(a) The Service Fee shall not be increased, nor shall any other compensation be payable, on account of the occurrence of the Insurable Force Majeure Event;

(b) The City shall continue to have the right to impose Deductions for Operating Service Failures and Unavailability Events however no such Deductions will count towards default or termination thresholds in the Project Agreement;

(c) The Project Company shall comply with its obligations under Section 4.1.1 (*Project Company Reinstatement*) above, notwithstanding the insufficiency for any reason of Insurance Proceeds; and

(d) The Project Company shall bear all costs resulting from the occurrence of an Insurable Force Majeure Event.

¹⁸ COLB Note: [Open issue re earthquake insurance.]

4.1.4 Insurance Trust Account. Upon Project Closing, the parties shall cause an insurance trust account (“**Insurance Trust Account**”) to be created and held by the depository provided for under the Financing Agreements pursuant to the terms of an insurance trust agreement (“**Insurance Trust Agreement**”) to which the City, the Project Company and the Senior Lenders are parties and which has been approved by the City. The Insurance Trust Agreement shall be consistent with the Project Agreement and the Ground Lease in all material respects.

4.1.5 Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. Upon the occurrence of an Insurable Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in the Insurance Trust Account and (a) applied to such repair, replacement or restoration purposes in accordance with the terms of the Project Agreement or released to the agent of the Senior Lenders, as provided in the Lenders’ Remedies Agreement and following the procedures set forth in the Insurance Trust Agreement; or (b) paid to the City upon a termination of the Ground Lease as provided in Section 1.41 (*Ground Lease and Space Lease Considerations in Project Agreement Termination*).

4.2 Uninsurable Force Majeure Events.

4.2.1 Project Company Reinstatement. If all or any part of the Project is damaged or destroyed on account of an Uninsurable Force Majeure Event and neither party terminates the Project Agreement pursuant to Section 4.2.6 below, the Project Company shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction, and in compliance with Applicable Law, and in accordance with the relevant sections of the Project Agreement. The obligation of the Project Company to perform the Reinstatement Work described in this section, as it pertains to Uninsurable Force Majeure Events occurring prior to the Occupancy Date, is conditioned on the availability of funds as provided for in Section 1.22 (*Certain Design-Build Period Obligations Subject to the Availability of Funds*).

4.2.2 Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Services to the extent that any failure to perform results from an Uninsurable Force Majeure Event. With respect to schedule relief:

(a) The Scheduled Occupancy Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Uninsurable Force Majeure Event; and

(b) The occurrence of an Uninsurable Force Majeure Event shall operate to extend the Expiration Date by an equivalent length of time as the Scheduled Occupancy Date is extended under paragraph (a) above, and shall correspondingly extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee.

4.2.3 Compensation for Uninsurable Force Majeure Events Occurring Prior to the Occupancy Date. If any Uninsurable Force Majeure Event occurs prior to the Occupancy Date in respect of a Facility, and the Project Agreement is not terminated pursuant to Section 4.2.6 below, the City shall pay the Project Company an amount equal to (i) the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder and the costs of any Reinstatement Work in accordance with the Reinstatement Plan), plus (ii) any increase in the cost of performing the FM Services (including the Project Company's own increased costs as well as increased amounts payable to the FM Contractor) to the extent resulting from the Uninsurable Force Majeure Event. Such amount shall be payable pursuant to Section 10.3 (*Funding Additional Costs for Which the City is Responsible*) as soon as practicable by the City following agreement of the parties pursuant to Section 2.7 (*Negotiated Lump Sum Pricing of Additional Work*) and Section 2.8 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*), as applicable, as to such cost and the Reinstatement Plan or other appropriate relief measures.

To the extent the Scheduled Occupancy Date has been extended pursuant to Section 4.2.2 (*Schedule and Performance Relief*), no later than twenty (20) days following the Occupancy Date, the Parties shall calculate the extent to which the Project Company was left in a better or worse position as a result of each such extension of the Scheduled Occupancy Date and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to section 2.6 (*Private Payment Test*)) or the City (as relevant) shall reimburse the other Party so as to ensure that the Project Company is left in a no better and no worse position.

Such amounts shall be paid (subject to appropriation) by the City, as applicable, to the Project Company separate from and in addition to the Service Fee. No amounts other than those provided for in this subsection shall be payable by the City on account of the Uninsurable Force Majeure Event that occurs prior to the Occupancy Date.

4.2.4 Compensation Relief for Uninsurable Force Majeure Events Occurring On and After the Occupancy Date. If an Uninsurable Force Majeure Event occurs on or after the Occupancy Date in respect of a Facility, the Service Fee¹⁹ shall be:

- (a) Reduced by an amount equal to Avoidable Costs; and
- (b) Increased by an amount necessary to compensate the Project Company for an increase in the cost to the Project Company of performing the Contract Services (including the costs of any Reinstatement Work in accordance with the Reinstatement Plan), to the extent resulting from the Uninsurable Force Majeure Event.

In lieu of all or a portion of the adjustment to the Service Fee, the City and the Project Company may mutually agree that the City will compensate the Project Company for specific costs pursuant to Section 2.7 (*Negotiated Lump Sum Pricing of Additional Work*) or Section 2.8 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*), as applicable.

¹⁹ [PECP Note: need to consider how the adjustment applies to each of the Capital Fee and the Operating Fee components of the Service Fee.]

4.2.5 Disaster Relief Funds. Upon the occurrence of an Uninsurable Force Majeure Event, the City shall promptly apply for and use all reasonable efforts to obtain any available State and federal disaster relief funds in order to repair, replace or rebuild the Project. The City shall deposit any such funds it receives into the Insurance Trust Account promptly upon receipt.

4.2.6 City and Project Company Termination Rights²⁰. If (1) the Project is completely or substantially destroyed or is otherwise materially impacted by an Uninsurable Force Majeure Event and such condition is continuing and persists, or its effects are continuing and persisting so as to render the Project, or a substantial part thereof, unusable, and (2) a period of 180 days expires during which (a) the City or the Project Company has been denied the benefits of the Project Agreement substantially as intended hereby, (b) the parties have not agreed upon a scope, price and schedule for the Reinstatement Plan, and (c) the City has not provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Reinstatement Plan will be available for such purposes in the amounts and on the schedule agreed upon by the parties, then either party may, by notice to the other party, terminate the Project Agreement, in which case the City shall pay compensation to the Project Company in accordance with Appendix 3 (Compensation on Termination) Item 2 (No Fault Termination by the City or the Project Company); provided that the City's right to terminate the Project Agreement under this section shall not be effective unless an appropriation of funds has been made for the purpose of the City making the applicable Termination Payment due under this section.

4.3 Project Company's Obligations Upon Material Damage or Destruction.

4.3.1 Draft Reinstatement Plan. If the Project suffers damage or destruction that is likely to cost more than \$[1,000,000], Index Linked, to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued provision of the FM Services to other parts of the Project), provide the City with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under Section 4.3.3 (*Reinstatement Plan*).

4.3.2 No Reinstatement in Same Form. As soon as reasonably practicable and in any event within 15 Business Days after the delivery of the Draft Reinstatement Plan, the City:

- (a) Shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan; and

²⁰ PECP Note: this provision is intended to apply to an Uninsurable Force Majeure Event occurring either before or after the Occupancy Date.

(b) If it has decided that the Project is not required to be reinstated in the same form as prior to the damage or destruction, will issue a preliminary Capital Modification instruction to that effect.

4.3.3 Reinstatement Plan: As soon as reasonably practicable and in any event within 15 Business Days after receipt of the City's comments, the Project Company shall deliver to the City a revised plan (the "**Reinstatement Plan**") to reasonably take into account the comments received from the City and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works.

4.3.4 Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much details as is reasonable in the circumstances:

(a) The identity of the person, or (if the Project Company is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(b) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the FM Services to be fully provided);

(c) The impact that implementation of the Reinstatement Plan will have on the revenues of the Project Company under the Project Agreement and on the payment obligations of the Project Company under the Project Contracts, including in respect of life cycle requirements;

(d) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and

(e) The impact of any Capital Modification requested by the City as part of the reinstatement.

Thereafter, unless the damage or destruction was caused by an Uninsurable Force Majeure Event and a party elects to terminate the Project Agreement in accordance with the provisions of subsection 1.39 (*Termination*), the Project Company shall repair, replace or restore the Project, subject to Applicable Law and, if the Uninsurable Force Majeure Event occurred prior to the Occupancy Date in respect of a Facility, to Section 1.22 (*Certain Design-Build Period Obligations Subject to the Availability of Funds*).

4.4 Standards of Replacement, Repair or Reconstruction. Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Sections 4.1 (*Insurable Force Majeure Events*) or 4.2 (*Uninsurable Force Majeure Events*) shall be made or done in compliance with the performance standards and Design-Build Work review procedures in the Project Agreement, subject to any agreement made between the City and the Project Company to revise such performance standards or work review procedures as they pertain to the replacement, repair or reconstruction work.

4.5 Availability of Insurance for Uninsurable Force Majeure Events.

4.5.1 Additional Insurance. If, during the Term, insurance is or has become available for a risk constituting an Uninsurable Force Majeure Event, the City may itself, or may direct the Project Company to, take out and maintain insurance on terms which are in accordance with the requirements of the Project Agreement and have been accepted by the Project Company (acting reasonably). The premiums for such additional coverage shall be paid, as applicable, by the City to the insurer or by an adjustment to the Service Fee.

4.5.2 Additionally Insured Risk to Constitute an Insurable Force Majeure Event. In any period during which additional insurance is maintained pursuant to section 4.5.1 (*Additional Insurance*), the occurrence of the additionally insured risk shall be deemed to constitute an Insurable Force Majeure Event for the purposes hereof, and any Insurance Proceeds available due to the occurrence thereof shall be applied as provided in Section 4.1.5 (*Application of Insurance Proceeds Available for Repair, Replacement or Restoration*).

4.6 Unavailability of Insurance for Insurable Force Majeure Events or for Third Party Liability.

4.6.1 Insurance Unavailability Event. If, during the Term:

(a) Any Required Insurance against an Insurable Force Majeure Event or against third party liability is not available to the Project Company with Qualified Insurers; or

(b) The insurance premium payable or the terms and conditions for insuring against such Insurable Force Majeure Event or against third party liability at the levels and on the terms required by the Project Agreement are at such cost that contractors, owners or others having a substantially similar interest in property in California such as the Project are not generally insuring the risk with Qualified Insurers,

then such circumstance shall constitute an “**Insurance Unavailability Event**” under the Project Agreement.

4.6.2 Termination by the City. If and for so long as an Insurance Unavailability Event has occurred and is continuing, the City may by notice to the Project Company terminate the Project Agreement, whereupon the Project Company shall be entitled to compensation upon termination as provided in Appendix 3 (*Compensation on Termination*) Item 2 (*No Fault Termination by City or by Project Company*); provided, however, that the City’s right to terminate the Project Agreement under this subsection shall not be effective unless an appropriation of funds has been made for the purpose of the City making the applicable Termination Payment due under this section.

4.6.3 Continuance of Project Agreement. During any period prior to the Termination Date in which an Insurance Unavailability Event has occurred and is continuing, and the City has not exercised its termination right under Section 4.6.2 (*Termination by the City*) or the City has exercised such right but the Termination Date has not yet occurred:

(a) The Project Company will not be obligated to maintain such Required Insurance and references in the Project Agreement to such Required Insurance will be construed accordingly. During such period the Service Fee shall be adjusted in accordance with the Project Agreement by agreement of the parties acting reasonably, to reflect any savings in the Project Company's insurance cost as a result of the Project Company not having to provide such Required Insurance; and

(b) On the occurrence of an Insurable Force Majeure Event or third party claim with respect to which an Insurance Unavailability Event has occurred, the City, will either:

(1) pay to the Project Company an amount equal to the insurance proceeds that would have been payable directly to the Project Company under the relevant policy of Required Insurance in respect of the Insurable Force Majeure Event or the third party claim had the relevant insurance continued to be available and in effect, and the Project Agreement will continue; or

(2) by notice to the Project Company, terminate the Project Agreement, whereupon the Project Company shall be entitled to compensation on termination as provided in Appendix 3 (Compensation on Termination) Item 2 (No Fault Termination by the City or by Project Company); provided, however, that the City shall not have the right to terminate the Project Agreement under this subsection if the Project Company (A) releases the City from all obligations under subsection 4.6.3(b)(1), and (B) deposits into the Insurance Trust Account an amount equal, in the reasonable opinion of the City, to the Insurance Proceeds, and all amounts in respect of deductibles and waiting periods, that would have been the responsibility of the Project Company under Appendix 4 (Insurance Requirements), that would have been payable in respect of such Insurable Force Majeure Event that occurred or third party claim that was made had the relevant insurance continued to be available and in effect, and such payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant insurance continued to be available and in effect.

4.6.4 Subrogation. If the City makes any payment to the Project Company pursuant to Section 4.6.3(b)(1), then the City, to the extent of the amount paid, will be subrogated to the Project Company's rights against any third party (other than Project Company related persons) in respect of the occurrence or claim as a result of which the payment was made.

4.6.5 City's Right to Purchase Replacement Insurance Coverage. During the continuance of any Insurance Unavailability Event, the City may, but shall not be obligated to, purchase insurance policies in the commercial insurance market providing the coverage intended to be provided by the Required Insurance that is unavailable due to an Insurance Unavailability Event. The Service Fee shall be adjusted in accordance with the Project Agreement to reflect a credit in the amount of the cost to the City of any such replacement insurance coverage, but only to the extent that such costs would be considered commercially reasonable without giving effect to the occurrence of the Insurance Unavailability Event. By way

of example, if the premium on a policy of Required Insurance was costing the Project Company \$5 and it suddenly jumps to \$100 due to an Insurance Unavailability Event, the Service Fee reduction would be \$5, not \$100.

4.7 Continuing Attempts to Obtain Insurance. During any period when an Insurance Unavailability Event has occurred and is continuing, the Project Company shall approach the insurance market on a regular basis and in any event at regular intervals of no longer than 6 months to establish whether the Required Insurance remains unavailable.

5. Project Agreement – Change in Law Events and Other Relief Events.

5.1 Change in Law Events.

5.1.1 Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Services to the extent that any failure to perform results from a Change in Law Event. With respect to schedule relief:

(a) The Scheduled Occupancy Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Change in Law Event; and

(b) The occurrence of a Change in Law Event shall operate to extend the Expiration Date by an equivalent length of time as the Scheduled Occupancy Date is extended under paragraph (a) above, and shall correspondingly extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee.

