

FIRST AMENDMENT TO 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

THIS FIRST AMENDMENT TO THE 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 ("Amendment") is entered into on July 18, 2017, between the City of Long Beach (the "City") pursuant to a minute order adopted by its City Council on May 15, 2018, 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, a limited liability company organized and existing under the laws of the State of Delaware (the "Project Company").

RECITALS

The City, the Port and the Project Company are parties to 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 as of April 20, 2016 (the "Project Agreement"). All initially capitalized terms used herein, which are not otherwise defined, shall have the meaning given them in the Project Agreement.

The Project Agreement, among other things, imposes certain insurance requirements upon the Project Company, which such requirements are detailed in Appendix 9 to the Project Agreement ("Original Appendix 9"). Due to certain corporate policies of the Design-Builder, among other things, the Project Company has been unable to provide insurance policies which comply with all of the requirements of Original Appendix 9. The City, the Port and the Project Company have mutually agreed that the insurance policies that have actually been provided by the Project Company, in some cases with increased coverage limits, protect the Project and provide adequate protection to the City and the Port notwithstanding their failure to strictly comply with Original Appendix 9.


The parties wish to amend the requirements of Original Appendix 9 so that the insurance policies which have been accepted and approved by the City and the Port are in formal compliance with Appendix 9.

SECTION 1. PROJECT AGREEMENT AMENDMENT. This Amendment constitutes a Project Agreement Amendment and is being executed and delivered in accordance with Section 28.8 of the Project Agreement.


SECTION 2. INSURANCE REQUIREMENTS. Exhibit A attached to this Amendment ("Amended Appendix 9") is hereby attached to the Project Agreement and incorporated therein as Appendix 9, superseding and replacing in its entirety Original Appendix 9. Exhibit B attached to this Amendment shows, for informational purposes only, the differences between Amended Appendix 9 and Original Appendix 9.

SECTION 3. CONTINUING EFFECTIVENESS. Except as herein amended and supplemented or interpreted by Contract Administration Memoranda, the Project Agreement shall remain unchanged and in full force and effect.


IN WITNESS WHEREOF, the Parties have caused this First Amendment to Project Agreement to be executed by their duly authorized representatives as of the date first written above.

APPROVED AS TO FORM
6-25-2018
CHARLES PARKIN, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

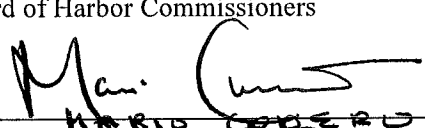
APPROVED AS TO FORM AND RETURNED

JUL 05 2018
CHARLES PARKIN, City Attorney
By: 
DEPUTY CITY ATTORNEY

CITY OF LONG BEACH

By: 
Name: Patrick H. West
Title: City Manager

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

By: 
Name: MARIO LOPEZ
Title: Executive Director

PLENARY PROPERTIES LONG BEACH LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused this First Amendment to Project Agreement to be executed by their duly authorized representatives as of the date first written above.

CITY OF LONG BEACH

By: _____
Name:
Title:

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

By: _____
Name:
Title:

PLENARY PROPERTIES LONG BEACH LLC

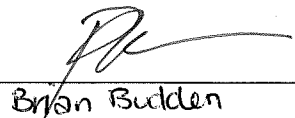
By:  _____
Name: Bryan Budden
Title: President

EXHIBIT A

APPENDIX 9 - CLEAN

APPENDIX 9

INSURANCE REQUIREMENTS

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. Coverage shall be primary and non-contributory with respect to the City and the Port. Coverage as specified herein shall be exclusive to the Project (with the exception of \$200 million of Commercial General Liability (both on- and off-site), Commercial Automobile Liability, Off-Site Umbrella or Excess Liability Insurance, Professional Liability and Pollution Legal Liability Insurance), and aggregates, if any, shall renew on an annual basis (except for Pollution Liability Insurance and the products and completed operations liability coverage within the commercial general liability insurance policy, as set forth in Section 1.4 of this Appendix), which shall renew on the period of the policy for such insurance). Certified copies of these policies shall be delivered to the City and the Port 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, or cause to be provided, any or all of the following insurance policies by means of a Contractor Controlled Insurance Program ("CCIP") or use of the Design-Builder's corporate practice policies.

