

EXHIBIT F

EXHIBIT "F"

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

among

CITY OF LONG BEACH

and

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

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

Dated January [•], 2016

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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 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 is entered into on January [•], 2016, between 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 Edgemoor Civic Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”).

RECITALS

The City and the Port own certain sites that include the current location of the Long Beach Civic Center mega-block, which is bounded by W. Broadway, Pacific Avenue, Ocean Boulevard, and Magnolia Avenue, as well as a separate site at Third Street and Pacific Avenue, which is a 0.89 acre site bounded by Pacific Avenue, Third Street, Cedar Avenue and adjacent to 245 W. Broadway. As currently designed, the mega-block includes the existing city hall, the existing main library, Lincoln Park, the aboveground Broadway parking structure, the subterranean Lincoln Park parking structure, and the Old Courthouse (not a part of the Project, as that term is defined below).

On April 26, 2013, the City issued a Request for Qualifications (“RFQ”) to interested parties to tender submissions and substantiate their qualifications to work with the City to design, build, finance, operate and maintain a new City Hall, Port Headquarters, Main Library, Lincoln Park and related public facilities, all of which are to be located at the Project Site, and related private development, which is to be located on the Private Development Sites.

On October 22, 2013, the City selected three (3) qualified proposers to respond to the issuance of a future request for proposals for the Project.

Pursuant to a request for proposals issued on February 28, 2014, as amended and supplemented from time to time, and the proposal process provided for therein, on June 1, 2014, the Project Company submitted a proposal to the City and the Port and on December 8, 2014 and December 9, 2014, the Port and the City, respectively, selected the Project Company as the preferred proposer to design, build, finance, operate, and maintain the new Long Beach City Hall, the new Main Library, the revitalized Lincoln Park, and the new Port of Long Beach Headquarters Building.

On January 5, 2015, the City, the Port and the Project Company entered into an exclusive negotiation agreement (the “ENA”) during which the parties negotiated the terms and conditions for the agreements that consummate the transactions envisioned in the requests for proposals.

On August 11, 2015, the State legislature enacted Senate Bill No. 562, Chapter 178, Statutes of 2015, authorizing the City to enter into a design-build-finance-operate-maintain contract for the provision of the Project.

On December [15], 2015, the City Council authorized the execution and delivery of this Project Agreement by the City, and on December [17], 2015, the Board of Harbor Commissioners authorized the execution and delivery of this Project Agreement by the Port.

The City and the Port desire to receive and the Project Company desires to provide services as provided herein.

In consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Project Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Project Agreement whether or not this Article contains a cross-reference to such definitions.

“50% Complete Documents” has the meaning specified in Section 3.3 (Construction Drawings Phase) of Appendix 6 (Design-Build Work Review Procedures).

“50% Design Documents” has the meaning specified in Section 3.2 (Design Development Phase) of Appendix 6 (Design-Build Work Review Procedures).

“95% Complete Documents” has the meaning specified in Section 3.3 (Construction Drawings Phase) of Appendix 6 (Design-Build Work Review Procedures).

“100% Design Documents” has the meaning specified in Section 3.2 (Design Development Phase) of Appendix 6 (Design-Build Work Review Procedures).

“2010 Lease Agreement” has the meaning specified in Section 6.7 (Prepayment of Existing Bonds).

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

“Adjusted Design and Construction Energy Target” has the meaning set forth in Section 2.2 of Appendix 21 (Energy).

“Affiliate”, in respect of a person means any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where “control” means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person.

“Agreed-Upon Design Deviations” has the meaning specified in Section 3.2 (Design Development Phase) of Appendix 6 (Design-Build Work Review Procedures).

“Agreed-Upon Deviations” has the meaning specified in Section 3.3 (Construction Drawings Phase) of Appendix 6 (Design-Build Work Review Procedures).

“Annual Settlement Statement” has the meaning set forth in Section 18.9 (Annual Settlement).

“Appendix” means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Project Agreement and identified as such in the Table of Contents.

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

“Architect” means Skidmore, Owings & Merrill, L.L.P., which has been engaged by the Design-Builder to have primary responsibility for the design of the Project.

“AV Equipment” has the meaning specified in Section 7.15(B) (Allowance Account for Audio Visual Equipment).

“AV Equipment Allowance Account” has the meaning specified in Section 7.15(B) (Allowance Account for Audio Visual Equipment).

“Average Unit Cost – Electricity” has the meaning set forth in Section 3.1 of Appendix 21 (Energy).

“Average Unit Cost – Natural Gas” has the meaning set forth in Section 3.2 of Appendix 21 (Energy).

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

- (1) are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or
- (2) if the Project Company acted reasonably and in accordance with this Project Agreement (including Section 28.5(A) (Mitigation by the Project Company)) would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects.

“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. “Bankruptcy Law” also includes 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.

“Base Port Allocable FM Fee” means the Port Allocable FM Fee for the applicable Port FM Month as set forth in Appendix 22 (Port FM Fee Schedule and Port Allocable FM Fee Schedule) multiplied by $(CPI-U_{x-1}/CPI-U_{2014})$.

“Base Port FM Fee” means the Port FM Fee for the applicable Port FM Month as set forth in Appendix 22 (Port FM Fee Schedule and Port Allocable FM Fee Schedule) multiplied by $(CPI-U_{x-1}/CPI-U_{2014})$.

“Base Service Fee” means

- (1) the Fixed Growth Fee $\times (1.0218)^{(\text{Fiscal Year } x - \text{Fiscal Year } 2016)}$ divided by 12, *plus*
- (2) the Variable Growth Payment $\times (CPI-U_{x-1})/(CPI-U_{2014})$ divided by 12.

“Best Design-Build Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the delivery of public or institutional buildings serving purposes similar to the Project on a design-build basis as observed in Southern California.

“Best Management Practice” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices for public or institutional buildings serving purposes similar to the Project as observed in Southern California.

“Billing Period” means each month of a Contract Year, except that:

(1) the first Billing Period of the first Contract Year shall begin on the Occupancy Date and shall continue to the last day of the month in which the Occupancy Date occurs; and

(2) the last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

“Board of Harbor Commissioners” means the governing board of the Harbor Department.

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

“Broadway Garage Site” means the site south of Broadway between Chestnut and Cedar Avenues, in Long Beach, California as depicted in Appendix 1 (City Site) (APN 7280-025-902), which includes lots A through J and lots 1 through 4 of block 107 in their entirety, and those portions of lot 5 and lot 6 of block 107 that are encumbered by the Broadway Garage, townsite of Long Beach, in the City of Long Beach, County of Los Angeles, State of California, as shown on map recorded in book 19, pages 91 to 96, inclusive, of miscellaneous records, in the office of the registrar-recorder/county clerk of the county of Los Angeles together with those portions of the abutting vacated streets which would pass by operation of law with the conveyance of said site.

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

“Capital Expenditure” means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

“Capital Fee” means, for the applicable Fiscal Quarter, the amount set forth in Appendix 18 (Capital Fee Schedule) divided by 3.

“Capital Modification” means any material change to any part of the physical assets constituting a Facility (including a Port FM Facility but excluding any other Port Facility) occurring after the Occupancy Date in respect of such Facility, including the alteration, addition, demolition or extension of the physical assets constituting the Facility or the installation of new structures, equipment, systems or technology. If a replacement of any part of a Facility is made by the Project Company under Article 9

(Operation and Maintenance), or a capital investment, improvement or modification is required to be made by the Project Company in order to remedy a Project Company Fault, and can be reasonably expected to result in a material change to the physical assets constituting the Project, then such replacement, capital investment, improvement or modification shall constitute a Capital Modification.

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

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

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

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

- (1) any Applicable Law enacted after the Contract Date; or
- (2) any modification (including repeal) of any Applicable Law existing on the Contract Date that comes into effect after the Contract Date;

compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays or increases the cost of performing the Contract Services.

It is specifically understood, however, that none of the following shall constitute a “Change in Law Event”:

- (1) any law, statute, code or regulation that has been enacted or adopted on or before the Contract Date to take effect after the Contract Date;
- (2) the denial, delay in issuance of, or imposition of any term or condition in connection with, any Governmental Approval required for the Contract Services;
- (3) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Contract Date;
- (4) any increase in any fines or penalties provided for under Applicable Law in effect as of the Contract Date;
- (5) any act, event or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on the Project Company by the Contract Standards in effect as of the Contract Date;
- (6) any change in Tax law (except that the Project Company shall be entitled to relief on account of a change in Tax law constituting a Discriminatory Change in Law Event to the extent provided in Section 17.2 (Discriminatory Changes in Law)); or

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

“Change Order” means either a Mutual Change Order or a Unilateral Change Order.

“City” means the City of Long Beach, a municipal corporation and chartered city organized and existing under the City Charter and the Constitution and laws of the State, but shall not include the Port, the Harbor Department or any Port Related Party.

“City Activities” means any activities carried on or to be carried on by the City, or other persons permitted by the City, in the City Hall Building, the Library, the Shared Facilities, the New Parking Facility, Lincoln Park and the Shared Rooms related to any lawful City purpose.

“City Charter” means that certain freeholders’ charter relating to the organization and existence of the City adopted under provisions of Section 8, Article XI of the Constitution of the State, which charter was ratified by the electors of the City on April 14, 1921 and approved by the legislature of the State on April 26, 1921, as amended and supplemented to the date hereof.

“City Council” means the city council of the City.

“City Design-Build Agreement Sum” means \$[202,253,571]¹, being the amount set forth in in the Design-Build Agreement.

“City Design-Build Payments” means the amounts set forth in Appendix 24 (City Design-Build Payments).

“City Direct Agreement (Design-Builder)” means the direct agreement to be entered into between the City, the Project Company and the Design-Builder in the form set forth in Transaction Form C-1.

“City Direct Agreement (FM Contractor)” means the direct agreement to be entered into between the City, the Project Company and the FM Contractor in the form set forth in Transaction Form C-2.

“City Event of Default” has the meaning set forth in Section 23.1 (City Events of Default).

“City Facilities Construction Security” means any letter of credit, parent company guaranty or performance or surety bond issued to secure the obligations (whether performance or payment) of the Design-Builder with respect to the City Facilities and the Shared Rooms under the Design-Build Agreement.

“City Facilities Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the City Facilities by the Project Company pursuant to this Project Agreement during the Design-Build Period.

“City Facilities Design Documents” means the Design Documents in respect of the City Facilities.

“City Facilities Design Requirement Change Allowance Account” means an allowance account established by the Project Company, with a Qualified Commercial Bank, not later than 30 days

¹ To be updated prior to execution and delivery of this Project Agreement.

after the commencement of construction, and funded by the Project Company in the amount of \$0. Amounts in the City Facilities Design Requirement Change Allowance Account shall only be used to pay the costs of City-directed Design Requirement Changes.

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

“City Facilities Financing” means the financing for the City Facilities and the Shared Rooms comprising (a) capital provided by the Unit Holders and (b) a portion of the City Facilities Senior Debt.

“City Facilities Financing Documents” means:

(1) any loan agreement, funding agreement, account maintenance or control agreement, security agreement, collateral agreement, insurance or reimbursement agreement, subordination agreement, trust indenture, agreement from any Unit Holder in favor of any City Facilities Senior Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Project Contractor and any City Facilities Senior Lender, or other agreement by, with or in favor of any City Facilities Senior Lender pertaining to City Facilities Senior Debt;

(2) any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of the Project Company for City Facilities Senior Debt; and

(3) any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

“City Facilities Senior Debt” means

(1) all amounts outstanding, including interest and default interest accrued to the City Facilities Senior Lenders under the City Facilities Financing Documents, provided that default interest shall not include any increased interest, fees or penalty amounts payable for any reason other than a failure to pay any amount when due;

(2) (without double-counting) the cost of early termination of interest rate or currency hedging arrangements and other breakage costs and make-whole amounts, as the case may be, payable to the City Facilities Senior Lenders as a result of a prepayment under the City Facilities Financing Documents due to the termination or partial termination of this Project Agreement; and

(3) all other reasonable transaction fees, costs and expenses for which the Project Company is responsible under the City Facilities Financing Documents,

provided, however, that in the event of a partial termination of this Project Agreement pursuant to Section 25.3 (Non-Relocation), make-whole amounts shall be excluded from the City Facilities Senior Debt .

“City Facilities Senior Lenders” means the noteholders, lenders, agents or other financing parties under the City Facilities Financing Documents.

“City Facility” means each of:

(1) the City Hall Building;

- (2) the Library; and
- (3) Lincoln Park,

together the “**City Facilities**”. For the avoidance of doubt, the Shared Facilities and the Shared Rooms are not included in the City Facilities.

“**City Fault**” means:

- (1) a breach by the City of any of its obligations (other than payment obligations) under this Project Agreement; or
- (2) a breach of any representation or warranty by the City under this Project Agreement; or
- (3) willful misconduct of a City Related Party; or
- (4) a negligent act or omission of City Related Party.

“**City Hall Building**” means the new City Hall building to be designed, built and maintained as part of the Project.

“**City Insurance Trust Account**” means the insurance trust account created and held by the Collateral Agent pursuant to the terms of the Insurance Trust Agreement and into which the proceeds of policies of insurance related to the City Facilities and the Shared Rooms shall be deposited.

“**City Longstop Date**” has the meaning set forth in Section 8.7(E) (City Longstop Date Defined).

“**City Manager**” means the city manager of the City.

“**City Moveable Furniture, Fixtures and Equipment**” means Moveable Furniture, Fixtures and Equipment installed in the City Facilities and the City’s portion of the Shared Facilities and Shared Rooms.

“**City Non-Appropriation Event**” means the failure for any reason of the City Council to appropriate funds necessary to make any payment due from the City to the Project Company under this Project Agreement.

“**City Partial Termination Project Company Event of Default**” means a Project Company Event of Default described in items (3) through (9), inclusive, of Section 22.1(A) (Project Company Events of Default Defined).

“**City Person**” means any officer, member, employee or volunteer of the City, but shall not include any Port Related Party.

“**City Project Agreement**” has the meaning specified in Section 6.8 (Two Agreements).

“**City Related Party**” means:

- (1) the City;
- (2) the City Manager;

- (3) all departments, divisions and offices of the City; and
- (4) any council member, officer, employee or agent of the City.

For the avoidance of doubt, City Related Party shall not include the Port, the Harbor Department or any Port Related Party.

“City Representative” means the individual specified in writing by the City as the representative of the City from time to time for all purposes of this Project Agreement.

“City Site” means the Lincoln Park Site, the Old Courthouse Site and the Broadway Garage Site as depicted in Appendix 1 (City Site), but not including the Port Site as depicted in Appendix 2 (Port Site).

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

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

“Commissioning” means the commissioning of the Project conducted pursuant to Section 7.18 (Commissioning and Training) and Appendix 7 (Project Commissioning).

“Commissioning Plan” means the Commissioning Plan for the Project prepared pursuant to Appendix 7 (Project Commissioning).

“Commissioning Tests” means the Commissioning Tests set forth in Appendix 7 (Project Commissioning).

“Committed Equity Investment” means the sum of (i) any Equity Investment; and (ii) any Deferred Equity Amounts.

“Conditioned City Design-Build Period Obligations” has the meaning specified in Section 7.22(A).

“Conditioned Port Design-Build Period Obligations” has the meaning specified in Section 7.22(B)(6).

“Confidential Information” means Personal Information, and information of a party that the party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Contract Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information.

“Construction Drawings” has the meaning specified in Section 3.3 (Construction Drawings Phase) of Appendix 6 (Design-Build Work Review Procedures).

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

“Construction Superintendent” has the meaning specified in Section 4.2(B) (Construction Superintendent).

“Contract Administration Memorandum” has the meaning set forth in Section 28.7 (Project Agreement Administration).

“Contract Date” means the date this Project Agreement is executed and delivered by the parties hereto.

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

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by:

- (1) Applicable Law;
- (2) the Design Requirements;
- (3) Best Design-Build Practice;
- (4) the FM Requirements;
- (5) Best Management Practice;
- (6) the DB Quality Management Plan;
- (7) the Master Maintenance Plan;
- (8) applicable written equipment manufacturers’ specifications;
- (9) applicable Insurance Requirements; and
- (10) any other standard, term, condition or requirement specifically provided in this Project Agreement to be observed by the Project Company,

in each case, subject to Section 7.1(B) (Project Company Control of the Design-Build Work; No City or Port Responsibility). Section 1.2(S) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability, stringency and consistency of the Contract Standards. The Final Documents shall constitute the agreement of the parties as to specific changes to the Contract Standards, including any changes to the Contract Standards agreed in accordance with Section 7.1(B) (Project Company Control of the Design-Build Work; No City or Port Responsibility), so that the Final Documents shall be deemed to satisfy all of the Contract Standards. The Project Company shall be required to perform the construction in accordance with the Final Documents.

“Contract Year” means each of:

- (1) the period from the date of Financial Close to the next September 30th;
- (2) each subsequent period of 12 calendar months commencing on October 1st; and
- (3) the period from October 1st in the year in which this Project Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

“Conveyance Agreements” means the Mid-Block Site Conveyance Agreement and the Pacific Site Conveyance Agreement.

“Cost Substantiation” has the meaning described in Section 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation).

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

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

(2) the costs that the City or the Port, as the case may be, reasonably and properly projects that they will incur in achieving Occupancy Readiness of the City Facilities and the Port Facilities; *plus*

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

(4) any Insurance Proceeds actually collected and retained by the City or the Port, as the case may be.

“D&C Standards” means the standards for the design, construction and performance of the Project as set forth in Appendix 5 (D&C Standards) and approved as set forth in Appendix 6 (Design-Build Work Review Procedures).

“DB Quality Management Plan” means the Project Company’s plan for quality assurance and quality control in implementing the Design-Build Work in respect of the Facilities to be developed in accordance with the requirements set forth in Appendix 6 (Design-Build Work Review Procedures).

“Deductions” means those deductions from (1) the otherwise applicable Service Fee that the City is permitted to take as offsets on account of specified instances of non-performance as described in Appendix 10 (Deductions), and (2) the otherwise applicable Port FM Fee that the City is permitted to take as offsets on account of specified instances of non-performance as described in Appendix 10A (Port Deductions).

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

“Deferred Equity Letter of Credit” means the deferred equity letters of credit to be provided in support of the Deferred Equity Amounts in accordance with the City Facilities Financing Documents.

“Deliverable Material” has the meaning specified in Section 7.1(H) (Deliverable Material).

“Demolition Performance Bond” has the meaning specified in Section 12.1(H)(2).

“Design-Build Agreement” means the design-build agreement between the Project Company and the Design-Builder, a certified copy of which has been delivered by the Project Company to the City and the Port.

“Design-Build Governmental Approvals” means all Governmental Approvals required from time to time during the Design-Build Period for the commencement and continuance of the Design-Build Work.

“Design-Build Period” means the period from and including Financial Close through the Project Occupancy Date.

“Design-Build Work” means, collectively, the City Facilities Design-Build Work, the Shared Facilities Design-Build Work, the Port Facilities Design-Build Work and the Shared Rooms Design-Build Work. For the avoidance of doubt, the Design-Build Work does not include any obligations in respect of the Broadway Garage.

“Design-Builder” means Clark Construction Group – California, LP, or any assignee or replacement permitted under this Project Agreement.

“Design and Construction Energy Target” means 4,215,249 kWh/year electricity, 1,782 Therm of natural gas/year.

“Design Development Drawings” has the meaning specified in Section 3.2 (Design Development Phase) of Appendix 6 (Design-Build Work Review Procedures).

“Design Development Phase” has the meaning specified in Section 3.2 (Design Development Phase) of Appendix 6 (Design-Build Work Review Procedures).

“Design Documents” means the Project Company’s plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Design-Build Work.

“Design Noncompliance Items” has the meaning specified in Section 3.2 (Design Development Phase) of Appendix 6 (Design-Build Work Review Procedures).

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

- (1) as a result of a Project Company request agreed to by the Owner pursuant to Section 7.9 (Design Requirement Changes Made at Project Company Request);
- (2) on account of Relief Events pursuant to Section 7.10 (Design Requirement Changes Made Due to Relief Events); or
- (3) at the direction of the City or the Port pursuant to Section 7.11 (Design Requirement Changes Made at City or Port Direction).

“Design Requirements” means the requirements for the design and construction of the Project as set forth in the D&C Standards; provided, however, that the City, the Port and the Project Company may

agree to specific changes to the Design Requirements in accordance with the terms hereof and such agreement shall be binding on the parties as set forth herein.

“Differing Site Conditions” means (1) unknown physical conditions encountered at the Old Courthouse Site and that portion of the Lincoln Park Site upon which the Library will be constructed that differ from those indicated in the Geotechnical Baseline Report, or (2) conditions at that portion of the Lincoln Garage needed to support the Library that differ from those indicated in the as built-drawings for Lincoln Garage. For the avoidance of doubt, Regulated Site Conditions do not constitute Differing Site Conditions.