5.1.2 Compensation Relief for Changes Occurring Prior to the Occupancy Date. If a Change in Law Event occurs prior to the Occupancy Date in respect of a Facility and the City does not terminate the Project Agreement pursuant to Section 5.1.4 below, the City shall pay the Project Company an amount equal to (i) the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder), plus (ii) any increase in the cost of performing the FM Services (including the Project Company's own increased costs as well as increased amounts payable to the FM Contractor) to the extent resulting from such Change in Law Event. Such amount shall be payable pursuant to Section 10.3 (*Funding Additional Costs for Which the City is Responsible*) as soon as practicable by the City following agreement of the parties, as to such cost or other appropriate relief measures.

To the extent the Scheduled Occupancy Date has been extended pursuant to Section 5.1.1 (*Schedule and Performance Relief*), no later than twenty (20) days following the Occupancy Date, the Parties shall calculate the extent to which the Project Company was left in a better or worse position as a result of each such extension of the Scheduled Occupancy Date and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to section 2.6 (*Private Payment Test*)) or the City (as relevant) shall reimburse the other Party so as to ensure that the Project Company is left in a no better and no worse position.

Such amounts shall be paid (subject to appropriation) by the City to the Project Company separate from and in addition to the Service Fee. No amounts other than those provided for in this subsection shall be payable by the City on account of such Change in Law Event that occurs prior to the Occupancy Date in respect of a Facility. The obligation of the Project Company to perform the work necessitated by the occurrence of a Change in Law Event occurring prior to the Occupancy Date in respect of a Facility for which the Project Company is entitled to compensation as provided in this subsection is conditioned on the availability of funds as provided in Section 1.22 (*Certain Design-Build Period Obligations Subject to the Availability of Funds*).

5.1.3 Compensation Relief for Change in Law Events Occurring On and After the Occupancy Date. If a Change in Law Event occurs on or after the Occupancy Date in respect of a Facility, the Service Fee²¹ shall be:

- (a) Reduced by an amount equal to Avoidable Costs; and
- (b) Increased by an amount necessary to compensate the Project Company for an increase in the cost to the Project Company of performing the Contract Services, to the extent resulting from the Change in Law Event.

In lieu of all or a portion of the adjustment to the Service Fee, the City and the Project Company may mutually agree that the City will compensate the Project Company for specific costs pursuant to Section 2.7 (*Negotiated Lump Sum Pricing of Additional Work*) or Section 2.8 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*), as applicable.

5.2 Discriminatory Change in Law Events.

5.2.1 Changes prior to the Occupancy Date. If a Discriminatory Change in Law Event occurs prior to the Occupancy Date in respect of a Facility, the Project Company or the City shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company directly attributable thereto, such additional compensation to the Project Company shall be payable by the City (subject to appropriation) directly to the Project Company.

5.2.2 Changes on or after the Occupancy Date. If a Discriminatory Change in Law occurs on or after the Occupancy Date in respect of a Facility, the Project Company or the City shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company or any Equity Member (as the case may be) directly attributable thereto.

5.3 Other Relief Events

²¹ [PECP Note: need to consider how the adjustment applies to each of the Capital Fee and the Operating Fee components of the Service Fee].

5.3.1 Schedule and Performance Relief. The Project Company shall be relieved from its obligation to perform the Contract Services to the extent that any failure to perform results from an Other Relief Event. With respect to schedule relief:

(a) The Scheduled Occupancy Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Other Relief Event; and

(b) The occurrence of an Other Relief Event shall operate to extend the Expiration Date by an equivalent length of time as the Scheduled Occupancy Date is extended under paragraph (a) above, and shall correspondingly extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee.

5.3.2 Compensation for Other Relief Events Occurring Prior to the Occupancy Date. If an Other Relief Event occurs prior to the Occupancy Date in respect of a Facility (except for Other Relief Events described in items [•] and [•]²² of the definition thereof, as to which the Project Company shall be entitled to performance and schedule relief but not compensation relief), and the City does not terminate the Project Agreement pursuant to Section 5.3.4 below, the City shall, subject to appropriation, pay the Project Company an amount equal to (i) the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder), plus (ii) any increase in the cost of performing the FM Services (including the Project Company's own increased costs as well as increased amounts payable to the FM Contractor) to the extent resulting from such Other Relief Event, which amount shall be payable pursuant to Section 10.3 (*Funding Additional Costs for Which the City is Responsible*) as soon as practicable by the City following agreement of the parties, as applicable, as to such cost or other appropriate relief measures.

To the extent the Scheduled Occupancy Date has been extended pursuant to Section 5.1.1 (*Schedule and Performance Relief*), no later than twenty (20) days following the Occupancy Date, the Parties shall calculate the extent to which the Project Company was left in a better or worse position as a result of each such extension of the Scheduled Occupancy Date and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to section 2.6 (*Private Payment Test*)) or the City (as relevant) shall reimburse the other Party so as to ensure that the Project Company is left in a no better and no worse position.

Such amounts shall be paid by the City to the Project Company separate from and in addition to the Service Fee. No amounts other than those provided for in this subsection shall be payable by the City on account of such Other Relief Event that occurs prior to the Occupancy Date in respect of the relevant Facility. The obligation of the Project Company to perform the work necessitated by the occurrence of an Other Relief Event occurring prior to the Occupancy Date in respect of the Facility for which the Project Company is entitled to compensation as

²² [PECP Note: Reserve for any Other Relief Events which may not warrant compensation relief]

provided in this subsection is conditioned on the availability of funds as provided in Section 1.22 (*Certain Design-Build Period Obligations Subject to the Availability of Funds*).

5.3.3 Compensation Relief for Other Relief Events Occurring On and After the Occupancy Date. If an Other Relief Event occurs on or after the Occupancy Date in respect of a Facility, the Service Fee²³ shall be:

- (a) Reduced by an amount equal to Avoidable Costs; and
- (b) Increased by an amount necessary to compensate the Project Company for an increase in the cost to the Project Company of performing the Contract Services, to the extent resulting from the Other Relief Event.

In lieu of all or a portion of the adjustment to the Service Fee, the City and the Project Company may mutually agree that the City will compensate the Project Company for specific costs pursuant to Section 2.7 (*Negotiated Lump Sum Pricing of Additional Work*) or Section 2.8 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*), as applicable.

5.3.4 Right of Termination for Extended Other Relief Event. Section 1.39(d) (*Termination*) sets out provisions for termination of the Project Agreement by either party where an Other Relief Event has occurred and is continuing for an extended period of time.

6. Project Agreement - Insurance, Damage and Destruction

6.1 Insurance.

6.1.1 Required Insurance. At all times during the Design-Build Period and the Operating Period, as applicable, the Project Company shall obtain and maintain the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

6.1.2 Project Contractors and Subcontractors. The Project Company shall ensure that all Project Contractors and subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

6.1.3 Compliance with Insurer Requirements. The Project Company, the City and the Port shall comply with the requirements of all insurers pertaining to the City Site and the Port Site under any policy of Required Insurance to which such is an insured, a co-insured, or an additional insured person. No party to the Project Agreement shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or the reduction of coverage under any policy or Required Insurance to which such is an insured, a co-insured, or an additional insured person.

²³ [PECP Note: need to consider how the adjustment applies to each of the Capital Fee and the Operating Fee components of the Service Fee].

6.1.4 Failure to Provide Insurance Coverage. If the Project Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, the City may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and withhold the amount of any such premium from future Operating Fee. The failure of the Project Company to obtain and maintain any Required Insurance shall not relieve the Project Company of its liability for any losses intended to be insured thereby, be a satisfaction of any Project Company liability under the Project Agreement or in any way limit, modify or satisfy the Project Company's indemnity obligations under the Project Agreement.

6.1.5 Reductions for Insurance Proceeds and Insurance Receivables. Whenever the Project Agreement obligates the City to pay any amount to the Project Company in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Project Company under the Required Insurance, the amount which the City is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which the Project Company recovers or would have been entitled to recover if it had complied with the requirements of the Project Agreement or any policy of Required Insurance.

6.1.6 Property Insurance Proceeds. Property Insurance Proceeds shall be deposited, held and applied as provided in Section 4.1.4 (*Insurance Trust Account*).

6.2 Protection of Project from Loss, Damage and Destruction.

6.2.1 Protection. The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to the City and the insurers, immediately upon obtaining knowledge thereof, any damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to the City. The Project Company shall also submit to the City within 24 hours of receipt of copies of all accident and other reports filed with, or given to the Project Company by, any insurer, adjuster or governmental body.

6.2.2 Repair of Property. The Project Company shall promptly repair or replace all property owned by the City that is damaged by the Project Company in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

6.2.3 Damage or Destruction from Uninsurable Force Majeure Events. Where damage or destruction of the Project is caused by the occurrence of an Uninsurable Force Majeure Event, and the City does not terminate the Project Agreement pursuant to Section 4.2.6 (*City and Project Company Termination Rights*) above, the City shall be responsible for paying the cost of the Reinstatement Works in accordance with Section 4.2 (*Uninsurable Force Majeure Events*).

6.2.4 Damage or Destruction from Other Relief Events. Where damage or destruction of the Project is caused by the occurrence of an Other Relief Event, the City shall be responsible for paying the cost of the Reinstatement Works in accordance with Section 5.3 (*Other Relief Events*).

6.2.5 Damage or Destruction from Insurable Force Majeure Events. Where damage or destruction of the Project is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may, prior to the Termination Date, withdraw any Insurance Proceeds standing to the credit of the Insurance Trust Account, together with interest accrued thereon, as required to enable it to comply with its obligations under Section 4.3 (*Project Company's Obligations Upon Material Damage or Destruction*), and the parties shall comply with the signatory requirements governing the Insurance Trust Account to permit such payments to be made.

7. The Ground Lease.

7.1 Parties. There shall be a Ground Lease for the City Site. The parties to the Ground Lease shall be the Ground Lessor and the Ground Lessee.

7.2 Premises. The "**Ground Lease Premises**" shall be the entirety of the City Site and shall include the City Facilities, but not the Port Facilities²⁴.

7.3 Term. The term of the Ground Lease shall commence on the date of Project Closing and continue until the Ground Lease Expiration Date, without any right to extend or renew, except by mutual agreement by the parties.

7.4 Ground Rent. The ground rent under the Ground Lease shall be One Dollar (\$1.00) per annum, payable yearly in advance.

7.5 Use of Premises. The Ground Lessee shall be subject to various use covenants, including site maintenance and cooperation with neighboring property owners and shall restrict uses to those contemplated by the Project Agreement.

7.6 No Assignment. The Ground Lessee shall have no right to assign the Ground Lease without the Ground Lessor's prior consent, which may be withheld in its absolute discretion, except for an assignment or transfer to a person or entity to whom the Project Agreement is being assigned or transferred contemporaneously therewith and in accordance with the applicable provisions of the Project Agreement.

7.7 Subletting. The Ground Lessee shall have no right to sublease any portion of the Ground Lease Premises without the Ground Lessor's prior written consent, which may be withheld in its absolute discretion.

²⁴ PECP Note: May need to consider air rights as well given layered uses with the structures (i.e. Port parking beneath City Hall Building, CUP beneath Port building and Port garage entrance beneath City Hall Building, etc.)

7.8 Casualty Damage or Destruction. In the event of damage or destruction to the Project, the respective obligations and remedies of the parties will be as set out in the Project Agreement.

7.9 Indemnification. Except to the extent expressly provided in the Space Lease, Ground Lessee shall indemnify Ground Lessor, the City and the Trustee with respect to any liability arising by reason of any:

- (a) Breach of any representation or warranty by Ground Lessee under the Ground Lease;
- (b) Negligent act or omission of Ground Lessee;
- (c) Willful misconduct of Ground Lessee;
- (d) Non-compliance by Ground Lessee with any provision of the Ground Lease or Project Agreement; or
- (e) Hazardous Substances in the Ground Lease Premises which are caused by act or omission of Ground Lessee.

7.10 Non-Subordination. In no event shall the interests of the City in the Ground Lease or as fee owner of the City Site be subordinated to the interest of the Ground Lessee or any other party.

7.11 Termination. In the event of termination of the Project Agreement for any reason, if the Senior Debt under the City Facilities Financing remains outstanding, the Ground Lessee shall remain in full force and effect in accordance with the Financing Documents.

7.12 Other Provisions. The Ground Lease shall contain such other provisions as are customarily included in similar transactions.

8. The Space Lease

8.1 Parties. There shall be a Space Lease for the City Site. The parties to the Space Lease shall be the Landlord and the Tenant.

8.2 Premises. The “**Space Lease Premises**” shall be [all or a portion] of the City Facilities located on the City Site. [PECP Note: Need to consider further whether the Space Lease should be limited to the City Hall Building and the Library only, excluding Lincoln Park.]

[COLB Note: The provisions of the following Sections 8.3 through 8.16 will be included in both the Space Lease and the Project Agreement and need to be the same in both documents].

8.3 Term. The Space Lease shall be effective as of Project Closing, but the term of the Space Lease shall commence only upon the Initial Occupancy Date and shall expire simultaneously with the expiration or earlier termination of the Ground Lease.

8.4 Rent.

8.4.1 Rent Composition. “Rent” payable under the Space Lease will be comprised of (i) a “**Base Rent**” component that is sufficient to service, amortize, and repay principal and interest under the Financing indebtedness under the City Facilities Financing and (ii) an “**Additional Rent**” component which shall be the amount of charges payable by the Tenant for equity charges, maintenance, services, utilities, insurance and other services and costs as will be more fully described in the Project Agreement. Pursuant to a collateral assignment of the Space Lease to the Trustee, the Base Rent shall be paid directly to the Trustee. The Additional Rent shall be paid to the Project Company.

8.4.2 Amount of Rent and Relationship to Service Fee under Project Agreement. The amount of Rent payable by the Tenant under the Space Lease will be equal to (without double counting) the amount of the Service Fee payable by the City under the Project Agreement, as set out in Appendix 1 (*Payment Mechanism*). The Rent will comprise:

(a) Base Rent. The amount of the Base Rent component under the Space Lease will be equal to (without double counting) the amount of the Capital Fee under the Project Agreement; plus

(b) Additional Rent. The amount of the Additional Rent component under the Space Lease will be equal to (without double counting) the amount of the Operating Fee under the Project Agreement, subject to Deductions as set forth in Appendix 2 (*Service Fee Deductions*).

8.5 Rent Commencement. The commencement date for the Rent shall be the Initial Occupancy Date.

8.6 Rent Deductions. The City shall have the right to offset against the Additional Rent, any Deductions based on a schedule of deductions as set forth in Appendix 2 (*Service Fee Deductions*) hereto.