1.1 Builder's Risk – City Facilities and Shared Rooms. An all-risk builder's risk course of construction insurance policy(s) covering all City Facilities Design-Build Work and Shared Rooms Design-Build Work, including Waiver of Subrogation and Non-vitiation, in each case other than design (including testing and commissioning) at the City 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 City Facilities or the Shared Rooms or for permanent use in the City Facilities or the Shared Rooms or incidental to the construction; all temporary structures at the City Facilities or the Shared Rooms that are to be used in or incidental to the fabrication, erection, testing, or completion of the City Facilities or the Shared Rooms to the extent the cost thereof is included in the City Facilities Design-Build Work or Shared Rooms Design-Build Work upon which the Service Fee is based, while on or about the City Site awaiting or during construction. The builder's risk policy(s):

- (a) shall be maintained until the Occupancy Date in respect of each City Facility and Shared Room;
- (b) shall be in an amount equal to the aggregate of the initial City Design-Build Agreement Sum, subject to subsequent modifications of such amounts;
- (c) shall be written on an all risk basis, including coverage for flood, water damage, and terrorism (subject to a \$50 million aggregate sublimit for flood coverage);
- (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 City Facility and Shared Room redesign if a covered loss ensues as a result of design error, subject to a \$50 million sublimit (design defects exclusions, if any, shall be limited to those contained in the LEG-3 exclusion or its equivalent);

- (f) shall include extensions for valuable papers, fire-fighting expenses, professional fees, extra/expediting expenses, law & ordinance, off premises services interruption, accounts receivable, ingress/egress, and testing and commissioning (minimum 90 days);
- (g) may exclude loss arising from war and war-related causes;
- (h) may exclude dishonest acts of the Project Company's employees, mysterious disappearance, and ordinary wear and tear;
- (i) may include deductibles or self-insured retentions, but such deductible or self-insured retention shall not be a recoverable cost under this Project Agreement; and
- (j) shall not include earthquake or earth movement losses, and the Project Company shall not be responsible for deductibles associated with earthquake or earth movement losses.

Named Insureds: Project Company, Design-Builder, all subcontractors, the City

Additional Insured: FM Contractor, Collateral Agent and the City Facilities Senior Lenders

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

1.2 Builder's Risk – Port Facilities and Shared Facilities. An all-risk builder's risk course of construction insurance policy(s) covering all Port Facilities Design-Build Work and Shared Facilities Design-Build Work, in each case other than design (including testing and commissioning) at the City Site and the 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 Port Facilities and the Shared Facilities or for permanent use in the Port Facilities or Shared Facilities or incidental to the construction; all temporary structures at the Port Facilities or Shared Facilities that are to be used in or incidental to the fabrication, erection, testing, or completion of the Port Facilities or the Shared Facilities to the extent the cost thereof is included in the Port Facilities Work or the Shared Facilities Work, while on or about the City Site or the Port Site awaiting or during construction. The builder's risk policy(s):

- (a) shall be maintained until the Occupancy Date in respect of each Port Facility and Shared Facility;
- (b) shall be in an amount equal to the aggregate of the initial Port Design-Build Agreement Sum, subject to subsequent modifications of such amounts;
- (c) shall be written on an all risk basis, including coverage for flood, water damage, and terrorism (subject to a \$50 million aggregate sublimit for flood coverage);
- (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 Port Facility and Shared Facility redesign if a covered loss ensues as a result of design error, subject to a \$50 million sublimit (design defects exclusions, if any, shall be limited to those contained in the LEG-3 exclusion or its equivalent);

- (f) shall include extensions for valuable papers, fire-fighting expenses, professional fees, extra/expediting expenses, law & ordinance, off-premises services interruption, accounts receivable, ingress/egress and testing and commissioning (minimum 90 days);
- (g) may exclude loss arising from war and war-related causes;
- (h) may exclude dishonest acts of the Project Company's employees, mysterious disappearance, and ordinary wear and tear;
- (i) may include deductibles or self-insured retentions, but such deductible or self-insured retention shall not be a recoverable cost under this Agreement; and
- (j) shall not include earthquake or earth movement losses, and the Project Company shall not be responsible for deductibles associated with earthquake or earth movement losses.

