



CITY OF LONG BEACH

OFFICE OF THE CITY MANAGER

333 West Ocean Boulevard • Long Beach, CA 90802 • (562) 570-6711 FAX (562) 570-7650

October 1, 2016

34242

Plenary Properties Long Beach LLC
10100 Santa Monica Blvd., Suite 410
Los Angeles, California 90067
Attn: Joshua Coulter

Re: Change Order Forms - Project Agreement Contract Administration Memorandum No.

3

Dear Mr. Coulter:

Reference is hereby made to that certain Project Agreement dated as of April 20, 2016 ("Project Agreement") executed by and among the City of Long Beach ("City"), the Port of Long Beach ("Port"), and Plenary Properties Long Beach LLC ("Project Company"). This letter agreement constitutes a Contract Administration Memorandum as that term is defined and described in Section 28.7 of the Project Agreement. All initially-capitalized terms used herein which are not otherwise defined shall have the meanings given them in the Project Agreement.

The Project Agreement requires the execution of Change Orders under various circumstances more particularly described therein, including without limitation in order to evidence Design Requirement Changes. The Project Agreement does not, however, stipulate the form of Change Order to be used.

The parties agree that (i) the Change Order form attached as Exhibit A to this Memorandum shall be used for Port-related Change Orders, and (ii) the Change Order form attached as Exhibit B to this Memorandum shall be used for City-related Change Orders.

CITY OF LONG BEACH,

By:


Patrick H. West
City Manager

APPROVED AS TO FORM

9-29-2016



CHARLES PARKIN, City Attorney

By


RICHARD ANTHONY
DEPUTY CITY ATTORNEY

CITY OF LONG BEACH, ACTING BY AND THROUGH ITS BOARD OF HARBOR COMMISSIONERS

By:



Duane Kenagy
Acting Chief Executive
Long Beach Harbor Department

APPROVED AS TO FORM AND RETURNED

SEP 29 2016

WILLIAM R. BAERG, City Attorney

By


DEPUTY CITY ATTORNEY

Plenary Properties Long Beach LLC
October 1, 2016
Page 2 of 2

Acknowledged and Agreed:

PLENARY PROPERTIES LONG BEACH LLC

By: 
Joshua Coulter
Project Company Representative

cc:

Jeffrey Fullerton

EXHIBIT A

[Date]

DUPLICATE ORIGINAL

Port of Long Beach
4801 Airport Plaza Drive
Long Beach, CA 90815

ATTENTION: [●]

**Re: 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 (“Project”)
Change Order No. [●]**

Dear [●]:

Reference is made to the Project Agreement (“Project Agreement”) with respect to the Project among the City of Long Beach (the “City”), the City of Long Beach, acting by and through its Board of Harbor Commissioners (in such capacity, the “Port”), and Plenary Properties Long Beach LLC (the “Project Company”).

Capitalized terms not otherwise defined herein have the meanings given in the Project Agreement.

The Project Company hereby proposes Change Order No. [●] for the Port’s consideration. If approved by the Port, this Change Order will be deemed a Port-Directed Design Requirement Change and a Mutual Change Order in accordance with the procedures outlined in Section 7.11 (*Design Requirement Changes Made at City or Port Direction*) of the Project Agreement.

This Change Order covers additive and/or deductive design requirement change items agreed between the Port and the Project Company during the design development process. Upon approval, the changes detailed herein are hereby made a part of the Project Agreement, and shall be performed under the same terms and conditions as set out in Appendix 5 of the Project Agreement.

The Change Order will be implemented in accordance with the submitted detailed information attached to this report by the Project Company, the Design-Builder and the FM Contractor; and as summarized below:

<u>Item No.</u>	<u>Description</u>	<u>Construction Costs</u>	<u>Project Company Costs*</u>	<u>Annual FM Costs</u>	<u>Lifecycle Costs or LCC</u>

*Project Company Costs to include all costs noted in Note iv below.