8.7 Facilities Management. The Project Company under the Project Agreement, shall be responsible for providing FM Services consistent with industry standards for Class A office buildings²⁵ in the Los Angeles/Orange County area for the City Hall and Library, and an agreed upon standard for Lincoln Park, including all interior and exterior elements of the City Facilities and the Shared Facilities, operating systems (including elevators, HVAC, etc.), exterior roofs and sidewalls and other structural elements of the City Facilities and the Shared Facilities. FM Services shall be further detailed in the Project Agreement.

8.8 Insurance. The Project Company under the Project Agreement shall be responsible for maintaining and paying the cost of specified property, business interruption, casualty, [seismic]²⁶, public liability and other insurance with respect to the City Facilities, as further described in the Project Agreement.

²⁵ PECP Note: “Class A office building” needs to be better understood and defined.

²⁶ PECP Note: Open item in respect of earthquake insurance.

8.9 Taxes. The Project Company under the Project Agreement shall pay all real estate and possessory interest taxes (if any) and any other fees or levies against the Space Lease Premises. The City shall reimburse the Project Company under the Project Agreement that portion of the property tax or possessory interest tax which (i) is paid by the Project Company, (ii) is applicable exclusively to the Project (iii) is actually received by the City, and (iv) has not otherwise been dedicated by the City for specific purposes.²⁷

8.10 Indemnification. Indemnity provisions shall mirror those in the Project Agreement.

8.11 Utilities. The Project Company shall make all arrangements necessary to secure the availability of all Utilities required to construct and operate the City Site as set out in the Project Agreement.

8.12 Parking Management. The Project Company shall operate and maintain the Broadway Garage and the Lincoln Garage as part of the FM Services (which shall be further detailed in the Project Agreement) and in accordance with the FM Requirements.

8.13 Assignment and Subletting.

8.13.1 Assignment. Tenant shall have the right to assign its interest in the Space Lease subject to Landlord's consent, which shall not be unreasonably withheld where the assignee is another governmental body of equal or better financial standing and which assumes, and is legally capable of discharging, all the obligations of the City under the Space Lease and the Project Agreement. The tenant may not assign its interest if to do so would adversely affect the tax-exemption of the City Facilities Financing.

8.13.2 Subletting. Tenant shall have the right to sublease all or any portion of the Space Lease without the consent of Landlord, provided Tenant remains primarily liable under the Space Lease and provided such sublet does not adversely affect the tax-exemption of the City Facilities Financing.

8.14 Rights and Remedies. In the event of a default by Tenant in the payment of Rent under the Space Lease, Landlord's (and the Trustee's) remedies shall be limited to judicial enforcement of Tenant's rental obligations as and when the same are periodically due pursuant to California Civil Code §1951.4. Landlord shall have no right to terminate the Space Lease, accelerate rental obligations, evict Tenant or exercise any other remedy for Tenant's default.

8.15 Damage and Destruction. In the event of the damage or destruction of all or a portion of the Space Lease Premises during the Space Lease term, the relevant provisions of the Project Agreement shall apply.

8.16 Eminent Domain. Subject to and in accordance with the Financing Documents, in the event of a partial condemnation of the Space Lease Premises by a government agency exercising its power of eminent domain, the parties shall reconfigure and restore the

²⁷ PECP Note: The application of possessory interest tax is still under review.

Space Lease Premises utilizing available condemnation proceeds, with an equitable adjustment of Rent payable by Tenant. In the event of a total condemnation of the Space Lease Premises by a government agency exercising its power of eminent domain, subject to the rights of the Trustee pursuant to the collateral assignment of the Space Lease, both the Space Lease and the Ground Lease shall terminate, and any condemnation proceeds shall be allocated in accordance with the Financing Documents as set out in the Project Agreement.

8.17 Termination. In the event of termination of the Project Agreement for any reason, if the Senior Debt under the City Facilities Financing remains outstanding, the Space Lease shall remain in full force and effect in accordance with the Financing Documents.

8.18 Other Provisions. The Space Lease shall include such other provisions as are customarily included in similar transactions and any other relevant provisions in the Project Agreement.

9. Disbursement Agreement(s).

9.1 Parties. There shall be a City Facilities Disbursement Agreement and a Port Facilities Disbursement Agreement. The parties to the City Facilities Disbursement Agreement shall be the City, the City Facilities Financing Trustee, the Project Company, and the DB Contractor. The parties to the Port Facilities Disbursement Agreement shall be the Port Facilities Construction Financing Trustee, the Port, the Project Company and the DB Contractor (as design-build contractor under the DB Contract).

9.2 Disbursement Account(s). The City Disbursement Agreement shall govern the disbursement of proceeds under the City Facilities Financing to fund the development of the City Facilities and the Port Disbursement Agreement shall govern the disbursement of proceeds from the Port Facilities Construction Financing to fund the development of the Port Facilities.

9.3 Disbursement Terms. The amounts on deposit in the Disbursement Account(s) will be used by Project Company to fund Project costs including payments to the DB Contractor as progress payments, with customary retentions and holdbacks, based upon receipted paid invoices for qualifying hard and soft costs of construction, and otherwise pursuant to procedures provided in the DB Contracts and the Financing Documents.

[PECP Note: The Financing Documents will regulate the disbursement and use of proceeds and the City and the Port will have an opportunity to review and approve the Financing Documents. The Financing Documents will require all of the equity capital required to fund the Project to be committed at Project Closing with all Deferred Equity Amounts supported by an Equity Letter of Credit.] [COLB Note: The City and the Port need to be a party to the Financing Documents.]

10. Project Financing.

10.1 Financing. The parties acknowledge that:

(a) the City Facilities will be financed with the City Facilities Financing and the City shall have no liability whatsoever under the City Facilities Financing other

than compliance with the City's obligations, including its obligation to pay Rent under the Space Lease and to comply with its obligations under the Project Agreement; and

(b) the Port Facilities will be financed using the Port Facilities Construction Financing and the Port shall have no liability whatsoever under the Port Facilities Construction Financing other than compliance with its obligations, including its obligation to pay the Port Completion Payment, under the Project Agreement.

10.2 Refinancing. The Project Company shall not enter into any voluntary refinancing in respect of the City Facilities Financing without the prior consent of the City, which may be withheld in its sole discretion. In no event shall such refinancing be allowed if it negatively impacts the City's credit rating or debt capacity. The Project Company will be entitled to any refinancing gain associated with the refinancing but will reimburse the City for its reasonable time and costs incurred in any such refinancing.

10.3 Funding Additional Costs for Which the City is Responsible.

10.3.1 City Financing. Any (a) costs for Capital Modifications required due to a Relief Event or at the City's direction; and (b) costs for Design-Build Work or Reinstatement Works required due to an Uninsurable Force Majeure Event occurring prior to the Occupancy Date in respect of a Facility for which the City is responsible, shall be paid by the City, on a negotiated lump sum basis in accordance with to Section 2.7 (*Negotiated Lump Sum Pricing of Additional Work*) or subject to Cost Substantiation in accordance with Section 2.8 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*), to the Project Company or to the third party entitled to receive such payments. Any changes in costs for FM Services required due to a Relief Event or at the City's direction for which the City is responsible shall be agreed between the parties and paid by the City by way of adjustment to the Service Fee. In the event the City determines to finance such payments rather than use currently available funds, the City shall provide such financing unless otherwise agreed pursuant to Section 10.3.2 (*Project Company Financing*).

10.3.2 Project Company Financing. At the City's request, and subject to Section 1.22 (*Certain Design-Build Period Obligations Subject to the Availability of Funds*) the Project Company (with the cooperation of the City) shall use all reasonable efforts to obtain the financing required to pay all or a portion of the capital costs that the City is obligated to pay for as referred to in Section 10.3.1 (*City Financing*), on commercially reasonable terms and subject to any applicable consent or other requirements under the Financing Documents; provided in no event shall the Project Company be obligated to undertake any such financing if doing so could reasonably be expected to materially adversely affect its rights or obligations under the Transaction Documents. To the extent the Project Company is able to obtain such financing, the cost of the financing will be taken into consideration by the parties through the negotiation of the adjustment of the Service Fee or an extension of the Term resulting from the implementation of the Capital Modification. The City shall pay the Project Company an amount equal to the reasonable out-of-pocket expenses incurred by the Project Company in seeking such financing, provided that the City approved such expenses prior to the Project Company incurring them.

11. Private Development Sites.

11.1 Parties. The parties to the Conveyance Agreement(s) (to be executed concurrently with the Project Agreement will be the City (as Seller), and the Project Company or its affiliate(s) or City approved assignee(s) (as Buyer(s)).

11.2 Conveyance of Private Development Sites.

11.2.1 Pacific Site. Upon Project Closing (or at such later time as requested by the Project Company), the City shall convey the Pacific Site to the Project Company or its affiliate or assignee²⁸.

11.2.2 Mid-Block Site. Upon Project Closing, the City will enter into a Conveyance Agreement with the Project Company (or its affiliate) pursuant to which the City shall convey the Mid-Block Site to the Project Company or its affiliate (or either's assignee) upon [PECP Note: the Occupancy Date of the new City Hall Building] [COLB Note: Final Completion of the Project, including the Port Facilities, by the Project Company] and subject to the other conditions to be set forth in the Conveyance Agreement (including the [removal of all liens other than agreed upon by the parties from the Mid-Block Site, the issuance of a demolition permit in respect of the old City Hall (Note: the issue of which project approvals are required) and the] reservation by the City of certain public rights-of-way over the Mid-Block Site). The City shall convey the Mid-Block Site, in fee simple, to the Project Company at a date and time agreed upon by the parties (subject to the satisfaction of conditions set forth in the Conveyance Agreement).

11.3 Consideration for Conveyance. The consideration for such conveyance shall include the Project Company's performance of its obligations under the Project Agreement. In particular, it is acknowledged that the Lincoln Park improvements are intended to be funded by the Project Company from the proceeds it receives from selling its rights to develop, or from developing, the Private Development Sites and it is also acknowledged that the following items will be completed by the private developer (which may be a special purpose entity established by the Initial Equity Members or their affiliates) and the Conveyance Agreement for the Mid-Block Site will be conditioned with the obligation to complete the following:

- (a) Demolition and removal of the old City Hall building;
- (b) Redevelop Cedar Street between Broadway and Ocean Boulevard; and
- (c) New access ramp structure off Chestnut Avenue or Cedar Avenue, servicing the new Library loading dock and Lincoln Garage.

Proceeds required to complete the Project (i.e. Lincoln Park improvements) will be deposited to the City Facilities Disbursement Account at the same time that the Mid-Block Site is conveyed to the private developer. The Project Company has an obligation to complete the Lincoln Park, and the Initial Equity Members will ensure that the three projects above are also completed, regardless of whether or not a sale to a private developer occurs and to complete

²⁸ The City will be responsible for relocating the storm water drain on the Pacific Site prior to Project Closing.
[Open issue]

each project within a reasonable time to be negotiated. The obligation of the Initial Equity Members to complete the three projects above will be supported by cash deposit, parental company guarantees and/or other adequate security to be agreed prior to Project Closing.

11.4 Condition of Property. [The Private Development Sites shall be conveyed to the Project Company “as is”, without representations or warranty of any kind, and the Project Agreement shall include standard disclaimer of liability and litigation release provisions to that effect.]²⁹

11.5 Project Approvals. The Conveyance Agreement(s) will provide for preliminary design submittals by the Project Company including a conceptual design, drawings (including plans and outline specifications), each of which shall be subject to review and approval by the City in its proprietary capacity under the Conveyance Agreement and by various public agencies, including the City, in their regulatory capacities for the site plan approval. The Project Company shall be responsible for compliance with CEQA and any identified mitigation measures relating thereto. Nothing in the Transaction Documents shall limit or eliminate the obligation of the Project Company to obtain all Regulatory Approvals from the City, in its regulatory capacity (and payment of applicable fees in connection therewith³⁰), for development of the Private Development Sites.

11.6 Access to Sites. Prior to the conveyance of the Private Development Sites, representatives of the Project Company shall have the right of access to the Private Development Sites in accordance with that certain Site Access Agreement dated as of January 5, 2015, executed by and between the City and the Project Company.

11.7 Closing Conditions and Timing. The following conditions apply for the conveyance of both Private Development Sites. These conditions must be met for each parcel before conveyance of such parcel, but do not have to be completed for both parcels for the conveyance of a single parcel.

(a) [All permits for construction have been issued and financing has been obtained for development of the Private Development Site in question.]³¹ A title company acceptable to the Project Company has irrevocably committed to issue a CLTA title policy insuring that fee title to the Private Development Site in question will be vested in the Project Company or its assignee subject only to known and recorded encumbrances and other agreed upon exceptions to title.

(b) The Project Company has approved, in its sole and absolute discretion, the environmental, geological and soils condition of the Private Development Site, including any mitigation measures and monitoring requirements which may be required for the Private Development Sites pursuant to the certified Downtown Program Plan EIR³².

²⁹ PECP Note: Under review pending phase 2 site due diligence.

³⁰ PECP Note: discuss fees with the City to minimize cost of the Project.

³¹ PECP Note: open issue as to what the appropriate approval and financing conditions are for closing.

³² PECP Note: Subject to phase 2 site due diligence and any subsequent remediation required.

11.8 Scope of Project Development.

(a) Development on each Private Development Site shall conform to the Downtown Plan/PD-30 Zoning Code and be compatible with existing and planned adjacent uses.

(b) The residential development located on a Private Development Site must provide ten (10%) percent of the total units as moderate income restricted for a period of at least fifty-five (55) years at 100% to 120% Area Median Income, per the State of California Department of Housing and Community Development definition.

(c) Any hotel/hospitality uses developed on either Private Development Site require the execution of a labor peace agreement between the Project Company (or operator of the hotel) and a union in the Long Beach area representing hospitality industry employees.

(d) Any development located on any Private Development Site must achieve a minimum certification of LEED Gold and contribute to the certification of LEED ND for the Project Site. In addition, the development must meet the City's Sustainable City Action Plan's requirements for sustainable development in effect on the date of Project Closing.

(e) As part of the development of the Mid-Block Site, the Project Company shall construct First Street between Cedar Ave and Chestnut Avenue, and complete the construction of Cedar Avenue between Broadway and West Ocean Boulevard.

11.8.2 Assignment of Rights. The Project Company may assign (without release of the Project Company's outstanding obligations under the Project Agreement) the conveyance of Private Development Sites to a third-party developer subject to the City's reasonable approval, which shall include the financial capability, relevant experience and other factors relating to the proposed assignee's ability to develop and complete a project on the Private Development Sites. All conditions and provisions included in this Terms Sheet and the Conveyance Agreement that relate to the development or conveyance of the Private Development Sites will transfer to the third-party developer with the land subject to the assignee's assumption of the Project Company's obligations in respect thereof.