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

Additional Insured: FM Contractor, Collateral Agent and the Port Facilities Senior Lenders

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

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

- (a) be in an amount not less than \$125,000,000 per claim and in the aggregate;
- (b) be on a "claims-made" basis;
- (c) have an extended reporting or discovery "tail" period, or be renewed for a period, of not less than 10 years after the Contract Date;
- (d) have a retroactive date effective before the commencement of any design; and
- (e) is not required to be on an exclusive basis for the Project.

Named Insureds: Design-Builder

Additional Insured: City, Port and Project Company with respect to their vicarious liability arising out of the Project only.

1.4 Commercial General Liability. A commercial general liability insurance policy, including Waiver of Subrogation and Non-vitiating, 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. Defense costs shall be in addition to limits. The products and completed operations liability coverage shall be maintained for a period of not less than 10 years following the Final City 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 \$300,000,000 per occurrence and a \$300,000,000 aggregate limit (\$100 million of which shall be exclusive to the Project);
- (b) include extensions for Owners' and contractor's protective liability, cross liability, severability of interests, and hoist collision liability; and
- (c) be maintained throughout the Term until the Final City Occupancy Date.

Named Insureds: Design-Builder

Additional Insureds: Project Company, City, Port, Collateral Agent, Senior Lenders and FM Contractor

1.5 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than \$1,000,000 per accident. 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. Defense costs shall be in addition to limits.

Named Insureds: The vehicle owner

Additional Insureds: Project Company, Design-Builder, City, Port, Collateral Agent, Senior Lenders and FM Contractor

1.6 Worker's Compensation and Employer's Liability. Worker's compensation as required by Applicable Law, and employer's liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit).

1.7 Contractor Pollution Liability. Contractor Pollution Liability written on an occurrence form with limits of not less than \$125,000,000 and a \$125,000,000 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 for not less than three years following the Occupancy Date in respect of each Facility.

Named Insured: Design-Builder

Additional Insured: Project Company, City, Port, Senior Lenders and FM Contractor

2. INSURANCE DURING THE OPERATING PERIOD

Commencing on the Occupancy Date in respect of a Facility, the Project Company shall obtain and keep in force, or cause to be obtained and kept in force, until the Termination Date the following insurance coverage in respect of such Facility. Coverage shall be primary and non-contributory with respect to the City and the Port and shall be dedicated solely to the Project:

2.1 Property. All risk property insurance 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 or in the City Facilities and Shared Rooms, and including coverage for business interruption, extra expense and expediting expense, subject to a \$50 million aggregate sublimit for flood coverage and other events.

Facilities Covered: City Facilities, City's interest in the Shared Rooms, City's interest in the Shared Facilities, City's interest in the New Parking Facility

Name Insureds: Project Company, Design-Builder, FM Contractor, and the City

First Loss Payee: Collateral Agent

2.2 Boiler and Machinery. Boiler and machinery insurance with limits of liability of not less than the value of the highest valued structure 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 in the City Facilities and Shared Rooms, and including coverage for business interruption, extra expense and expediting expense.

Facilities Covered: City Facilities, City's interest in the Shared Rooms, City's interest in the Shared Facilities, City's interest in the New Parking Facility

Named Insureds: Project Company, Design-Builder, FM Contractor and the City

First Loss Payee: Collateral Agent

2.3 Business Interruption. The business interruption insurance required by Sections 2.1 and 2.2 of this Appendix shall be provided with limits of liability in an amount equal to 24 months of (i) Service Fee payments, and (ii) Port FM Fee payments 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 of this Appendix, 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.