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

- (1) the Project (including by reference to projects delivered through design-build-finance-operate-maintain or performance based infrastructure delivery methods or other similar methods); or
- (2) the Project Company,

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

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

- (1) distribution to Unit Holders or other distribution in respect of Units;
- (2) redemption or purchase of Units or reduction of limited liability company capital or the amount of a Unit Holder’s contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;
- (3) payment in respect of Unit Holder Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Unit Holder Debt);
- (4) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered into after the Contract Date and not in the ordinary course of business and on commercially reasonable terms including to any current or former Unit Holder, or any current or former Affiliate of any current or former Unit Holder; or
- (5) conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Project Company.

“Downtown Plan Program EIR” means the Final Program Environmental Impact Report certified in January 2012 (State Clearinghouse (SCH) # 2009071006).

“Employee Payments” means any liability that has been reasonably incurred by the Project Company arising as a result of termination of this Project Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Project

Company, including severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution.

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

“**Encumbrance**” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“**Energy**” means energy used in the City Facilities and created by, or produced from, electricity, natural gas, solar photovoltaic and any other renewable energy sources.

“**Energy Consumption**” for a period means the kWh of electricity and Therm of natural gas consumed at the Energy Guaranteed City Facilities during that period, such consumption to be obtained from the Utility bills.

“**Energy Gainshare**” means the amount calculated in accordance with Section 3.2 of Appendix 21 (Energy).

“**Energy Guaranteed City Facilities**” means the City Hall Building, Shared Rooms (for the portion allocated to the City), Shared Facilities (for the portion allocated to the City), Library, and Lincoln Park.

“**Energy Model**” has the meaning set forth in Attachment 1 to Appendix 21 (Energy) and submitted to the City at the time of the Financial Close.

“**Energy Painshare**” means the amount calculated in accordance with Section 3.3 of Appendix 21 (Energy).

“**Energy Year**” means:

- (1) the 12 month period beginning on the day after the Initial Occupancy Date;
- (2) each subsequent period of 12 months during the Term; and
- (3) the period of less than 12 months from the end of the previous Energy Year to the Termination Date.

“**Equity Investment**” means:

- (1) any form of direct investment by Unit Holders, including the purchase of newly issued Units in, and the provision of Unit Holder Debt to, the Project Company; and
- (2) any payment under, or draws on, any instrument guaranteeing the provision of Deferred Equity Amounts, including but not limited to any draws by or on behalf of the Project Company of any letter(s) of credit issued by or for the account of a Unit Holder or associated company in respect of Deferred Equity Amounts.

“**Equity IRR**” means the pre-income tax internal rate of return on equity investment projected to be earned over the full term of this Project Agreement, which as of the date of Financial Close is 13.25%.

“**Equity Ratio**” means, in respect of the City Facilities Financing, the ratio of:

- (1) the Committed Equity Investment in respect of the City Facilities Financing; and
- (2) the sum of: (i) the Committed Equity Investment in respect of the City Facilities Financing at the time; and (ii) the aggregate amount of the undrawn commitments and principal outstanding under the City Facilities Financing at the time.

“Existing Bonds” means that certain private placement municipal bond issued by the City in connection with the 2010 Site and Facility Lease dated as of August 1, 2010, by and between the City, as lessor, and the Long Beach Bond Finance Authority, as lessee, which was subsequently assigned by the Long Beach Bond Finance Authority to Banc of America Public Capital Corp pursuant to the Letter Agreement for Purchase, dated as of August 13, 2010, by Banc of America Public Capital Corp to the City.

“Existing Parking Facilities” means the Broadway Garage and the Lincoln Garage.

“Expiration Date” means the date that is 40 years following the Scheduled Final City Occupancy Date.

“Extraordinary Item” has the meaning specified in Section 18.6 (Extraordinary Items).

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

“Facility Condition Index” has the meaning given to such term in Section 5 of Appendix 8 (FM Standards) with respect to the City Facilities, the Shared Facilities and the Shared Rooms or in Section 6 of Appendix 8A (FM Standards – Port FM Facilities) with respect to the Port FM Facilities.

“Fair Market Value” means the amount at which an asset or a liability would be exchanged in an arm’s length transaction between informed and willing parties, other than in a forced or liquidation sale.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

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

“Final Completion” means completion of the Design-Build Work in respect of a Facility in compliance with the Design Requirements and the requirements of Section 7.19 (Final Completion).

“Final Completion Deadline” in respect of a City Facility or the Port Facilities (as the case may be) means the relevant date referred to in Section 7.19(B) (Obligation to Achieve Final Completion).

“Final Documents” has the meaning specified in Section 3.3 of Appendix 6 (Design-Build Work Review Procedures).

“Financial Close” means the execution and delivery of the Financing Documents and closing of the financing for the Project as contemplated by Article 6 (Project Financing and Refinancing) and the Financing Documents.

“Financial Close Deadline” means February 15, 2016.

“Financial Model” means the financial model for the Project to be attached to this Project Agreement as Appendix 16 (Financial Model), as updated or amended from time to time in accordance with the terms of this Project Agreement.

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

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

“Financing Period” means the period from and including the Contract Date through Financial Close.

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

“Fiscal Quarter” means a quarter of a Fiscal Year.

“Fiscal Year” means each 12 month period commencing on October 1 and ending on the next succeeding September 30, or such other fiscal year as the City or the Port may hereafter adopt after giving prior written notice to the Project Company.

“Fitch” means Fitch Ratings Inc., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the City.

“Fixed Growth Fee” means $[\$9,918,291]^2$.

“FM Contract” means the agreement between the Project Company and the FM Contractor, a certified copy of which has been delivered by the Project Company to the City.

“FM Contractor” means Johnson Controls, Inc., or any assignee or replacement permitted under this Project Agreement.

“FM Facilities” means the City Facilities, the Shared Facilities, the Shared Rooms and the Port FM Facilities.

“FM Requirements” means the operations and maintenance requirements in respect of the FM Facilities as set forth in the FM Standards.

“FM Service Failure” has the meaning specified in Appendix 10 (Deductions) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 10A (Port Deductions) (with respect to the Port FM Facilities), as applicable.

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

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

² To be updated prior to execution and delivery of this Project Agreement.

“FM Services Change Certificate” means a certificate issued by the City or the Port, as the case may be, describing and authorizing an FM Services Change, the value or method of valuation of the FM Services Change, and the adjustment, if any, to the Service Fee or the Port FM Fee, as the case may be, associated with the FM Services Change.

“FM Services Change Report” has the meaning set forth in Section 10.8(B) (Project Company FM Services Change Report).

“FM Services Manager” has the meaning specified in Section 4.3 (FM Services Personnel).

“FM Standards” means the standards for the operation, maintenance and management of the Project as set forth in Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities).

“Force Majeure Event” means an Insurable Force Majeure Event or Uninsurable Force Majeure Event.

“GAAP” means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

“Geotechnical Baseline Report” means the letter, dated December 2, 2015, from Mark A. Murphy and Perry A. Malijian, Amec Foster Wheeler Environment & Infrastructure, Inc., to John Warren, Clark Construction Group – California, LP regarding Geotechnical Baseline Conditions, Proposed Long Beach Civic Center, Amec Foster Wheeler Project 4953-15-0141.

“Governmental Approvals” means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services, including, without limitation, those approvals identified in Appendix 4 (Governmental Approvals) hereto.

“Governmental Body” means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body (including the City Council and the Board of Harbor Commissioners, each acting in its governmental capacity other than as a party to this Project Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Project Agreement or the Project.

“Handback Requirements” has the meaning specified in Section 9.10(A) (Required Project Condition).

“Handback Reserve” has the meaning specified in Section 9.10(C)(2) (Determination of Handback Reserve).

“Handback Reserve Account” has the meaning specified in Section 9.10(D) (Establishment and Use of Handback Reserve Account).

“Harbor Department” means the Harbor Department of the City established pursuant to Section 1200 et seq. of the City Charter, to promote, develop and operate the Port of Long Beach.

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

“Income Tax” means any Tax imposed on the income of a person by any federal, State or local Governmental Body.

“Indemnitee” means:

- (1) the City;
- (2) all departments, divisions and offices of the City;
- (3) the Port;
- (4) the Harbor Department; and
- (5) any official board member, manager, employee, representative, agent or advisor (including legal and financial advisors) of any person referred to in items (1) through (4) above or any manager, official, employee, contractor or subcontractor (of any tier) thereof, in any such person’s capacity as a provider of services to the City or the Port in connection with the Project, other than the Project Company, Project Contractors or Subcontractors.

“Independent Building Expert” means the consultant appointed by the parties pursuant to Section 8.1(A) (Engagement), or any assignee or replacement permitted under this Project Agreement and the Independent Building Expert Agreement.

“Independent Building Expert Agreement” means the agreement to be entered into between the City, the Port, the Project Company and the Independent Building Expert substantially in the form set forth in Transaction Form D (Independent Building Expert Agreement).

“Index Linked” means, with respect to an amount at any time, that the amount is adjusted as of each October 1 commencing October 1, 2016 by:

- (1) multiplying it by the Inflation Index for the immediately preceding calendar year;
and
- (2) dividing it by 242.434, the Inflation Index for 2014.

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

“Initial Occupancy Date” means the date on which the first City Facility achieves its Occupancy Date.

“Initial Unit Holders” means Plenary Group USA Concessions Ltd. (or an Affiliate thereof).

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

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

“Insurance Receivables” means Insurance Proceeds which a person is entitled to receive but which have not been received.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Project Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

“Insurance Trust Agreement” means the agreement to be entered into between the City, the Port, the Project Company, and the Collateral Agent substantially in the form set forth in Transaction Form E (Form of Insurance Trust Agreement).

“Insurance Unavailability Event” has the meaning set forth in Section 16.6(A) (Insurance Unavailability Event).

“Intellectual Property” means any or all of the following and all rights, arising out of or associated therewith:

- (1) national, international and foreign patents, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;
- (2) inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;
- (3) copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;
- (4) industrial designs and any registrations and applications therefor throughout the world;
- (5) rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world;
- (6) databases and data collections and all rights therein throughout the world;

(7) moral and economic rights of authors and inventors, however denominated, throughout the world; and

(8) any similar or equivalent rights to any of the foregoing anywhere in the world.

“IT Equipment” has the meaning specified in Section 7.15(D) (Allowance Account for Information Technology Equipment).

“IT Equipment Allowance Account” has the meaning specified in Section 7.15(D) (Allowance Account for Information Technology Equipment).

“Key Individuals” has the meaning set forth in Appendix 13 (Project Company and Project Contractors Information).

“Key Performance Indicators” has the meaning specified in Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities).

“kWh” means kilowatt hours.

“LEED” means the Leadership in Energy and Environmental Design Green Building Rating System for New Construction, developed and maintained by the U.S. Green Building Council.

“LEED-EB Certification” means formal certification of the Project as meeting the requirements of “LEED for Existing Buildings; Operations & Maintenance Green Building Rating System” published by the U.S. Green Building Council.

“LEED NC Gold Certification” means formal certification of a Facility as meeting the requirements for a LEED “gold” rating for new construction published by the U.S. Green Building Council.

“LEED-ND Gold Certification” means formal certification of the Project as meeting the requirements of “LEED: Neighborhood Development” gold rating published by the U.S. Green Building Council.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Project Agreement, and all appeals therefrom.

“Lenders’ Direct Agreement (City)” means the agreement to be entered into between the Collateral Agent, the City, the Port and the Project Company in the form set forth in Transaction Form B-1 (Form of Lenders’ Direct Agreement (City)).

“Lenders’ Direct Agreement (Port)” means the agreement to be entered into between the Collateral Agent, the Port, the City and the Project Company in the form set forth in Transaction Form B-2 (Form of Lenders’ Direct Agreement (Port)).

“Lenders’ Direct Agreements” means the Lenders’ Direct Agreement (City) and the Lenders’ Direct Agreement (Port).

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

“Lien” means any and every lien against the Project or against any monies due or to become due from the City or the Port to the Project Company under this Project Agreement, for or on account of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens and stop notices.

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

“Lincoln Garage Upgrades Allowance Account” has the meaning given to such term in Section 7.24(B) (Allowance Account for Certain Upgrades).

“Lincoln Park” means the existing Lincoln Park located at W. Broadway and Pacific Avenue, Long Beach, California and to be revitalized as part of the Project.

“Lincoln Park Site” means the site generally bounded by Broadway to the north, Pacific Avenue to the east, Ocean Boulevard to the south, and Chestnut Avenue to the west in Long Beach, California, as depicted in Appendix 1 (City Site) (APN 7280-025-902) which includes the Lincoln Park lot in the townsite of Long Beach, in the City of Long Beach, County of Los Angeles, State of California, as shown on map recorded in book 19, pages 91 to 96 inclusive, of miscellaneous records, in the office of the registrar-recorder/county clerk of the county of Los Angeles together with those portions of the abutting vacated streets which would pass by operation of law with the conveyance of said site.

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

“Loss-and-Expense” means, and is limited to, (in each case subject to Section 21.10 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third-party claims for which the Project Company is obligated to indemnify the City and the Port hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Project Agreement.

“Master Maintenance Plan” means the master maintenance plan prepared by the Project Company pursuant to Section 3.3 of Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Section 3.3 of Appendix 8A (FM Standards –Port FM Facilities) (with respect to the Port FM Facilities).

“Material Contract Party” means the Design-Builder and the FM Contractor.

“Material Contract Party Direct Agreement” means the City Direct Agreement (Design-Builder), the Port Direct Agreement (Design-Builder), and the City Direct Agreement (FM Contractor).

“Material Contracts” means:

- (1) the Project Contracts; and
- (2) any agreement between the Project Company and an Affiliate of the Project Company.

“Mediator” means any person serving as a mediator of disputes hereunder pursuant to Section 20.2 (Non-Binding Mediation Generally).

“Mid-Block Site” means the site generally bounded by the southern edge of the Broadway Garage Site to the north, Chestnut Avenue to the east, and Ocean Boulevard to the south in Long Beach, California as depicted in Appendix 3 (Private Development Sites) (APN 7280-025-902), which includes all of block 107 including vacated alleyways and easements, except for lots A through J and lots 1 through 4 and those portions of lots 5 and lot 6 that are encumbered by the Broadway Garage, townsite of Long Beach, in the City of Long Beach, County of Los Angeles, State of California, as shown on map recorded in book 19, pages 91 to 96, inclusive, of miscellaneous records, in the office of the registrar-recorder/county clerk of the county of Los Angeles together with those portions of the abutting vacated streets which would pass by operation of law with the conveyance of said site.

“Mid-Block Site Conveyance Agreement” means the agreement for the conveyance of the Mid-Block Site to be entered into between the City and the Project Company or its designee substantially in the form set forth in Transaction Form F-2 (Form of Mid-Block Site Conveyance Agreement).

“Moody’s” means Moody’s Investors Service Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the City and the Port.

“Moveable Furniture, Fixtures and Equipment” means the list of items set forth in Section E of the Uniformat Specifications of Appendix 5 (D&C Standards).

“Mutual Change Order” means a written order signed by the Owner and the Project Company prior to Substantial Completion in respect of a Facility under this Project Agreement, making a Design Requirement Change.

“Nationally Recognized Rating Agency” means any of Fitch, Moody’s or Standard & Poor’s.

“Net City Facilities Design-Build Work Value” means an amount equal to the City Design-Build Agreement Sum *minus* the aggregate of (a) the costs and expenses that were actually incurred by or on behalf of the Project Company directly in connection with the City Facilities Design-Build Work and Shared Rooms Design-Build Work through the Termination Date or Partial Termination Date, (b) the Cost to Complete the City Facilities and the Shared Rooms, and (c) any Service Fee, City Design-Build Payments, Port Site Proceeds Amount and amounts payable resulting from Change Orders or Capital Modifications that has been paid prior to the Termination Date or Partial Termination Date.

“Net Port Facilities Design-Build Work Value” means an amount equal to the Port Design-Build Agreement Sum *minus* the aggregate of (a) the costs and expenses that were actually incurred by or on behalf of the Project Company directly in connection with the Port Facilities Design-Build Work and Shared Facilities Design-Build Work through the Termination Date or Partial Termination Date, (b) the Cost to Complete the Port Facilities and the Shared Facilities, and (c) any Port Completion Payment and amounts payable resulting from Change Orders or Capital Modifications that has been paid prior to the Termination Date or Partial Termination Date.

“New Parking Facility” means the underground parking garage to be constructed underneath the Civic Plaza and which forms part of the Port Facilities.

“**Nominal**” means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation.

“**Non-Binding Mediation**” means the voluntary system of dispute resolution established by Section 20.2 (Non-Binding Mediation Generally) for addressing disputes arising under this Project Agreement.

“**Non-Targeted Energy Consumption**” means Energy Consumption minus Targeted Energy Consumption, such consumption to be calculated from the applicable BMS and metering systems.

“**Noncompliance Items**” has the meaning specified in Section 3.3 (Construction Drawings Phase) of Appendix 6 (Design-Build Work Review Procedures).

“**Occupancy Date**” means, in respect of a Facility, the date on which Occupancy Readiness occurs or is deemed to have occurred under Article 8 (Occupancy Readiness).

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

“**Occupancy Readiness Certificate**” means a certificate delivered by the Independent Building Expert in accordance with Section 4.3 (Procedure for Certification of Occupancy Readiness) of the Independent Building Expert Agreement.

“**Occupancy Readiness Conditions**” has the meaning specified in Section 8.4 (Occupancy Readiness Conditions).

“**Occupancy Readiness Notice**” means a notice delivered by the Independent Building Expert in accordance with Section 4.3 (Procedure for Certification of Occupancy Readiness) of the Independent Building Expert Agreement.

“**Old City Hall Building**” means the existing City Hall building located at 333 W. Ocean Blvd., Long Beach, California.

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

“**Old Courthouse Demolition Activities**” means demolition activities on the Old Courthouse Site including:

- (1) the removal of foundations and basement walls, including clearing and grubbing dirt such that no debris larger than 3” in diameter remains on the Old Courthouse Site;
- (2) the excavation of the basement, such excavation to be left open to the greatest extent possible and in a safe condition;
- (3) the demolition of the Old Courthouse Site to the back of perimeter sidewalks, including the removal of all asphalt, site concrete, miscellaneous structures, ornamental fencing, trees and vegetation;

- (4) the removal of underground tunnels from the Old Courthouse Site and sealing off underground tunnels such that they are water tight on the adjacent property occupied as of the date hereof by the Long Beach Police Department;
- (5) cutting, capping and removing existing Utilities at the Old Courthouse Site;
- (6) the removal of the piston of any hydraulic elevator units;
- (7) the removal or relocation of any miscellaneous structures impeding onto the Project Site;
- (8) the installation of an eight (8) foot tall construction fence with wind screen around the perimeter of the Old Courthouse Site (such fence to remain in place following demolition and to be turned over to the Project Company with the Old Courthouse Site); and
- (9) the removal of Hazardous Substances, if any, from the Old Courthouse Site.

“Old Courthouse Site” means the site north of Ocean Boulevard between Cedar and Magnolia Avenues in Long Beach, California as depicted in Appendix 1 (City Site) (APN 7280-025-900), which includes all of lots 13, 15, and 17 through 41, and a portion of lot 42, block 108, townsite of Long Beach, in the City of Long Beach, County of Los Angeles, State of California, as shown on map recorded in book 19, pages 91 to 96, inclusive, of miscellaneous records, in the office of the registrar-recorder/county clerk of the county of Los Angeles, including those portions of Bronze Way, 10 feet wide, now vacated, Virginia court, 16 feet wide, now vacated, and Chestnut Avenue, 80 feet wide, now vacated, all as shown on said map of townsite of Long Beach, and lots 1 through 5, Stovell’s tract, as shown on map recorded in book 6, page 112, of maps, in the office of said registrar-recorder/county clerk, including the alley adjoining lots 3, 4 and 5 of said Stovell’s tract, 8 feet wide, now vacated Angeles together with those portions of the abutting vacated streets which would pass by operation of law with the conveyance of said site.

“Operating Notice” means a notice given by one party to the other hereunder relating to routine operational matters arising under this Project Agreement following the Occupancy Date specifically required hereunder to be given as an “Operating Notice”.