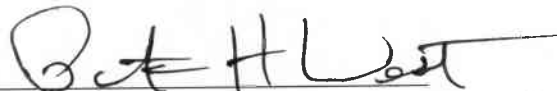
11.8.3 Other Closing Conditions. In addition to other standard closing conditions, as a prerequisite to the closing and conveyance of the Mid-Block Site, the Project Company must have [**PECP Note:** achieved Occupancy Readiness in respect of the City Hall Building and Library under the Project Agreement] [**COLB Note:** including Final Completion of the Project.]

11.8.4 Interim Maintenance. The Conveyance Agreement(s) shall include reasonable provisions for maintenance of the Private Development Sites subsequent to conveyance and prior to physical development.

11.9 Closing Procedures for the Private Development Sites. Conveyance of the Private Development Sites shall be accomplished through a title company escrow, or other mutually agreed upon closing procedure, upon satisfaction of all closing conditions. The Project Company shall pay all title premiums, transfer taxes (if any) and other third party costs of closing. Fee title to Private Development Sites shall be conveyed to the Project Company at closing free and clear of liens and encumbrances, other than "Permitted Exceptions" to be agreed upon through a title review and approval process.

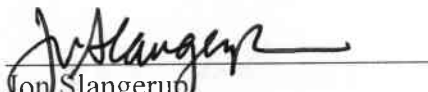
“The City”

CITY OF LONG BEACH

By: 
Patrick H. West
City Manager

“The Port”

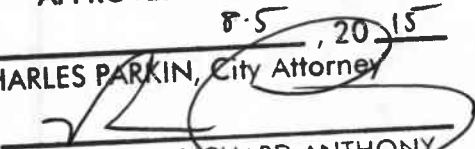

CITY OF LONG BEACH, acting by and through
its Board of Harbor Commissioners

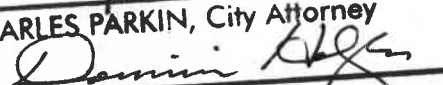
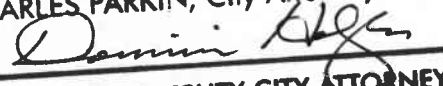
By: 
Jon Slangerup
Chief Executive

“The Project Company”

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

By: _____
Stuart Marks
Authorized Person

APPROVED AS TO FORM
8-5, 2015
By 
CHARLES PARKIN, City Attorney
By 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

APPROVED AS TO FORM
8/5, 2015
By 
CHARLES PARKIN, City Attorney
By 
PRINCIPAL DEPUTY CITY ATTORNEY

“The City”

CITY OF LONG BEACH

By: _____
Patrick H. West
City Manager


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CITY OF LONG BEACH, acting by and through
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PLENARY EDGEMOOR CIVIC PARTNERS, LLC,
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By:  S. MARKS
Stuart Marks
Authorized Person

APPENDICES

- Appendix 1: Payment Mechanism
- Appendix 2: Service Fee Deductions
- Appendix 3: Compensation on Termination
- Appendix 4: Insurance Requirements
- Appendix 5: Port & City Rights Framework
- Appendix 6: Shared Facilities Framework
- Appendix 7: Definitions

APPENDIX 1. PAYMENT MECHANISM

Service Fee payments from the City to the Project Company will take place monthly³³ based on the nominal value established in the Project Agreement and will comprise two components (the Capital Fee and the Operating Fee):

(i) Capital Fee

The City will pay the Capital Fee according to the Capital Fee Schedule³⁴.

(ii) Operating Fee

The City will pay the Operating Fee in month x to the Project Company which will be:

- (a) the amount of the Base Annual Payment for the applicable FY (year x) divided by 12, *plus*
- (b) the Electricity Payment in month x-1, *less*
- (d) Service Fee Deductions, as contemplated in Appendix 2 (Service Fee Deductions), *less*
- (e) the Capital Fee in month x, *less*
- (f) the Parking Fee applicable in FY (year x) divided by 12.

Payment of the Service Fee from the City to the Project Company will be paid within 30 days from receipt of invoice from the Project Company.

Base Annual Payment

Fiscal Year of Payment From Occupancy	Base Annual Payment (\$)
FY2017 (Oct 1 2016 to 30 Sept 2017)	13,258,031
FY2018 (Oct 1 2017 to 30 Sept 2018)	13,551,227
FY2019 (Oct 1 2018 to 30 Sept 2019)	13,801,100
FY2020 (Oct 1 2019 to 30 Sept 2020)	14,104,055

³³ PECP Note: Under S&P's public finance rating methodology, a debt service reserve is not required if there is sufficient time (i.e. 3 months) between the start of the City's fiscal year (i.e. October 1) and payment of the Service Fee. This requirement recurs annually. Financial Model and Financing Documents to be structured accordingly based on monthly payment of the Service Fee.

³⁴ PECP Note: Capital Fee Schedule will be a schedule of payments based on senior debt and equity distribution profile.

FY2021 (Oct 1 2020 to 30 Sept 2021)	14,240,137
-------------------------------------	------------

On October 1, 2021 for FY2022, the Base Annual Payment will be:

$$\begin{aligned}
 & \$14,240,137 \times 0.2 + \\
 & \$14,240,137 \times [0.55 \times (\text{CPI-U}_{\text{Sept2021}})/\text{CPI}_{\text{Sept2020}}] + \\
 & \$14,240,137 \times [0.17 \times (\text{CPI-U}_{\text{Sept2021}})/\text{CPI}_{\text{Sept2020}}].
 \end{aligned}$$

Beginning on October 1, 2022 for FY2023, and for subsequent FYs, the City’s Base Annual Payment in FY x will be:

$$\begin{aligned}
 & \text{Base Annual Payment for FYx} = \\
 & \text{Base Annual Payment FYx-1} \times 0.2 + \\
 & \text{Base Annual Payment for FYx-1} \times [0.55 \times \{1 + \text{lesser of } 0.06 \text{ or } (\text{CPI-U}_x/\text{CPI-U}_{x-1})\}] + \\
 & \text{Base Annual Payment for FYx-1} \times [0.17 \times \{1 + \text{lesser of } 0.02 \text{ or } (\text{CPI-U}_x/\text{CPI-U}_{x-1})\}]
 \end{aligned}$$

Electricity Payment

From the Initial Occupancy Date until Final City Occupancy Date, the Electricity Payment shall be equal to the Base Electricity Consumption multiplied by the Electricity Rate charged to the Project.

[PECP Note: For the purposes of PECP’s Proposal, the annual Electricity Rate was calculated to be the Base Electricity Rate commencing at the Base Date and growing at a compound annual growth rate (CAGR) of 6% every twelve (12) months until the Expiration Date. City and PECP to work through necessary adjustments to the Service Fee.]

From and following Final City Occupancy Date, the Electricity Payment in month x-1 shall be:

- (a) the [Base Electricity Consumption] in Electricity Base Table in month x-1 multiplied by the Electricity Rate charged to the Project in month x-1, *minus*
- (b) the Electricity Benchmark Adjustment in month x-1.

Electricity Benchmark Table

Starting with the third year after the Final City Occupancy Date, the Independent Building Expert will utilize actual Electricity Consumption data for the preceding year to establish the average utility consumption benchmark amount for each calendar month, and those amounts will set the first Electricity Benchmark Table, subject to reasonable mutual approval by

the City and the Project Company. The first Electricity Benchmark Table will be applicable for years 3 through 7 of operation post the Final City Occupancy Date.

The amounts in the Electricity Benchmark Table will be readjusted, by the Independent Building Expert, subject to the reasonable mutual approval by the City and the Project Company, thereafter every five years (with the first reset of the Electricity Benchmark Table applicable in year 8 of operation post Final Completion) using the average of the actual electricity consumption for each month during the five years preceding the prior establishment of the Electricity Benchmark Table.

Electricity Consumption Adjustment

For the first 2 years after Final Completion, the Electricity Consumption Adjustment will be zero.

Starting with the third year of operation after Final Completion, the City shall be credited for each amount of electricity not consumed below each monthly amount in the Electricity Benchmark Table multiplied by the actual rates charged to the Project Company in that month and will be debited for each electricity amount consumed above each monthly amounts in the Electricity Benchmark Table multiplied by the actual rates charged to the Project Company in that month.

Consumer Price Index

CPI_{Sept2013}

The September 2013 Consumer Price Index for All Urban Consumers (CPI-U) as published by the US Bureau of Labor Statistics for the Greater Los Angeles Area (Los Angeles-Riverside-Orange County). As published, the CPI_{Sept2013} value shall be 239.611.

CPI-U_x

The Consumer Price Index for All Urban Consumers (CPI-U) as published by the US Bureau of Labor Statistics for the Greater Los Angeles Area (Los Angeles-Riverside-Orange County), or its replacement equivalent in future for September in year x.

Parking Fee³⁵

If Project Company is to retain revenues from Broadway Garage, the Parking Fee will be calculated as follows:

- The Parking Fee for FY2022 will be \$480,000 x [lesser of (1.06⁹) or (1 + {CPI-U_{Sept2022} / CPI-U_{Sept2013}})].

³⁵ PECP Note: PECP is still considering possibility of taking revenue risk on the Parking Fees (subject to further legal, financial and tax due diligence).

- Beginning on October 1, 2022 for FY2023, and for subsequent FYs, the Parking Fee in FY x will be: Parking Fee for FYx-1 x [1+lesser of 0.06 or (CPI-Ux/CPI-Ux-1)].

If the City retains revenues from Broadway Garage, the Parking Fee will be calculated as follows:

- The Parking Fee for FY2022 will be \$130,000 x [lesser of (1.06⁹) or (1+{CPI-U_{Sept2022}/ CPI-U_{Sept2013}})].
- Beginning on October 1, 2022 for FY2023, and for subsequent FYs, the Parking Fee in FY x will be: Parking Fee for FYx-1 x [1+lesser of 0.06 or (CPI-Ux/CPI-Ux-1)].

Payments Prior to Project Completion

The City will begin making the applicable Base Annual Payment to the Project Company in the following portions:

- (a) 10% of the Service Fee upon the Occupancy Date of the Library;
- (b) 80% of the Service Fee upon achieving the Occupancy Date of the City Hall Building;
- (c) [³⁶] of the Service Fee upon achieving the Occupancy Date of both the Library and the City Hall Building;
- (d) [³⁷] of the Service Fee upon achieving the Final City Occupancy Date; and
- (e) 100% of the Service Fee upon achieving the Project Occupancy Date.

Any such Service Fee Payment amounts will be prorated daily.

The City will also pay the Project Company the applicable *pro rata* Electricity Payment as described prior to Final Completion.

³⁶ PECP Note: This amount will be sufficient to cover Senior Debt service, all operating costs of the City Hall Building and the Library and 25% of any equity distribution.

³⁷ PECP Note: This amount will be sufficient to cover Senior Debt service, all operating costs of the City Hall Building, the Library and Lincoln Park and 50% of any equity distribution.

APPENDIX 2. SERVICE FEE DEDUCTIONS

The Project Company shall provide FM Services that result in a level of operations and maintenance that maintains the facility consistent with industry standards for Class A office buildings³⁸, including but not limited to best property management practices, building systems operations, provision of security in the case of the City, provision of customer services and all other FM Services as set out in the Project Agreement.

The Project Company's performance in the provision of FM Services will be monitored against Facility Management Standards and Key Performance Indicators (KPIs) to be agreed upon in the Project Agreement. If at any time after the Initial Occupancy Date the Project Company fails to provide the FM Services in accordance with the provisions agreed upon and defined in the Project Agreement the City will be entitled to make Deductions to the Service Fee for the relevant Billing Period.

If applicable, Deductions to the Service Fee will be included in one or the combination of the following Deductions³⁹:

- (i) Deductions for Unavailability, which will be applied in case Functional Units are Unavailable after the applicable Completion Period has expired;
- (ii) Deductions for Total Unavailability, which will be applicable when a Total Unavailability Condition occurs and will result in a Deduction for Unavailability being applied for each Functional Unit that would have otherwise been Available. All Functional Units will continue to be deemed Unavailable until Total Unavailability Condition no longer occurs;
- (iii) Deductions for Elevator Unavailability, which will be applied in case of Unavailability of elevator service after the corresponding Completion Period;
- (iv) Deduction for Operating Service Failures, which will be applied in case the Project Company fails to comply with the KPIs established in the Project Agreement;
- (v) Deductions for Failure to Monitor or Report, which will be applied in case the Project Company fails to submit the necessary FM Documentation, according to the standards established in the Project Agreement and;
- (vi) Deductions for Misconduct, which will be applied if the Project Company is involved in fraudulent action or inaction, deliberate misrepresentation or gross misconduct or incompetence.

KPIs Performance Limits, Functional Unit definitions, Total Unavailability Condition, Completion Period Times, monetary Deduction Amounts, Elevator Unavailability, Operating

³⁸ PECP Note: concept of "Class A office building" needs to be better understood and defined.

³⁹ PECP Note: Deduction provisions are subject to further discussion.

Service Failures, Failure to Monitor or Report, and Misconduct as well as any others deemed necessary shall be agreed upon and included in the Project Agreement.

APPENDIX 3. COMPENSATION ON TERMINATION

[PECP Note: need to consider treatment of Private Development Sites in termination compensation calculations. Also note that the regime in this appendix specifically doesn't include debt payments because of the proposed abatement lease structure for the City Facilities whereas the compensation on termination provisions for the Port Facilities will include debt payments as agreed between the Port, the Project Company and the lenders of the Port Facilities Construction Financing.]

