

34282

---

CITY DIRECT AGREEMENT (FM CONTRACTOR)

by and among

CITY OF LONG BEACH

and

JOHNSON CONTROLS, INC.

and

PLENARY PROPERTIES LONG BEACH LLC

Dated April 20, 2016

---

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATION .....	1
SECTION 1.1. DEFINITIONS .....	1
SECTION 1.2. INTERPRETATION.....	5
ARTICLE 2 GENERAL .....	7
SECTION 2.1. FM CONTRACTOR’S OBLIGATIONS .....	7
SECTION 2.2. FM CONTRACTOR’S RIGHTS NOT PREJUDICED.....	7
SECTION 2.3. FM CONTRACTOR’S RIGHT TO SUSPEND WORK.....	8
ARTICLE 3 NOTICES.....	8
SECTION 3.1. TERMINATION NOTICE .....	8
SECTION 3.2. INDICATIVE NOTICE.....	8
SECTION 3.3. CITY’S WITHDRAWAL NOTICE .....	8
SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES.....	8
SECTION 3.5. SUBSEQUENT FM CONTRACTOR NOTICE OF LIABILITIES.....	9
SECTION 3.6. NO RIGHT TO TERMINATE .....	9
SECTION 3.7. CITY’S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT .....	9
ARTICLE 4 STEP-IN <sup>10</sup>	
SECTION 4.1. STEP-IN NOTICE .....	10
SECTION 4.2. CONTENTS OF STEP-IN NOTICE .....	10
SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS.....	10
SECTION 4.4. FM CONTRACTOR RIGHT TO TERMINATE .....	10
ARTICLE 5 STEP-OUT .....	11
SECTION 5.1. STEP-OUT NOTICE .....	11

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD .....	11
SECTION 5.3. PROJECT COMPANY REMAINS BOUND.....	11
ARTICLE 6 CITY REPLACEMENT OF THE PROJECT COMPANY .....	11
SECTION 6.1. PROJECT COMPANY ASSIGNMENT.....	11
SECTION 6.2. FM CONTRACTOR CONSENT .....	12
SECTION 6.3. WITHHOLDING OF CONSENT .....	12
SECTION 6.4. TERMS OF ASSIGNMENT .....	12
ARTICLE 7 ACCESS; MEETINGS; NOTICES .....	13
SECTION 7.1. ACCESS.....	13
SECTION 7.2. MEETINGS .....	13
ARTICLE 8 CITY FACILITIES SENIOR LENDERS' RIGHTS.....	13
SECTION 8.1. CITY FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT .....	13
ARTICLE 9 INSURANCE.....	13
SECTION 9.1. RELEASE OF INSURANCE PROCEEDS.....	13
ARTICLE 10 COVENANTS .....	13
SECTION 10.1. FM CONTRACTOR COVENANTS.....	13
SECTION 10.2. CITY COVENANTS .....	14
SECTION 10.3. PROJECT COMPANY COVENANT.....	14
ARTICLE 11 ASSIGNMENT.....	15
SECTION 11.1. RESTRICTION ON ASSIGNMENT .....	15
SECTION 11.2. ASSIGNMENT BY FM CONTRACTOR .....	15
ARTICLE 12 GENERAL.....	15
SECTION 12.1. TERM.....	15
SECTION 12.2. CONFLICT OR INCONSISTENCY.....	15
SECTION 12.3. ENTIRE AGREEMENT.....	15

SECTION 12.4. VENUE .....	15
SECTION 12.5. WAIVER.....	15
SECTION 12.6. COUNTERPARTS .....	16
SECTION 12.7. CONFIDENTIALITY.....	16
SECTION 12.8. NOTICES.....	16
SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY .....	17

## CITY DIRECT AGREEMENT (FM CONTRACTOR)

This FM SERVICES DIRECT AGREEMENT (this "Agreement") is entered into on April 20, 2016, by and among the CITY OF LONG BEACH (the "City"), JOHNSON CONTROLS, INC., a Wisconsin corporation (the "FM Contractor") and PLENARY PROPERTIES LONG BEACH LLC, a Delaware limited liability company (the "Project Company").