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

“OSHA” means both the California Occupational Safety and Health Act, Chapter 3.2, Division 1, Title 8 of the California Code of Regulations, including all applicable regulations promulgated thereunder, and the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 650 et seq., including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Other Relief Event” means the occurrence of any of the following events or circumstances:

- (1) the existence of a Regulated Site Condition, as set forth in Section 4.10 (Regulated Site Conditions);
- (2) the existence of a latent structural defect in the Broadway Garage, to the extent provided in Section 7.1(S) (Latent Structural Defects in the Broadway Garage), or the existence of a latent structural defect in the Lincoln Garage, to the extent provided in Section 7.1(T) (Latent Structural Defects in the Lincoln Garage);

(3) compliance by the Project Company, pursuant to Section 9.1(D) (Emergency Orders and Directives) or otherwise, with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction (other than an order pertaining to compliance with building codes or construction inspection);

(4) an official or unofficial strike, lockout, work rule or other labor dispute by (1) public sector employees, or (2) private sector employees (other than employees of the Project Company, a Project Contractor or a Subcontractor that are working at the Project Site) (a) which (i) is regional or national in nature and affects the City, the Port, the construction, building maintenance or facilities management industry generally or (ii) takes place at a facility manufacturing materials or equipment for the Project and is not directed at the Project, and (b) which lasts for more than 30 days in the aggregate;

(5) any failure of title to the Project or any placement or enforcement of any Encumbrance on the Project Site or the Project not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby. Notwithstanding the foregoing, if the Encumbrance is a Permitted Encumbrance, the enforcement of such Permitted Encumbrance shall not be an Other Relief Event if the enforcement was caused by an act or omission of the Project Company;

(6) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project;

(7) a change in the requirements to obtain LEED NC Gold Certification, LEED-ND Gold Certification or LEED-EB Certification of a Facility as provided in Section 7.20 (LEED NC Gold and LEED-ND Gold Certifications);

(8) the failure of any Governmental Body or utility company having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities to the Project that are required to perform this Project Agreement;

(9) any material act of prevention, hindrance, obstruction, or other non-cooperation by the City or the Port (or a third party acting on behalf of the City or the Port) or any material defect or non-compliance with Applicable Law or the Contract Standards, in carrying out a Capital Modification, as contemplated by Section 10.7 (Alternative Procedures for Implementing Capital Modifications);

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

(11) the closure, due to an accident, construction or otherwise, of a road necessary for direct access to the Project by order of a Governmental Body having police power;

(12) the performance of maintenance pursuant to the Master Maintenance Plan that cannot be performed under the Contract Standards without affecting the other Contract Services and the relief for which is approved in advance by the City in writing;

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

(14) any other event that, under a specific provision of this Project Agreement, constitutes or is deemed to constitute or to be caused by an Other Relief Event, including events referred to in Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications and FM Services Changes);

(15) any delay in the timely issuance of a Governmental Approval that is directly caused by the imposition of a moratorium by or on the issuing Governmental Body relating to the acceptance or processing of applications or the issuance of Governmental Approvals generally and not caused by Project Company Fault;

(16) the failure of the City to perform the Old Courthouse Demolition Activities and to make the Old Courthouse Site available, in each case, by June 1, 2016;

(17) the occurrence of any event described in clause (9) of Section 12.1(H) (Closing Conditions and Timing);

(18) the removal or material reduction of the FM Services with respect to the Port FM Facilities (except to the extent that the Project Company is compensated for the impact on the FM Services as part of a Partial Termination Payment);

(19) the diminution in value of a Private Development Site as a result of (i) any Relief Event, or (ii) as a result of an act or omission of the City (in any capacity) occurring between June 29, 2015 and the date of the conveyance for such Private Development Site set forth in the applicable Conveyance Agreement;

(20) to the extent that the City enters into a definitive agreement for the removal of the storm water pipe along the east edge of the Pacific Site in accordance with Section 5.2(A)(1) (City Financial Close Responsibilities), such storm water pipe is not removed in accordance with the definitive agreement by August 31, 2016;

(21) any City directed Change Order that adversely impacts the Port Facilities or any Port directed Change Order that adversely impacts the City Facilities;

(22) the Port modifies the Port Facilities (other than the Port FM Facilities) and such modification impacts the FM Services;

(23) encountering a Differing Site Condition as provided in Section 7.4(B) (Subsurface Conditions);

(24) to the extent that an approval under this Agreement must be given by both the City and the Port, the City and the Port are unable to resolve any dispute as to whether such approval should be granted within ten Business Days following request for approval by the Project Company, or such longer period for such approval as may be specified in this Project Agreement, as set forth in Section 4.11 (Joint Approval by City and Port);

(25) the occurrence of a partial termination of all obligations under this Agreement in respect of the Port Facilities and the Shared Facilities and the removal of all of the Port Facilities

and the Shared Facilities from the Project, as and to the extent set forth in Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination);

(26) any appeal, challenge or change in the requirements or conditions of the SEIR or other requirements or conditions relating to CEQA or the Site Master Plan as set forth in Section 7.3 (Regulatory Approvals);

(27) any exercise by the Port of its rights under this Agreement that negatively impacts the City Facilities or the Shared Rooms, or any exercise by the City of its rights under this Agreement that negatively impacts the Port Facilities and the Shared Facilities, in each case, as and to the extent set forth in Section 6.8;

(28) the failure by the City or the Port, as the case may be, to maintain, repair and replace (i) the AV Equipment, as set forth in Section 7.15(B), (ii) the IT Equipment, as set forth in Section 7.15(D), (iii) Moveable Furniture, Fixtures and Equipment, as set forth in Section 9.1(C), or (iv) Owner Furnished Equipment, as set forth in Section 9.1(C), and in each case, in accordance with Best Management Practice; or

(29) a City Fault or a Port Fault,

the response to which or compliance with which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Owner” means, except as otherwise set forth in Section 7.17(C), Section 7.18(C), and Section 8.5(F):

(1) in respect of a City Facility, the City (but not in its regulatory capacity);

(2) in respect of the Port Headquarters Building, the Port;

(3) in respect of the New Parking Facility:

(a) with respect to the Design-Build Work, prior to Final Completion, the Port;

(b) with respect to any Design-Build Work occurring after Final Completion to correct any defect with respect to the Design-Build Work, the Port; and

(c) otherwise, prior to the Occupancy Date in respect of the New Parking Facility, the Port, and after the Occupancy Date in respect of the New Parking Facility, the City (but not in its regulatory capacity) and the Port;

(4) in respect of a Shared Facility:

(a) with respect to the Design-Build Work, prior to Final Completion, the Port;

(b) with respect to any Design-Build Work occurring after Final Completion to correct any defect with respect to the Design-Build Work, the Port; and

(c) otherwise, prior to the Occupancy Date in respect of such Shared Facility, the Port, and after the Occupancy Date in respect of such Shared Facility, the City (but not in its regulatory capacity) and the Port; and

(5) in respect of the Shared Rooms:

(a) with respect to the Design-Build Work, prior to Final Completion, the City;

(b) with respect to any Design-Build Work occurring after Final Completion to correct any defect with respect to the Design-Build Work, the City; and

(c) prior to the Occupancy Date in respect of such Shared Room, the City (but not in its regulatory capacity), and after the Occupancy Date in respect of such Shared Room, the City (but not in its regulatory capacity) and the Port,

provided, however, that all amounts payable to the Project Company under this Project Agreement in respect of the FM Services for the Shared Facilities and the Shared Rooms shall be paid by the City as a component of the Service Fee.

“Owner Furnished Equipment” means any equipment that is used in connection with the Project furnished and paid for directly by the City or the Port.

“Owner’s Representative” means the City’s Representative or the Port’s Representative, as the case may be.

“Pacific Site” means the site located at Pacific Avenue and W. 3rd Street, in Long Beach, California as depicted in Appendix 3 (Private Development Sites) (APN 7280-022-914), which includes lots 1 through 10 in block 87 of the townsite of Long Beach, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in book 19 page 91, et seq., of miscellaneous records of said county, together with the west half of Park Court, as shown on the map of said tract, adjoining said lots on the east, lying between the easterly prolongation of the north line of said lot 2 and the easterly prolongation of the south line of said lot 8 together with those portions of the abutting vacated streets which would pass by operation of law with the conveyance of said site.

“Pacific Site Conveyance Agreement” means the agreement for the conveyance of the Pacific Site to be entered into between the City and the Project Company or its designee substantially in the form set forth in Transaction Form F-1 (Form of Pacific Site Conveyance Agreement).

“Pacific Site Escrow Account” has the meaning specified in Section 12.1(D) (Use of Funds Received for Conveyance).

“Pacific Site Excess Account” has the meaning specified in Section 12.1(D) (Use of Funds Received for Conveyance).

“Partial Termination Date” means the date of partial termination of this Project Agreement provided in Section 24.1(G) (Termination Date and Partial Termination Date).

“Partial Termination Payment” means the applicable amount owing by the City or the Port, as the case may be, to the Project Company in connection with the termination of all of the obligations in respect of the City Facilities and the Shared Rooms or the Port Facilities and the Shared Facilities, as the

case may be, under this Project Agreement and the removal of the City Facilities and the Shared Rooms or the Port Facilities and the Shared Facilities, as the case may be, from this Project Agreement pursuant to Article 24 (Termination).

“Partial Termination Payment Due Date” means the date on which the City or the Port, as the case may be, is obligated to make the Partial Termination Payment as provided in Section 24.1(H) (Termination Payment Due Date; Partial Termination Payment Due Date).

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) Encumbrances for utility charges, Taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves in accordance with GAAP;

(2) any Encumbrance arising out of any judgment rendered which is being contested diligently and in good faith by the Project Company, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability of the Project Company to construct the Project or operate the Project;

(3) any Encumbrance arising in the ordinary course of business imposed by law dealing with materialmen’s, mechanics’, workmen’s, repairmen’s, warehousemen’s, landlords’, vendors’ or carriers’ encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Project Company and against which the Project Company has established appropriate reserves;

(4) servitudes, licenses, easements, Encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which shall not in the aggregate materially and adversely impair the construction of the Project or operation of the Project by the Project Company;

(5) applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Project and operation of the Project by the Project Company;

(6) Encumbrances which are created on or before the Contract Date;

(7) Encumbrances which are created by a Change in Law Event on or after the Contract Date;

(8) any Encumbrance created by an act or omission by any Governmental Body or with respect to which the City (in respect of the City Facilities and the Shared Rooms) or the Port (in respect of the Port Facilities and the Shared Facilities) has given its consent;

(9) any servitudes, licenses, easements, restrictions, rights-of-way, rights and Encumbrances specifically identified in Appendix 1 (City Site), Appendix 2 (Port Site) or Appendix 3 (Private Development Sites);

(10) any encumbrance arising out of the Tidelands Trust or the use of funds from the Tidelands Trust.

“Permitted Investments” means, to the extent permitted by State law:

(1) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(2) investments in demand or time deposits, federal funds or bankers’ acceptances issued by any depository institution or trust company, provided that (i) any demand or time deposit or certificate of deposit is fully insured by the Federal Deposit Insurance Corporation or (ii) any long-term unsecured debt obligations or deposits of such depository institution or trust company at the time of such investment or contractual commitment providing for such investment have been rated “A+” by Standard & Poor’s or Fitch or “A1” by Moody’s (so long as such Nationally Recognized Rating Agency at such time has entered into a “ratings surveillance” agreement with the obligors at the time of such investment);

(3) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated “AAAm” by Standard & Poor’s, “AAA/mmf” by Fitch and “Aaa-mf” by Moody’s and (iii) have portfolio assets of at least \$5,000,000,000, including any money market funds for which the Collateral Agent or any of its affiliates provides management services; and

(4) any other investment or security approved by the Director of Financial Management of the City.

“Personal Information” means ‘personal information’ as defined in the Public Records Act, which is collected, acquired, obtained by the City, the Port, or the Project Company in relation to or in the course of providing the Contract Services, and includes any information about an identifiable individual other than contact information, which is the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

“Port” means the City, acting by and through its Board of Harbor Commissioners.

“Port Activities” means any activities carried on or to be carried on by the Port, or other persons permitted by the Port, in the Port Facilities, the Shared Facilities and the Shared Rooms related to any lawful Port purpose.

“Port Allocable FM Month” means a month in which the Project Company provides FM Services to the City Facilities, the Shared Facilities and the Shared Rooms, with Port Allocable FM Month 1 commencing on the Initial Occupancy Date.

“Port Completion Payment” means \$[212,916,490]³.

“Port Design-Build Agreement Sum” means \$[193,567,881]⁴, being the amount set forth in the Design-Build Agreement.

³ To be updated prior to execution and delivery of this Project Agreement.

⁴ To be updated prior to execution and delivery of this Project Agreement.

“Port Direct Agreement (Design-Builder)” means the direct agreement to be entered into between the Port, the Project Company and the Design-Builder in the form set forth in Transaction Form C-3.

“Port Event of Default” has the meaning set forth in Section 23.3 (Port Events of Default).

“Port Facilities Construction Financing” means the short-term or construction financing by the Project Company of the development, design and construction of the Port Facilities and the Shared Facilities.

“Port Facilities Construction Financing Documents” means:

(1) any loan agreement, funding agreement, account maintenance or control agreement, security agreement, collateral agreement, insurance or reimbursement agreement, subordination agreement, trust indenture, agreement from any Unit Holder in favor of any Port Facilities Senior Lender, hedging agreement, interest rate swap agreement, guaranty, indemnity agreement, agreement between any Project Contractor and any Port Facilities Senior Lender, or other agreement by, with or in favor of any Port Facilities Senior Lender pertaining to Port Facilities Senior Debt;

(2) any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Project Company for Port Facilities Senior Debt; and

(3) any amendment, supplement, variation or waiver of any of the foregoing agreements or instruments.

“Port Facilities Construction Security” means any letter of credit, parent company guaranty or performance or surety bond issued to secure the obligations (whether performance or payment) of the Design-Builder with respect to the Port Facilities and the Shared Facilities under the Design-Build Agreement.

“Port Facilities Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Port Facilities by the Project Company pursuant to this Project Agreement during the Design-Build Period.

“Port Facilities Design Documents” means the Design Documents in respect of the Port Facilities.

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

“Port Facilities Senior Debt” means:

(1) all amounts outstanding, including interest and default interest accrued to the Port Facilities Senior Lenders under the Port Facilities Construction Financing Documents, provided that default interest shall not include any increased interest, fees or penalty amounts payable for any reason other than a failure to pay any amount when due;

(2) the cost of early termination of interest rate or currency hedging arrangements and other breakage costs, as the case may be, payable to the Port Facilities Senior Lenders as a

result of a prepayment under the Port Facilities Construction Financing Documents due to the termination or partial termination of this Project Agreement; and

(3) all other reasonable transaction fees, costs and expenses for which the Project Company is responsible under the Port Facilities Construction Financing Documents.

“Port Facilities Senior Lenders” means the bondholders, lenders, agents or other financing parties under the Port Facilities Construction Financing Documents.

“Port Facility” means each of:

- (1) the Port Headquarters Building; and
- (2) the New Parking Facility,

together the **“Port Facilities”**. For the avoidance of doubt, the Port Facilities include the Port FM Facilities.

“Port Fault” means:

- (1) a breach by the Port of any of its obligations (other than payment obligations) under this Project Agreement;
- (2) a breach of any representation or warranty by the Port under this Project Agreement;
- (3) willful misconduct of a Port Related Party; or
- (4) a negligent act or omission of a Port Related Party.

“Port FM Facilities” means the Port Headquarters Building and the New Parking Facility, to the extent of the obligations set forth in Appendix 8A (FM Standards – Port FM Facilities).

“Port FM Fee” has the meaning specified in Section 18.3 (Port FM Fee).

“Port FM Month” means a month in which the Project Company provides FM Services to the Port Facilities, with Port FM Month 1 commencing on the Scheduled Port Occupancy Date.

“Port Headquarters Building” means the new headquarters building for the Port to be located on the Port Site to be designed and built as part of the Project.

“Port Insurance Trust Account” means the insurance trust account created and held by the Collateral Agent pursuant to the terms of the Insurance Trust Agreement and into which the proceeds of policies of insurance related to the Port Headquarters Building (prior to the Occupancy Date), the New Parking Facility (prior to the Occupancy Date) and the Shared Facilities shall be deposited.

“Port Longstop Date” has the meaning set forth in Section 8.7(F) (Port Longstop Date Defined).

“Port Moveable Furniture, Fixtures and Equipment” means Moveable Furniture, Fixtures and Equipment installed in the Port Facilities and the Port’s portion of the Shared Facilities and Shared Rooms.

“Port Non-Appropriation Event” means the failure for any reason of either of the City Council or the Board of Harbor Commissioners to appropriate funds necessary to make any payment due from the Port to the Project Company under this Project Agreement.

“Port Occupancy Date” means the date on which Occupancy Readiness in respect of all the Port Facilities and the Shared Facilities occurs or is deemed to have occurred.

“Port of Long Beach” means the harbor system subject to and under the jurisdiction of the Port.

“Port Partial Termination Project Company Event of Default” means a Project Company Event of Default described in items (10) through (13), inclusive, of Section 22.1(A) (Project Company Events of Default Defined).

“Port Project Agreement” has the meaning specified in Section 6.8 (Two Agreements).

“Port Related Party” means any commissioner, officer, member, employee or agent of the Port.

“Port Representative” means the individual specified in writing by the Port as the representative of the Port from time to time for all purposes of this Project Agreement.

“Port Site” means the real property generally occupied by the footprint of the Port Headquarters Building and extending southerly to Ocean Boulevard and easterly to Cedar Avenue, in the City of Long Beach, California as depicted in Appendix 2 (Port Site), including those portions of the abutting vacated streets which would pass by operation of law with the conveyance of said site.

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

“Prime Rate” means the prime rate as published in The Wall Street Journal (Western Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Western Edition) or the method of computation thereof is substantially modified.

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

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

“Project Agreement” means this Project Agreement, and includes the Transaction Forms and Appendices (as applicable).

“Project Agreement Amendment” has the meaning set forth in Section 28.8 (Project Agreement Amendments).

“Project Company” means Plenary Edgemoor Civic Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its permitted successors and assigns.

“Project Company Bankruptcy-Related Event” has the meaning specified in Section 22.1(B) (Project Company Bankruptcy-Related Event Defined).

“Project Company Event of Default” has the meaning specified in Section 22.1(A) (Project Company Events of Default Defined).

“Project Company Fault” means:

- (1) a breach by the Project Company of any of its obligations under this Project Agreement;
- (2) a breach of any representation or warranty made by the Project Company under this Project Agreement;
- (3) willful misconduct of the Project Company or any Project Company Person; or
- (4) a negligent act or omission of the Project Company or a Project Company Person.

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

“Project Company Person” means:

- (1) any director, officer, employee or agent of the Project Company in each case acting as such; or
- (2) any Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Project Company, in any such Person’s capacity as a provider of services directly or indirectly to the Project Company in connection with the Project.

“Project Company Representative” means the individual specified in writing by the Project Company as the representative of the Project Company from time to time for all purposes of this Project Agreement.

“Project Contractor” means the Design-Builder or the FM Contractor, and **“Project Contractors”** means both of them.

“Project Contractor Breakage Costs” means the amount payable by the Project Company to a Project Contractor under the terms of a Project Contract as a direct result of the partial termination or termination of this Project Agreement but reduced (without duplication) to the extent that:

- (1) the Project Company, a Project Contractor or any Subcontractor fails to take all reasonable steps to mitigate such amount;
- (2) such amount relates to any agreements or arrangements entered into by the Project Company, a Project Contractor or a Subcontractor other than in the ordinary course of business and on commercial arm’s length terms;
- (3) such amount is a Distribution; or
- (4) such amount includes any loss of overhead or profit of the FM Contractor or its Subcontractors relating to any period or costs after the Termination Date (except to the extent

they are properly included in any reasonable commercial breakage fee set forth in the applicable Project Contract or Subcontract).

“Project Contracts” means the Design-Build Agreement and the FM Services Agreement.

“Project Equipment” means all manufactured equipment, systems, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, excluding in each case the Owner Furnished Equipment.

“Project Final Completion” means the date on which Final Completion has been achieved in respect of all Facilities.

“Project Intellectual Property” means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Project Company, any Project Contractor, any Subcontractor or any other third party, directly or indirectly, for the purposes of the Contract Services, but does not include the Financial Model.

“Project Labor Agreement” means the agreement to be entered into between the Design-Builder and the unions anticipated to participate in the Project in the form set forth in Transaction Form A (Form of Project Labor Agreement).

“Project Occupancy Date” means the date on which both the Final City Occupancy Date and the Port Occupancy Date have been achieved.

“Project Right of Entry” has the meaning set forth in Section 3.3 (Right of Entry).

“Project Schedule” has the meaning set forth in Appendix 6 (Design-Build Work Review Procedures), as updated in accordance with Section 2.2 of Appendix 6 (Design-Build Work Review Procedures).