Facilities Covered: City Facilities, City's interest in the Shared Rooms, City's interest in the Shared Facilities, City's interest in the New Parking Facility

Named Insured: Project Company, Design-Builder and FM Contractor

First Loss Payee: Collateral Agent

2.4 Commercial General Liability. Commercial general liability insurance insuring against liability of the Project Company and the FM Contractor with respect to the FM Facilities or arising out of the Contract Services in respect of the FM Facilities, including Non-vitiation, 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). Defense costs shall be in addition to limits. The insurance shall (a) apply 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 \$50,000,000, 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. If coverage is written with an aggregate, the aggregate shall be twice the occurrence limit.

Named Insured: Project Company

Additional Insureds: City, Port, Collateral Agent, Design-Builder and FM Contractor

2.5 Commercial Automobile Liability. Commercial automobile liability insurance with limits of liability of not less than \$1,000,000 per accident, including Non-vitiation, 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. Defense costs shall be in addition to limits.

Named Insured: The vehicle owner

Additional Insureds: Project Company, City, Port, Collateral Agent, FM Contractor

2.6 Worker’s Compensation and Employer’s Liability. Worker’s compensation as required by Applicable Law, including Voluntary Compensation and Waiver of Subrogation, and employer’s liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 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 \$10,000,000 and a \$10,000,000 annual limit, covering third party bodily injury and property damage, remediation costs for unknown pollution conditions, and first party property damage.

Named Insured: Project Company, Design-Builder and FM Contractor

Additional Insureds: City, Port and City Facilities Senior Lenders

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 \$10,000,000.

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 FM Contractor, 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 \$1,000,000.

Named Insured: Project Company

First Loss Payee: Collateral Agent

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 and the City. 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 of this Appendix 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 Project Company shall cause the Design-Builder and its insurers providing the insurance required under Sections 1.1, 1.2, 1.3, 1.4, 1.5 and 1.7 of this Appendix to waive any right of subrogation they may have against the City and the Port, including their respective elected and appointed officials, employees and agents, if any, and those for whom the City is in law responsible, and the Senior Lenders, 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 of this Appendix 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, the Port and the Senior Lenders, whether or not the damage is caused by its act, omission or negligence.

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 or, at the Project Company's option, be provided by means of a Contractor Controlled Insurance Program ("CCIP") or use of the Design-Builder's corporate practice policies, with all coverage provided in conformance with the insurance requirements contained herein;
- (b) be issued by a Qualified Insurer authorized to do business in the State;
- (c) be in a form approved by the City and the Port (as applicable), 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 and the Port; and

- (e) require the insurers to notify the City, the Port and the Senior Lenders in writing not less than 90 days (30 days for non-payment of premium) before any cancellation or termination; provided, however, that with respect to the policies of insurance described in Sections 1.5, 1.6, 2.5, 2.6 and 2.9 of this Appendix, such policies shall require the insurers to notify the City, the Port and the Senior Lenders in writing not less than 30 days (30 days for non-payment of premium) before any 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 the Port and to the FM Contractor (to the extent of coverage under which it is an additional insured) a certified copy of the policy of insurance containing the terms and conditions as required herein for approval as to sufficiency and as to form; provided, however, that in respect of policies of insurance to be procured by the FM Contractor pursuant to the FM Services Agreement, the Project Company shall deliver to the City and the Port certificates of insurance evidencing such coverage. The Project Company, acting reasonably, may redact proprietary information from the copy of the policies delivered to the City, the Port and the FM Contractor. 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 policy by the City or the Port shall derogate from or diminish the City's or the Port's rights under this 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 and the Port, 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 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 \$1,000,000 (Index Linked). In the event that an Insurance Unavailability Event has occurred such that a deductible in excess of \$1,000,000 (Index Linked) is necessary, the City shall, in the manner set forth in and as part of the amounts payable in accordance with this 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 \$1,000,000 (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.

EXHIBIT B
APPENDIX 9 - REDLINE

APPENDIX 9

INSURANCE REQUIREMENTS

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. Coverage shall be primary and non-contributory with respect to the City and the Port. Coverage as specified herein shall be exclusive to the Project (with the exception of \$200 million of Commercial General Liability (both on- and off-site), Commercial Automobile Liability, Off-Site Umbrella or Excess Liability Insurance, Professional Liability and Pollution Legal Liability Insurance), and aggregates, if any, shall renew on an annual basis (except for Pollution Liability Insurance and the products and completed operations liability coverage within the commercial general liability insurance policy, as set forth in Section 1.4 of this Appendix), which shall renew on the period of the policy for such insurance). Certified copies of these policies shall be delivered to the City and the Port 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, or cause to be provided, any or all of the following insurance policies by means of a Contractor Controlled Insurance Program ("CCIP") or use of the Design-Builder's corporate practice policies.