### RECITALS

WHEREAS, the City and the Project Company have entered into that certain Project Agreement for the Design, Construction, Financing, Operation, And Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters Building and Revitalized Lincoln Park, dated April 20, 2016 (the "Project Agreement"), whereby the Project Company has agreed to design, construct, finance, operate, maintain and manage a new civic center in Long Beach, California (the "Project"), all as more particularly described in the Project Agreement;

WHEREAS, the Project Company and the FM Contractor have entered into that certain FM Services Agreement, dated as of April 20, 2016 (the "FM Services Agreement") whereby the FM Contractor has agreed, among other things, to carry out and complete certain portions of the Project Company's obligations with respect to the FM Facilities under the Project Agreement (the "Work"), all as more particularly described in the FM Services Agreement;

WHEREAS, the parties acknowledge and agree that any failure to operate and maintain the FM Facilities as contemplated under both the Project Agreement and the FM Services Agreement would be prejudicial to all parties, and that it would be in the best interests of all parties to provide a mechanism for the continued operation and maintenance of the FM Facilities by the FM Contractor under the terms of the FM Services Agreement in the event of a default by the Project Company under the Project Agreement or the FM Services Agreement;

WHEREAS, it is a condition precedent to the obligations of the parties under the Project Agreement or the FM Services Agreement (as applicable) that this Agreement be executed and delivered by the Project Company, the City and the FM Contractor.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS. Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meanings given to such terms in the FM Services Agreement, and:

"Agreement" means this Agreement including any recitals, schedules and appendices to this agreement, as amended, supplemented or restated from time to time.

“Antecedent Liabilities” means, as at any time:

- (1) all amounts due and payable by the Project Company to the FM Contractor under the FM Services Agreement at such time; and
- (2) all obligations which should have, but have not, been performed by, and outstanding liabilities of, the Project Company under the FM Services Agreement at such time.

“Appointed Representative” means the City’s Representative identified in a Step-In Notice.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto, and any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers, or the liquidation of companies and estates that are unable to pay their debts when due.

“Bankruptcy Officer” means any trustee, receiver, liquidator, sequestrator, administrator, or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

“Bankruptcy Proceedings” means any:

- (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
- (2) appointment of a Bankruptcy Officer in connection with;
- (3) order or resolution passed in connection with; or
- (4) formal agreement reached regarding;

(a) a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company’s assets in any other jurisdiction.

“City Insurance Trust Account” has the meaning given to such term in the FM Services Agreement.

“City’s Cure Notice” has the meaning given to such term in Section 3.7 hereof.

“City’s Cure Period” has the meaning given to such term in Section 3.7 hereof.

“City’s Representative” has the meaning given to such term in the Project Agreement.

“City’s Withdrawal Notice” has the meaning given to such term in Section 3.3 hereof.

“Discharged Obligations” has the meaning given to such term in Section 6.4 hereof.

“Discharged Rights” has the meaning given to such term in Section 6.4 hereof.

“Expiration Date” has the meaning given to such term in the Project Agreement.

“FM Contractor” means Johnson Controls, Inc., a Wisconsin corporation.

“FM Facilities” has the meaning given to such term in the FM Services Agreement.

“FM Services Agreement” has the meaning given to such term in the Recitals above.

“Governmental Body” has the meaning given to such term in the FM Services Agreement.

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Assignment Notice given in accordance with Section 3.2 hereof.

“Indicative Notice Period” means the period commencing on the date of delivery of an Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of a City’s Withdrawal Notice; or
- (3) thirty (30) days following the date of delivery of the Indicative Notice.

“Indicative Step-In Notice” has the meaning given to such term in Section 3.2 hereof.

“Indicative Assignment Notice” has the meaning given to such term in Section 3.2 hereof.

“Insurance Trust Agreement” has the meaning given to such term in the FM Services Agreement.

“Interface Agreement” means that certain Interface Agreement, dated as of the date hereof, by and among the Project Company, the FM Contractor and the Design-Builder.

“Liability Report” has the meaning given to such term in Section 3.4 hereof.

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (1) financial liabilities; or
- (2) non-financial liabilities, the breach of which shall trigger any remedy of the FM Contractor under Article 23 of the FM Services Agreement.

“Notice Period” means with respect to a Project Company Event of Default, the Termination Notice Period, and with respect to a Project Agreement Event of Default, the Indicative Notice Period.

“Outstanding Obligations” has the meaning given to such term in Section 4.3 hereof.

“Project Agreement” has the meaning given to such term in the Recitals above.