“Project Site” means the City Site and the Port Site.

“Project User” means any person employed at or visiting the Project.

“Property Documents” means certain items and information pertaining to the Project Site that have been prepared by or made available to the Project Company pursuant to Section 5 of the ENA and listed in Appendix 19 (Property Documents).

“Public Records Act” means California Public Records Act, California Government Code Section 6250 et seq., as amended from time to time.

“Punch List” has the meaning set forth in Section 8.6(A) (Punch List).

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

“Qualified Commercial Bank” means a reputable domestic or foreign commercial bank whose long term and short term debt is rated “A2” or higher by Moody’s, “A” or higher by Standard & Poor’s, and “A” or higher by Fitch (the lowest of the three applying if there is a split rating).

“Qualified Insurer” means a reputable insurer of good standing in the United States having a credit rating of:

- (1) A- VII or better with A.M. Best; or
- (2) the equivalent thereof by any other recognized insurance rating agency.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

“Refinancing” means:

- (1) any amendment, variation, notation, supplement or replacement of any Senior Debt or Financing Document;
- (2) the exercise of any right, or the grant of any waiver or consent, under any Financing Document;
- (3) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Financing Documents or Senior Debt or the creation or granting of any other form of benefit or interest in the Financing Documents, the Senior Debt or the contracts, revenues or assets of the Project Company whether by way of security or otherwise; or
- (4) any other arrangement put in place by the Project Company or another person which has an effect which is similar to any of items (1) through (3) above or which has the effect of limiting the Project Company’s ability to carry out any of the actions referred to in items (1) through (3) above.

“Regulated Site Condition” means, and is limited to the following at the Project Site:

- (1) surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance;
- (2) any habitat of an endangered or protected species as provided in Applicable Law;
- (3) the presence anywhere in, on or under the Project Site on the Contract Date of wells or underground storage tanks for the storage of chemicals or petroleum products;
- (4) the presence of Hazardous Substances (other than Project Company Hazardous Substances) in, on or under the Project Site (including presence in surface water, groundwater, soils or subsurface strata); and
- (5) any fact, circumstance or condition constituting a violation of, or reasonably likely to result in any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment,

in each case to the extent not disclosed in or reasonably inferable from the Property Documents. For the avoidance of doubt, Regulated Site Conditions do not include Differing Site Conditions.

“Regulatory Approvals” means CEQA and any identified mitigation measures relating thereto, the Site Master Plan, any entitlements, and building permits.

“Reinstatement Plan” has the meaning specified in Section 16.3(C) (Reinstatement Plan).

“Reinstatement Works” has the meaning specified in Section 16.3(A) (Draft Reinstatement Plan).

“Relief Event” means:

- (1) an Insurable Force Majeure Event;
- (2) an Uninsurable Force Majeure Event;
- (3) a Change in Law Event; or
- (4) an Other Relief Event.

“Required Design-Build Period Insurance” means the insurance specified in part 1 of Appendix 9 (Insurance Requirements).

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

“Required Operating Period Insurance” means the insurance specified in part 2 of Appendix 9 (Insurance Requirements).

“Response Action” means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Hazardous Substance, or to otherwise correct any non-compliance with Applicable Law pertaining to the environment or address any environmental condition as may be required by any relevant Governmental Body. “Response Action” includes any action which constitutes a “removal”, “response”, or “remedial action” as defined by section 101 of CERCLA.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (1) is disbarred, suspended, or otherwise disqualified from federal, State, or City contracting for any services similar in nature to the Design-Build Work or the FM Services;
- (2) was or is subject to any material claim of the United States, State, or City in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the City’s view or the Port’s view, as applicable, in either case, be reasonably likely to materially affect the ability of the Project Company to perform its obligations under this Project Agreement;
- (3) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offences or misdemeanors) less than five years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;

(5) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent.

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

“Scheduled Final City Occupancy Date” has the meaning set forth in Section 8.7(B) (Scheduled Final City Occupancy Date Defined).

“Scheduled Initial Occupancy Date” means the date on which the Initial Occupancy Date is scheduled to occur.

“Scheduled Occupancy Date” has the meaning set forth in Section 8.7(A) (Scheduled Occupancy Date Defined).

“Scheduled Port Occupancy Date” has the meaning set forth in Section 8.7(C) (Scheduled Port Occupancy Date Defined).

“Scheduled Project Occupancy Date” has the meaning set forth in Section 8.7(D) (Scheduled Project Occupancy Date Defined).

“SEIR” means the Supplemental Environmental Impact Report, dated August 4, 2015 (SCH # 2015041054) and related Site Plan and Conditions of Approval as certified by the Long Beach Planning Commission on November 9, 2015.

“Senior Debt” means the City Facilities Senior Debt and the Port Facilities Senior Debt.

“Senior Lenders” means the City Facilities Senior Lenders and the Port Facilities Senior Lenders.

“Service Fee” has the meaning specified in Section 18.2 (Service Fee Formula).

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

“Shared Facilities Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Shared Facilities by the Project Company pursuant to this Project Agreement during the Design-Build Period.

“Shared Facilities Design Documents” means the Design Documents in respect of the Shared Facilities.

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

“Shared Rooms Design-Build Work” means everything required to be furnished and done for and relating to the design, construction and commissioning of the Shared Rooms by the Project Company pursuant to this Project Agreement during the Design-Build Period.

“Shared Rooms Design Documents” means the Design Documents in respect of the Shared Rooms.

“Site Master Plan” means the site master plan for the City Site, the Port Site and the Private Development Sites developed by the Project Company.

“Site Weather Monitoring Station” means the NOAA weather station for Long Beach – Daugherty Field, if data from the weather monitoring stations is unavailable, such other properly located and calibrated weather monitoring stations acceptable to each of the City and the Project Company, acting reasonably, or otherwise determined pursuant to Article 20 (Dispute Resolution).

“Small Scale Capital Modification” means a Capital Modification requested by the Project Company, and not required as a result of Relief Events or directed by the City or the Port, which has a cost of less than \$50,000 (Index Linked).

“Southern California” means the counties of Kern, Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara and Ventura.

“Standard & Poor’s” means Standard & Poor’s Rating Service or any of its successors and assigns. If such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Standard & Poor’s” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the City.

“State” means the State of California.

“Subcontract” means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of a Project Contractor of any tier, with one or more persons in connection with the carrying out of the Project Company’s obligations under this Project Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

“Subcontractor” means any person that enters into a Subcontract.

“Substantial Completion” has the meaning specified in Section 7.17 (Substantial Completion).

“Suitable Substitute Project Company” has the meaning given to such term in the Lenders’ Direct Agreements.

“Targeted Energy Consumption” means energy consumed by the Energy Guaranteed City Facilities for:

- (1) hardwired lighting; and
- (2) HVAC systems , including pumps, fans, chillers, condensers, evaporators, heat pumps, dry coolers, cooling towers, heating boilers, domestic hot water heaters, dehumidifiers, humidifiers, fan heaters, and radiators;

such consumption to be calculated from the applicable BMS and metering systems.

“**Tax**” means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection.

“**Term**” has the meaning set forth in Section 3.1 (Effective Date and Term).

“**Termination Date**” means the earlier of the Expiration Date or the date of termination of this Project Agreement provided in Section 24.1(G) (Termination Date and Partial Termination Date).

“**Termination Payment**” means the applicable amount owing by the City or the Port, as the case may be, to the Project Company or the Project Company to the City or the Port, as the case may be, in connection with the termination of this Project Agreement pursuant to Article 24 (Termination).

“**Termination Payment Due Date**” means the date on which the City or the Port, as the case may be, is obligated to make the Termination Payment as provided in Section 24.1(H) (Termination Payment Due Date; Partial Termination Payment Due Date).

“**Termination Project Company Event of Default**” means a Project Company Event of Default described in item (1) or item (2) of Section 22.1(A) (Project Company Events of Default Defined).

“**Therm**” means 100,000 British thermal units.

“**Tidelands Trust**” means restrictions, reservations and limitations of record, including without limitation, those contained in Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, Chapter 158, Statutes of 1935, Chapter 29, Statutes of 1956, First Extraordinary Session, Chapter 138, Statutes of 1964, First Extraordinary Session.

“**Total Unavailability**” has the meaning set forth in Appendix 10 (Deductions) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 10A (Port Deductions) (with respect to the Port FM Facilities), as applicable.

“**Transaction Form**” means any of the Transaction Forms appended to this Project Agreement and identified as such in the Table of Contents.

“**Transfer Restriction Date**” has the meaning set forth in Section 26.1 (Limitations on Assignment by Project Company).

“**Unavailability Event**” has the meaning set forth in Section 1.1 of Appendix 10 (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Section 1.1 of Appendix 10A (Port Deductions) (with respect to the Port FM Facilities), as applicable.

“**Unilateral Change Order**” means a written order signed by the Owner prior to Substantial Completion in respect of a Facility under this Project Agreement making a Design Requirement Change prior to an agreement between the Owner and the Project Company on an adjustment, if any, in the design and construction cost or schedule.

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

- (1) earthquakes or earth movement;

- (2) war, civil war, or armed conflict and related causes;
- (3) terrorism arising from nuclear, biological or chemical materials;
- (4) certified acts of terrorism (as defined by the Terrorism Reinsurance Act (TRIA)) occurring during any period in which TRIA or a substantially identical federal law is not in effect;
- (5) nuclear explosion or nuclear, radioactive, chemical or biological contamination;
- (6) epidemics, pandemics or quarantine, or health alerts issued by a Governmental Body relating thereto, but only to the extent that any such event causes the following (a) additional operating costs incurred during prevention activities or incurred due to compliance with actual quarantine activities, or (b) the additional cost of substituting the usual staff in the FM Facilities that may be absent from work due to illness; or
- (7) after the applicable Occupancy Date in respect of a Port Facility, a Shared Facility or a Shared Room, any peril with respect to such Port Facility or the Port's interest in such Shared Facility or such Shared Room; provided, however, that any peril occurring after the Occupancy Date of the New Parking Facility in respect of the City's interest in the New Parking Facility shall not be deemed an Uninsurable Force Majeure Event,

in each case, the response to which, in accordance with the Contract Standards, materially expands the scope or materially interferes with, delays, or increases the cost of performing the Contract Services, except to the extent that such event or circumstance arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Unit Holder” means any holder or owner of Units.

“Unit Holder Debt” means indebtedness owing by the Project Company to any Unit Holders or Affiliates of Unit Holders, excluding:

- (1) all amounts not actually paid to the Project Company by cash advance, rights entitling the Project Company to a cash advance, or other consideration;
- (2) all fees, including commitment fees, standby fees or other fees, paid or to be paid by the Project Company, other than to any Unit Holder or any Affiliate of a Unit Holder; and
- (3) capitalized interest, and interest on overdue interest.

“Units” means units or other equity interests of any class in the capital of the Project Company.

“USGBC” means the US Green Building Council.

“Utilities” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“Utility Company” means any company designated by the City or the Port, as the case may be, to provide Utilities to the City Facilities, the Shared Facilities, the Shared Rooms and the Port Facilities.

“Vandalism” means willful or malicious damage to the Project (including all mechanical equipment, structures, improvements, grounds and all other property constituting the Project) that is not

capable of being repaired by means of Minor Repairs (as such term is defined in Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities), and including wall patching or painting) performed during normal business hours and that is caused by a Project User or any person visiting the Project for any unauthorized purpose, except to the extent such damage arises from or is contributed to, directly or indirectly, by any Project Company Fault.

“Variable Growth Payment” means \$[5,340,618]⁵.

“Warranty Period” means, in respect of a Facility, a period of one year after the date of Occupancy Readiness of such Facility.

“Weather Data” means the record by the Site Weather Monitoring Station of hourly data (dry and wet bulb temperature, sky conditions, wind speed, relative humidity, precipitation, etc.) for the Energy Year.

“Work Directive” means a unilateral written order issued by the Owner directing the Project Company to perform or continue performance of the Design-Build Work or a disputed item of Design-Build Work pending resolution of a dispute concerning the scope.

SECTION 1.2. INTERPRETATION.

This Project Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project 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 Project 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 Project 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 Saving time, as the case may be.

(F) 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.

⁵ To be updated prior to execution and delivery of this Project Agreement.

(G) 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, codes of practice or instruments made under the relevant statute.

(H) 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.

(I) 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.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, 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 an obligation of either party, 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 Project Agreement. This Project Agreement, together with the Conveyance Agreements, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Project Agreement. Without limiting the generality of the foregoing, this Project Agreement, together with the Conveyance Agreements, shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(M) Counterparts. This Project Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Project Agreement.

(N) Governing Law. This Project Agreement shall be governed by and construed in accordance with the applicable laws of the State.

(O) Severability. Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement. If any such provision of this Project 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 Project 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 Project Agreement to the effect

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) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(R) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(S) Applicability, Stringency and Consistency of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Project Company hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. For example, as between the requirements of Article 7 (Design and Construction) and Appendix 5 (D&C Standards), and as between the requirements of Article 9 (Operation and Maintenance) and Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities), those provisions which provide better or greater Project size, quantity, quality, integrity, durability and reliability shall take precedence. Any reference in this Project Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Project Company to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Project Agreement.

(T) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party. Any failure of a party entitled to assistance hereunder to perform an obligation under this Project Agreement shall not be excused on account of any failure of the party obligated to provide assistance.

(U) Imputation of Knowledge to the City and the Port. Neither the City nor the Port will be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees or agents (including the City Representative and the Port Representative) who have responsibilities in connection with the conduct of the Contract Services or the Project.

(V) Imputation of Knowledge to Project Company. The Project Company will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its agents, employees or workers (including the Project Contractors and the Subcontractors) who have responsibilities in connection with the conduct of the Contract Services or the Project.

(W) Third-Party Rights. This Project Agreement is exclusively for the benefit of the City, the Port, and the Project Company and shall not provide any third parties (with the sole exceptions of the rights of any third-party Indemnitees as provided in Section 27.1 (Project Company's Obligation to Indemnify), of the City Facilities Senior Lenders as provided in the Lenders' Direct Agreement (City), and of the Port Facilities Senior Lenders as provided in the Lenders' Direct Agreement (Port)) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(X) Discretion. When a party has “discretion”, it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Project Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE CITY AND THE PORT.

(A) City Representations and Warranties. The City represents and warrants, as of the Contract Date, that:

(1) Existence and Powers. The City is a municipal corporation and chartered city organized and existing under the City Charter and the Constitution and laws of the State, with full legal right, power and authority to execute, deliver and perform its obligations under this Project Agreement.

(2) Due Authorization. The City has duly authorized, executed and delivered this Project Agreement, and this Project Agreement constitutes its legal, valid and binding obligation, enforceable against the City in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(3) No Conflict. To the best of its knowledge, neither the execution and delivery by the City of this Project Agreement nor the performance by the City of its obligations in connection with the transactions contemplated hereby or the fulfillment by the City of the terms or conditions hereof:

(a) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City; or

(b) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the City of this Project Agreement or, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation), the performance by the City of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to the Project Company, to the best of the City's knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against the City, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the City or the validity, legality or enforceability of this Project Agreement against the City, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby or on the ability of the City to perform its obligations hereunder or under any such other agreement or instrument.

(6) Ownership Interest in the City Site, the Port Site and the Private Development Sites. The City owns the City Site, the Port Site, and the Private Development Sites in fee simple, subject to the easements and other exceptions to title indicated or referred to in Appendix 1 (City Site), Appendix 2 (Port Site) and Appendix 3 (Private Development Sites).

(B) Port Representations and Warranties. The Port represents and warrants, as of the Contract Date, that:

(1) Existence and Powers. The Port is a department of the City established pursuant to Section 1200 of the City Charter, with full legal right, power and authority to execute, deliver and perform its obligations under this Project Agreement.

(2) Due Authorization. The Port has duly authorized, executed and delivered this Project Agreement, and this Project Agreement constitutes its legal, valid and binding obligation, enforceable against the Port in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(3) No Conflict. To the best of its knowledge, neither the execution and delivery by the Port of this Project Agreement nor the performance by the Port of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Port of the terms or conditions hereof:

(a) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Port; or

(b) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the Port is a party or by which the Port or any of its properties or assets are bound, or constitutes a material default under any of the foregoing.

(4) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the Port of this Project Agreement or, subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), the performance by the Port of its payment or other obligations hereunder except otherwise as such have been duly obtained or made.

(5) No Litigation. Except as disclosed in writing to the Project Company, to the best of the Port's knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against the Port, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the Port or the validity, legality or enforceability of this Project Agreement against the Port, or any other agreement or instrument entered into by the Port in connection with the transactions contemplated hereby or on the ability of the Port to perform its obligations hereunder or under any such other agreement or instrument.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE PROJECT COMPANY.

The Project Company represents and warrants, as of the Contract Date, that:

(A) Existence and Powers. The Project Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Project Agreement.

(B) Due Authorization and Binding Obligation. This Project Agreement has been duly authorized, executed and delivered by all necessary action of the Project Company and constitutes a legal, valid and binding obligation of the Project Company, enforceable against the Project Company in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Project Company of this Project Agreement nor the performance by the Project Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Project Company of the terms or conditions hereof:

(1) conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Project Company; or

(2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Project Company or any of its Affiliates is a party or by which the Project Company or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Agreement by the Project Company except as such have been duly obtained or made.

(E) No Litigation Affecting the Project Company. Except as disclosed in writing to the City and the Port, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against the Project Company or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the Project Company or the validity, legality or enforceability of this Project Agreement against the Project Company, or any other agreement or instrument entered into by the Project Company in connection with the transactions contemplated hereby, or on the ability of the Project Company to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. Except as disclosed in writing to the City and the Port, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Project Company's knowledge, overtly threatened or publicly announced against any Project Contractor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Project Contractor that is party to the Project Contract, or on the ability of any Project Contract to perform its obligations under its respective Project Contract.

(G) Intellectual Property. The Project Company owns, or has express rights to use, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(H) Information Supplied by the Project Company. The information supplied and representations and warranties made by the Project Company in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Project Company (and to the Project Company's knowledge, all information supplied in such submittals with respect to the Project Contractors and the Subcontractors) are true, correct and complete in all material respects.

(I) Project Company Reviews. The Project Company has carefully reviewed the whole of this Project Agreement and all Applicable Law, and has taken all steps it considers reasonably necessary to satisfy itself that nothing contained herein inhibits or prevents the Project Company from performing and completing the Project in accordance with the Contract Standards.

(J) No Gratuities. The Project Company has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any City Person or any Port Related Party with a view toward securing this Project Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Project Agreement.

(K) No Conflict of Interest. The Project Company has no interest that would constitute a conflict of interest under California Government Code sections 1090 *et seq.* or 87100 *et seq.*

(L) Compliance with Applicable Law Generally. The Project Company is in compliance in all material respects with Applicable Law pertaining to the Project Company's business and services.

(M) Non-Discrimination. The Project Company does not unlawfully discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, gender identity, AIDS HIV status, age or handicap, subject to Applicable Law.

(N) Non-Harassment. The Project Company does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Project Company may interact in the performance of this Project Agreement, and the Project Company takes all reasonable steps to prevent unlawful harassment from occurring.

(O) Other Law Compliance. The Project Company and any personnel performing Contract Services are able to work legally in the United States and possess valid proof of work eligibility. The Project Company also complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), California's Fair Employment and Housing Act, California Government Code section 12990 *et seq.* and California Code of Regulations, title 2, section 7285 *et seq.*

(P) Drug-Free Workplace. The Project Company provides a drug-free workplace as required by California Government Code sections 8355-8357.

(Q) Representations as to the Financial Model. The Project Company represents that the Financial Model:

- (1) was prepared by or on behalf of the Project Company in good faith;

(2) fully discloses all cost, revenue and other financial assumptions and projections used by the Project Company in determining to enter into this Project Agreement and by Unit Holders in purchasing Units; and

(3) is the only financial model used by the Project Company for the purposes described in item (2) of this subsection.

SECTION 2.3. CONTINUING ACCURACY OF PROJECT COMPANY REPRESENTATIONS AND WARRANTIES.

During the Term, the Project Company shall not take any action, or omit to perform any act, that results in a representation and warranty made in Section 2.2 becoming untrue. The Project Company shall promptly notify the City and the Port, if any such representation and warranty becomes untrue. From time to time, the Project Company shall provide the City and the Port, upon the City's and the Port's request, with proof of the continuing accuracy of these representations and warranties.