1.1 Builder's Risk – City Facilities and Shared Rooms. An all-risk builder's risk course of construction insurance policy(s) covering all City Facilities Design-Build Work and Shared Rooms Design-Build Work, including Waiver of Subrogation and Non-vitiation, in each case other than design (including testing and commissioning) at the City 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 City Facilities or the Shared Rooms or for permanent use in the City Facilities or the Shared Rooms or incidental to the construction; all temporary structures at the City Facilities or the Shared Rooms that are to be used in or incidental to the fabrication, erection, testing, or completion of the City Facilities or the Shared Rooms to the extent the cost thereof is included in the City Facilities Design-Build Work or Shared Rooms Design-Build Work upon which the Service Fee is based, while on or about the City Site awaiting or during construction. The builder's risk policy(s):

- (a) shall be maintained until the Occupancy Date in respect of each City Facility and Shared Room;
- (b) shall be in an amount equal to the aggregate of the initial City Design-Build Agreement Sum, subject to subsequent modifications of such amounts;
- (c) shall be written on an all risk basis, including coverage for flood, water damage, and terrorism (subject to a \$50 million aggregate sublimit for flood coverage);
- (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 City Facility and Shared Room redesign if a covered loss ensues as a result of design error, subject to a \$50 million sublimit (design defects exclusions, if any, shall be limited to those contained in the LEG-3 exclusion or its equivalent);

- (f) shall include extensions for valuable papers, fire-fighting expenses, professional fees, extra/expediting expenses, law & ordinance, off premises services interruption, accounts receivable, ingress/egress, and testing and commissioning (minimum 90 days);
- (g) may exclude loss arising from war and war-related causes;
- (h) may exclude dishonest acts of the Project Company's employees, mysterious disappearance, and ordinary wear and tear;
- (i) may include deductibles or self-insured retentions, but such deductible or self-insured retention shall not be a recoverable cost under this Project Agreement; and
- (j) shall not include earthquake or earth movement losses, and the Project Company shall not be responsible for deductibles associated with earthquake or earth movement losses.

Named Insureds: Project Company, Design-Builder, all subcontractors, the City

Additional Insured: FM Contractor, Collateral Agent and the City Facilities Senior Lenders

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

1.2 Builder's Risk – Port Facilities and Shared Facilities. An all-risk builder's risk course of construction insurance policy(s) covering all Port Facilities Design-Build Work and Shared Facilities Design-Build Work, in each case other than design (including testing and commissioning) at the City Site and the 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 Port Facilities and the Shared Facilities or for permanent use in the Port Facilities or Shared Facilities or incidental to the construction; all temporary structures at the Port Facilities or Shared Facilities that are to be used in or incidental to the fabrication, erection, testing, or completion of the Port Facilities or the Shared Facilities to the extent the cost thereof is included in the Port Facilities Work or the Shared Facilities Work, while on or about the City Site or the Port Site awaiting or during construction. The builder's risk policy(s):

- (a) shall be maintained until the Occupancy Date in respect of each Port Facility and Shared Facility;
- (b) shall be in an amount equal to the aggregate of the initial Port Design-Build Agreement Sum, subject to subsequent modifications of such amounts;
- (c) shall be written on an all risk basis, including coverage for flood, water damage, and terrorism (subject to a \$50 million aggregate sublimit for flood coverage);
- (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 Port Facility and Shared Facility redesign if a covered loss ensues as a result of design error, subject to a \$50 million sublimit (design defects exclusions, if any, shall be limited to those contained in the LEG-3 exclusion or its equivalent);

- (f) shall include extensions for valuable papers, fire-fighting expenses, professional fees, extra/expediting expenses, law & ordinance, off-premises services interruption, accounts receivable, ingress/egress and testing and commissioning (minimum 90 days);
- (g) may exclude loss arising from war and war-related causes;
- (h) may exclude dishonest acts of the Project Company's employees, mysterious disappearance, and ordinary wear and tear;
- (i) may include deductibles or self-insured retentions, but such deductible or self-insured retention shall not be a recoverable cost under this Agreement; and
- (j) shall not include earthquake or earth movement losses, and the Project Company shall not be responsible for deductibles associated with earthquake or earth movement losses.