1. Compensation on Termination for Convenience, for City Event of Default and for Port Event of Default.

If the Project Company terminates the Project Agreement pursuant to Section 1.38.2 (*City Event of Default and Port Event of Default*) or if the City terminates the Project Agreement for its convenience pursuant to Section [1.40] (*Termination for Convenience*), the City (or Port in respect of a Termination by Project Company for Port Event of Default) will pay to the Project Company a Termination Payment (which shall be subject to appropriation by the City Council as described in Section [1.39] (*Termination*)) calculated at the Termination Date as follows (without double-counting):

- (a) Employee Payments; *plus*
- (b) Project Contractor Breakage Costs; *plus*
- (c) Any accrued but unpaid amounts owing and payable by the City or the Port to the Project Company under the Project Agreement; *plus*
- (d) the net present value of the anticipated future nominal Distributions (post-tax on the part of the Project Company and pre-tax on the part of the Equity Members) in respect of drawn share capital and payments in respect of any Equity Member Debt as of the Termination Date as determined by an independent third party expert appraiser (to be appointed by agreement between the parties from a list of names to be determined and according to a selection criteria to be agreed) within ninety (90) days of the appointment by both parties of such expert appraiser taking into account the recent historical performance of the Project Company (including performance failures and any remediation action taken) (less the documented costs expended to conduct the independent third-party expert appraisal); *minus*
- (e) Account Balances; *minus*
- (f) Deferred Equity Amounts; *minus*
- (g) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

2. Compensation for No Fault Termination by the City or the Project Company

If any party terminates the Project Agreement pursuant to Section 4.2.6 (*City and Project Company Termination Right*) or Section 5.3.4 (*Right of Termination for Extended Other Relief Event*), the City will pay to the Project Company a Termination Payment (which shall be subject to appropriation by the City Council as described in Section 1.39 (*Termination*)) calculated at the Termination Date as follows (without double-counting):

- (a) Employee Payments; *plus*
- (b) Project Contractor Breakage Costs; *plus*
- (c) Any accrued but unpaid amounts owing and payable by the City or the Port to the Project Company under the Project Agreement; *plus*
- (d) All amounts paid to the Project Company by way of equity capital (less dividends and other distributions to have been paid to the Equity Members) and Equity Member Debt (less an amount equal to the aggregate of all payments of interest and principal to have been made by the Project Company in respect of such Equity Member Debt) as shown in the Financial Model(s); *minus*
- (e) Account Balances; *minus*
- (f) Insurance Proceeds actually received by the City (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

3. Compensation for Project Company Default

- (a) Termination by the City for Project Company Default Prior to the Final City Occupancy Date. If the City or Port terminates the Project Agreement pursuant to Section 1.38.1 (*Project Company Event of Default*) at any time prior to the Final City Occupancy Date, the City will pay to the Project Company or the Project Company will pay to the City a Termination Payment (which, in the case of the City, shall be subject to appropriation by the City Council as described in Section 1.39 (*Termination*)) equal to the Net Design-Build Work Value.
- (b) Termination by the City for Project Company Default After the Final City Occupancy Date. If the City terminates the Project Agreement pursuant to Section 1.38.1 (*Project Company Event of Default*) at any time after the Final City Occupancy Date, the City will pay to the Project Company, subject to all other provisions of the Project Agreement, a Termination Payment equal to any accrued but unpaid amounts owing and payable by the City to the Project Company under the Project Agreement.

APPENDIX 4. INSURANCE REQUIREMENTS

[PECP Note: This Appendix is subject to review by City, Port, Clark Construction, JCI and respective insurance advisors. Also need to consider insurance requirements for the Port.]

1. Insurance During the Design-Build Period

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, the following policies of insurance, in accordance with the terms of this section. Copies of these policies shall be delivered to the City promptly when received by the Project Company. Each policy shall be obtained and be effective prior to the performance of any work or commencement of any activity intended to be insured by each policy. At the Project Company's option, the Project Company may provide any or all of the following insurance policies by means of a Contractor Controlled Insurance Program ("CCIP"). In such case, (a) the limits for Commercial General Liability insurance shall equal or exceed the limits set forth in Section 1.3 for on-site activities and (b) the limits for Commercial General Liability insurance may be less than the limits set forth in Section 1.3 for off-site operations, but in no event less than \$[•] per occurrence/aggregate.

1.1 Builder's Risk. A builder's risk course of construction insurance policy(s) covering all Design-Build Work, in each case other than design (including testing and commissioning) at the City Site or Port Site, while in transit and at any temporary off-site location; all materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project or incidental to the construction; all temporary structures at the City Site or Port Site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project to the extent the cost thereof is included in the Design-Build Work upon which the Service Fee [and Port Completion Payment] is based, while on or about the City Site or Port Site awaiting or during construction. The builder's risk policy(s):

- (a) shall be maintained until the Occupancy Date in respect of each Facility;
- (b) shall be in an amount not less than the Full Insurable Value (as defined in Section 3.1 of this Appendix) of the Project;
- (c) shall be written on an all risk basis, including coverage for flood, water damage, [seismic] and terrorism (excluding loss from a non-certified act of terrorism that involves nuclear, biological or chemical materials, and subject to a \$[•] million aggregate sublimit for flood coverage [and other specified events which may include seismic]);
- (d) shall specifically cover loss or damage arising as a consequence of faulty workmanship or materials;
- (e) shall include coverage for delay costs, including the loss of revenue, loss of investment income, continued payment of debt service, and the costs of

Project redesign if a covered loss ensues as a result of design error, subject to a \$[•] million sublimit;

(f) [shall include loss arising from earthquake and earth movement, subject to a \$[•] million aggregate sublimit for Design-Build Work with respect to the City Site];

(g) may exclude loss arising from war and related causes; terrorism arising from nuclear, biological or chemical materials; and nuclear perils;

(h) may exclude dishonest acts of the Project Company's employees, mysterious disappearance, and ordinary wear and tear; and

(i) may include deductibles or self-insured retentions, but such deductible or self-insured retention shall not be a recoverable cost under the Project Agreement, [except as provided in Section 7.2 of this Appendix with respect to loss from earthquakes and earth movement].

Named Insureds: Project Company, Design-Builder, all subcontractors, the City, [and the Port]

Additional Insured: Operating Service Provider, and the Senior Lenders

First Loss Payee: Senior Lenders, as their interests may appear

1.2 Professional Liability Insurance. A professional liability errors and omissions insurance policy, which policy shall:

- (a) be in an amount not less than \$[•] per claim and in the aggregate;
- (b) be on a "claims-made" basis; and
- (c) have an extended reporting or discovery "tail" period, or be renewed for a period, of not less than ten (10) years after the Contract Date.

Such policy shall have a retroactive date effective before the commencement of any design.

The practice professional liability policy of the primary design professional shall be specifically in excess of any project-specific professional liability errors and omissions policy. The primary design professional shall maintain its practice policy until the statute of repose expires in an amount not less than \$[•]. Such practice policy shall not include any exclusionary language relating to design-build joint ventures or partnerships or both.

Named Insureds: All entities providing professional design services

Indemnified Parties: Project Company and Design-Builder.

1.3 Commercial General Liability. A commercial general liability insurance policy, written on an occurrence basis and covering liabilities arising out of the construction of

the Project, including independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract, and (unless covered under separate professional liability insurance) professional services provided in connection with the construction of the Project. The policy shall not contain exclusions for property damage from explosion, collapse or underground hazard, or inadvertent construction defects. The products and completed operations liability coverage shall be maintained for a period of not less than ten (10) years following the Occupancy Date or the Termination Date, whichever occurs first. The insurance shall apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability. This insurance policy shall:

(a) have coverage for any one occurrence or claim of not less than \$[•] per occurrence and a \$[•] aggregate limit applicable solely to the construction of the Project, which requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” or umbrella basis; and

(b) be maintained throughout the Term until the Occupancy Date in respect of each Facility.

Named Insureds: Project Company and Design-Builder

Additional Insureds: City, [Port], Senior Lenders and Operating Service Provider

1.4 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than \$[•] per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the construction of the Project.

Named Insureds: The vehicle owner

Additional Insureds: Project Company, Design-Builder, the City, [the Port], Senior Lenders and Operating Service Provider

1.5 Worker’s Compensation and Employer’s Liability. Worker’s compensation as required by Applicable Law, and employer’s liability insurance having coverage limits of \$[•] for each accident, \$[•] for disease (each employee), and \$[•] for disease (policy limit).

1.6 Contractor Pollution Liability. Contractor Pollution Liability written on an occurrence form with limits of not less than \$[•] and a \$[•] project aggregate limit, covering liability due to pollution caused by or exacerbated by construction activities. If the policy is provided on a “claims made” form, the Project Company shall cause the Design-Builder to continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three years following the Occupancy Date in respect of each Facility.

Named Insured: Project Company, Design-Builder and Subcontractors

Additional Insured: The City, [and the Port]

1.7 Pollution Legal Liability. Pollution Legal Liability provided on a “claims made” form with limits of not less than \$[•] and a \$[•] project aggregate limit, covering third party bodily injury and property damage, remediation costs for known and unknown pollution conditions, and first party property damage. The Project Company shall continue such coverage, either through policy renewals or purchase of an extended discovery period, if such coverage is available, for not less than three (3) years following the Occupancy Date in respect of each Facility.

Named Insured: Project Company, Design-Builder and Subcontractors

Additional Insured: The City

2. Insurance During the Operating Period

The Project Company shall obtain and keep in force, or cause to be obtained and kept in force, throughout the Operating Period the following insurance coverage:

2.1 Property. All risk property insurance [(earthquake)]⁴⁰ on a stated amount basis for the Full Insurable Value insuring all buildings, improvements (other than tenants’ improvements in the Project) and equipment (other than tenants’ equipment) that are built or placed on the City Site, and including coverage for business interruption, extra expense and expediting expense, subject to a \$[•] million aggregate sublimit for [flood coverage] and [other events].

Name Insureds: Project Company, Design-Builder, Operating Service Provider and the City

First Loss Payee: Senior Lenders, as their interests may appear

2.2 Boiler and Machinery. Boiler and machinery insurance with limits of liability of not less than \$[•] per loss, insuring those objects as defined in the comprehensive object definition that are in use or connected and ready for use and are located on the City Site, and including coverage for business interruption, extra expense and expediting expense.

Named Insureds: Project Company, Design-Builder, Operating Service Provider and the City

First Loss Payee: Senior Lenders, as their interests may appear

2.3 Business Interruption. The business interruption insurance required by Sections 2.1 and 2.2 shall be provided with limits of liability [in such amounts as are necessary

⁴⁰ PECP Note: Earthquake insurance is being considered but costs were not assumed in PECP Proposal.

to achieve target credit rating]⁴¹ resulting from or attributable to any of the perils required to be insured against under the policies referred to in Sections 2.1 and 2.2 above, including losses resulting from interference with or prevention of access to the City Site or the Project, in each case in whole or in part, as a result of such perils or for any other reason.

Named Insured: Project Company, Design-Builder and Operating Service Provider

First Loss Payee: Senior Lenders, as their interests may appear

2.4 Commercial General Liability. Commercial general liability insurance insuring against liability of the Project Company and the Operating Service Provider with respect to the Project or arising out of the Contract Services, written on an occurrence basis and covering liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising liability, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). The insurance shall (a) apply separately for each insured against whom a claim is made or a lawsuit is brought, subject only to the insurance policy limits of liability and (b) have coverage for any one occurrence or claim of not less than \$[•], which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis.

Named Insured: Project Company, Design-Builder and Operating Service Provider

Additional Insureds: The City, Senior Lenders

2.5 Commercial Automobile Liability. Commercial automobile liability insurance with limits of liability of not less than \$[•] per accident, which requirement may be met by any combination of primary and excess coverage so long as the excess coverage is written on a “follow form” basis. The insurance must cover liability arising from any motor vehicle, including owned, hired or non-owned vehicles, assigned to or used in connection with the operation and maintenance of the Project.

Named Insured: The vehicle owner

Additional Insureds: Project Company, the City, Senior Lenders, Operating Service Provider

2.6 Worker’s Compensation and Employer’s Liability. Worker’s compensation as required by Applicable Law, and employer’s liability insurance having coverage limits of \$[•] for each accident, \$[•] for disease (each employee), and \$[•] for disease (policy limit).

2.7 Pollution Legal Liability. Pollution legal liability insurance for a building owner having coverage for any one occurrence or claim of not less than \$[•] and a \$[•] project

⁴¹ PECP Note: S&P’s public finance rating criteria requires business interruption insurance cover of at least 24 months.

aggregate limit, covering third party bodily injury and property damage, remediation costs for known and unknown pollution conditions, and first party property damage.

Named Insured: Project Company, the Design-Builder and the Operating Service Provider

Additional Insureds: The City

2.8 Directors and Officers. Directors and officers legal liability and corporate indemnification insurance having coverage for any one occurrence or claim of not less than \$[•].

Named Insured: Project Company

2.9 Employee Dishonesty. Employee dishonesty (crime) insurance against the fraudulent/dishonest acts of employees of the Project Company and the Operating Service Provider, including additional coverage for broad form money and securities, money orders and counterfeit paper currency, depositor's forgery, computer fraud and funds transfer fraud, audit expenses and credit card forgery with coverage for any one occurrence or claim of not less than \$[•].

Named Insured: Project Company

First Loss Payee: Senior Lenders

2.10 Other. Any other form of insurance and with such limits, in such form, in amounts and for risks as the City, acting reasonably, may require from time to time. The Service Fee shall be adjusted to reflect the cost of any such additionally required insurance.

3. Full Insurable Value

3.1 Determining Full Insurable Value. For the purposes of this Appendix, "Full Insurable Value" of any building, improvement, equipment or other property shall be determined by the Project Company, acting reasonably, at the time the insurance is initially taken out and thereafter at least once every 24 months, and the Project Company shall promptly notify the City in writing of each such determination, provided that the City may at any time (but not more frequently than once in any 12 month period), by written notice to the Project Company, require the Full Insurable Value of any building, improvement, equipment or other property to be redetermined by an independent qualified appraiser designated by the Project Company's insurance agent/broker and approved by the property insurance company. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to the Project Company and the City.

3.2 Adequacy of Contemplated Insurance. In addition to the determination of "Full Insurable Value", as part of the periodic review contemplated in the preceding paragraph of this section, the Project Company shall determine whether the policies set out in Section 2 and the limits of such policies are adequate for the Project, and the Project Company shall promptly notify the City in writing of each such determination, provided that the City may at any time (but not more frequently than once in any 12 month period), by written notice to the Project

Company, require the policies or the limits of such policies be redetermined, in the manner described in the preceding paragraph. The Project Company shall cause such redetermination to be made promptly and the results of such redetermination communicated in writing to the Project Company and to the City. The Service Fee shall be adjusted to reflect the any reduced or increased cost of any City-directed insurance redetermination.

4. Waiver of Subrogation Rights, and Other Policy Requirements

4.1 Design-Builder Waiver of Subrogation. The Design-Builder and its insurers providing the insurance required under Sections 1.1, 1.2, 1.3, 1.4, and 1.5 shall waive any right of subrogation they may have against the City, including their respective elected and appointed officials, employees and agents, if any, and those for whom the City is in law responsible, whether or not the damage is caused by its act, omission or negligence.

4.2 Project Company Waiver of Subrogation. The Project Company and its insurers providing the insurance required under Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, and 2.7 shall waive any rights of subrogation they may have against the Design-Builder and those for whom the Design-Builder is in law responsible, and the City, whether or not the damage is caused by its act, omission or negligence.