ARTICLE 3

TERM; RIGHT OF ENTRY

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Project Agreement shall become effective, and the term hereof (the “Term”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Project Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 24 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Project Agreement shall:

(1) limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) preclude any party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Project Agreement, the following provisions hereof will survive the expiration or any earlier termination of this Project Agreement:

(1) Section 4.8 (Financial Books and Records);

(2) Section 7.16 (Warranties of Design-Build Work);

(3) Section 9.10 (Project Handback); provided that the survival of Section 9.10 (Project Handback) is limited to circumstances where this Project Agreement expires without an earlier termination of this Project Agreement;

(4) Article 20 (Dispute Resolution);

(5) Article 23 (City and Port Events of Default);

(6) Article 24 (Termination), as applicable to the obligations of the parties following the Termination Date;

(7) Article 25 (Appropriation);

(8) Section 27.2 (Indemnification Procedures);

(9) Section 28.13 (Confidentiality);

(10) Section 28.14 (Personal Information); and

(11) Section 1.2 (Professional Liability Insurance) of Appendix 9 (Insurance Requirements),

together with any provisions necessary to give effect to the above provisions. In addition to the foregoing, the provisions of Section 3.3 (Right of Entry), Section 4.1(B) (City) and Section 4.1(C) (Port),

together with any provisions necessary to give effect to the above provisions, shall survive any exercise of City's or the Port's partial termination rights.

SECTION 3.3. RIGHT OF ENTRY.

(A) On and after the Contract Date until the end of the Term, the Project Company and any Project Company Person shall have the right to enter onto the Project Site, the Facilities, the Existing Parking Facilities and lands as may be specified in writing by the City (in respect of the City Site) and the Port (in respect of the Port Site) and that are owned by or in the possession and control of the City or the Port, as the case may be, or subject to a right of entry or access in favor of the City or the Port, as the case may be, for purposes of carrying out the Project Company's obligations under this Project Agreement (the "Project Right of Entry"). Notwithstanding anything to the contrary in this Project Agreement, in the event of (1) a partial termination of this Project Agreement by the Port, the Project Company shall continue to have a right of entry onto the Port Site to the extent necessary to carry out the Contract Services in respect of the City Facilities, the Shared Facilities and the Shared Rooms, and the Port shall reasonably cooperate with the City and the Project Company in respect of such right of entry, and (2) a partial termination of this Project Agreement by the City, the Project Company shall continue to have a right of entry onto the City Site to the extent necessary to carry out the Contract Services in respect of the Port Facilities and the Shared Facilities, and the City shall reasonably cooperate with the Port and the Project Company in respect of such right of entry. Absent agreement by the parties as to a later date pursuant to an approved transition plan, and subject to Section 24.4, such right of entry shall automatically terminate at the end of the Term, but shall survive any partial termination of this Project Agreement. The City Site and the Port Site shall be made available to the Project Company free and clear of liens and Encumbrances, other than Permitted Encumbrances.

(B) It is the express intent and agreement of the parties that this Project Agreement shall in no way be deemed to constitute a lease to the Project Company (whether an operating lease or a financing lease), or a grant (regardless of the characterization of such grant, including by way of easement, purchase option, conveyance, lien or mortgage) in each case, of any ownership right or interest, title or estate in the Project, the Project Site, the Facilities, the Existing Parking Facilities or of any assets incorporated into, appurtenant to, or in any way connected with the Project. It is the express agreement and intent of the parties that the Project Company shall not be treated as or deemed to be the legal or equitable owner of the Project Site or any other Project land, structures, fixtures or improvements at the Project Site for any purpose. The parties acknowledge and agree that the rights of the Project Company under this Section are not independent, durable and exclusive of the rights held by others and that the rights of the Project Company do not provide a private benefit to the Project Company. The Project Company's rights hereunder are derived solely from its status as an independent contractor as described in this Project Agreement, and not as a tenant, lessee, easement holder, optionee, lienor, mortgagee, purchaser or owner of any other interest in real property (other than with respect to the Private Development Sites). The parties acknowledge and agree that the Project Company's interest is insufficiently autonomous to constitute more than a mere agency, in part because the Project Company does not have the right and ability to exercise significant authority and control over the management or operation of the real property, separate and apart from the policies, statutes, ordinances, rules, and regulations of the City. The payments to be received by the Project Company under this Project Agreement are solely for services to be performed by the Project Company, and are not payments in the nature of rent, fees with respect to real property, or purchase price of real property.

ARTICLE 4

CONTRACT SERVICES GENERALLY

SECTION 4.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Project Company. The Project Company shall, subject to the terms and conditions of this Project Agreement, design, construct, finance, operate, and maintain the City Facilities, the Shared Facilities, the Shared Rooms and the Port Facilities.

(B) City. The City shall, subject to the terms and conditions of this Project Agreement, enter into the Lenders' Direct Agreement (City), perform the Old Courthouse Demolition Activities and provide access to the City Site and the Port Site in order for the Project Company to carry out its obligations under this Project Agreement, timely review and comment on Project Company submittals in respect of the City Facilities Design-Build Work and the Shared Rooms Design-Build Work and FM Services, and pay the Service Fee, the Port FM Fee and the other amounts required to be paid by the City in accordance with the terms hereof.

(C) Port. The Port shall, subject to the terms and conditions of this Project Agreement, enter into the Lenders' Direct Agreement (Port), provide access to the Port Site in order for the Project Company to carry out its obligations under this Project Agreement, timely review and comment on Project Company submittals in respect of the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work, and pay the Port Completion Payment and the other amounts required to be paid by the Port hereunder to the Project Company for the performance of the Contract Services in respect of the Port Facilities and the Shared Facilities.

(D) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Service Fee, Port FM Fee or Port Completion Payment, as the case may be.

(E) Equal Opportunity; No Discrimination. The Project Company shall comply, and shall cause the Project Contractors and the Subcontractors to comply, with the equal opportunity and non-discrimination laws generally applicable to the City and the Port as if such laws were stated to be applicable to the Project Company, the Project Contractors and the Subcontractors.

SECTION 4.2. DESIGN-BUILD WORK PERSONNEL.

(A) Staffing Requirements. The Project Company shall enforce discipline and good order during the Design-Build Period among the Project Company's employees and the Design-Builder. All persons engaged by the Project Company for Design-Build Work shall have requisite skills for the tasks assigned. The Project Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. All firms and personnel performing Design-Build Work, including Project Contractor and Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Construction Superintendent. The Project Company shall designate from time to time an employee of the Project Company or any Affiliate or an employee of the Project Contractor as the Project Company's construction manager (the "Construction Superintendent"), who shall be present on the Project Site with any necessary assistants on a full-time basis when the Project Company or any Project

Contractor or Subcontractor is performing the Design-Build Work. The Construction Superintendent shall be appropriately trained, experienced and knowledgeable in all aspects of the Design-Build Work so as to knowledgeably interact and communicate with the City, the Port and the Project Contractors and all Subcontractors regarding the Project and appropriately oversee the day-to-day performance of the Design-Build Work. The Construction Superintendent shall, among other things:

- (1) be familiar with the Design-Build Work and all requirements of this Project Agreement;
- (2) coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision;
- (3) maintain a daily status log of the Design-Build Work;
- (4) attend all monthly construction progress meetings with the City and the Port; and
- (5) coordinate, where appropriate, with the Independent Building Expert.

The Project Company shall keep the City and the Port continuously informed of all business telephone, mobile telephone, fax and beeper numbers, e-mail addresses and other means by which the Construction Superintendent may be contacted. The Construction Superintendent shall be available to be contacted by the City and the Port on a continuous 24-hours per day, 7 days per week, 365 days per year basis for emergency response, information, coordination or any other purpose hereunder.

SECTION 4.3. FM SERVICES PERSONNEL.

(A) Staffing Requirements. The Project Company shall staff the FM Facilities during the Operating Period in accordance with the FM Standards with qualified personnel who meet the licensing and certification requirements of Applicable Law. The Project Company shall discipline or replace, as appropriate, any employee of the Project Company, the FM Contractor or any Subcontractor engaging in unlawful, unruly or objectionable conduct. The Project Company shall notify the City and the Port of any material change in staffing levels and positions from time to time, and shall not make any such material change if the new staffing level would adversely affect the ability of the Project Company to provide the FM Services in accordance with the FM Standards.

(B) FM Services Manager. The Project Company shall appoint a manager of FM Services during the Operating Period (the “FM Services Manager”) who shall be licensed, trained, experienced and proficient in the management and operation of institutional public buildings comparable to the FM Facilities, shall be appropriately certified under Applicable Law, and whose primary employment responsibility shall be managing the Project Company’s performance of the FM Services. The Project Company acknowledges that the performance of the individual serving as the FM Services Manager will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the City, the Port and the FM Services Manager will be essential to effectuating the intent and purposes of this Project Agreement. Accordingly, not fewer than 30 days prior to the date on which any candidate for FM Services Manager from time to time during the Term is proposed by the Project Company to assume managerial responsibility for the Project, the Project Company shall:

- (1) provide the City and the Port with a comprehensive resume of the candidate’s licenses, training, experience, skills and approach to management and customer relations; and

(2) afford the City and the Port an opportunity to interview the candidate with respect to such matters.

The City and the Port shall have the right within 30 days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The initial FM Services Manager, a Key Individual, shall not be replaced, unless otherwise approved by the City and the Port in their discretion, for a period of three years from the Final City Occupancy Date, absent death, disability, retirement, resignation or cessation of employment with the Project Company. The Project Company shall replace the FM Services Manager at the request of the City and the Port, after notice and a reasonable opportunity for corrective action, in the event the City and the Port determines, in their discretion, that an unworkable relationship has developed between the FM Services Manager and the City and the Port. Any costs associated with a replacement of the FM Services Manager shall be borne by the Project Company.

Notwithstanding the foregoing or any other provision of this Project Agreement to the contrary, the Project Company shall be permitted to immediately engage a temporary FM Services manager, without the prior approval of the City and the Port, in the event of the FM Services Manager's resignation or a cessation of the FM Services Manager's employment initiated by the Project Company. The Project Company shall have 90 days from the appointment of such temporary FM Services manager to appoint a new FM Services Manager in accordance with the procedures set forth in this Section 4.3(B).

SECTION 4.4. KEY INDIVIDUALS.

Attached as Appendix 13 (Project Company and Project Contractors Information) is a list of persons (the "Key Individuals") that the Project Company shall utilize in undertaking the duties described in this Project Agreement. With respect to each of the Key Individuals:

(1) the Project Company, while the Key Individuals remain within its employment, shall use all reasonable efforts to deploy the Key Individuals to perform the duties described in Appendix 13 (Project Company and Project Contractors Information);

(2) if for any reason a Key Individual resigns, retires, dies, becomes disabled or is terminated for cause, then the Project Company shall retain a replacement with equivalent expertise and experience to the unavailable Key Individual satisfactory to the City and the Port, each acting reasonably, and the Project Company shall not replace such Key Individual without the consent of the City and the Port, each acting reasonably; and

(3) any costs associated with the replacement of a Key Individual shall be borne by the Project Company.

SECTION 4.5. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Project Company shall perform the Contract Services in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law.

(B) Governmental Approvals. The Project Company shall make all filings, applications and reports necessary to be made in order to obtain and maintain all Governmental Approvals required for the performance of the Contract Services and shall comply with the terms of all Governmental Approvals.

(C) Registration, Licensing and Certification Requirements. The Project Company shall ensure that all persons performing the Contract Services, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) Investigations of Non-Compliance. In connection with any actual or alleged event of non-compliance with Applicable Law in the performance of the Contract Services, the Project Company shall, in addition to any other duties which Applicable Law may impose:

- (1) fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;
- (2) attend all meetings and hearings with respect to the Project required by any Governmental Body;
- (3) provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to the City and the Port; and
- (4) promptly upon receipt thereof, provide the City and the Port with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body.

The Project Company shall furnish the City and the Port with a prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Project Company has knowledge of any such event or circumstance, and of any Legal Proceeding alleging such non-compliance. To the greatest extent practicable, the Project Company shall provide the City and the Port an opportunity to review and comment on any proposed Project Company response to any non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) Fines, Penalties and Remediation. Except to the extent excused by Relief Events, in the event that the Project Company, a Project Contractor or any Subcontractor fails at any time to comply with Applicable Law with respect to the Contract Services, the Project Company shall:

- (1) immediately correct such failure and resume compliance with Applicable Law;
- (2) pay any resulting fines, assessments, levies, impositions, penalties or other charges;
- (3) indemnify, defend and hold harmless the City, the Port and the Indemnitees in accordance with Section 27.1 (Project Company's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;
- (4) make all changes in performing the Contract Services which are necessary to assure that the failure of compliance with Applicable Law will not recur; and
- (5) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Project Company, a Project Contractor or any Subcontractor to comply with Applicable Law.

SECTION 4.6. RESTRICTIONS ON CITY-DIRECTED AND PORT-DIRECTED DESIGN REQUIREMENT CHANGES, CAPITAL MODIFICATIONS AND FM SERVICES CHANGES.

Neither the City nor the Port shall at any time during the Term require, and the Project Company may refuse to implement, a Change Order (relating to a City-Directed Design Requirement Change, a Port-Directed Design Requirement Change or a Design Requirement Change made due to a Relief Event), a Capital Modification or an FM Services Change which:

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

Notwithstanding anything to the contrary in this Section 4.6, the failure of the Owner and the Project Company to agree on an adjustment, if any, to the design and construction cost or schedule impact in connection with a Change Order shall not entitle the Project Company to delay, refuse, or otherwise fail to perform a Change Order.

SECTION 4.7. BEST MANAGEMENT PRACTICE AND BEST DESIGN-BUILD PRACTICE. Best Management Practice and Best Design-Build Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Best Management Practice or Best Design-Build Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Project Company, the Project Company shall (1) with respect to the FM Facilities, be relieved of its obligation to comply with such evolved Best Management Practice (but not Best Management Practice as of the Contract Date) unless the City agrees to adjust the Service Fee and the Port FM Fee, (2) with respect to the City Facilities and the Shared Rooms, be relieved of its obligation to comply with such evolved Best Design-Build Practice (but not Best Design-Build Practice as of the Contract Date) unless the City agrees to adjust the Service Fee, and (3) with respect to the Port Facilities and the Shared Facilities, be relieved of its obligation to comply with such evolved Best Design-Build Practice (but not Best Design-Build Practice as of the Contract Date) unless the Port agrees to adjust the Port Completion Payment, in each case on a lump sum or reimbursable basis (subject to Cost Substantiation), as appropriate, to account for such additional costs.

SECTION 4.8. FINANCIAL BOOKS AND RECORDS.

(A) **Recordkeeping Requirements.** The Project Company shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts, costs and transactions in connection with or relating to or arising by reason of the Contract Services, this Project Agreement, the Project Contracts, any Subcontract or any transactions in which the City or the Port has or may have a financial or other material interest hereunder, in each case to the extent required to determine the costs of Design Requirement Changes, Relief Event costs, or other changes in or additions to the Service Fee, Port FM Fee or Port Completion Payment for which the City or the Port is or may be responsible under this Project Agreement. The Project Company shall, and shall cause Project Contractors and Subcontractors to, produce such financial books and records for examination and copying for all such purposes promptly upon request by the City or the Port. All such information upon delivery to the City or the Port shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP. The Project Company shall not be required to provide the City or the Port any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the City or the Port through the Cost Substantiation process, through the use of the Financial Model as contemplated hereunder, or otherwise upon the delivery of financial records for the purposes hereof. The Project Company shall keep and maintain all such financial books and records with respect to each Contract Year until at least the seventh anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending. In the event the Project Company fails to prepare or maintain any financial books, records or accounts as required under this Section, the Project Company shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Project Agreement.

(B) **Inspection, Audit and Adjustment.** The City and the Port shall have the right to perform or commission an inspection or independent audit of the financial information required to be kept under this Section. If an inspection or audit reveals that the Project Company has overstated any component of the Service Fee or Port FM Fee, then the Project Company shall offset against future payments of the Service Fee or Port FM Fee, respectively, as a Service Fee or Port FM Fee adjustment, the overstated amount plus interest at the Prime Rate, from the time such amount was initially overpaid until reimbursed or credited to the City. If the overpayment exceeds 1% of the total amount that should have been properly paid by the City during the period audited, then the Project Company shall, in addition, reimburse the City for any and all fees and costs incurred in connection with the inspection or audit through an adjustment to the Service Fee or Port FM Fee. The foregoing remedies shall be in addition to any other remedies the City or the Port may have, including remedies for a Project Company Event of Default.

SECTION 4.9. DELIVERY OF DOCUMENTS.

(A) **Project Company.** In this Project Agreement, the Project Company is obligated to deliver reports, records, designs, plans, drawings, as-built drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Project Company agrees that all such documents shall be submitted to the Owner both in printed form (in the number of copies indicated) and, at the Owner's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the Owner may reasonably request to facilitate the administration and enforcement of this Project Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) City and Port. The Owner shall make available to the Project Company copies of all information relating to the Project which is in the possession of the Owner and material to the Project Company's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

SECTION 4.10. REGULATED SITE CONDITIONS.

(A) Property Documents. The City has made the Property Documents available to the Project Company and the Project Company has reviewed the Property Documents. Neither the Project Company nor any other entity shall rely on the information contained therein. The City has taken no steps to verify the accuracy of the information contained in the Property Documents but is not aware of any errors therein.

(B) Regulated Site Conditions – Avoidance of Exacerbation. In performing the Design-Build Work, the demolition of the Old City Hall Building, and the FM Services, the Project Company shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition after the location and existence of such Regulated Site Condition has been disclosed to the Project Company in the Property Documents, or becomes actually known by the Project Company through physical observation (including any such observation made during excavations).

(C) Regulated Site Conditions – City Obligations. If at any time the City or the Port receives written notice from a Governmental Body or the Project Company, or the Project Company receives a written notice from a Governmental Body, that a Regulated Site Condition has been determined to exist which:

- (1) reasonably requires a Response Action or other action in order to comply with Applicable Law;
- (2) interferes or delays with the performance of the Design-Build Work or the FM Services;
- (3) increases the cost to the Project Company of performing the Design-Build Work or the FM Services; or
- (4) if not remediated or otherwise corrected, would reasonably be expected to result in the Project Company incurring costs, liabilities or obligations,

then the City shall, unless the City or the Port, as the case may be, partially terminates this Project Agreement pursuant to Section 17.3(D) (City and Project Company Partial Termination Rights) or Section 17.3(E) (Port and Project Company Partial Termination Rights), promptly commence and diligently prosecute Response Actions or other actions as may be necessary under Best Design-Build Practice or Best Management Practice to dispose of, remediate, rectify or otherwise correct the Regulated Site Condition in compliance with Applicable Law. The City shall have the right to contest any determination of a Regulated Site Condition at the Project Site and shall not be required to take any action under this subsection so long as (1) the City is contesting any determination of a Regulated Site Condition in good faith by appropriate proceedings conducted with due diligence, (2) Applicable Law permits continued design and construction or operation (as the case may be) of the Project pending resolution of the contest, so that the Project Company shall have no liability as a result of the failure of the City to remediate or otherwise correct such Regulated Site Condition during the period of contest, and (3) unless the City or the Port, as the case may be, affords the Project Company appropriate relief, the pendency of the City's contest is not otherwise having a material and adverse effect on the Project Company.

(D) Relief for Regulated Site Conditions. A Regulated Site Condition constitutes an Other Relief Event, and the Project Company shall, unless the City or the Port, as the case may be, has partially terminated this Project Agreement pursuant to Section 17.3(D) (City and Project Company Partial Termination Rights) or Section 17.3(E) (Port and Project Company Partial Termination Rights), be entitled to (1) relief on account thereof as provided herein, and (2) compensation for any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense relating to third party claims in connection with a Regulated Site Condition, except to the extent the Project Company fails to exercise due care with respect to a disclosed or known Regulated Site Condition as provided in subsection (B) of this Section.

SECTION 4.11. JOINT APPROVAL BY CITY AND PORT.

If an approval under this Project Agreement must be given by both the City and the Port, then, in the event of a dispute between the City and the Port as to whether the applicable approval should be granted, the City and the Port shall, in good faith, meet and discuss in an attempt to come to a resolution in respect of such approval. If the City and the Port are unable to resolve such dispute within ten Business Days following request for approval by the Project Company, or such longer period for such approval as may be specified in this Project Agreement, such failure shall be deemed to be an Other Relief Event.

ARTICLE 5

FINANCING PERIOD

SECTION 5.1. PROJECT COMPANY RESPONSIBILITIES DURING THE FINANCING PERIOD.

(A) Financing of the Project.

(1) Project Financing. The Project Company shall finance the Project in accordance with the requirements of Article 6 (Project Financing and Refinancing) and the Financing Documents. The Project Company shall achieve City Facilities Financial Close in accordance with the requirements of Article 6 (Project Financing and Refinancing) and the City Facilities Financing Documents. The Project Company shall achieve Port Facilities Financial Close in accordance with the requirements of Article 6 (Project Financing and Refinancing) and the Port Facilities Construction Financing Documents.