Project Company hereby confirms that the total of this Change Order will be in the net amount of \$[●] for Construction Costs, \$[●] in Project Company Costs, \$[●] in annual FM Costs and \$[●] for LCC (exclusive of indexation). Project Company also confirms that:

- i. Except as otherwise provided in the Project Agreement Summary -- Schedule, below, there will be no impact to the Scheduled Occupancy Date or the Date for Substantial Completion;
- ii. There will be no impact to the performance of the Project or any other impact on the Design-Build Agreement or the FM Services Contract;
- iii. There will be no impact to the expected usage of utilities for subsequent Contract Years;
- iv. Project Company costs encompass all changes to the sequence of work, disruptions, rescheduling, extended overhead, acceleration, all cost relating to the Change Order (including design and design assist and otherwise) and any impact resulting to the Project as a result of implementing the Change Order, including the Project Company markup cost for administering the Change Order, cost of financing and of obtaining such financing, permits, licenses and approvals that must be obtained or amended for the Change Order to be implemented.
- v. Except as modified herein, all terms and conditions of the Project Agreement and all prior amendments are and will continue to be strictly adhered to and are otherwise unaffected by implementation of this Change Order.
- vi. There will be no further claims from Project Company or its subcontractors and consultants (including claims from the Design-Builder and FM Contractor) related to this Change Order.
- vii. "Construction Costs" are per the Design-Builder proposal and are in today's dollars as per the date of the approved/signed Change Order from the Port.
- viii. "Project Company Costs" are per the Project Company proposal and are in today's dollars as per the date of the approved/signed Change Order from the Port.
- ix. "Annual FM Costs" are per the FM Contractor proposal and are in today's dollars as per the date of the approved/signed Change Order from the Port.
- x. "Lifecycle Costs" or "LCC" are per the FM Contractor's proposal and are in today's dollars as per the date of the approved/signed Change Order from the Port. These costs will be indexed as per the Project Agreement.

Project Agreement Summary – Cost:

Original Port Completion Payment	\$212,602,502
Previous Deductive Change Order(s)	\$[●]
Previous Additive Change Order(s)	\$[●]
This Change Order	\$[●]
Total Deductive Change Order(s)	\$[●]
Revised Port Completion Payment	\$[●]
Total Additive Change Order(s)	\$[●]

Project Agreement Summary – Schedule:

Original Scheduled Occupancy Date	June 30, 2019
Previous Extension(s)	0 Calendar Days
Previous Scheduled Occupancy Date	June 30, 2019
This Extension	0 Calendar Days
Current Schedule Occupancy Date	June 30, 2019

As contemplated in section 18.12 (*Negotiated Lump Sum Pricing of Additional Work*) of the Project Agreement, this Change Order will be funded as a lump sum payment by the Port as the work is performed and accepted



by the Port, and within 30 calendar days upon request for such payment by Project Company. For net deductive change orders, the net deductive amount will be subtracted from the Port Completion Payment at the end of the Project. Please indicate your acceptance of this Change Order by your signature below. If you have any questions please do not hesitate to contact me at your earliest convenience.

Regards,

PLENARY PROPERTIES LONG BEACH LLC

Joshua Coulter
Project Company Representative

Reviewed and Recommended by:

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

Project Manager _____

Director of Program Mgmt. _____

Senior Director, Program Delivery _____

Accepted By:

[•] Date
Chief Executive Officer

Cc: Port of Long Beach – Lincoln Lo, Doug Sereno, Sean Gamette, Doug Thiessen
PECP – Joshua Coulter, Jeff Fullerton, Stuart Marks
Clark Construction – Marc Kersey, Erin Young, John Warren
JCI – Mike Davis, Claudio Andreetta

EXHIBIT B

[Date]

DUPLICATE ORIGINAL

City of Long Beach
 333 W. Ocean Blvd.
 Long Beach, CA 90802

ATTENTION: [●]

Re: 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 (“Project”) Change Order No. [●]

Dear [●]:

Reference is made to the Project Agreement (“Project Agreement”) with respect to the Project among the City of Long Beach (the “City”), the City of Long Beach, acting by and through its Board of Harbor Commissioners (in such capacity, the “Port”), and Plenary Properties Long Beach LLC (the “Project Company”).

Capitalized terms not otherwise defined herein have the meanings given in the Project Agreement.

The Project Company hereby proposes Change Order No. [●] for the City’s consideration. If approved by the City, this Change Order will be deemed a City-Directed Design Requirement Change and a Mutual Change Order in accordance with the procedures outlined in Section 7.11 (*Design Requirement Changes Made at City or Port Direction*) of the Project Agreement.