“Project Agreement Event of Default” means a City Partial Termination Project Company Event of Default (as defined in the Project Agreement) or a Termination Project Company Event of Default (as defined in the Project Agreement) under the Project Agreement.

“Project Company Event of Default” has the meaning given to such term in the FM Services Agreement.

“Project Documents” means, collectively, the FM Services Agreement, the Interface Agreement, and any other agreement (other than this Agreement) entered into from time to time by the Project Company and the FM Contractor (with or without other parties) in connection with the FM Facilities.

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report.

“Restricted Person” has the meaning given to such term in the FM Services Agreement.

“Revocation of Termination Notice” means a written notice from the FM Contractor to the City revoking a Termination Notice.

“Step-In Date” means five (5) Business Days after delivery of a Step-In Notice.

“Step-In Notice” means a notice given by the City to the FM Contractor pursuant to Section 4.1 hereof, which shall include a certification that the City shall have access to funds sufficient to meet its obligations.

“Step-In Period” means, subject to Section 8.1 hereof, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the effective date of any assignment under Article 4 hereof;
- (3) the date of any termination under Section 4.4 hereof; and
- (4) the Expiration Date under the FM Services Agreement.

“Step-Out Date” means the date that is twenty (20) Business Days after the date of a Step-Out Notice.

“Step-Out Notice” means a notice from the City or the Appointed Representative to the FM Contractor pursuant to Section 5.1 hereof.

“Suitable Substitute Project Company” means a person that is not a Restricted Person:



- (1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under the FM Services Agreement; and
- (2) having or employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of the Project Company under the FM Services Agreement.

“Termination Notice” means a notice given by the FM Contractor to the City under Section 3.1 hereof.

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of service of a Revocation of Termination Notice; and
- (3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a) hereof) set forth in the Termination Notice.

SECTION 1.2. INTERPRETATION. This Agreement shall be interpreted according to the following provisions, except to the extent that the context or the express provisions of this Agreement otherwise require.

- (a) Plurality. Words importing the singular number mean and include the plural number and vice versa.
- (b) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.
- (c) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.
- (d) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.
- (e) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard Time or Pacific Daylight Time, as the case may be.

- (f) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.
- (g) References to Including. The words “include”, “includes” and including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.
- (h) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant statute.
- (i) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.
- (j) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, or otherwise modified or substituted, novated or assigned.
- (k) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with any obligation hereunder, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.
- (l) Entire Agreement. This Agreement and the Project Documents contain the entire agreement between some or all of the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement and the Project Documents shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

- (m) Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.
- (n) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of California (without regard to principles of conflicts of laws).
- (o) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- (p) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.
- (q) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.
- (r) Consents. Any consent required to be given under this Agreement must be in writing.

## ARTICLE 2 GENERAL

SECTION 2.1. FM CONTRACTOR'S OBLIGATIONS. Except as specifically provided for in this Agreement, the FM Contractor has no obligations (whether express, implied, collateral or otherwise) to the City in connection with this Agreement, the FM Services Agreement, the Interface Agreement, or with respect to the Project. All of the obligations and liabilities given, undertaken or arising on the part of the FM Contractor under this Agreement are given solely to the City and do not confer any rights on or in favor of the Project Company or any other person.

SECTION 2.2. FM CONTRACTOR'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in this Agreement or any other agreement between any of them (including any giving by the City of a notice hereunder) will, except as expressly set forth in this Agreement, affect the rights of the FM Contractor under the FM Services Agreement (but an

exercise by the FM Contractor of those rights will not preclude a proper exercise by the City of its rights under this Agreement). Notwithstanding the foregoing, each party does not make any acknowledgement with respect to any agreements referenced above to which it is not a party.

SECTION 2.3. FM CONTRACTOR'S RIGHT TO SUSPEND WORK. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall preclude or delay the FM Contractor's right to suspend Work in respect of the FM Facilities as provided in Section 18.7(C) of the FM Services Agreement.