(2) Failure to Achieve City Facilities Financial Close. The Project Company shall achieve City Facilities Financial Close by the Financial Close Deadline.

(3) Failure to Achieve Port Facilities Financial Close. The Project Company shall achieve Port Facilities Financial Close by the Financial Close Deadline.

(B) Project Company Financial Close Conditions. Promptly following the Contract Date, the Project Company shall proceed to satisfy all of the following Project Company responsibilities, as soon as practicable and in no event later than the Financial Close Deadline:

(1) City Facilities Financing Documents. The City Facilities Financing Documents shall be subject to the approval of the City, acting reasonably. The Project Company shall deliver to the City copies of the City Facilities Financing Documents following a review and comment period of at least 15 Business Days from the issuance of the first draft and five Business Days from the issuance of the final draft.

(2) Port Facilities Construction Financing Documents. The Port Facilities Construction Financing Documents shall be subject to the approval of the Port, acting reasonably. The Project Company shall deliver to the Port copies of the Port Facilities Construction Financing Documents following a review and comment period of at least 15 Business Days from the issuance of the first draft and five Business Days from the issuance of the final draft.

(3) Deferred Equity Letter of Credit. The Project Company shall provide evidence to the City that all Deferred Equity Amounts in respect of the City Facilities Financing are supported by a Deferred Equity Letter of Credit.

(4) Land Use Entitlements. The Project Company shall obtain all land use entitlements necessary to commence the Design-Build Work.

(5) Required Insurance. The Project Company shall provide evidence that all policies of Required Design-Build Period Insurance have been obtained and are in effect.

(6) No Litigation. The Project Company shall provide a certification in respect of the representation set forth in Section 2.2(E) (No Litigation Affecting the Project Company).

(7) City Approvals. The Project Company shall have submitted to the City, and the City shall have approved, the Financial Model, the Design-Build Agreement and the FM Contract, such approval not to be unreasonably withheld, conditioned or delayed.

(8) Port Approvals. The Project Company shall have submitted to the Port, and the Port shall have approved, the Financial Model, the Design-Build Agreement, and the FM Contract, such approval not to be unreasonably withheld, conditioned or delayed.

(9) Evidence of Construction Security. The Project Company shall provide evidence that the City Facilities Construction Security and the Port Facilities Construction Security are in place. The City's rights in respect of the City Facilities Construction Security will be governed by the City Direct Agreement (Design-Builder) and the Lenders' Direct Agreement (City) and the Port's rights in respect of the Port Facilities Construction Security will be governed by the Port Direct Agreement (Design-Builder) and the Lenders' Direct Agreement (Port).

(C) Notice of Breach. The Project Company shall provide to the City and the Port, promptly following the receipt thereof, copies of any notice of default, breach or noncompliance received under or in connection with any Project Contract or Subcontract pertaining to the Financing Period.

SECTION 5.2. CITY AND PORT RESPONSIBILITIES DURING THE FINANCING PERIOD.

(A) City Financial Close Responsibilities. At the City's cost, and as soon as practicable and in no event later than Financial Close, the City shall:

(1) either (a) relocate or cause to be relocated the Los Angeles County storm water pipe located along the east edge of the Pacific Site and obtain from the Los Angeles County Flood Control District a release and quitclaim of any rights it may have to any part of the Pacific Site, or (b) enter into a definitive agreement, which shall include a guaranteed completion date and specify the source of funds to be used to satisfy the City's obligations under such definitive agreement, in form reasonably acceptable to the Project Company providing for the relocation and removal of such storm water pipe;

(2) provide a certification that, to the best of the City's knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced in respect of the CEQA approval with respect to the Project; and

(3) at the City's cost, deliver to the Project Company copies of the Lenders' Direct Agreement (City) duly executed by the City, as well as such other opinions (including as to due authorization, authority and enforceability), instruments, documents, and certificates required for Financial Close as may be reasonably requested by the Project Company consistent with prior public-private partnership projects in the United States of America.

(B) Port Financial Close Responsibilities. At the Port's cost, and as soon as practicable and in no event later than Financial Close, the Port shall deliver to the Project Company copies of the Lenders' Direct Agreement (Port) duly executed by the Port, as well as such other opinions (including as to due authorization, authority and enforceability), instruments, documents, and certificates required for Financial Close as may be reasonably requested by the Project Company consistent with prior public-private partnership transactions in the United States.

SECTION 5.3. PORT SITE PROCEEDS AMOUNT.

At City Facilities Financial Close, the City will pay to the Project Company an amount equal to the Port Site Proceeds Amount.

ARTICLE 6

PROJECT FINANCING AND REFINANCING

SECTION 6.1. RIGHT AND RESPONSIBILITY TO FINANCE PROJECT.

(A) City Facilities Financing. The parties acknowledge and agree that:

(1) the City Facilities and the Shared Rooms will be financed by the Project Company through a combination of (i) capital contributed by the Project Company and deposited with the Collateral Agent, and (ii) proceeds of the issuance of long term debt in accordance with the City Facilities Financing Documents, which financing shall in no event encumber or subordinate the interests of the Port or the City in the Port Site or the City Site, except as set forth in the Lenders' Direct Agreement (City);

(2) prior to the Occupancy Date of the City Hall Building, the Equity Ratio shall be greater than or equal to eight percent (8%);

(3) in connection with the City Facilities Financing, the Project Company will provide to the Collateral Agent one or more letters of credit in support of Deferred Equity Amounts in accordance with the City Facilities Financing Documents; and

(4) the City Facilities Financing Documents and the Lenders' Direct Agreement (City) shall provide that, in accordance with the Lenders' Direct Agreement (City), the City may assume the City Facilities Senior Debt in the event of a partial termination or termination of this Project Agreement by the City; except the City shall have no right to assume the City Facilities Senior Debt in the case of (a) a termination or partial termination of this Project Agreement by the Project Company for a City Event of Default in accordance with Section 23.2 (Project Company Options Upon City Event of Default), or (b) a termination of this Project Agreement for a City Non-Appropriation Event in accordance with Section 25.1(F)(2).

(B) Port Facilities Financing. The parties acknowledge and agree that:

(1) the Port Facilities and the Shared Facilities will be financed by the Project Company through the issuance by the Project Company of short-term or construction debt in accordance with the Port Facilities Construction Financing Documents which financing shall in no event encumber or subordinate the interests of the Port or the City in the Port Site or the City Site, except as set forth in the Lenders' Direct Agreement (Port); and

(2) the Port Facilities Construction Financing Documents and the Lenders' Direct Agreement (Port) shall provide that, in accordance with the Lenders' Direct Agreement (Port), the Port may assume the Port Facilities Senior Debt in the event of a partial termination or termination of this Project Agreement by the Port; except the Port shall have no right to assume the Port Facilities Senior Debt in the case of (a) a partial termination of this Project Agreement for its convenience in accordance with Section 24.1(C)(1), (b) a termination or partial termination of this Project Agreement by the Project Company for a Port Event of Default in accordance with Section 23.4 (Project Company Options Upon Port Event of Default), or (c) a termination of this Project Agreement for a Port Non-Appropriation Event in accordance with Section 25.1(F)(2).

(C) Sources and Uses. As of the Contract Date, the anticipated sources and uses of funds are as follows:

Civic Center Sources and Uses

in FY 16 \$ Millions		
Sources	Amount	%
Private Taxable Debt Borrowed by PECP	(236.66)	79%
Equity Funding by PECP	(21.02)	7%
City Cash/Other borrowing	(10.78)	4%
Land Sales	(29.70)	10%
Total Sources	(298.17)	

in FY 16 \$ Millions		
Uses	Amount	%
Design, Construction, Contingency	218.09	73%
Prepayment of Existing Debt	17.60	6%
Transaction Costs and Fees	18.73	6%
Financing Costs and Fees	37.72	13%
Pre-Occupancy Costs	6.04	2%
Total Uses	298.17	

(D) Financing True-Up. By no later than April 1, 2019, the Project Company shall transfer \$[8,455,586]⁶ from the construction fund with respect to the City Facilities Financing to the construction fund with respect to the Port Facilities Financing, which funds shall then be applied in accordance with the Port Facilities Construction Financing Documents.

(E) Guarantee. The Project Company shall not agree to any amendment or modification to the guarantee of the Design-Builder’s obligations under the Design-Build Agreement given by Clark Construction Group, LLC to the Project Company without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the City and the Port.SENIOR DEBT NON-RECOURSE TO CITY OR PORT.

All Senior Debt or other obligations issued or incurred by the Project Company in connection with this Project Agreement or the Project shall be issued or incurred only in the name of the Project Company. The City and the Port shall have no obligation to pay debt service on any Senior Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Project Company or the Financing Documents (other than the Lenders’ Direct Agreements).

SECTION 6.3. COMPLIANCE WITH FINANCING DOCUMENTS.

If at any time the Project Company receives a notice that an “event of default”, any event entitling the Senior Lenders to enforce any security or any other similar event has occurred under the Financing Documents, the Project Company shall forthwith deliver to the City or the Port, as applicable, a copy of such notice.

SECTION 6.4. CHANGES TO FINANCING DOCUMENTS.

The Project Company shall not without the written consent of the City (in respect of the City Facilities Financing Documents) or the Port (in respect of the Port Facilities Construction Financing Documents), such consent not to be unreasonably withheld or delayed, terminate, amend or otherwise modify the Financing Documents, or waive or exercise any of its rights under the Financing Documents if such action would materially adversely affect the Project Company’s ability to perform its obligations under this Project Agreement or have the effect of materially increasing any liability or potential liability

⁶ To be updated prior to execution and delivery of this Project Agreement.

of the Project Company, the City or the Port. If at any time any material amendment is made to any Financing Document or the Project Company enters into any replacement Financing Document (or any agreement which affects the interpretation or application of any Financing Document), the Project Company shall deliver to the City (in respect of the City Facilities Financing Documents) or the Port (in respect of the Port Facilities Construction Financing Documents), a copy of each such material amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 6.5. REFINANCING.

(A) Consent Required for Refinancing. The Project Company shall not enter into any Refinancing without the prior written consent of the City (in respect of the City Facilities Financing) or the Port (in respect of the Port Facilities Construction Financing), such consent not to be unreasonably withheld, conditioned or delayed. The Project Company shall provide written notice of any Refinancing to the City or the Port, as the case may be, no later than 30 days prior to the expected closing date of such Refinancing, which notice shall include:

- (1) all proposed revisions to the applicable Financing Documents;
- (2) a copy of the proposed updates to the applicable Financial Model; and
- (3) the basis for the assumptions and calculations used in the proposed updates to the applicable Financial Model.

(B) Allocation of Refinancing Gain. The Project Company shall be entitled to one hundred percent (100%) of any gain associated with a Refinancing.

(C) City and Port Cooperation. The City (in respect of a Refinancing of the City Facilities Financing) and the Port (in respect of a Refinancing of the Port Facilities Construction Financing) shall cooperate, as reasonably requested by the Project Company, in connection with the closing of any Refinancing, including entering into a Lenders' Direct Agreement (City) or a Lenders' Direct Agreement (Port), as the case may be, in connection therewith and providing customary legal opinions and instruments and other documents.

(D) City's and Port's Expenses. The Project Company shall pay the City's and the Port's reasonable internal administrative and personnel costs and all reasonable and properly incurred out-of-pocket professional costs in connection with a Refinancing. At the time of the request for consent, the Project Company will make a payment to the City or the Port, as the case may be, against its obligation under this subsection of \$50,000 (Index Linked) in respect of the consent under Section 6.4 (Changes to Financing Documents) or \$25,000 (Index Linked) in respect of the consent under this subsection. After the decision of the City or the Port, as the case may be, is rendered, the City or the Port, as the case may be, will either refund any over payment or invoice the Project Company for any additional amounts due under this subsection.

SECTION 6.6. FINANCING CAPITAL COSTS FOR WHICH THE OWNER IS RESPONSIBLE.

(A) Owner Financing. Any (1) increase in design and construction costs required due to a Relief Event pursuant to Section 7.10 (Design Requirement Changes Made Due to Relief Events) or for City-directed Design Requirement Changes and Port-directed Design Requirement Changes pursuant to Section 7.11 (Design Requirement Changes Made at City or Port Direction), (2) costs for Capital

Modifications required due to a Relief Event pursuant to Section 10.4 (Capital Modifications Required Due to Relief Events) or at the Owner's direction pursuant to Section 10.5 (Capital Modifications at Owner Direction), and (3) costs for Design-Build Work or Reinstatement Works required due to an Uninsurable Force Majeure Event occurring prior to the Occupancy Date in respect of a Facility for which the Owner is responsible pursuant to Section 16.2(C) (Compensation for Uninsurable Force Majeure Events Occurring Prior to the Occupancy Date in respect of a Facility), shall be paid by the Owner, on a negotiated lump sum basis in accordance with Section 18.12 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation), to the Project Company or to the third party entitled to receive such payments. In the event the Owner determines to finance such payments rather than use currently available funds, the Owner shall provide such financing unless otherwise agreed pursuant to subsection (B) of this Section.

(B) Project Company Financing. At the Owner's request, and subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds) the Project Company shall use all reasonable efforts to obtain the financing required to pay the capital costs that the Owner is obligated to pay for as referred to in subsection (A) of this Section on commercially reasonable terms and subject to any applicable consent or other requirements under the Financing Documents; provided, however, in no event shall the Project Company be obligated to undertake any such financing if doing so could reasonably be expected to materially adversely affect its rights or obligations under this Project Agreement. To the extent the Project Company is able to obtain such financing, the cost of the financing will be taken into consideration by the parties in the negotiation of the adjustment of the Service Fee, Port FM Fee or Port Completion Payment resulting from the implementation of the Capital Modification. The Owner shall pay the Project Company an amount equal to the reasonable out-of-pocket expenses incurred by the Project Company in seeking such financing, provided that the Owner approved such expenses prior to the Project Company incurring them.

(C) No Senior Lender Obligation. The parties acknowledge that the Senior Lenders have no obligation to provide the financing referred to in this Section 6.6 or to subordinate or, except as otherwise set forth in the Lenders' Direct Agreements, share their security.

SECTION 6.7. PREPAYMENT OF EXISTING BONDS

On or before [June 25, 2019]⁷, the Project Company shall make a payment in the amount of \$17,595,000 to the City for the purpose of prepaying the lease payments under the 2010 Lease Agreement, dated as of August 1, 2010, by and between the Long Beach Bond Finance Authority, as sublessor, and the City, as sublessee, as amended from time to time (the "2010 Lease Agreement") with respect to the Existing Bonds, and the City shall prepay such lease payments under the 2010 Lease Agreement as contemplated in this Section 6.7.

SECTION 6.8. TWO AGREEMENTS.

The City, the Port and the Project Company acknowledge that for the purposes of the City Facilities Financing and the Port Facilities Construction Financing only, during the Design-Build Period, this Project Agreement shall for all purposes constitute and be treated as two separate and divisible contracts whereby all provisions relating to the Port Facilities and the Shared Facilities shall constitute one contract (the "Port Project Agreement"), all provisions relating to the City Facilities and the Shared Rooms shall constitute another contract (the "City Project Agreement"), and where any provision of this Project Agreement is silent as to whether it applies to the Port Facilities or the Shared Facilities, on the

⁷ To be updated prior to execution and delivery of this Project Agreement.

one hand, or the City Facilities or the Shared Rooms, on the other hand, such provision shall apply to each of the Port Project Agreement and the City Facilities Project Agreement. In furtherance of the foregoing, the City, the Port and the Project Company further agree that during the Design-Build Period the Project Company can be replaced by a Suitable Substitute Project Company with respect to the City Project Agreement or the Port Project Agreement, as the case may be without any change to the Project Company with respect to the other Project Agreement and as set forth more fully in the Lenders' Direct Agreements. Nothing herein shall be construed to limit the ability of the Project Company to be replaced by a Suitable Substitute Project Company during the Operating Period in accordance with the Lenders' Direct Agreement (City). Notwithstanding anything to the contrary herein, this Section shall not be interpreted to impose duplicative obligations on the Project Company or to expose the Project Company to greater obligations or liability than if this Project Agreement was a single agreement. In furtherance of the foregoing, (i) the Port agrees that it will not exercise its rights hereunder or under the Port Direct Agreement (Design-Builder) that would have a material adverse effect on the design, construction or operation of the City Facilities and the Shared Rooms, and (ii) the City agrees that it will not exercise its rights hereunder or under the City Direct Agreement (Design-Builder) that would have a material adverse effect on the design, construction or operation of the Port Facilities and the Shared Facilities. To the extent that any exercise by the Port hereunder negatively impacts the City Facilities and the Shared Rooms, or to the extent that any exercise by the City hereunder negatively impacts the Port Facilities and the Shared Facilities, it shall be deemed to be an Other Relief Event.

ARTICLE 7

DESIGN AND CONSTRUCTION

SECTION 7.1. DESIGN-BUILD WORK GENERALLY.

(A) Commencement and Prosecution of Design-Build Work.

(1) On the Financial Close date, the Project Company shall promptly proceed to undertake, perform and complete the City Facilities Design-Build Work in accordance with the Contract Standards. The Project Company's failure to satisfy the Occupancy Readiness Conditions in respect of a City Facility by or before the Scheduled Occupancy Date for such City Facility shall result in the loss of the Service Fee scheduled to be paid by the City under Section 18.1 (Service Fee, Port FM Fee and Port Completion Payment Generally) during the period of delay. Failure to achieve the Final City Occupancy Date by the City Longstop Date shall constitute a Project Company Event of Default upon which the City may partially terminate this Project Agreement for cause in accordance with Section 24.1(B) (City Partial Termination Rights).

(2) On the Financial Close date, the Project Company shall promptly proceed to undertake, perform and complete the Port Facilities Design-Build Work in accordance with the Contract Standards. Failure to achieve the Port Occupancy Date by the Port Longstop Date shall constitute a Project Company Event of Default upon which the Port may partially terminate this Project Agreement for cause in accordance with Section 24.1(C) (Port Partial Termination Rights).

(3) On the Financial Close date, the Project Company shall promptly proceed to undertake, perform and complete the Shared Facilities Design-Build Work and the Shared Rooms Design-Build Work in accordance with the Contract Standards.

(4) At least 10 Business Days prior to the Financial Close date, the Project Company shall deliver to the City and the Port a site plan, subject to final design and engineering considerations, of the Project Site showing:

(a) that the proposed location of the Project on the City Site and the Port Site is in compliance with all applicable building and setback lines and does not encroach on or interfere with existing easements (whether on, above or below ground), except for any existing easements to be vacated in connection with the Project (the expected date of such vacations to be indicated on the site plan); and

(b) no encroachments from the Project extending to adjacent property or, except as set forth in Appendix 1 (City Site), from adjacent property onto the Project, nor any gaps, gores, projections, protrusions or other survey defects created by the location of the Project, except for any such encroachments, gaps, gores, projections, protrusions or other survey defects that may exist as a result of the Old Courthouse Demolition Activities.

(B) Project Company Control of the Design-Build Work; No City or Port Responsibility. Subject to the rights of the City and the Port to issue Change Orders hereunder, the Project Company shall have total control of the Design-Build Work and shall effectively direct and supervise the Design-Build Work so that it is undertaken in compliance with the terms of this Project Agreement. The Project

Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the Contract Standards; the fact that the RFP included certain minimum conceptual design criteria for the Design-Build Work and the D&C Standards that the Project would be required to meet; or the fact that in negotiating this Project Agreement, between the date the Project Company was selected as the preferred proposer pursuant to the RFP and the Contract Date, the City and the Port participated in certain design development activities that resulted in the finalization of the Design Requirements. The Project Company acknowledges that such minimum conceptual design criteria do not in any manner or to any degree impair the Project Company's ability to perform the Design-Build Work and the FM Services in compliance herewith. Nothing in this Project Agreement shall be interpreted as giving any responsibility for the Design-Build Work to the City or the Port, any Indemnitee, or to the Independent Building Expert. The City's rights of review and comment with respect to any aspect of the City Facilities Design-Build Work and the Shared Rooms Design-Build Work and the Port's rights of review and comment with respect to any aspect of the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work shall be for the City's and the Port's respective benefit only, and no review or comment by the City Representative, the Port Representative, any City Person, or any Port Related Party shall in any way relieve the Project Company of its obligation for all aspects of the Design-Build Work of the Project. Additionally, if, the City, the Port and the Project Company agree to specific changes to the Contract Standards that agreement shall be binding on the parties.