4.3 City Waiver of Subrogation and Waiver of Claims. To the extent the City maintains commercial insurance after the Occupancy Date of the type customarily maintained by occupants of commercial office property, they shall waive any rights of subrogation they may have against the Project Company, the Design-Builder or the Operating Service Provider and those for whom they are in law responsible, whether or not the damage is caused by the acts, omissions or negligence of the Project Company, the Design-Builder or the Operating Service Provider and those for whom such parties are in law responsible. To the extent the City self-insures against such risks for which commercial insurance is normally purchased, they shall waive the right to make claims against the Project Company, the Design-Builder or the Operating Service Provider and those for whom such parties are in law responsible with respect to such damages.]

5. GENERAL POLICY REQUIREMENTS

5.1 Policy Requirements. Each policy of insurance required under this Appendix shall:

- (a) [be written on a project or location specific basis];
- (b) be issued by a Qualified Insurer;
- (c) be in a form approved by the City, such approval not to be unreasonably withheld;
- (d) be non-contributing with and shall apply only as primary and not excess to any other insurance, self-insurance, or other risk financing program available to the City;

(e) contain an undertaking by the insurers to notify the City and the Senior Lenders in writing not less than 30 days before any material change, cancellation or termination.

6. Evidence of Insurance

Upon the issue of a policy of insurance, and otherwise upon request by the City, the Project Company shall deliver to the City and to the Operating Service Provider (to the extent of coverage under which it is an additional insured) a copy of the policy of insurance or other satisfactory evidence of adequate insurance. The Project Company, acting reasonably, may redact proprietary information from the copy of the policies delivered to the City. Upon request by the City, the Project Company shall deliver proof of payment of premiums for insurance required to be effected pursuant to this Appendix. No review or approval of any insurance certificate or insurance policy by the City shall derogate from or diminish the City's rights under the Project Agreement.

7. Deductibles

7.1 Deductibles During the Design-Build Period. Except as provided in Section 7.2 of this Appendix, any of the policies of insurance required under Section 1 of this Appendix during the Design-Build Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Project Company and approved by the City, such approval not to be unreasonably withheld. During the Design-Build Period, the Project Company shall pay the amount deducted from the insurance moneys payable in the event of any loss, and the amount shall be included as Insurance Proceeds or Insurance Receivables.

7.2 [Earthquake Insurance Deductibles.] []

7.3 Deductibles During the Operating Period. Any of the policies of insurance required under Section 2 of this Appendix during the Operating Period may provide that the amount payable in the event of any loss shall be reduced by a deductible amount designated by the Project Company and approved by the City, such approval not to be unreasonably withheld; provided, that in the absence of an Insurance Unavailability Event the maximum deductible for such insurance coverage shall not exceed \$[•] (Index Linked). In the event that an Insurance Unavailability Event has occurred such that a deductible in excess of \$[•] (Index Linked) is necessary, the City shall, in the manner set forth in and as part of the amounts payable in accordance with the Project Agreement, be responsible for paying the Project Company an amount equal to the difference between the amount deducted from the insurance moneys paid in the event of such a loss and \$[•] (Index Linked), and the amount paid by the City to the Project Company shall be included as Insurance Proceeds or Insurance Receivables. Except as otherwise provided in this section 7.3, during the Operating Period, the Project Company shall pay the amount deducted from the insurance moneys payable in the event of any loss, and the amount shall be included as Insurance Proceeds or Insurance Receivables.

APPENDIX 5. PORT & CITY RIGHTS FRAMEWORK

Rights

Item	City Approval	Port Approval
Amendments to Project Agreement (Construction Period)	✓	✓
Amendments to Project Agreement (Operating Period)	✓	✓ (Limited to capital modifications and level of maintenance and service to Shared Facilities)
City Facilities Financing	✓	
Port Facilities Financing		✓
City Facilities – design approvals,	✓	
Port Facilities - design approvals		✓
Shared Facilities - design approvals	✓	✓
City Facilities – change orders (Construction Period)	✓	
Port Facilities – change orders (Construction Period)		✓
Shared Facilities – change orders (Construction Period)	✓	✓
City Facilities – change orders (Operating Period)	✓	
Port Facilities – change orders (Operating Period)		
Shared Facilities – change orders (Operating Period)	✓	✓ (Limited to capital modifications and level of maintenance and service to Shared Facilities)

Notification Rights

Item	City	Port
Project Agreement generally (Construction Period)	✓	✓
Project Agreement generally (Operating Period)	✓	✓ (Limited to capital modifications and level of maintenance and service to Shared Facilities)
City Facilities	✓	(Copy to Port)
Port Facilities	(Copy to City)	✓

Shared Facilities	✓	✓
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Completion Tests (Substantial Completion, Occupancy, Final Completion)

Item	City Facilities	Port Facilities
City Hall Building	✓	
Main Library	✓	
Lincoln Park	✓	
Port Headquarters		✓
Underground Parking		✓
Shared Facilities – Central Utility Plant & Utility Yard	✓ (Full)	✓ (Full)
Shared Facilities – Civic Plaza	✓ (City half)	✓ (Port half)
Shared Facilities – Shared Rooms	✓	
Shared Facilities - Loading Dock & Ramps	✓	✓

For the purposes of the Completion Tests:

- **“City Hall Building”** means the new City Hall Building (including the Shared Rooms located within it) and also includes:
 - City-side half of the Civic Plaza;
 - Loading Dock & Ramps; and
 - Central Utility Plant & Utility Yard.
- **“Port Facilities”** means the new Port Headquarters Building (including underground parking structure) and also includes:
 - Port-side half of the Civic Plaza;
 - Loading Dock & Ramps; and
 - Central Utility Plant & Utility Yard.

For the purposes ownership:

- The City will own the City Site and the Port will own the Port Site.
- The City will own the City Facilities and the Port will own the Port Facilities
- The Shared Facilities will be owned by the City and the Port under some of joint ownership (to be agreed) in accordance with their respective allocations and subject to easements or other rights of access in favor of each other for the use and enjoyment of such Shared Facilities by the City and the Port.

As regards insurance after Occupancy, the Port intends to separately insure the new Port Headquarters Building (including nearby underground parking structure), the Central Utility Plant & Utility Yard and,

probably, the Loading Docks & Ramps, in each case with reimbursement from the City to the extent of the City’s interest in the relevant Shared Facility⁴².

Any Port directed Change Order which impacts the City Facilities shall constitute a Relief Event in respect of the City Facilities for which the Port shall pay and any City directed Change Order which impacts the Port Facilities will constitute a Relief Event in respect of the Port Facilities for which the City shall pay.

Relief, Default and Termination Rights

Item	City	Port
Relief Events affecting City Facilities	✓	
Relief Events affecting Port Facilities		✓
Relief Events affecting Shared Facilities	✓	
Default and termination –City Facilities and generally	✓	
Default and termination – Port Facilities		✓

⁴² PECP Note: A matrix of insurance coverage and responsibility between the Port, the City and PECP will be required for the Project Agreement.

APPENDIX 6. SHARED FACILITIES FRAMEWORK

The following table sets out which payments under the Project Agreement will be used to pay for the capital costs and O&M costs for each of the City, Port and Shared Facilities:

Facility	Classification	Capital Cost	O&M cost
City Hall Building	City Facility	Service Fee	Service Fee
Main Library	City Facility	Service Fee	Service Fee
Lincoln Park	City Facility	Service Fee	Service Fee
Port Headquarters	Port Facility	Port Completion Fee	N/A (Port self-performing)
Underground Parking	Port Facility	Port Completion Fee	Service Fee (with City reimbursement from Port)
Loading Dock & Ramps	Shared Facility: <ul style="list-style-type: none"> • City Portion ([50]%)* • Port Portion ([50]%)* 	<ul style="list-style-type: none"> • City Portion in Service Fee • Port Portion in Port Completion Payment 	Service Fee (with City reimbursement from Port for Port Portion)
Central Utility Plant & Utility Yard	Shared Facility <ul style="list-style-type: none"> • City Portion ([50]%)* • Port Portion ([50]%)* 	<ul style="list-style-type: none"> • City Portion in Service Fee • Port Portion in Port Completion Payment 	Service Fee (with City reimbursement from Port for Port Portion) + separate metering for energy and utility costs
Civic Plaza	Shared Facility <ul style="list-style-type: none"> • City Portion ([50]%)* • Port Portion ([50]%)* 	<ul style="list-style-type: none"> • City Portion in Service Fee • Port Portion in Port Completion Payment 	Service Fee (with City reimbursement from Port for Port Portion)
Shared Rooms	Shared Facility <ul style="list-style-type: none"> • City Portion ([50]%)* • Port Portion ([50]%)* 	<ul style="list-style-type: none"> • City Portion in Service Fee • Port Portion in Port Completion Payment 	Service Fee (with City reimbursement from Port for Port Portion)

(*) Allocations to be confirmed

APPENDIX 7. DEFINITIONS

Interpretation

- All references to dollars or “\$” are to USD.
- “Customary” means customary in P3 or performance based infrastructure projects in the U.S., with particular reference to the Deukmejian Court House Project.

Glossary of Defined Terms

“**Account Balances**” means all amounts standing to the credit of any bank account held by or on behalf of the Project Company (excluding the Handback Reserve Account).

“**Additional Rent**” means that component of the Rent payable under the Space Lease which represents equity charges, maintenance, services, utilities, insurance and other services costs of the Project Company for performing the Contract Services under the Project Agreement, and which is equal to (without double counting) the Operating Fee component of the Service Fee under the Project Agreement.

“**Adverse Interim Circumstances**” is defined in Section 1.34 (*Step-In Rights*).

“**Applicable Law**” means any statute, law, code, regulation, ordinance, rule, common law, judgement, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any governmental entity, which is applicable to the Project, whether taking effect before or after the date of the Project Agreement.

“**Avoidable Costs**” when used in relation to an event or circumstance means all costs and expenditures which:

(a) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or

(b) If the Project Company had acted reasonably and in accordance with the Project Agreement (including its mitigation obligations) would have been saved or avoided as a result of, or in responding to, the event or circumstance of its effects.

“**Base Date**” means September 30, 2013⁴³.

“**Base Electricity Consumption**” means [•] million KWh annually⁴⁴.

“**Base Electricity Rate**” means \$[0.14]/KWh⁴⁵.

⁴³ PECP Note: RFP Section D1.15.3 (*Electricity and Rate Escalation*)

⁴⁴ PECP Note: RFP Section D1.15.3 provided for 12 million KWh annually

⁴⁵ PECP Note: RFP Section D1.15.3 provided for \$0.10/KWh.

“Base Rent” means that component of the Rent payable under the Space Lease which represents interest and principal on the Senior Debt in respect of the City Facilities Financing and which is equal to (without double counting) the Capital Fee component of the Service Fee under the Project Agreement.

“BOD” is defined in Section 1.10.

“Broadway Garage” means the existing structured parking garage located at 318 W Broadway, Long Beach, California.

“Business Day” means a day other than a Saturday, Sunday, or public holiday in the State of California.

“Capital Fee” means the amount as set out in the Capital Fee Schedule referred to in Appendix 1 (Payment Mechanism).

“Capital Modification” means any material change to any part of the physical assets constituting the Project occurring after the Occupancy Date, including the alteration, addition, demolition or extension of the physical assets constituting the Project or the installation of new structures, equipment, systems or technology.

“Central Utility Plant & Utility Yard” means the central utility plant located underneath the Port Headquarters Building and the utility yard located on the City Site to the north of the City Hall Building.

“CEQA” means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq., and applicable regulations and guidelines promulgated thereunder, each as amended from time to time.

“Change in Law Event” means the coming into effect of:

- (a) Any Applicable Law enacted after the Contract Date; or
- (b) Any modification (including repeal) of an Applicable Law existing on the Contract Date that comes into effect after the Contract Date,

compliance with which, in accordance with the Project Agreement (and applicable standards), materially expands the scope or materially interferes with, delays or increases the cost of performing the Contract Services. It is specifically understood, however, that none of the following shall constitute a “Change in Law Event”:

- (a) Any law, statute, code or regulation that has been enacted or adopted on or before the Contract Date to take effect after the Contract Date;
- (b) The denial, delay in issuance of, or imposition of any term or condition in connection with, any governmental approval required for the Contract Services;

(c) A change in the nature or severity of the actions typically taken by a governmental body to enforce compliance with Applicable Law which was in effect as of the Contract Date;

(d) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date;

(e) Any act, event or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on the Project Company under the Project Agreement in effect as of the Contract Date;

(f) Any change in Tax law (except that the Project Company shall be entitled to relief on account of a change in Tax law constituting a Discriminatory Change in Law Event); or

(g) Any change to the prevailing rates of wages under the California Labor Code or similar statute.

“Change Order” means a written order signed by the City and the Project Company prior to Substantial Completion under the Project Agreement making a Design Requirement Change, making a Design Requirement Change. A Change Order shall be deemed to constitute a Project Agreement amendment.

“City” means the City of Long Beach, a California municipal corporation.

“City Design Requirement Change Allowance Account” has the meaning given in Section 1.42.2 (*Allowance Account for City Directed Design Requirement Changes*).

“City Event of Default” has the meaning set forth in section 1.36 (*Default by the City*).

“City Facility” means:

- (a) the City Hall Building (including shared chambers and meeting facilities);
- (b) the Library; or
- (c) Lincoln Park,

together, the “City Facilities”.

“City Facilities Collateral Agent” means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Senior Lenders in the City Facilities Financing Documents with respect to the City Facilities Financing.

“City Facilities Construction Security” means any letter of credit, parent company guaranty or performance or surety bond issued to secure the obligations (whether performance or payment) of the DB Contractor pursuant to the DB Contract and such other items to be agreed upon in the Project Agreement.

“City Facilities DB Direct Agreement” means the agreement in respect of the City Facilities to be entered into among the City, the DB Contractor and the Project Company in a form to be agreed.

“City Facilities Disbursement Account” means the account established under the City Facilities Disbursement Agreement for the disbursement of proceeds under the City Facilities Financing to fund the development of the City Facilities.

“City Facilities Disbursement Agreement” means the agreement between the City, the City Facilities Financing Trustee, the Project Company, and the DB Contractor for the disbursement of proceeds under the City Facilities Financing to fund the development of the City Facilities.

“City Facilities Financial Close” means the execution and delivery of the City Facilities Financing Documents and closing the City Facilities Financing.

“City Facilities Financial Model” means the financial model for the City Facilities to be attached to the Project Agreement, as updated or amended from time to time in accordance with the terms of the Project Agreement.

“City Facilities Financing” means the financing for the City Facilities comprising (a) equity capital provided by the Equity Members and (b) tax-exempt senior debt obligations which will be structured by the Project Company and the City in accordance with the Transaction Structure and issued by the City in the form of certificates of participation or lease revenue bonds.

“City Facilities Financing Documents” means all agreements relating to the City Facilities Financing.