### ARTICLE 3 NOTICES

SECTION 3.1. TERMINATION NOTICE. The FM Contractor shall not terminate or deliver any notice terminating the FM Services Agreement in respect of a Project Company Event of Default under the FM Services Agreement without giving to the City and the City Facilities Senior Lenders written notice (a "Termination Notice") stating:

- (a) that a Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than thirty (30) days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

SECTION 3.2. INDICATIVE NOTICE. Subject to Section 8.1 hereof, at any time upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default the continuance of such Project Agreement Event of Default, the City may give notice to the FM Contractor and the Project Company of its intention to nominate an Appointed Representative to step-in in accordance with Section 4.1 hereof (an "Indicative Step-In Notice") or to effect an assignment in accordance with Section 6.1 hereof (an "Indicative Assignment Notice"). The FM Contractor shall be entitled and obligated to rely on such notices as conclusive evidence of a Project Agreement Event of Default for purposes of this Agreement, and shall not be required to make any inquiry into the entitlement of the City to give such notice.

SECTION 3.3. CITY'S WITHDRAWAL NOTICE. If at any time after the giving of an Indicative Notice or a Termination Notice, the City has determined that it is not, or is no longer, considering appointing a City's Representative in accordance with Section 4.1 hereof or effecting an assignment of the Project Company's rights and liabilities under the FM Services Agreement to a Suitable Substitute Project Company in accordance with Section 6.1 hereof, the City shall give notice (a "City's Withdrawal Notice") to the FM Contractor and the Project Company and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the FM Contractor shall be at liberty to take any and all action available to it under the FM Services Agreement and other Project Documents.

SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES. Unless a City's Withdrawal Notice has been given, not later than thirty (30) days after the date of delivery by the FM Contractor of a Termination Notice or the date of delivery by the City of an Indicative

Notice, as the case may be, the FM Contractor shall give the City a notice (the "Liability Report") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of the Project Company to the FM Contractor which the FM Contractor is aware (after reasonable inquiry) that will become due under the FM Services Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
  - (1) in the case of a Termination Notice, the proposed Termination Date set forth in that notice; and
  - (2) in the case of an Indicative Notice, thirty (30) days after the date of delivery of the Indicative Notice.

**SECTION 3.5. SUBSEQUENT FM CONTRACTOR NOTICE OF LIABILITIES.** After the delivery of the Liability Report, unless a City's Withdrawal Notice has been given, the FM Contractor shall, promptly upon becoming aware of them, notify the City in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be.

**SECTION 3.6. NO RIGHT TO TERMINATE.** The FM Contractor shall not terminate the FM Services Agreement or deliver any notice terminating the FM Services Agreement during any Notice Period that would have the effect of terminating the FM Services Agreement prior to the expiration of the thirty (30) day period referred to in Section 3.1 hereof; provided, however, that until the expiration of that period the FM Contractor shall be entitled to require the Project Company (or any other entity that has exercised step-in rights, as applicable) to remedy any Project Company Event of Default and shall be entitled to exercise all rights under the FM Services Agreement other than termination of such agreement.

**SECTION 3.7. CITY'S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT.** The City shall have the right to take such actions as may be necessary, in the City's sole discretion, to cure or remedy a Project Company Event of Default prior to any Step-In Period. Prior to exercising any such right, the City shall deliver a written notice thereof to the FM Contractor (a "City's Cure Notice"). The FM Contractor shall have no duty to deal with the City in any such circumstances, but the FM Contractor will accept performance by the City as performance by the Project Company. Any acts or failures to act by the City in the exercise of such right shall be deemed to be acts or failures to act of the Project Company for the purposes of the FM Services Agreement, including the indemnity provisions thereof. The City may exercise such rights for a period (the "City's Cure Period") commencing on the date of delivery of a City's Cure Notice and ending on the earlier of:

- (a) the Step-In Date;
- (b) the date of delivery of a City's Withdrawal Notice; or

- (c) the Termination Date.

ARTICLE 4  
STEP-IN

SECTION 4.1. STEP-IN NOTICE. Subject to Section 8.1 hereof, the City may give the Project Company and the FM Contractor a notice (a "Step-In Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2. CONTENTS OF STEP-IN NOTICE. In the Step-In Notice, the City shall (a) state that it intends to exercise its step-in rights under this Agreement, and (b) identify the Appointed Representative.

SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the FM Services Agreement, the Interface Agreement and any other Project Document, and the Appointed Representative, as agent for the City, shall assume all of the Project Company's obligations (without exception) under the FM Services Agreement, the Interface Agreement and any other Project Document, whether incurred prior to, on, or after the Step-In Date, including, without limitation, all payment obligations of the Project Company under the FM Services Agreement (collectively, the "Outstanding Obligations"). During the Step-In Period, the FM Contractor shall deal with the Appointed Representative and not the Project Company.