(C) Materials, Labor and Services. The Project Company shall furnish all necessary architectural, design and engineering services, labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and utilities, completed structures, assemblies, fabrications, acquisitions, installations, testing, accounting, recordkeeping and other things and services of every kind whatsoever necessary for the full performance and completion of the Project Company's design, engineering, construction, start-up, commissioning, obtaining and maintaining Governmental Approvals and related obligations with respect to the design, construction and commissioning of the Project during the Design-Build Period under this Project Agreement. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Work shall be new, of recent manufacture, and of good quality.

(D) Project Sequencing, Schedule and Reports. The Project Company shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. The Project Company shall prepare and provide the City and the Port with the "critical path method" Project Schedule in accordance with Appendix 6 (Design-Build Work Review Procedures). Throughout the Design-Build Period, the Project Company shall submit to the City and the Port a monthly progress schedule and report in accordance with the requirements of Appendix 6 (Design-Build Work Review Procedures). The Project Company's submission of the monthly progress schedule and report (or any revised progress schedule and report) is for the City's and the Port's information only and shall not limit or otherwise affect the Project Company's obligations to achieve the Project Occupancy Date by the Scheduled Project Occupancy Date. The City's and the Port's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the City or the Port in any manner and shall not imply City or Port approval or consent to any of the matters set forth therein.

(E) Design Requirements. The Project Company shall perform the Design-Build Work in compliance with the Design Requirements. The Design Requirements are intended to include the basic design principles, concepts and requirements for the Design-Build Work but do not include the final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work or for achieving the Project Occupancy Date. The Project Company agrees to prepare and furnish all necessary detailed designs, plans, drawings and

specifications in conformity with the Design Requirements. The Project Company further agrees that it shall not have the right to bring any claim whatsoever against the City or the Port or any of their consultants or subcontractors, arising out of any designs, plans, drawings or specifications included in the RFP or made available during the procurement process.

(F) Standards of Workmanship and Materials. Where this Project Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Project Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Design Requirements, and the Design Requirements are to be interpreted accordingly. All structures, improvements, fixtures, machinery, equipment, systems and materials (including workmanship and services) furnished and incorporated into the Port Facilities under this Project Agreement shall be of the quality as specified by the Port as reflected in Appendix 5 (D&C Standards). For each of the Design Development Drawings, the Project Company shall provide a comparison of specifications for the Port Facilities to those of the City Facilities and provide reasonable opportunity for the Port to request a commensurate change to such items in respect of the Port Facilities. During construction of the Facilities the Project Company will review Design Change Notices (as defined in Section 4.3 of Appendix 6) for the City Facilities with the Port and provide reasonable opportunity for the Port to request a commensurate change to such items in respect of the Port Facilities. Changes requested by the Port in accordance with this Section shall be implemented as Port-directed Design Requirement Changes in accordance with Section 7.11 (Design Requirement Changes made at City or Port Direction).

(G) Technical Standards and Codes. References in this Project Agreement to all professional and technical standards, codes and specifications, except as otherwise provided in Appendix 5 (D&C Standards), are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Design Requirements, and (2) if any material revision occurs, to the Project Company's knowledge, after the Contract Date, and prior to completion of the applicable Design-Build Work, the Project Company shall notify the City and the Port. If so directed by the City (with respect to Design-Requirements applicable to the City Facilities and Shared Rooms) or the Port (with respect to Design-Requirements applicable to the Port Facilities and Shared Facilities), the Project Company shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code, or specification and such direction shall be deemed to be an Other Relief Event.

(H) Deliverable Material. The Project Company shall deliver to the Owner all design documents, reports, submittals and other materials ("Deliverable Material") required to be delivered under Appendix 6 (Design-Build Work Review Procedures), Appendix 7 (Project Commissioning), Appendix 9 (Insurance Requirements) and Appendix 12 (Reports and Records). With respect to those Deliverable Materials required to be delivered within a certain number of days after the date of Financial Close under Appendix 5 (D&C Standards), Appendix 6 (Design-Build Work Review Procedures), Appendix 7 (Project Commissioning), Appendix 9 (Insurance Requirements) and Appendix 12 (Reports and Records), such obligation to provide such Deliverable Materials shall be counted from the date of Financial Close. The Owner shall have the right from and after the Contract Date to use (or permit use of) all such Deliverable Material, all oral and written information received by the Owner in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation and for any purpose at the Project Site. The Owner's use of any such Deliverable Material for any purpose other than the Project shall be at its own risk and the Project Company shall have no liability therefor.

(I) Payment of Costs. Except as otherwise expressly provided or referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), the Project Company shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Project Company; obtaining and maintaining the City Facilities Construction Security, the Port Facilities Construction Security and the Required Insurance; financing costs; payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Project Company; sales, use and similar Taxes on building supplies, materials and equipment; general supervision by the Project Company of all Design-Build Work; the preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Substantial Completion, Occupancy Readiness and Final Completion.

(J) Quality Assurance and Quality Control. The Project Company shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the DB Quality Management Plan, which shall be developed by the Project Company in accordance with Appendix 6 (Design-Build Work Review Procedures).

(K) Naming and Signs. The City shall have the exclusive right to name the City Facilities, and the Shared Rooms, and any parts thereof. The Port shall have the exclusive right to name the Port Facilities and the Shared Facilities, and any parts thereof. The Project Company shall provide and maintain temporary Project identification and information signs during the Design-Build Period. No signs shall be erected (other than those required pursuant to Section 7.12(B)(2) (Safety and Security)) until their appearance, content, and location have been fully reviewed and approved by the City or the Port (as applicable), which approval shall not unreasonably be withheld, conditioned or delayed. The Project Company shall remove temporary signs from the Project Site when they are no longer necessary.

(L) Laydown Areas. Laydown and staging areas for construction materials shall be located on the Project Site or at other locations arranged and paid for by the Project Company.

(M) Maintenance of the Project Site. During performance of the Design-Build Work, the Project Company shall be responsible for the overall maintenance of the Project Site, including dust control; provided, however, that the Project Company shall have no maintenance obligations in respect of the existing library and such overall maintenance obligations in respect of Lincoln Park shall not commence until it is under active construction, and such overall maintenance obligations in respect of the Lincoln Garage and Broadway Garage shall not commence until the City Hall Occupancy Date (except that while active construction is taking place in the Lincoln Garage, the Project Company shall provide barricades indicating safe paths of travel and overall maintenance in the areas affected by such active construction), and such overall maintenance of the Old Courthouse Site shall not commence until the City has performed the Old Courthouse Demolition Activities. The Project Company shall keep the Project Site neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Site as they accumulate in accordance with the Contract Standards.

(N) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the City Facilities shall pass to the City, title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Port Headquarters Building shall pass to the Port, and title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Shared Facilities, the Shared Rooms and the New Parking Facility shall pass jointly to the City and the Port, in each case upon incorporation in the Project, free and clear of all Liens, other than Permitted Encumbrances, as provided in subsection (O) of this Section. Upon incorporation of each such Facility in the Project, free and clear of all Liens, other than Permitted Encumbrances, (1) the

City shall be deemed to own fifty percent (50%) of the Loading Docks & Ramps, fifty-six percent (56%) of each of the Central Utility Plant & Utility Yard and solar energy systems, fifty percent (50%) of the Civic Plaza, and eight percent (8%) of the New Parking Facility, and (2) the Port shall be deemed to own fifty percent (50%) of the Loading Docks & Ramps, forty-four percent (44%) of each of the Central Utility Plant & Utility Yard and solar energy systems, fifty percent (50%) of the Civic Plaza, and ninety-two percent (92%) of the New Parking Facility. The Project Company shall, however, subject to the Relief Event provisions hereof, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials constituting a Facility until Substantial Completion of such Facility, regardless of the extent to which the loss was insured or the availability of Insurance Proceeds.

(O) Encumbrances. The Project Company shall not directly or indirectly, without the consent (not to be unreasonably conditioned, withheld, or delayed) of the Owner, create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance arising on the Project, the Project Site or the Design-Build Work, other than Permitted Encumbrances, arising out of the Project Company's construction of the Project.

(P) Compliance with Easements and Limits; Surveying. The Project Company shall construct the Project in compliance with the requirements of the easements, exceptions to title, limits and setback requirements identified in Appendix 1 (City Site) and Appendix 2 (Port Site); shall perform all construction surveying necessary in connection therewith; and shall preserve or replace as necessary all existing property line and corner survey monuments encountered.

(Q) Utilities. The Project Company shall make all arrangements necessary to secure the availability of all Utilities required to construct and operate the Project in the capacities required hereunder. The Project Company shall not interrupt Utilities serving facilities then occupied by the City or the Port without the prior consent of the City or the Port, as the case may be.

(R) Relocation of Existing Utilities. Except as set forth in Section 5.2(A)(1), the Project Company shall be responsible for all construction activities required with regard to existing utility services and installations (e.g., conduits, pipelines, transmission mains and other utility equipment and appurtenances), including any relocation of Utilities, whether such construction activities are performed by the Project Company or by the owner of the existing utility. Residents shall be informed in advance of work that affects their utility service. A reasonable effort shall be made to coordinate with the needs of the affected residents.

(S) Latent Structural Defects in the Broadway Garage. The existence of a latent structural defect in the Broadway Garage that results in a systemic failure shall constitute an Other Relief Event.

(T) Latent Structural Defects in the Lincoln Garage. The existence of a latent structural defect in the Lincoln Garage discovered prior to the Library Occupancy Date shall constitute an Other Relief Event if such defect could not have been known or reasonably predicted or rectified (1) based on observations, investigations, inspections or testing of the Lincoln Garage made in accordance with Best Design-Build Practice, or (2) based on the data and information set forth in the Property Documents, the D&C Standards and the Contract Standards.

(U) Software Programming. The Project Company's obligation to perform the Design-Build Work includes the obligation to provide all software programming for the monitoring instrumentation and controls relating to the Project.

(V) Notice of Default. The Project Company shall provide to the Owner, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in

connection with any Governmental Approval, or Project Contract pertaining to the Design-Build Period, that may have a material and adverse effect on performance by the Project Company of its obligations in respect of a Facility under this Project Agreement.

(W) Continued Performance. Except as set forth in Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds), the Project Company shall not delay or postpone any Design-Build Work pending resolution of any disputes or disagreements, including any cost and schedule adjustments associated with a Change Order, except as the Owner and Project Company may otherwise agree in writing. Pending final resolution of a dispute or disagreement, the Project Company shall proceed diligently with performance of the Design-Build Work and the Owner shall continue to make payments for undisputed Design-Build Work in accordance with this Project Agreement. Except as set forth in Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds), in the event of disputed Design-Build Work or a Unilateral Change Order, the Owner shall have the right to unilaterally issue a Work Directive and the Project Company shall, notwithstanding its rights under Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications, and FM Services Changes), continue performance pending resolution of the dispute and shall maintain accounting and cost data in accordance with Section 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiations).

SECTION 7.2. FAMILIARITY WITH THE PROJECT SITE.

The Project Company acknowledges that the Project Company's agents and representatives have visited, inspected and are familiar with the Project Site, its surface physical condition relevant to the obligations of the Project Company pursuant to this Project Agreement, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions; that the Project Company is familiar with all local and other conditions which may be material to the Project Company's performance of its obligations under this Project Agreement (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed all information regarding the Project Site provided to it hereunder or obtained in the course of performing its obligations under this Project Agreement, has made any other investigations that it deems necessary to make a determination as to the suitability of the Project Site; and that based on the foregoing, the Project Site constitutes acceptable and suitable sites for the construction of the Project in accordance herewith, and the Project can be constructed on the Project Site by the City Scheduled Occupancy Date and the Port Scheduled Occupancy Date, as applicable, and within the construction cost upon which the Service Fee and the Port Completion Payment are based.

SECTION 7.3. REGULATORY APPROVALS.

The Project Company shall be responsible for compliance with the Regulatory Approvals related to the Project. The Project Company shall not be responsible for compliance with the Regulatory Approvals or Governmental Approvals related to the demolition and removal of the Old Courthouse or the preparation of the Old Courthouse Site or the Lincoln Park cannon. Notwithstanding anything to the contrary contained herein, any of the following shall constitute an Other Relief Event: (a) failure by the City Council to certify the SEIR and the Site Master Plan for the Project and to approve the Project, (b) any change concerning the requirements or conditions of the Downtown Plan Program EIR, the SEIR, the Site Master Plan, and related conditions of approval (including but not limited to the final mitigation measures set forth in the Mitigation Monitoring and Reporting Program (as defined in the SEIR) after approval by the Planning Commission or the City Council, or (c) any other change to the requirements or conditions of the Downtown Plan Program EIR, the SEIR or the Site Master Plan, including, but not limited to a challenge to or appeal of the SEIR or Site Master Plan approvals.

SECTION 7.4. SUBSURFACE EXCAVATIONS AND CONDITIONS.

(A) Subsurface Excavations. All underground structures known to the City and the Port have been identified to the Project Company. This information is provided for the assistance of the Project Company, but is not guaranteed to be correct or complete. Prior to commencing any trenching or excavations, the Project Company shall conduct investigations, including exploratory excavations and further borings, to determine the location and type of underground structures that could be damaged as a result of the excavations. Such underground structures include, but are not limited to, all sewer, water, gas, and other piping, and manholes, chambers, electrical conduits, wires, tunnels and other existing subsurface work located within or adjacent to the Project Site. The Project Company shall carefully sustain in their places and support, or if necessary relocate, all underground and surface structures located within or adjacent to the Project Site and as required by the party owning or controlling such structure. Before proceeding with the work of sustaining and supporting such structure the Project Company shall satisfy the City (with respect to the City Site) and the Port (with respect to the Port Site) that the methods and procedures to be used have been approved by the party owning same. Existing surface facilities which are temporarily removed to facilitate installation of the Design-Build Work shall be replaced and restored to their original condition. The Project Company shall notify the City (with respect to the City Site) and the Port (with respect to the Port Site) five Business Days in advance of any work that might impact utilities of residents and shall coordinate with the applicable Utility Company regarding the notification of the customers of such Utility Company impacted by such work. The Project Company shall notify the City (with respect to the City Site) and the Port (with respect to the Port Site) five Business Days in advance of any Design-Build Work which might impact the supply of Utilities to the City or the Port, and shall not proceed with such Design-Build Work without the consent of the City or the Port, as the case may be, such consent not to be unreasonably withheld, conditioned or delayed. In the event that such events may foreseeably affect the use and occupancy of the Old City Hall Building or any completed and occupied Facility, the Project Company and the City or the Project Company and the Port, as the case may be, shall meet and confer in advance of such Design-Build Work in order to minimize such impact. In the event that the Project Company takes any action which unexpectedly impacts Utilities at the Old City Hall Building the Project Company shall use commercially reasonable efforts to promptly reinstate such Utilities.

(B) Differing Site Conditions. The Project Company shall be responsible for the first \$1,000,000 in direct and indirect costs and schedule impacts resulting from Differing Site Conditions (which shall be applied first to any Differing Site Conditions encountered at the Old Courthouse Site, and thereafter to any Differing Site Conditions encountered at (1) that portion of the Lincoln Park Site upon which the Library will be constructed, or (2) that portion of the Lincoln Garage that will support the Library). To the extent that the Project Company incurs any direct and indirect costs and schedule impacts resulting from Differing Site Conditions in excess of \$1,000,000, such incurrence shall be an Other Relief Event.

SECTION 7.5. DESIGN-BUILD GOVERNMENTAL APPROVALS.

(A) Generally. The Project Company shall make all applications and take all other action necessary to obtain and maintain all Design-Build Governmental Approvals, including storm water pollution prevention plan (SWPPP) permits, and shall pay all fees, costs and charges due in connection therewith. Fee credits, including without limitation offsets to the Transportation Improvement Fees creditable under Section 18.17.110 of the Long Beach Municipal Code against fees otherwise payable for improvements constructed by the Project Company, shall accrue to the benefit of the Project Company. Where required under Applicable Law, such applications shall be made in the name of the City or the Port, as applicable, subject to the City's or the Port's rights hereunder. The Project Company shall manage the process of obtaining the Design-Build Governmental Approvals in a manner which affords

the City or the Port, as applicable, a reasonable opportunity to review and comment on the basis upon which such Design-Build Governmental Approvals shall be obtained, as provided in Appendix 6 (Design-Build Work Review Procedures).

(B) Limited Permitting Assistance by the City and the Port. The City and the Port shall provide reasonable assistance to the Project Company in connection with the Project Company's obligation to obtain and maintain the Design-Build Governmental Approvals required under this Section. In respect of the Project Company's primary role in the permitting and development of the Project, such assistance shall be limited to signing permit applications, acting as permit applicant, attending public hearings and meetings of the Governmental Bodies charged with issuing the Design-Build Governmental Approvals, and providing the Project Company with existing relevant data and documents that are within the City's or the Port's custody or control or are reasonably obtainable by the City or the Port and which are reasonably required for such purpose. Any such assistance shall be provided only upon the reasonable request of the Project Company made directly to the City or the Port, and the City or the Port, as applicable, shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the City or the Port to staff the Project Company's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Design-Build Governmental Approvals. Neither the City (in its non-regulatory capacity) nor the Port, however, shall take any action which seeks to cause the denial or delay of any application for any Design-Build Governmental Approval.

(C) Project Company Assumption of Permitting Risk for Design-Build Work. The Project Company explicitly assumes the risk of obtaining and maintaining the Design-Build Governmental Approvals, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body; provided, however, that the Project Company shall be afforded relief from the assumption of such risk in the event of the occurrence of any Change in Law Event or Other Relief Event. In assuming this risk, the Project Company acknowledges in particular that the Governmental Body issuing any Design-Build Governmental Approval may impose terms and conditions which require the Project Company to make changes or additions to the Project or Project operations which may increase the cost or risk to the Project Company of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Project Company.

SECTION 7.6. PROJECT COMPANY DESIGN – GENERAL.

(A) Design Considerations. The design for the Project undertaken and performed by the Project Company shall:

(1) be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the Contract Date, and the Project Company shall appoint a design team that:

(a) is so qualified;

(b) includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the standard set forth in this Project Agreement;

(2) include specific consideration of “constructability” and “life cycle” cost issues at all stages of design, as appropriate; and

(3) include consideration of efficient and cost-effective operation and maintenance.

(B) Review and Comment on Design Documents. The Project Company shall provide the Owner with the design submittal protocol in accordance with the specific requirements set forth in Appendix 6 (Design-Build Work Review Procedures). The City shall have the right to review and comment on all Design Documents applicable to the City Facilities and the Shared Rooms and the Port shall have the right to review and comment on all Design Documents applicable to the Port Facilities and the Shared Facilities, as provided in Appendix 6 (Design-Build Work Review Procedures), in order to confirm the compliance and consistency of the Design Documents with the Design Requirements. In no event shall the Project Company proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol and Appendix 6 (Design-Build Work Review Procedures). The Project Company shall give due consideration and provide written responses, in the time and manner provided in Appendix 6 (Design-Build Work Review Procedures), to any comments delivered by the City or the Port as to the Project Company’s design submittals. Save to the extent the Project Company is entitled to an Other Relief Event pursuant to Section 7.13(F) (Notice of Covering Design-Build Work), neither compliance by the Project Company with the Design Requirements, nor review and comment by the City or the Port of the Project Company’s Design Documents, nor any failure or delay by the City or the Port in commenting on any design submittals shall in any way relieve the Project Company of full responsibility for the design, construction, performance, operation and maintenance of the Project in accordance with the Contract Standards, subject to the last sentence of Section 7.1(B) (Project Company Control of the Design-Build Work; No City or Port Responsibility). Notwithstanding the foregoing, this Project Agreement provides for a series of design submittals by the Project Company, including design development documents, as well as final plans and specifications, each of which shall conform to the Design Requirements and each of which shall be subject to review and approval by the Owner in accordance with this Section 7.6(B). This Project Agreement contemplates a progressive approval regime whereby the plans and specifications most recently approved by the Owner will supersede previously-approved plans and specifications.

(C) Documents at the Project Site The Project Company shall maintain at the Project Site all design and construction documents, including a complete set of record drawings, in accordance with Appendix 5 (D&C Standards). These documents shall be available to the City and the Port for reference, copying and use, and a complete set thereof shall be delivered to the City and the Port upon completion of the Design-Build Work.

(D) Ownership of Design. The City shall own the City Facilities Design Documents and the Shared Rooms Design Documents and the Port shall own the Port Facilities Design Documents and the Shared Facilities Design Documents. Except for reference purposes, the Design Documents shall not be used by the City, the Port or the Project Company on any other project unless required by law.