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

Additional Insured: FM Contractor, Collateral Agent and the Port Facilities Senior Lenders

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

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

- (a) be in an amount not less than ~~\$10,000,000~~ 125,000,000 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 10 years after the Contract Date; ~~and~~
- (d) have a retroactive date effective before the commencement of any design; ~~and~~
- (e) is not required to be on an exclusive basis for the Project.

Named Insureds: ~~All entities providing professional design services~~ Design-Builder

Additional Insured: ~~City, Port, and Project Company and Design-Builder with respect to their vicarious liability arising out of the Project only.~~

1.4 Commercial General Liability. A commercial general liability insurance policy, including Waiver of Subrogation and Non-vitiating, 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. Defense costs shall be in addition to limits. The products and completed operations liability coverage shall be maintained for a period of not less than 10 years following the Final City 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 ~~\$100,000,000~~300,000,000 per occurrence and a ~~\$100,000,000~~300,000,000 aggregate limit, ~~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~~ (\$100 million of which shall be exclusive to the Project);
- (b) include extensions for Owners’ and contractor’s protective liability, cross liability, severability of interests, ~~non-owned automobiles, tenant’s legal liability,~~ and hoist collision liability; and
- (c) be maintained throughout the Term until the Final City Occupancy Date.

Named Insureds: ~~Project Company and Design-Builder~~

Additional Insureds: Project Company, City, Port, Collateral Agent, Senior Lenders and FM Contractor

1.5 Commercial Automobile Liability. A commercial automobile liability insurance policy with limits of liability of not less than \$1,000,000 per accident. 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. Defense costs shall be in addition to limits.

Named Insureds: The vehicle owner

Additional Insureds: Project Company, Design-Builder, City, Port, Collateral Agent, Senior Lenders and FM Contractor

1.6 Worker’s Compensation and Employer’s Liability. Worker’s compensation as required by Applicable Law, and employer’s liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit).

1.7 Contractor Pollution Liability. Contractor Pollution Liability written on an occurrence form with limits of not less than ~~\$25,000,000~~125,000,000 and a ~~\$25,000,000~~125,000,000 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 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: Project Company, City, Port, Senior Lenders and FM Contractor

2. INSURANCE DURING THE OPERATING PERIOD

Commencing on the Occupancy Date in respect of a Facility, the Project Company shall obtain and keep in force, or cause to be obtained and kept in force, until the Termination Date the following insurance coverage in respect of such Facility. Coverage shall be primary and non-contributory with respect to the City and the Port and shall be dedicated solely to the Project:

2.1 Property. All risk property insurance 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 or in the City Facilities and

Shared Rooms, and including coverage for business interruption, extra expense and expediting expense, subject to a \$50 million aggregate sublimit for flood coverage and other events.

Facilities Covered: City Facilities, City's interest in the Shared Rooms, City's interest in the Shared Facilities, City's interest in the New Parking Facility

Name Insureds: Project Company, Design-Builder, FM Contractor, and the City

First Loss Payee: Collateral Agent

2.2 **Boiler and Machinery.** Boiler and machinery insurance with limits of liability of not less than the value of the highest valued structure 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 in the City Facilities and Shared Rooms, and including coverage for business interruption, extra expense and expediting expense.

Facilities Covered: City Facilities, City's interest in the Shared Rooms, City's interest in the Shared Facilities, City's interest in the New Parking Facility

Named Insureds: Project Company, Design-Builder, FM Contractor and the City

First Loss Payee: Collateral Agent

2.3 **Business Interruption.** The business interruption insurance required by Sections 2.1 and 2.2 of this Appendix shall be provided with limits of liability in an amount equal to 24 months of (i) Service Fee payments, and (ii) Port FM Fee payments 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 of this Appendix, 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.