SECTION 4.4. FM CONTRACTOR RIGHT TO TERMINATE. The FM Contractor shall not terminate the FM Services Agreement during the Step-In Period, except as set forth in this Section. The FM Contractor shall be entitled to terminate the FM Services Agreement during the Step-In Period by written notice to the Project Company, the City, and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the FM Contractor on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if Antecedent Liabilities that are financial liabilities, of which the FM Contractor was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
  - (1) if notice of the liability is given to the City at least twenty (20) Business Days prior to the Step-In Date, the Step-In Date;
  - (2) if notice of the liability is given to the City within twenty (20) Business Days before the Step-In Date and such liability is material (as stated by the FM Contractor, acting reasonably, when it gives such notice or by the City, acting reasonably, by notice to the FM Contractor within five (5) Business Days of receipt of the notice of liability from the FM Contractor), twenty (20) Business Days after the Step-In Date; or

- (3) otherwise, twenty (20) Business Days after delivery of the notice;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the FM Services Agreement; or
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the FM Services Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities within the time periods set forth in the FM Services Agreement.

ARTICLE 5  
STEP-OUT

SECTION 5.1. STEP-OUT NOTICE. The City or the Appointed Representative may at any time during the Step-In Period deliver to the FM Contractor a notice (a "Step-Out Notice") which specifies the Step-Out Date.

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

- (a) the rights of the FM Contractor against the Appointed Representative and the rights of the Appointed Representative against the FM Contractor shall be cancelled; and
- (b) the FM Contractor shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the FM Services Agreement.

SECTION 5.3. PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4 hereof, the Project Company shall continue to be bound by the terms of the FM Services Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the City or the Appointed Representative, or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the FM Services Agreement prior to the expiration of the Step-in Period from actions or inactions of the City or the Appointed Representative. The Project Company shall remain liable for any unpaid amounts due and payable to the FM Contractor by the Project Company under the FM Services Agreement.

ARTICLE 6  
CITY REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1. PROJECT COMPANY ASSIGNMENT. Subject to Section 6.2 hereof and Section 6.4 hereof, at any time:

- (a) upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default during the continuance of a Project Agreement Event of Default; or
- (b) during the Step-In Period,

the City may, on thirty (30) days' notice to the FM Contractor and any Appointed Representative, take any action available to it to cause the assignment and assumption of the Project Company's rights and liabilities under the FM Services Agreement, the Interface Agreement and any other Project Document to a Suitable Substitute Project Company in accordance with the provisions of Section 6.2 hereof.

SECTION 6.2. FM CONTRACTOR CONSENT. The FM Contractor shall notify the City as to whether any person to whom the City proposed to assign the Project Company's rights and liabilities under the Project Agreement is a Suitable Substitute Project Company, not later than 5 Business Days after the date of receipt from the City of all information reasonably required by the FM Contractor to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3. WITHHOLDING OF CONSENT. The FM Contractor shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company. If the FM Contractor does not object to or request further information on the Suitable Substitute Project Company proposed by the City within five (5) Business Days of receipt from the City of such notice, the Suitable Substitute Project Company shall be deemed to be approved by the FM Contractor.

SECTION 6.4. TERMS OF ASSIGNMENT. Upon the assignment referred to in Section 6.1 hereof becoming effective:

- (a) the Project Company shall be released from its obligations under the FM Services Agreement, the Interface Agreement, and any other Project Document, whether arising prior to or after such assignment (the "Discharged Obligations");
- (b) the Suitable Substitute Project Company shall pay all Outstanding Obligations incurred prior to the effective date of assignment and assume the Outstanding Obligations of the Project Company under the FM Services Agreement that will accrue after the effective date of assignment;
- (c) the rights of the Project Company against the FM Contractor under the FM Services Agreement, the Interface Agreement, and any other Project Document (the "Discharged Rights") shall be cancelled;
- (d) any subsisting ground for termination of the FM Services Agreement by the FM Contractor shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked (so long as the basis for these grounds has been cured as of the effective date of assignment, including payment of all Outstanding Obligations incurred prior to the effective date of such assignment); and



- (e) the FM Contractor shall enter into a new FM Services Direct Agreement with the Suitable Substitute Project Company and a representative of the City on substantially the same terms as this Agreement.

