

FOURTH 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
ADMINISTRATION BUILDING AND REVITALIZED LINCOLN PARK

34242

THIS FOURTH 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 ADMINISTRATION BUILDING AND REVITALIZED LINCOLN PARK ("Amendment") is entered into on July 1, 2021, between the City of Long Beach (the "City") pursuant to minute order adopted by its City Council on February 16, 2021, 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 (i) 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, (ii) that certain First Amendment thereto dated as of July 18, 2017, (iii) that certain Second Amendment thereto dated as of March 24, 2020, and (iv) that certain Third Amendment thereto dated as of August 13, 2020 (as amended, the "Project Agreement"). All initially capitalized terms used herein, which are not otherwise defined, shall have the meaning given them in the Project Agreement.

In connection with the development of the Mid-Block Site, the parties wish to amend certain provisions of the Project Agreement.

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. SCHEDULED OCCUPANCY DATE, SCHEDULED PROJECT OCCUPANCY DATE AND LONGSTOP DATE. Section 8.7(A) of the Project Agreement is amended so that the Scheduled Occupancy Date in respect of Lincoln Park is December 17, 2021. Section 8.7(B) of the Project Agreement is amended so that the Scheduled Final City Occupancy Date is December 17, 2021. Section 8.7(D) of the Project Agreement is amended so that the Scheduled Project Occupancy Date is December 17, 2021. Section 8.7(E) of the Project Agreement is amended so that the City Longstop Date is December 17, 2022.

SECTION 3. PRIVATE DEVELOPMENT SITES.

(A) The final sentence of the first paragraph of Section 12.1(C) of the Project Agreement is amended and restated in its entirety to read as follows:

"It is also acknowledged that the Mid-Block Site Conveyance Agreement or the Access and Demolition Agreement (referred to in Section 12.1(G) below), as applicable, will require the following:"

(B) Section 12.1(C)(1) of the Project Agreement is amended and restated in its entirety to read as follows:

“(1) the demolition and removal of the Old City Hall Building. A demolition permit shall be obtained by the Project Company or its designee no later than November 1, 2021. A payment and performance bond in an amount equal to 110% of the Old City Hall Building demolition cost (including any related costs such as remediation), naming the City as beneficiary, and otherwise in form and substance reasonably acceptable to City (the 'Demolition Performance Bond') shall be issued prior to commencement of demolition. Demolition and removal shall be completed no later than one year after the later of (i) issuance of the demolition permit, or (ii) July 1, 2021. If permit issuance and/or demolition has not been completed in accordance with this subsection (C)(1), the City shall be entitled to an Extraordinary Item credit against the Service Fee in an amount equal to \$1,750 (Index Linked) per day until such time as such permit is issued and/or demolition is completed. If the demolition has not been completed on or before the date which is eighteen (18) months after the date of issuance of the demolition permit, the City may make a claim to the surety under the Demolition Performance Bond. The parties agree that the City’s actual damages in such circumstance would be difficult or impossible to ascertain, and that such liquidated damages are intended to place the City in the same economic position as it would have been in had the circumstance not occurred. Notwithstanding the City’s rights to Extraordinary Item credits and the Demolition Performance Bond, the City and the Project Company agree that the Project Company’s failure to complete demolition of the Old City Hall Building in accordance with this subsection (C)(1) shall not constitute a Project Company Event of Default under Section 22.1(A) of the Project Agreement. If a Relief Event occurs impacting the demolition and removal of the Old City Hall Building, then the demolition and removal completion deadline described herein shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay caused by the Relief Event.”

(C) Section 12.1(G) of the Project Agreement is amended and restated in its entirety to read as follows:

“(G) Access to Private Development Sites. Prior to the conveyance of the Private Development Sites, representatives of the Project Company and certain other parties shall have the right of access to the Private Development Sites in accordance with that certain Amended and Restated Access and Demolition Agreement, dated as of May 6, 2021, executed by and between the City, the Project Company and certain other parties requiring access ('Access and Demolition Agreement').”