“City Facilities Financing Trustee” means the trustee appointed in respect of the City Facilities Financing.

“City Facilities Lenders’ DB Direct Agreement” means the agreement to be entered into between the Senior Lenders in respect of the City Facilities Financing, the DB Contractor, the City and the Project Company in a form to be agreed.

“City Fault” means:

- (a) A breach by the City of any of its obligations⁴⁶ under the Project Agreement;
- (b) A breach of any representation or warranty by the City under the Project Agreement;
- (c) Willful misconduct by the City or a related party;

⁴⁶ [PECP Note: consider any necessary carve out for payment obligations based on appropriations law]

(d) A negligent act or omission of the City or a related party.

“City Hall Building” means the new City Hall building, which forms part of the Project.

“City Site” is defined in the Recitals.

“Civic Plaza” means the plaza in between and around the City Hall Building and the Port Headquarters Building.

“Commissioning” means the commissioning of the Project.

“Commissioning Fine Tuning Period” means the period commencing after the Occupancy Date, at a time when the City Hall Building or the Library (as the case may be) can be operated under fully loaded occupancy cycles for four complete seasons after the Occupancy Date (or such earlier time as the City may reasonably agree) whereby the Project Company verifies through various testing that all key systems in the City Hall Building, the Central Utility Plant & Utility Yard, or the Library (as the case may be), including heating, air conditioning, and ventilation, are functioning in accordance with the Design Requirements.

“Commissioning Tests” means the Commissioning Tests to be specified in the Project Agreement.

“Committed Equity Investment” means, in the aggregate: (a) any Equity Investment; and (b) any Deferred Equity Amounts.

“Construction Security” means the City Facilities Construction Security and the Port Facilities Construction Security.

“Contract Date” is defined in Section 1.2 (*Term*).

“Contract Services” means the Design-Build Work and the FM Services.

“Conveyance Agreement(s)” means the conveyance and land purchase agreements for the Private Development Sites.

“Cost Substantiation” has the meaning described in Section 2.7 (*Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation*).

“Cost to Complete” means (without double-counting):

(a) those costs (internal and external) that the City and the Port reasonably and properly project that they will incur in carrying out any process to request tenders from any parties interested in entering into a contract with the City and the Port to achieve Occupancy Readiness, including all costs related to the preparation of tender documentation, evaluation of tenders and negotiation and execution of relevant contracts; *plus*

(b) the costs that the City and the Port reasonably and properly project that they will incur in achieving Occupancy Readiness of the City Facilities and the Port Facilities; *plus*

(c) any other losses that the City or the Port would, but for the termination of the Project Agreement, not have incurred prior to Occupancy Readiness; *minus*

(d) any Insurance Proceeds.

“DB Contract Sum” means \$[•], being the amount so defined in the DB Contract.

“DB Contractor” or **“Design Builder”** means [Clark Construction Group - California, LP] (or one of its affiliates or subsidiaries), or any assignee or replacement permitted under the terms of the Project Agreement.

“Deductions” means those deductions from the otherwise applicable Service Fee that the City is permitted to take as offsets on account of specified instances of non-performance as described in Appendix 2 (*Service Fee Deductions*).

“Deferred Equity Amounts” means in respect of the City Facilities Financing or the Port Facilities Construction Financing, on any date, any amount of unfunded equity that has been committed to the Project Company as of the date of financial close (either in the form of newly issued equity shares in, and/or the provision of Equity Member Debt to, Project Company) and is shown to be utilized in the Financial Model prior to Final Completion of the City Facilities or the Port Facilities (as the case may be).

“Design-Build Period” means the period from and including the date of Project Closing through the Project Occupancy Date.

“Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the City Facilities or the Port Facilities (as the case may be) pursuant to the Project Agreement during the Design-Build Period.

“Design Requirement Change” means a change in the Design Requirements made by a Change Order:

- (a) as a result of a Project Company request agreed to by the City or Port;
- (b) on account of Relief Events; or
- (c) at the direction of the City or Port.

“Design Requirements” means the requirements for the design and construction of the Project as set forth in the Performance Standards.

“Disbursement Account(s)” means the City Facilities Disbursement Account and the Port Facilities Disbursement Account.

“Disbursement Agreement(s)” means the City Facilities Disbursement Agreement and the Port Facilities Disbursement Agreement.

“Discriminatory Change in Law Event” means a Change in Law Event that adversely affects Project Company’s rights and obligations under the Project Agreement, the terms of which specifically apply to discriminate against:

(a) the Project ([**PECP Note Open Item**]) including by reference to projects delivered through design-build-finance-operate-maintain or performance based infrastructure delivery methods or other similar methods); or

(b) the Project Company,

provided that, in each case, such Change in Law Event is not of general application to other persons.

“Distribution” means, whether in cash or in kind, any:

(a) Dividend or other distribution in respect of share capital;

(b) Reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital;

(c) Payments made by the Project Company in respect of Equity Member Debt (whether of principal, interest, breakage costs or otherwise);

(d) Payment, loan, contractual arrangement or transfer of assets or rights directly to the extent (in each case) it was put in place after Project Closing and was neither in the ordinary course of business nor on reasonable commercial terms; or

(e) The receipt of any other benefit which is not received in the ordinary course of business and not on reasonable commercial terms.

“Electricity Rate” means the electricity rate in any given year, as calculated in accordance with Appendix 1 (Payment Mechanism) – Electricity Payment.

“Employee Payments” means any liability that has been reasonably incurred by the Project Company arising as a result of termination of the Project Agreement under collective bargaining agreements, employment arrangements or under any other agreements with employees of the Project Company, including severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution.

“ENA” means that certain Exclusive Negotiation Agreement dated January 5, 2015 by and among the City, the Port and the Project Company, as amended from time to time.

“Equity Investment” means:

(a) any form of direct investment by Equity Members, including the purchase of newly issued equity shares in, and/or the provision of Equity Member Debt to, Project Company; and

(b) any payment under, or draws on, any instrument guaranteeing the provision of Deferred Equity Amounts, including but not limited to any draws by or on behalf of the Project Company of any letter(s) of credit issued by or for the account of an Equity Member or associated company in respect of Deferred Equity Amounts.

“Equity Member”⁴⁷ means any person that directly holds an equity interest in the Project Company.

“Equity Member Debt” means any obligations created, issued or incurred by the Project Company for borrowed money that is owed to any Equity Member (or affiliate) [on arm’s length terms].

“Equity Ratio” means, in respect of either the City Facilities Financing or the Port Facilities Construction Financing (as the case may be), the ratio between:

(a) the Committed Equity Investment in respect of either the City Facilities Financing or the Port Facilities Construction Financing (as the case may be); and

(b) the sum of: (i) the Committed Equity Investment in respect of either the City Facilities Financing or the Port Facilities Construction Financing (as the case may be) at the time; and (ii) the amount of Senior Debt in respect of either the City Facilities Financing or the Port Facilities Construction Financing (as the case may be) scheduled to be outstanding at the time (as the case may be).

“Existing Lease Payment Date” means every October 1 and April 1 between October 1, 2010 and April 1, 2027.

“Expiration Date” means the date that is forty (40) years after the Scheduled Final City Occupancy Date.

“Facility” means either the Port Facilities or a City Facility.

“Final City Occupancy Date” means the date on which Occupancy Readiness has occurred or is deemed to have occurred in respect of all the City Facilities.

“Final Completion” means completion of the Design-Build Work in compliance with the Project Agreement and the requirements in Section 1.26 (*Final Completion*).

“Final Completion Deadline” in respect of the City Facilities or the Port Facilities (as the case may be) means the relevant date referred to in section 1.26 (*Final Completion*) of the Terms Sheet.

“Financial Model” means the City Facilities Financial Model or the Port Facilities Financial Model (as the case may be).

⁴⁷ PECP Note: Note that the initial Equity Members are intended to be [Plenary Group USA Ltd] (or affiliate) and [Edgemoor Infrastructure and Real Estate LLC] (or affiliate).

“Financing” means the City Facilities Financing and the Port Facilities Construction Financing.

“Financing Documents” means the City Facilities Financing Documents and the Port Facilities Construction Financing Documents.

“Fire Marshal” means the Long Beach Fire Prevention Bureau Fire Marshal.

“First Project Company Existing Lease Payment” means the first Existing Lease Payment after the Occupancy Date of the City Hall Building.

“Fixed Price Proposal” means the fixed price proposal required under the ENA.

“FM Contract” or **“Operating Services Agreement”** means the agreement between the Project Company and the FM Contractor, a certified copy of which has been delivered to the City (a certified copy of which will be delivered to the City).

“FM Contractor” or **“Operating Service Provider”** means Johnson Controls, Inc. (or one of its affiliates or subsidiaries), or any assignee or replacement permitted under the Project Agreement.

“FM Direct Agreement” means the agreement to be entered into among the City, the FM Contractor and the Project Company in a form to be agreed.

“FM Requirements” means the operations and maintenance requirements in respect of the City Facilities as set out in the Project Agreement.

“FM Services” means everything required to be furnished and done for and relating to the operation and maintenance of the City Facilities by the Project Company pursuant to the Project Agreement during the Operating Period.

“FM Services Change” means a change, including an addition, deletion, alteration, substitution or modification, to the Project Company’s FM Services obligations under the Project Agreement.

“Ground Lease” means the Ground Lease Agreement to be entered into between the Ground Lessor and the Ground Lessee, in a form to be agreed.

“Ground Lease Expiration Date” means [[50 years] from the commencement date of the Ground Lease].

“Ground Lease Premises” has the meaning given in Section 7.2 (*Premises*).

“Ground Lessee” means [•]⁴⁸, as lessee under the Ground Lease.

“Ground Lessor” means the City, as lessor under the Ground Lease.

⁴⁸ PECP Note: see footnote 1

“Handback Reserve Account” means the account so named to be established under the Project Agreement.

“Hazardous Substance” means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous good, pollutant, waste, reportable substance, and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment or otherwise, or capable of causing harm to human health or the environment, including “hazardous substances” as defined under CERCLA and “hazardous waste” as defined under RCRA.

“Independent Building Expert” means the consultant so appointed by the parties pursuant to the Project Agreement, or any assignee or replacement permitted under the Project Agreement.

“Indexed Linked” means, with respect to an amount at any time, that the amount is adjusted as of each [*insert day and month*] commencing [*insert day and month*], [*insert year*] by:

- (a) Multiplying it by the Inflation Index for the immediately preceding [October]; and
- (b) Dividing it by [*insert relevant inflation index*], the Inflation Index for [October], [2013].

“Inflation Index” means the All Items Consumer Price Index for All Urban Consumers (CPI-U) in the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area as published by the Bureau of Labor Statistics using a reference year of 1982-84 that equals 100.0 or, if such index in its present form becomes unavailable, such similar index as may be agreed by the parties, acting reasonably.

“Initial Equity Members” means Plenary Group and [Edgemoor Infrastructure & Real Estate LLC]⁴⁹.

“Initial Occupancy Date” means the date on which the first City Facility achieve(s) its Occupancy Date.

“Initial Scheduled Occupancy Date” means the date on which the first City Facility is scheduled to achieve Occupancy Readiness.

“Insurable Force Majeure Event” means any peril other than an Uninsurable Force Majeure Event or an Other Relief Event, the response to which, in accordance with the Project Agreement, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent such event arises from or is contributed to, directly or indirectly, by any Project Company Fault.

⁴⁹ PECP Note: final corporate structure to be determined (subject to legal, financial and tax due diligence) and approved by the City.

“Insurance Proceeds” means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Project Company under the Project Agreement.

“Insurance Trust Account” has the meaning specified in Section 4.1.4 (*Insurance Trust Account*).

“Insurance Unavailability Event” will have the meaning defined in the Project Agreement.

“Landlord” means [•]⁵⁰ as lessor under the Space Lease.

“Lenders’ Direct Agreements” means: (a) in respect of the City Facilities Financing, the agreements to be entered into between the City, the Senior Lenders and the Project Company in a form to be agreed; and (b) in respect of the Port Facilities Construction Financing, the agreements to be entered into between the City, the Senior Lenders and the Project Company in a form to be agreed.

“Library” means the new Main Library (and associated common areas and parking facilities), forming part of the Project.

“Lincoln Garage” means the existing underground parking garage located beneath Lincoln Park on Broadway Street and Pacific Avenue, Long Beach, California.

“Lincoln Park” means the revitalized Lincoln Park forming part of the Project.

“Loading Docks & Ramps” means the loading docks and ramps servicing both the City Hall Building and the Port Headquarters Building.

“Longstop Date” means the date [540] days following the Scheduled Project Occupancy Date, as such date may be extended for Relief Events.

“Mid-Block Site” generally means the site between Ocean Boulevard and south of the Broadway Garage and between Chestnut and Cedar Avenues.

“Net Design-Build Work Value” means an amount equal to the DB Contract Sum (to be defined in the Project Agreement *minus* the aggregate of (a) the Cost to Complete the City Facilities and the Port Facilities; and (b) any Port Site Proceeds Amount, Port Completion Payment and Service Fee payments that have been paid prior to the Termination Date. If the Design-Build Work Value is a negative number, for purposes of Item (3)(a) (*Termination by the City for Project Company Default Prior to the Final City Occupancy Date*) of Appendix 3 (*Compensation on Termination*), such amount shall be paid by the Project Company to the City or Port as the case may be.

⁵⁰ PECP Note: see footnote 1

“Net Senior Debt” means the amount calculated as at the early Termination Date (without double counting) as follows:

- (a) Senior Debt; *minus*
- (b) Account Balances; *minus*
- (c) Insurance Proceeds (excluding proceeds of personal injury, property damage or other third party liability insurance payable to or for the account of a third party).

“Occupancy Date” means, in respect of a Facility, the date on which Occupancy Readiness occurs or is deemed to have occurred.

“Occupancy Readiness” means, in respect of a Facility, satisfaction of the relevant Occupancy Readiness Conditions.

“Occupancy Readiness Conditions” has the meaning specified in Section 1.27 (*Occupancy Readiness Conditions*).

“Old Courthouse” means the old Long Beach Courthouse located at 415 W Ocean Boulevard, Long Beach, California.

“Old Courthouse Site” means the site on which the Old Courthouse is located.

“Operating Fee” means the amount so defined in Appendix 1 (*Payment Mechanism*).

“Operating Period” means the period between the Initial Occupancy Date and the Termination Date⁵¹.

“Operating Service Failures” will have the meaning specified in the Project Agreement.