ARTICLE 7  
ACCESS; MEETINGS; NOTICES

SECTION 7.1. ACCESS. During the Operating Period, the FM Contractor and the Project Company shall at all times afford the City or the Appointed Representative, as the case may be, every reasonable opportunity for observing all of the Work. The FM Contractor and the Project Company shall use all reasonable efforts to provide the City's or the Appointed Representative's, as the case may be, employees with safe access to the Work and such employees shall execute the FM Contractor's customary forms regarding visits to the Sites. During any such observation, all representatives of the City and the Appointed Representative shall comply with the FM Contractor's site-specific health and safety plan for the Work applicable to areas visited and all reasonable instructions or directions made by the FM Contractor in this respect, and shall not interfere with the FM Contractor's performance of any Work.

SECTION 7.2. MEETINGS. During the Operating Period, the FM Contractor and the Project Company shall afford the City or the Appointed Representative, as the case may be, reasonable opportunity to attend periodic meetings between the FM Contractor and the Project Company held in accordance with Section 1.4(B) of the FM Services Agreement.

ARTICLE 8  
CITY FACILITIES SENIOR LENDERS' RIGHTS

SECTION 8.1. CITY FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT. The City acknowledges and agrees that the rights of the City hereunder shall be subject to the provisions of the Purchasers' Direct Agreement (City), dated April 20, 2016, by and among the City, the Port, Project Company, and U.S. Bank National Association, as collateral agent.

ARTICLE 9  
INSURANCE

SECTION 9.1. RELEASE OF INSURANCE PROCEEDS. Notwithstanding the other provisions of this Agreement, amounts shall only be released from the City Insurance Trust Account in accordance with the Insurance Trust Agreement.

ARTICLE 10  
COVENANTS

SECTION 10.1. FM CONTRACTOR COVENANTS. The FM Contractor agrees with the City that the FM Contractor shall:

- (a) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the City, an Appointed Representative or a Suitable Substitute Project Company taking assignment in accordance with Article 6 hereof may

reasonably require for perfecting any assignment or release under this Agreement, including the execution of an assignment conforming to the requirements of this Agreement, and the giving of any notice, order or direction and the making of any registration which, in each case, the City or Appointed Representative or Suitable Substitute Project Company reasonably requires, so long as such action does not increase the risk of the FM Contractor under the FM Services Agreement and does not increase the cost or time of performance of the Work; and

- (b) not, prior to Final Completion of the FM Facilities unless the City has (acting reasonably) consented in writing:
  - (1) appoint a Bankruptcy Officer;
  - (2) commence any Bankruptcy Proceedings
  - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the City, vote against any Bankruptcy Proceedings; or
  - (4) take any action authorizing, or which might result in or is in furtherance of any of the prohibited matters referred to in items (1), (2) or (3) above.

SECTION 10.2. CITY COVENANTS. The City shall promptly:

- (a) notify the FM Contractor when it believes Final Completion of the FM Facilities will occur or has occurred, and in any event shall so notify no later than ten (10) Days after its occurrence;
- (b) notify the FM Contractor of any decision by the City to take action under the Project Agreement in respect of the FM Facilities; and
- (c) unless notice is already provided under the above provisions, notify the FM Contractor and the Project Company of any decision by the City to:
  - (1) appoint a Bankruptcy Officer;
  - (2) commence a Bankruptcy Proceedings;
  - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
  - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (1), (2) or (3) above.

SECTION 10.3. PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 11  
ASSIGNMENT

SECTION 11.1. RESTRICTION ON ASSIGNMENT. Except as set forth in Section 11.2 hereof and subject to Article 6 hereof, no party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except with the prior written consent of the other parties in their sole discretion.

SECTION 11.2. ASSIGNMENT BY FM CONTRACTOR. The FM Contractor may assign its rights and obligations under this Agreement to any permitted assignee of its interest in the FM Services Agreement concurrently with the assignment of the FM Services Agreement to such Assignee. The City and the Project Company shall cooperate with the FM Contractor in completing such transfer or assignment, including by executing any additional documents as may be reasonably required by the FM Contractor.