This Change Order covers additive and/or deductive design requirement change items agreed between the City and the Project Company during the design development process. Upon approval, the changes detailed herein are hereby made a part of the Project Agreement, and shall be performed under the same terms and conditions as set out in Appendix 5 of the Project Agreement.

The Change Order will be implemented in accordance with the submitted detailed information attached to this report by the Project Company, the Design-BUILDER and the FM Contractor; and as summarized below:

<u>Item No.</u>	<u>Description</u>	<u>Construction Costs</u>	<u>Project Company Costs*</u>	<u>Annual FM Costs</u>	<u>Lifecycle Costs or LCC</u>

*Project Company Costs to include all costs noted in Note iv below.

Project Company hereby confirms that the total of this Change Order will be in the net amount of \$[●] for Construction Costs, \$[●] in Project Company Costs, \$[●] in annual FM Costs and \$[●] for LCC (exclusive of indexation). Project Company also confirms that:

- i. Except as otherwise provided in the Project Agreement Summary -- Schedule, below, there will be no impact to the Scheduled Occupancy Date or the Date for Substantial Completion;
- ii. There will be no impact to the performance of the Project or any other impact on the Design-Build Agreement or the FM Services Contract;
- iii. There will be no impact to the expected usage of utilities for subsequent Contract Years;
- iv. Project Company costs encompass all changes to the sequence of work, disruptions, rescheduling, extended overhead, acceleration, all cost relating to the Change Order (including design and design assist and otherwise) and any impact resulting to the Project as a result of implementing the Change Order, including the Project Company markup cost for administering the Change Order, cost of financing and of obtaining such financing, permits, licenses and approvals that must be obtained or amended for the Change Order to be implemented.
- v. Except as modified herein, all terms and conditions of the Project Agreement and all prior amendments are and will continue to be strictly adhered to and are otherwise unaffected by implementation of this Change Order.
- vi. There will be no further claims from Project Company or its subcontractors and consultants (including claims from the Design-Builder and FM Contractor) related to this Change Order.
- vii. "Construction Costs" are per the Design-Builder proposal and are in today's dollars as per the date of the approved/signed Change Order from the City.
- viii. "Project Company Costs" are per the Project Company proposal and are in today's dollars as per the date of the approved/signed Change Order from the City.
- ix. "Annual FM Costs" are per the FM Contractor proposal and are in today's dollars as per the date of the approved/signed Change Order from the City.
- x. "Lifecycle Costs" or "LCC" are per the FM Contractor's proposal and are in today's dollars as per the date of the approved/signed Change Order from the City. These costs will be indexed as per the Project Agreement.

Project Agreement Summary – Cost:

Original City Facilities Design Requirement Change Allowance Account Balance	\$4,500,000*
Previous Deductive Change Order(s)	\$[●]
Previous Additive Change Order(s)	\$[●]
This Change Order	\$[●]
Revised City Facilities Design Requirement Change Allowance Account Balance	\$[●]

*Balance subject to change in accordance with funding schedule contained in Section 7.11(A) of the Project Agreement.

Project Agreement Summary – Schedule:

Original Scheduled Occupancy Date	June 30, 2019
Previous Extension(s)	0 Calendar Days
Previous Scheduled Occupancy Date	June 30, 2019
This Extension	0 Calendar Days
Current Schedule Occupancy Date	June 30, 2019



As contemplated in section 7.11(C) of the Project Agreement, this Change Order will be funded from the City Facilities Design Requirement Change Allowance Account. If there are insufficient funds in the City Facilities Design Requirement Change Allowance Account to pay for the costs of this Change Order, then this Change Order (or portion hereof) will be funded in accordance with Section 7.11(F)(1) of the Project Agreement. For net deductive change orders, the net deductive amount will be added to the City Facilities Design Requirement Change Allowance Account and funded by the Project Company. Please indicate your acceptance of this Change Order by your signature below. If you have any questions please do not hesitate to contact me at your earliest convenience.

Regards,

PLENARY PROPERTIES LONG BEACH LLC

Joshua Coulter
Project Company Representative

Reviewed and Recommended by:

CITY OF LONG BEACH

Project Manager _____

Accepted By:

[•] Date
City Manager

Cc: City of Long Beach –
PECP – Joshua Coulter, Jeff Fullerton, Stuart Marks
Clark Construction – Marc Kersey, Erin Young, John Warren
JCI – Mike Davis, Claudio Andreetta