“Other Relief Event” means the occurrence of any of the following events or circumstances that affect any critical path matter in the Project Schedule:

- (a) The existence of a Regulated Site Condition, to the extent provided for in the Project Agreement [**COLB Note:** open issue];
- (b) The existence of a latent structural defect in the Broadway Garage [**COLB Note:** open issue];
- (c) [**PECP Note:** Risk allocation for existing Lincoln Garage still under discussion];
- (d) Compliance by the Project Company with an order or direction by police, fire officials or any comparable public authority (not including any certification of occupancy by the Fire Marshall or any other comparable public authority), other than where such order or direction results from a failure by Project Company to comply with Applicable Law;

⁵¹ PECP Note: Note overlap between the Design-Build Period and the Operating Period as currently defined.

(e) An official or unofficial strike, lockout, work rule or other labor dispute by public sector employees or private sector employees (other than employees of the Project Company, any of the Project Contractors, or the subcontractors of each that are working on the Project Site) (i) which: (A) is regional or national in nature and affects the City of Long Beach, the Port, the construction, building maintenance or facilities management industry generally, or (B) takes place at a facility manufacturing materials or equipment for the Project and is not directed as the Project and (ii) which lasts for more than 30 days in the aggregate;

(f) Any failure of title to the Project or any placement or enforcement of any encumbrance on the City Site, the Port Site or the Project not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby;

(g) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a governmental body in connection with public emergency or any condemnation or other taking by eminent domain of any material portion of the Project⁵²;

(h) Any change in the requirements to obtain LEED NC Gold Certification, LEED ND or LEED-EB Certification of the facility as of the date of the Fixed Price Proposal;

(i) Any act of prevention, hindrance, obstruction, or other non-cooperation by the City (or third party acting on behalf of the City) or any defect or non-compliance with Applicable Law in carrying out any capital modification by the City;

(j) The issuance of an injunction or any other final order by a court of competent jurisdiction, with the result that the City or the Project Company becomes unable to perform its material obligations under the Project Agreement;

(k) The closure, due to an accident, construction or otherwise, of a road necessary for direct access to the Project by order of a governmental body having police power;

(l) The performance of maintenance pursuant to the master maintenance plan that cannot reasonably be performed without affecting the other Contract Services and the relief for which is approved in writing in advance by the City;

(m) The occurrence during the Operating Period of a period of extreme temperature conditions that materially exceed those conditions on which the design parameters for the Project were based;

(n) Any other event that, under a specific provision of the Project Agreement, constitutes or is deemed to constitute or to be caused by an Other Relief Event;

(o) Any delay in the timely issuance of a governmental approval that is directly caused by the imposition of a moratorium by or on the issuing governmental body relating to the

⁵² PECP Note: A condemnation or taking of eminent domain of the whole or substantially all the Project will constitute a termination event under the Project Agreement. Condemnation or taking of eminent domain of a material portion of the Project would constitute an Other Relief Event.

acceptance or processing of applications or the issuance of Governmental Approvals generally and not caused by Project Company Fault; or

(p) A City Fault or Port Fault.

“Pacific Site” means the site located at Pacific and Third Street.

“Performance Standards” means the standards for the design, construction and performance of the Project to be set out in an appendix to the Project Agreement.

“Plenary Group” means [Plenary Group USA, Ltd]⁵³.

“Port” means the City, acting through its Harbor Department.

“Port Completion Payment” means [a fixed amount to be agreed].

“Port Facilities” means the Port Headquarters Building (including a nearby underground parking structure).

“Port Facilities Collateral Agent” means the financial institution listed or otherwise designated to act as trustee or agent on behalf of or at the direction of the Senior Lenders in the Port Facilities Construction Financing Documents with respect to the Port Facilities Construction Financing.

“Port Facilities Construction Financing” means the financing for the Port Facilities comprising equity capital provided by the Equity Members and short-term finance arranged by the Project Company.

“Port Facilities Construction Financing Documents” means all agreements relating to the Port Facilities Construction Financing.

“Port Facilities Construction Financing Trustee” means the trustee appointed in respect of the Port Facilities Construction Financing.

“Port Facilities Construction Lenders’ DB Direct Agreement” means the agreement to be entered into between the Senior Lenders in respect of the Port Facilities Construction Financing, the DB Contractor, the Port and the Project Company in a form to be agreed.

“Port Facilities Construction Security” means any letter of credit, parent company guaranty or performance or surety bond issued to secure the obligations (whether performance or payment) of the DB Contractor pursuant to the DB Contract on such other items to be agreed upon in the Project Agreement.

⁵³ PECP Note: Subject to final corporate structure as approved by the City and based on further legal, financial and tax due diligence.

“Port Facilities DB Direct Agreement” means the agreement in respect of the Port Facilities to be entered into among the Port, the DB Contractor and the Project Company in a form to be agreed.

“Port Facilities Disbursement Account” means the account established under the Port Facilities Disbursement Agreement for the disbursement of proceeds under the Port Facilities Construction Financing to fund the development of the Port Facilities.

“Port Facilities Disbursement Agreement” means the agreement between the Port, the Port Facilities Construction Financing Trustee, the Project Company, and the DB Contractor for the disbursement of proceeds under the Port Facilities Construction Financing to fund the development of the Port Facilities.

“Port Facilities Financial Close” means the execution and delivery of the Port Facilities Construction Financing Documents and closing the Port Facilities Construction Financing.

“Port Facilities Financial Model” means the financial model for the Port Facilities to be attached to the Project Agreement, as updated or amended from time to time in accordance with the terms of the Project Agreement.

“Port Fault” means:

- (a) A breach by the Port of any of its obligations⁵⁴ under any Transaction Document;
- (b) A breach of any representation or warranty by the Port under any Transaction Document;
- (c) Willful misconduct by the Port or a related party;
- (d) A negligent act or omission of the Port or a related party.

“Port Headquarters Building” means the new headquarters building for the Port to be located on the Port Site.

“Port Site” is defined in the Recitals.

“Port Site Proceeds Amount” means the proceeds from the fee simple conveyance of the Port Site by the City to the Port in the amount of [\$8,000,000].

“Private Development Sites” means the Mid-Block Site and the Pacific Site.

“Project” means the design, construction and financing of the Port Facilities and the City Facilities and the operation and maintenance of the City Facilities, as described in this Terms Sheet.

⁵⁴ [PECP Note: consider any necessary carve out for payment obligations based on appropriations law]

“Project Agreement” means the project to be entered into between the City, the Port and the Project Company to design, build, finance, operate and maintain the City Facilities and to design, build and finance the Port Facilities and to otherwise deliver the Project.

“Project Closing” means the date on which both the City Facilities Financial Close and the Port Facilities Financial Close is achieved.

“Project Company” means Plenary Edgemoor Civic Partners, LLC, a Delaware limited liability company.

“Project Company Event of Default” is defined in Section 1.35 (*Default by Project Company*).

“Project Company Fault” means:

- (a) A breach by the Project Company of any of its obligations under the Project Agreement;
- (b) A breach of any representation or warranty made by the Project Company under the Project Agreement;
- (c) Willful misconduct of the Project Company (or related person); or
- (d) A negligent act or omission of the Project Company (or related person).

“Project Company Hazardous Substances” means the presence of Hazardous Substances in, on or under the City Site or the Port Site (including the presence in surface water, groundwater, soils, or subsurface strata) which is caused by or attributable to any acts or omissions of the Project Company.

“Project Contractor” means the DB Contractor or any FM Contractor and **“Project Contractors”** means any two of them.

“Project Contractor Breakage Costs” [COLB Note: need to discuss] means the amount payable by the Project Company to a Project Contractor under the terms of a Project Contract as a direct result of the termination of the Project Agreement but reduced (without duplication) to the extent that:

- (a) the Project Company, a Project Contractor or any Subcontractor fails to take all reasonable steps to mitigate such amount;
- (b) such amount relates to any agreements or arrangements entered into by the Project Company, a Project Contractor or a Subcontractor other than in the ordinary course of business and on commercial arm’s lengths terms;
- (c) such amount is a Distribution; and

(d) such amount includes any loss of overhead or profit of the FM Contractor or its Subcontractors relating to any period or costs after the Termination Date (except to the extent they are properly included in any reasonable commercial breakage fee set forth in the applicable Project Contract or Subcontract).

“Project Equipment” means all manufactured equipment, furnishings, fixtures, systems, property or assets, whether or not constituting personal property or fixtures, constituting part of a Facility, excluding any equipment to be provided by the City or the Port.

“Project Occupancy Date” means the date on which both the Final City Occupancy Date is achieved and the Occupancy Date of the Port Facilities has been achieved.

“Project Schedule” means the schedule for delivering the Project agreed between the parties.

“Project Site” means the City Site, the Port Site and the Private Development Sites.

“Punch List Items” means any defects, deficiencies and items of outstanding work that would not materially impair the City and/or Port activities or the performance of the FM Services and could be rectified with minimal interference to the occupancy, use and lawful operation of the City Facilities or the Port Facilities (as the case may be).

“Regulated Site Condition” means [•]⁵⁵.

“Regulatory Approvals” means compliance with CEQA and any identified mitigation measures relating thereto, as well as the Site Master Plan, any entitlements, building permits, and any other regulatory approvals required in respect to construction and occupancy of the Project.

“Reinstatement Plan” means a plan for the carrying out of Reinstatement Work agreed between the Project Company and the City in accordance with the Project Agreement.

“Reinstatement Work” means work necessary to repair, replace and restore the damaged or destroyed portions of the Project and related assets.

“Relief Events” means:

- (a) An Insurable Force Majeure Event;
- (b) An Uninsurable Force Majeure Event;
- (c) A Change in Law Event; or
- (d) An Other Relief Event.

“Rent” means the rent payable by the Tenant to the Landlord under the Space Lease, which shall be equal to (with [?] double counting) the amount of the Service Fee payable by the

⁵⁵ PECP Note: Subject to phase 2 site due diligence outcomes.

City to the Project Agreement under the Project Agreement. Rent is comprised of the Base Rent component and the Additional Rent component.

“Required Design-Build Period Insurance” means the insurance specified in Section 1 (*Insurance During the Design-Build Period*) of Appendix 4 (*Insurance Requirements*).

“Required Insurance” means the Required Design-Build Period Insurance and the Required Operating Period Insurance.

“Required Operating Period Insurance” means the insurance specified in Section 2 (*Insurance During the Operating Period*) of Appendix 4 (*Insurance Requirements*).

“RFP” means that certain Request for Proposals No. CM-14-040 for the Long Beach Civic Center including all addenda.

“Scheduled Final City Occupancy Date” means the date on which Occupancy Readiness is scheduled to occur in respect of all the City Facilities.

“Scheduled Occupancy Date” means: (a) in respect of the City Hall Building, the date that is [•] days following Project Closing, as such date may be extended for Relief Events; (b) in respect of the Library, the date that is [•] days following Project Closing, as such date may be extended for Relief Events; (c) in respect of Lincoln Park, the date that is [•] days following Project Closing, as such date may be extended for Relief Events; and (d) in respect of the Port Facilities, the date that is [•] days following Project Closing, as such date may be extended for Relief Events.

“Scheduled Project Occupancy Date” means the date on which Occupancy Readiness is scheduled to occur in respect of all the City Facilities and the Port Facilities.

“Senior Debt” means: (a) all principal and interest amounts outstanding, including interest and default interest accrued, to the Senior Lenders under the Financing Documents; (b) all amounts due to the Senior Lenders by reason of the early termination of any hedging arrangements; and (c) all other reasonable transaction fees, costs and expenses for which the Project Company is responsible under the Financing Documents.

“Senior Lenders” means the lenders under the relevant Financing Documents.

“Service Fee” means the amount to be paid by the City to the Project Company as compensation for the Project Company’s performance of the Contract Services under the Project Agreement, as calculated in accordance with Appendix 1 (*Payment Mechanism*) and which comprises the Capital Fee and the Operating Fee. [PECP Note: the amount of the Service Fee will be set out in the Project Agreement and will be based on PECP’s Fixed Price Proposal as adjusted for agreed changes in assumptions.]

“Shared Facilities” means the Loading Docks & Ramps, the Central Utility Plant & Utility Yard, the Shared Rooms and the Civic Plaza.

“Shared Rooms” means the shared meeting and operations rooms located within the City Hall Building.

“Site Master Plan” means the site master plan for the Project developed by the Project Company.

“Space Lease” means the Space Lease Agreement to be entered into between the Landlord and the Tenant in a form to be agreed.

“Space Lease Premises” has the meaning given in Section 8.2 (*Premises*).

“Step-In Rights” is defined in Section 1.34 (*Step-In Rights*).

“Substantial Completion” has the meaning defined in Section 1.24 (*Substantial Completion*).

“Technical Requirements” meaning the design plans and specifications and performance requirements approved by the City and Port, and incorporated into the Project Agreement⁵⁶.

“Tenant” means the City as lessee under the Space Lease.

“Term” has the meaning set forth in Section 1.2 (*Term*).

“Termination Date” means the earlier of the Expiration Date or the date of termination of the Project Agreement in accordance with the terms thereof.

“Termination Non-Payment Event” means any failure by the City to pay the Termination Payment by the due date for such payment under the Project Agreement.

“Termination Non-Payment Event Caused by a Failure to Appropriate” means the occurrence of a Termination Non-Payment Event not preceded by an appropriation of funds for the purpose of paying the Termination Payment.

“Termination Payment” means the applicable amount owing by the City to the Project Company in connection with the termination of the Project Agreement as set out in Appendix 3 (*Compensation on Termination*).

“Transaction Documents” means the Project Agreement, the Ground Lease, the Space Lease and any other documents identified as Transaction Documents.

“Unavailability Event” will have the meaning set out in the Project Agreement.

“Uninsurable Force Majeure Event” means the occurrence of any of the following events or circumstances⁵⁷:

⁵⁶ PECP Note: as proposed by Project Company in the Fixed Price Proposal

⁵⁷ [PECP Note: Subject to review by insurance advisors]

- (a) [Earthquakes or earth movement]⁵⁸;
 - (b) War, civil war, or armed conflict and related causes;
 - (c) Terrorism arising from nuclear, biological or chemical materials;
 - (d) Certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)) occurring during any period in which TRIA or a substantially identical federal law is not in effect;
 - (e) Nuclear explosion or nuclear, radioactive, chemical or biological contamination;
- or
- (f) Epidemics, pandemics or quarantine, or health alerts issued by a governmental body relating thereto, but only to the extent that any such event causes the following: (i) additional operating costs incurred during prevention activities or incurred due to compliance with actual quarantine activities, or (ii) the additional cost of substituting the usual staff in the facilities that may be absent from work due to illness.

“Utilities” means [any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone and telecommunications conduit but not cabling or service arrangements), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith].

⁵⁸ PECP Note: Earthquake insurance is under discussion but was not assumed as part of PECP’s proposal.