ARTICLE 12  
GENERAL

SECTION 12.1. TERM. This Agreement shall remain in effect until the earlier of (a) the Expiration Date, (b) the execution of a new FM Services Direct Agreement pursuant to the provisions of Section 6.2, (c) subject to compliance with Section 6.4(e) above, the date of assignment of the Project Company's rights and liabilities under the FM Services Agreement to a Suitable Substitute Project Company pursuant to Section 6.1 hereof, or (d) the Termination Date.

SECTION 12.2. CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the FM Services Agreement as between the City and the FM Contractor the provisions of this Agreement shall prevail.

SECTION 12.3. ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 12.4. VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the non-exclusive jurisdiction of any state or federal court located in the County of Los Angeles, California and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 12.5. WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 12.6. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 12.7. CONFIDENTIALITY. For the avoidance of doubt, Section 28.13 (Confidentiality) of the Project Agreement shall apply in connection with all information received by the City hereunder or from any other party in connection with the Project.

SECTION 12.8. NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to the Project Company:

Plenary Properties Long Beach LLC  
10100 Santa Monica Blvd., Suite 410  
Los Angeles, California 90067  
Attention: Stuart Marks  
Email: stuart.marks@plenarygroup.com  
Telephone No.: (424) 278-2175

if to the City:

Patrick H. West  
Office of the City Manager  
City of Long Beach  
333 W. Ocean Blvd., 13th Floor  
Long Beach, California 90802  
Telephone No.: (562) 570-6916  
Fax No.: (562) 570-7650

with a copy to:

Charles Parkin  
Office of the City Attorney  
City of Long Beach  
333 W. Ocean Blvd., 13th Floor  
Long Beach, California 90802  
Telephone No.: (562) 570-2200  
Fax No.: (562) 436-1579

if to the FM Contractor:

Johnson Controls, Inc.  
7400 Birchmount Road  
Markham, Ontario L3R 5V4  
Canada  
Attention: John J. Fleming

Email: john.j.fleming@jci.com  
Telephone No.: (905) 474-5433

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY. In the event of the commencement of any Bankruptcy Proceeding by or against any Party to this Agreement, it is the intention of the parties that this Agreement be construed as the equivalent of a subordination or inter-creditor agreement, and therefore be enforceable in any such Bankruptcy Proceeding.

*[The remainder of this page intentionally left blank; signature page immediately follows.]*

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

APPROVED AS TO FORM

4.12.2016

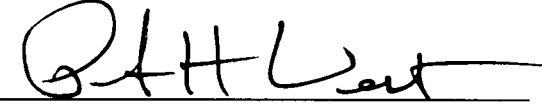
CHARLES PARKIN City Attorney

By

RICHARD ANTHONY  
DEPUTY CITY ATTORNEY

CITY OF LONG BEACH

By:



Name: Patrick H. West

Title: City Manager

PLENARY PROPERTIES LONG BEACH LLC, a  
Delaware limited liability company

By:

Name: Paul Dunstan

Title: President

By:

Name: Stuart Marks

Title: Senior Vice President

JOHNSON CONTROLS, INC., a Wisconsin  
corporation

By:

Name:


Title:

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

CITY OF LONG BEACH

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

PLENARY PROPERTIES LONG BEACH LLC, a  
Delaware limited liability company

By:  \_\_\_\_\_  
Name: Paul Dunstan  
Title: President

By: \_\_\_\_\_  
Name: Stuart Marks  
Title: Senior Vice President

JOHNSON CONTROLS, INC., a Wisconsin  
corporation

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

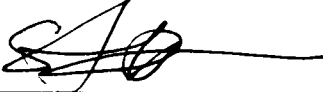
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

CITY OF LONG BEACH

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

PLENARY PROPERTIES LONG BEACH LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: Paul Dunstan  
Title: President

By:  \_\_\_\_\_  
Name: Stuart Marks  
Title: Senior Vice President

JOHNSON CONTROLS, INC., a Wisconsin corporation

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



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

CITY OF LONG BEACH

By: \_\_\_\_\_

Name:

Title:

PLENARY PROPERTIES LONG BEACH LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: Paul Dunstan

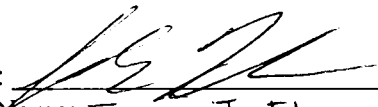
Title: President

By: \_\_\_\_\_

Name: Stuart Marks

Title: Senior Vice President

JOHNSON CONTROLS, INC., a Wisconsin  
corporation

By:  \_\_\_\_\_

Name: John J. Fleming

Title: Vice President and General Manager