(D) Section 12.1(H)(2) of the Project Agreement is amended and restated in its entirety to read as follows:

“(2) In respect of the Mid-Block Site only, a demolition permit for the Old City Hall Building shall have been issued and the Demolition Performance Bond shall have been issued in connection therewith.”

(E) Section 12.1(M) of the Project Agreement is amended and restated in its entirety to read as follows:

“(M) Termination of the Conveyance Agreement for the Mid-Block Site. If the Project Company or its approved assignee has not satisfied the Allowance Account Reimbursement Obligations by the City Longstop Date, the Conveyance Agreement for the Mid-Block Site shall immediately terminate, and the Project Company or any approved assignee shall relinquish all rights to acquire the Mid-Block Site pursuant

to the Conveyance Agreement, and in such event the Project Company shall have no further obligations in respect of the completion of the Cedar Street Redevelopment.”

(F) Section 1.1 of the Project Agreement is amended by amending and restating the following defined term in its entirety:

“**Demolition Performance Bond**’ has the meaning specified in Section 12.1(C)(1).”

SECTION 4. ALLOWANCE ACCOUNT REIMBURSEMENT OBLIGATIONS.

(A) The parties acknowledge that the Project Company’s reimbursement obligation contained in Section 7.11(A) of the Project Agreement is to be reduced by \$1,000,000 in consideration for, among other things, advancing the demolition and removal of the Old City Hall Building. In consideration for the City’s effective contribution of up to \$1,000,000 towards such demolition and removal, the Project Company hereby agrees it shall not hereafter claim a Relief Event based on the diminution of value of the Old City Hall Building, or an increase in the demolition and removal costs thereof, due to an act or omission of the City. In furtherance thereof, Section 7.11(A) of the Project Agreement is amended and restated in its entirety to read as follows:

“(A) Allowance Account for City-Directed Design Requirement Changes. The Project Company shall establish on the date of Financial Close an allowance account (the “City Facilities Design Requirement Change Allowance Account”) with the Collateral Agent, which shall be funded (i) by the City on the date of Financial Close in an amount not to exceed \$4,500,000, (ii) by the Project Company on or before June 30, 2017, in the amount of \$2,000,000, and (iii) by the Project Company on or before February 28, 2018, in the amount of \$2,500,000. Amounts on deposit in the City Facilities Design Requirement Change Allowance Account shall be used to pay the cost of any Design Requirement Changes that the City may direct pursuant to subsection (C) of this Section, and not for any other purpose. The Project Company shall reimburse the City in the amount of (i) \$3,500,000 simultaneously with the closing of the escrow for the conveyance of the Mid-Block Site to the Project Company or an approved assignee or (ii) \$4,500,000 (less all Extraordinary Item credits actually taken by City pursuant to Section 12.1(C)(1)) simultaneously with the closing of the escrow for the conveyance of the Mid-Block Site to the Project Company or an approved assignee if the City has previously drawn upon the Demolition Performance Bond (as defined in Section 12.1(C)(1)) as a result of a default of the Project Company under Section 12.1(C)(1), provided that if the Mid-Block Site has not been conveyed to the Project Company or an approved assignee (and City has no further obligation to make such conveyance) and the Project Company or an approved assignee has not satisfied this reimbursement obligation by the City Longstop Date, such reimbursement obligation shall be discharged and the Project Company shall have no such obligation after the City Longstop Date.”

SECTION 5. 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 Fourth Amendment to Project Agreement to be executed by their duly authorized representatives as of the date first written above.

APPROVED AS TO FORM

4.23, 2021

CHARLES PARKIN, City Attorney

By: 

RICHARD ANTHONY
DEPUTY CITY ATTORNEY

CITY OF LONG BEACH

By: 

Name: LINDA F. TATUM

Title: ~~ASST CITY MANAGER~~

EXECUTED PURSUANT
TO SECTION 301 OF
CITY CHARTER
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:

By: _____

Name:

Title:

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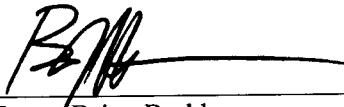
CITY OF LONG BEACH


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: Brian Budden
Title: Director

By:  _____
Name: Stuart Marks
Title: Director