Facilities Covered: City Facilities, City's interest in the Shared Rooms, City's interest in the Shared Facilities, City's interest in the New Parking Facility

Named Insured: Project Company, Design-Builder and FM Contractor

First Loss Payee: Collateral Agent

2.4 **Commercial General Liability.** Commercial general liability insurance insuring against liability of the Project Company and the FM Contractor with respect to the FM Facilities or arising out of the Contract Services in respect of the FM Facilities, including Non-vitiation, 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). Defense costs shall be in addition to limits. The insurance shall (a) apply 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 \$50,000,000, 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. If coverage is written with an aggregate, the aggregate shall be twice the occurrence limit.

Named Insured: Project Company

Additional Insureds: City, Port, Collateral Agent, Design-Builder and FM Contractor

2.5 Commercial Automobile Liability. Commercial automobile liability insurance with limits of liability of not less than \$1,000,000 per accident, including Non-vitiation, 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. Defense costs shall be in addition to limits.

Named Insured: The vehicle owner

Additional Insureds: Project Company, City, Port, Collateral Agent, FM Contractor

2.6 Worker’s Compensation and Employer’s Liability. Worker’s compensation as required by Applicable Law, including Voluntary Compensation and Waiver of Subrogation, and employer’s liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 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 \$10,000,000 and a \$10,000,000 annual limit, covering third party bodily injury and property damage, remediation costs for unknown pollution conditions, and first party property damage.

Named Insured: Project Company, Design-Builder and FM Contractor

Additional Insureds: City, Port and City Facilities Senior Lenders

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 \$10,000,000.

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 FM Contractor, 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 \$1,000,000.

Named Insured: Project Company

First Loss Payee: Collateral Agent

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 and the City. 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 of this Appendix 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 Project Company shall cause the Design-Builder and its insurers providing the insurance required under Sections 1.1, 1.2, 1.3, 1.4, ~~1.5,~~ ~~1.6~~ 1.5 and 1.7 of this Appendix to waive any right of subrogation they may have against the City and the Port, including their respective elected and appointed officials, employees and agents, if any, and those for whom the City is in law responsible, and the Senior Lenders, 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 of this Appendix 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, the Port and the Senior Lenders, whether or not the damage is caused by its act, omission or negligence.

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 or, at the Project Company's option, be provided by means of a Contractor Controlled Insurance Program ("CCIP") or use of the Design-Builder's corporate practice policies, with all coverage provided in conformance with the insurance requirements contained ~~therein~~ herein;
- (b) be issued by a Qualified Insurer authorized to do business in the State;
- (c) be in a form approved by the City and the Port (as applicable), 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 and the Port; and

- (e) require the insurers to notify the City, the Port and the Senior Lenders in writing not less than 90 days (30 days for non-payment of premium) before any cancellation or termination; provided, however, that with respect to the policies of insurance described in Sections 1.5, 1.6, 2.5, 2.6 and 2.9 of this Appendix, such policies shall require the insurers to notify the City, the Port and the Senior Lenders in writing not less than 30 days (30 days for non-payment of premium) before any 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 the Port and to the FM Contractor (to the extent of coverage under which it is an additional insured) a certified copy of the policy of insurance containing the terms and conditions as required herein for approval as to sufficiency and as to form; provided, however, that in respect of policies of insurance to be procured by the FM Contractor pursuant to the FM Services Agreement, the Project Company shall deliver to the City and the Port certificates of insurance evidencing such coverage. The Project Company, acting reasonably, may redact proprietary information from the copy of the policies delivered to the City, the Port and the FM Contractor. 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 policy by the City or the Port shall derogate from or diminish the City's or the Port's rights under this 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 and the Port, 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 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 \$1,000,000 (Index Linked). In the event that an Insurance Unavailability Event has occurred such that a deductible in excess of \$1,000,000 (Index Linked) is necessary, the City shall, in the manner set forth in and as part of the amounts payable in accordance with this 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 \$1,000,000 (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.