SECTION 7.7. PROJECT COMPANY DESIGN – DESIGN REQUIREMENTS. The Project Company shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. As of the Contract Date, the Project Company’s design for the Project is not complete. The Design Requirements shall form the basis of design for the Project and all design work shall be completed in accordance therewith. All the Project Company working and final Design Documents shall comply with the Design Requirements and shall ensure that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Design Requirements, subject to the last sentence of Section 7.1(B) (Project Company Control of the Design-Build Work; No City or Port Responsibility).

SECTION 7.8. CHANGES TO DESIGN REQUIREMENTS GENERALLY. The Project Company acknowledges the City's and the Port's material interest in each provision of the Design Requirements, and agrees that, subject to Section 7.10 (Design Requirement Changes Made Due to Relief Events), no material change to the Design Requirements applicable to the City Facilities and the Shared Rooms shall be made except with the consent of the City and no material change to the Design Requirements applicable to the Port Facilities and the Shared Facilities shall be made except with the consent of the Port, which may be withheld or conditioned in the City's or the Port's reasonable discretion taking into account the standards of quality, integrity, durability and reliability established for the Project by the Contract Standards. Any such changes shall be evidenced by a Contract Administration Memorandum, Project Agreement Amendment, or Change Order, as applicable. The City reserves the right to review and comment upon the final design of the City Facilities and the Shared Rooms and the Port reserves the right to review and comment upon and the final design of the Port Facilities and the Shared Facilities insofar as such final design relates to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Port Facilities, the City Facilities, the Shared Facilities and the Shared Rooms (as the case may be) are in compliance with the Design Requirements applicable to such matters. The parties acknowledge that reasonable, minor variations from the Design Requirements shall be permitted in the final design of the Project to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Facility component or system in question. Examples of elements of the Design Requirements from which there may be reasonable, minor variations in the final design include thickness, level and composition of individual structural members; exact dimensions of rooms (to the extent overall functionality is not impaired or total square footage decreased); exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical cables, and control panels.

SECTION 7.9. DESIGN REQUIREMENT CHANGES MADE AT PROJECT COMPANY REQUEST.

The Project Company shall give the Owner written notice of, and reasonable opportunity to review and comment upon, any Design Requirement Changes proposed to be made at the Project Company's request. The notice shall identify the requested Design Requirement Change with specificity and contain sufficient information for the Owner to determine that the Design Requirement Change:

- (1) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) does not impair the quality, integrity, durability and reliability of the Project;
- (3) is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) is feasible.

The Owner shall have the right, acting reasonably, to accept, reject or modify any Design Requirement Change proposed by the Project Company. Any such Design Requirement Change accepted or modified by the Owner and any related change in the terms and conditions of this Project Agreement, shall be reflected in a Change Order.

SECTION 7.10. DESIGN REQUIREMENT CHANGES MADE DUE TO RELIEF EVENTS.

Upon the occurrence of a Relief Event prior to the Occupancy Date, Owner shall promptly proceed, subject to Article 15 (Relief Event Procedures), to make or cause to be made all Design Requirement Changes reasonably necessary, if any, to address the Relief Events. The Project Company and the Owner shall consult concerning possible means of addressing and mitigating the effect of any Relief Event, and the Project Company and Owner shall cooperate in order to minimize any delay, lessen any additional cost and modify the Project so as to permit the Project Company to continue providing the Contract Services in light of such Relief Events. The Owner shall pay the Project Company directly the design and construction costs resulting from any such Design Requirement Change, and any related operation, maintenance, repair and replacement costs, shall be borne by the Owner (through an adjustment of the Service Fee, Port FM Fee, or Port Completion Payment, as applicable, payable solely following the Initial Occupancy Date, except to the extent provided in Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds) and Article 17 (Change in Law Events and Other Relief Events)), as applicable. Any Design Requirement Change made on account of Relief Events, and any related change in the terms and conditions of this Project Agreement, shall be reflected in a Change Order. The Project Company's obligation to perform the design and construction work resulting from the Design Requirement Change is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

SECTION 7.11. DESIGN REQUIREMENT CHANGES MADE AT CITY OR PORT DIRECTION.

(A) Allowance Account for City-Directed Design Requirement Changes. The Project Company may establish, not later than 30 days after the commencement of construction of the Project and as part of the consideration for the City's obligation to pay the Service Fee, an allowance account (the "City Facilities Design Requirement Change Allowance Account") with the Collateral Agent in the amount of \$4,500,000. 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.

(B) Unused City Facilities Design Requirement Change Allowance Account. On and after the Final City Occupancy Date, any amounts remaining in the City Facilities Design Requirement Change Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the City, to the costs of City-directed Capital Modifications, to the payment of the Service Fee, or to any other cost or expense for which the City is responsible under this Project Agreement. If this Project Agreement is terminated or partially terminated prior to the Final City Occupancy Date, any amounts remaining in the City Facilities Design Requirement Change Allowance Account at such time shall be immediately applied to the Termination Payment.

(C) City Facility or Shared Room. The City shall have the right, but not the obligation, to make Design Requirement Changes in respect of a City Facility or a Shared Room at any time prior to the Occupancy Date for such City Facility or Shared Room at the City's discretion for any reason whatsoever, whether and however the exercise of such rights affects this Project Agreement so long as such Design Requirement Change does not contravene the limitations referred to in Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications and FM Services Changes). The design and construction costs resulting from any such Design Requirement Change made at the City's direction under this Section shall be paid first from the City Facilities Design Requirement Change Allowance Account, and then by the City directly as provided in subsection (F)(1) of this Section. Any related operation, maintenance, repair and replacement costs or

savings incurred or realized by the Project Company arising from a City-Directed Design Requirement Change shall be borne by or be to the benefit of the City through an adjustment to the Service Fee.

(D) Port Facility or Shared Facility. The Port shall have the right, but not the obligation, to make Design Requirement Changes in respect of the Port Facilities or the Shared Facilities at any time prior to the Port Occupancy Date or the Occupancy Date for such Shared Facility, as the case may be, at the Port's discretion for any reason whatsoever, whether and however the exercise of such rights affects this Project Agreement so long as such Design Requirement Change does not contravene the limitations referred to in Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications and FM Services Changes). The design and construction costs resulting from any such Design Requirement Change made at the Port's direction under this Section shall be paid by the Port directly as provided in subsection (F)(2) of this Section. Any related operation, maintenance, repair and replacement costs or savings incurred or realized by the Project Company arising from a Port-Directed Design Requirement Change shall be borne by or be to the benefit of the City through an adjustment to the Port FM Fee.

(E) Design Requirement Change to be Reflected in Change Order. Any Design Requirement Change described in clauses (C) or (D) of this Section 7.11 and any related change in the terms and conditions of this Project Agreement shall be reflected in a Change Order. The Project Company's obligation to perform the work related to a Design Requirement Change is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds). To the extent the Scheduled Occupancy Date in respect of a Facility has been extended pursuant to a Design Requirement Change Order, no later than 20 days following the applicable Occupancy Date, the Parties shall calculate the extent to which the Project Company was left in a better or worse position as a result of each such extension of such Scheduled Occupancy Date and, to the extent that the Project Company was left in a better or worse position, the Project Company or the City or the Port, as the case may be, shall reimburse the other party (through an adjustment to the Service Fee, Port FM Fee or Port Completion Payment, as applicable) so as to ensure that the Project Company is left in a no better and no worse position.

(F) Payment for Design Requirement Changes.

(1) The City shall pay the Project Company the cost of any Design Requirement Changes that the City may direct pursuant to Section 7.11(C). The cost of such City-directed work shall be determined either on a negotiated, lump sum basis in accordance with Section 18.12 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation). All such work shall be deemed Design-Build Work hereunder, and the Project Company shall perform the work in accordance with the Contract Standards. The City shall pay the Project Company directly an amount equal to the amount by which the costs of City-Directed Design Requirement Changes exceed the amount remaining in the City Facilities Design Requirement Change Allowance Account, and the Project Company's obligation to implement a City-Directed Design Requirement Change, where the costs thereof will exceed the amounts remaining in the City Facilities Design Requirement Change Allowance Account, to the extent such allowance has not already been utilized, is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

(2) The Port shall pay the Project Company directly an amount equal to the costs of any Design Requirement Changes that the Port may direct pursuant to Section 7.11(D). The cost of such Port-directed work shall be determined either on a negotiated, lump sum basis in accordance with Section 18.12 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 18.13 (Cost Substantiation of Additional Work

Not Subject to Lump Sum Price Negotiation). All such work shall be deemed Design-Build Work hereunder, and the Project Company shall perform the work in accordance with the Contract Standards. The Project Company's obligation to implement a Port-Directed Design Requirement Change is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

SECTION 7.12. CONSTRUCTION PRACTICE, SAFETY AND SECURITY.

(A) Means and Methods. The Project Company shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Project Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include the obligation of the Project Company to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; dust control; clean-up and housekeeping of the Project Site; construction trade management; temporary parking; vehicle traffic; safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Project Contractor and Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Site; temporary utilities; potable water; sanitary services; Project Contractor, Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(B) Safety and Security. The Project Company shall maintain safety and security at the Project Site at all times at a level consistent with the Contract Standards. Without limiting the foregoing, the Project Company shall:

(1) take all necessary precautions for the safety and security of the Design-Build Work and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Design-Build Work, for:

- (a) workers at the Project Site and all other persons who may be involved with deliveries or inspections;
- (b) visitors to the Project Site;
- (c) passersby, neighbors and adjacent properties;
- (d) materials and equipment under the care, custody or control of the Project Company or Subcontractors on the Project Site;
- (e) other property constituting part of the premises or the Project under construction; and
- (f) City Property and Port Property;

(2) establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;

(3) implement a comprehensive safety program in accordance with Applicable Law;

- (4) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
- (5) operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
- (6) provide for safe and orderly vehicular movements;
- (7) develop and implement a written site-specific health and safety plan that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections;
- (8) designate an appropriately certified safety professional with a minimum of five years of construction safety experience who is to develop and sign the site-specific health and safety plan including all safety rules at the Project Site;
- (9) designate a qualified safety professional stationed full-time at the Project Site during on-site construction activities whose primary/only duty shall be the implementation of safety rules at the Project Site, the prevention of fires and accidents, monitoring compliance with the Project Company's site-specific health and safety plan, and the coordination of such activities as shall be necessary with the City, the Port and all Governmental Bodies having jurisdiction;
- (10) require the Project Contractors and all Subcontractors to work and implement a site-specific health and safety plan; and
- (11) comply with the Project Company's on-site safety requirements and to designate a qualified safety professional whose duty shall be the implementation of safety rules at the Project Site and monitoring compliance of Project Contractor and Subcontractor employees with the Subcontractor's site-specific health and safety plan.

SECTION 7.13. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) **Observation and Design Review Program.** During the progress of the Design-Build Work through Final Completion, the Project Company shall at all times afford the Owner every reasonable opportunity for observing all Design-Build Work pertaining to such Owner's Facilities and shall comply with the Design-Build Work review procedures set forth in Appendix 6 (Design-Build Work Review Procedures). The Project Company shall use all reasonable efforts to provide Owner employees with safe access to the Design-Build Work pertaining to such Owner's Facilities. During any such observation, all representatives of the Owner shall comply with the Project Company's site-specific health and safety plan for the Design-Build Work applicable to areas visited and all reasonable instructions or directions made by the Design-Builder in this respect, and shall not interfere with the Project Company's performance of any Design-Build Work. The Project Company shall, upon reasonable notice, cooperate with the Owner to arrange for tours of the Project Site at reasonable times during normal working hours during construction for interested city officials, provided that all such tours do not interfere with the progress of the Design-Build Work.

(B) **Project Company Tests and Inspections.** The Project Company shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Project Company shall give the Owner reasonable advance notice (at least 10 Business Days) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or

refusal to attend or be present of the Owner at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design-Build Work. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction and shall be subject to the approval of the Owner, as applicable, which approval shall not be unreasonably withheld. In addition to the foregoing, Commissioning Tests of the completed Facilities shall be conducted in accordance with Section 7.18 (Commissioning and Training) and Appendix 7 (Project Commissioning).

(C) Owner Tests, Observations and Inspections. The Owner, its employees, agents, representatives and contractors (which may be selected in the Owner's discretion) may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests of the Design-Build Work pertaining to such Owner's Facilities as the Owner deems necessary or desirable to ascertain whether such Design-Build Work complies with this Project Agreement. The costs of any such test, observation or inspection shall be borne by the Owner and paid promptly following receipt of an invoice therefor from the Project Company if the Owner directs the Project Company to perform such test on its behalf, unless such test, observation or inspection reveals a material failure of such Design-Build Work to comply with this Project Agreement or Applicable Law, in which event the Project Company shall bear all reasonable costs and expenses of such observation, inspection or test. In the event that any requested test, observation or inspection causes a material delay in the construction schedule for a Facility, the Scheduled Occupancy Date in respect of such Facility shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Project Company shall secure and deliver to the Owner promptly, at the Project Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work pertaining to such Owner's Facilities as and when required by the Contract Standards. The Project Company shall provide to the Owner, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Project Company under or in connection with any Governmental Approval, Project Contract, or Subcontract pertaining to the Design-Build Work pertaining to such Owner's Facilities.

(E) Independent Building Expert Responsibility for Review, Testing and Inspections. The parties acknowledge that the Independent Building Expert Agreement obligates the Independent Building Expert to verify the satisfaction by the Project Company of the conditions to Substantial Completion, Occupancy Readiness and Final Completion. The rights of an Owner to review, comment on, test or inspect the Design-Build Work pertaining to such Owner's Facilities shall apply notwithstanding the performance by the Independent Building Expert or its subcontractors of similar duties.

(F) Notice of Covering Design-Build Work. The Project Company shall give the Owner reasonable advance notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work pertaining to such Owner's Facilities and shall update such notice, if necessary, within a reasonable time period before such covering and completion. The Owner shall give the Project Company reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the Owner a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the Owner's written request, the Project Company shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work pertaining to such Owner's Facilities; provided, however, that the Owner's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the Owner as to whether the disputed Design-Build Work complies with

the requirements of this Project Agreement. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

- (1) by the Project Company, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which the Owner was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; and
- (2) in all other cases, as follows:
 - (a) by the Project Company, if such observation or test reveals that the Design-Build Work does not comply with this Project Agreement; or
 - (b) by the Owner, promptly following receipt of an invoice therefor from the Project Company, if such observation or test reveals that the Design-Build Work complies with this Project Agreement.

In the event such Design-Build Work does comply with this Project Agreement, the delay caused by such observation or test shall be treated as having been caused by an Other Relief Event.

(G) Meetings and Design-Build Work Review. During the Design-Build Period, the Project Company, the City and the Port shall conduct periodic meetings in accordance with Appendix 6 (Design-Build Work Review Procedures).

SECTION 7.14. CORRECTION OF DESIGN-BUILD WORK.

(A) Correction of Non-Conforming Design-Build Work. Throughout the Design-Build Period, the Project Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work which does not conform with the Contract Standards.

(B) Election to Accept Non-Conforming Design-Build Work. The Owner may elect by Change Order, at the Project Company's request, to accept non-conforming Design-Build Work and charge the Project Company (through an adjustment to the Service Fee or Port Completion Payment, as applicable) an amount agreed upon by the parties by which the value of the Project Company's services or Design-Build Work has been reduced.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Project Company's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Project Company under this Project Agreement. This Section is intended to supplement (and not to limit) the Project Company's obligations under the Commissioning Tests, Occupancy Readiness Conditions and any other provisions of this Project Agreement or Applicable Law.

SECTION 7.15. FURNITURE, FIXTURES AND EQUIPMENT, AV EQUIPMENT, IT EQUIPMENT AND OWNER-FURNISHED EQUIPMENT.

(A) Base Furniture, Fixtures and Equipment. The Project Company shall furnish, pay for and install all furniture, fixtures and equipment required for the Project by the Contract Standards provided in Section E of the Uniform Specifications of Appendix 5 (D&C Standards).

(B) Allowance Account for Audio Visual Equipment. The Project Company shall establish on the date of Financial Close and as part of the consideration for the City’s obligation to pay the Service Fee, an allowance account with a Qualified Commercial Bank in the amount of \$750,000 (the “AV Equipment Allowance Account”) to pay for the design, acquisition, furnishing and installation of audio visual equipment in that portion of the Shared Rooms consisting of the chambers (the “AV Equipment”). Amounts on deposit in the AV Equipment Allowance Account shall not be used for any other purpose. The City shall identify and select the AV Equipment for the Project in its discretion and in consultation with the Project Company. The Project Company shall arrange for and pay the cost of acquisition, delivery and installation of the AV Equipment from the AV Equipment Allowance Account plus a mark-up of ten percent (10%). The City shall pay the Project Company directly, pursuant to Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), an amount equal to the amount by which the costs of AV Equipment exceed amounts available in the AV Equipment Allowance Account, and the Project Company’s obligation to provide such AV Equipment is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds). AV Equipment shall be deemed to be part of the Project, except that the City shall be responsible for the maintenance, repair and replacement thereof and the Project Company shall be entitled to an Other Relief Event to the extent that the City does not maintain, repair or replace the AV Equipment in accordance with Best Management Practice.

(C) Unused AV Equipment Allowance. Any amounts remaining on and after the Final City Occupancy Date in the AV Equipment Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the City, to the costs of acquisition, delivery and installation of AV Equipment paid or incurred following the Final City Occupancy Date, to the payment of the Service Fee, or to any other cost or expense for which the City is responsible under this Project Agreement. If this Project Agreement is terminated or partially terminated prior to the Final City Occupancy Date, any amounts remaining in the AV Allowance Account at such time shall be immediately applied to the Termination Payment.

(D) Allowance Account for Information Technology Equipment. The Project Company shall establish on the date of Financial Close and as part of the consideration for the City’s obligation to pay the Service Fee, an allowance account with a Qualified Commercial Bank in the amount of \$2,000,000 (the “IT Equipment Allowance Account”) to pay the cost of acquiring, furnishing and installing certain cabling and infrastructure to support data transmission and information technology needs of the City (the “IT Equipment”). Amounts on deposit in the IT Equipment Allowance Account shall not be used for any other purpose. The City shall identify and select the IT Equipment for the Project in its discretion and in consultation with the Project Company. The Project Company shall arrange for and pay the cost of acquisition, delivery and installation of the IT Equipment from the IT Equipment Allowance Account plus a mark-up of ten percent (10%). The City shall pay the Project Company directly, pursuant to Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), an amount equal to the amount by which the costs of IT Equipment exceed amounts available in the IT Equipment Allowance Account, and the Project Company’s obligation to provide such IT Equipment is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds). IT Equipment shall be deemed to be part of the Project, except that the maintenance, repair and replacement thereof shall be carried out by the Project Company and the City in accordance with Table 3 of Appendix 8 (FM Standards), and the Project Company shall be entitled to an Other Relief Event to the extent that the City does not maintain, repair or replace the IT Equipment for which the City is responsible in accordance with Best Management Practice.

(E) Unused IT Equipment Allowance. Any amounts remaining on and after the Final City Occupancy Date in the IT Equipment Allowance Account, including interest accrued and to accrue on the account balance, shall be applied from time to time, at the direction of the City, to the costs of acquisition,

delivery and installation of IT Equipment paid or incurred following the Final City Occupancy Date, to the payment of the Service Fee, or to any other cost or expense for which the City is responsible under this Project Agreement. If this Project Agreement is terminated or partially terminated prior to the Final City Occupancy Date, any amounts remaining in the IT Allowance Account at such time shall be immediately applied to the Termination Payment.

(F) Owner-Furnished Equipment. The City and the Port shall furnish and pay for all Owner-Furnished Equipment. The City and the Port shall advise the Project Company, in connection with the establishment and periodic revision of the Project Schedule, as to the nature and quantity of the Owner-Furnished Equipment the City or the Port plans to supply, and the expected dates of delivery and installation. The City and the Port shall be responsible for the delivery and installation of any Owner-Furnished Equipment, and shall not unreasonably interfere with the Design-Build Work in connection therewith. The Project Company shall provide reasonable assistance to the City and the Port in all coordination, scheduling, delivery and installation activities related to Owner-Furnished Equipment. Owner-Furnished Equipment shall not be deemed to be part of the Project, and the City and the Port shall be responsible for the maintenance, repair and replacement thereof as provided in Section 9.1(C) (Moveable Furniture, Fixtures and Equipment and Owner Furnished Equipment).

SECTION 7.16. WARRANTIES OF DESIGN-BUILD WORK.

(A) General. The Project Company warrants to the Owner that (1) all materials and equipment furnished on the Project will be of good quality and new unless otherwise agreed in writing by the Owner and otherwise in accordance with the Contract Standards, (2) the Design-Build Work will be free from defects, and (3) the Design-Build Work will conform to the requirements of the Contract Standards. Design-Build Work not conforming to these requirements, including substitutions not properly accepted by the Owner, shall be deemed defective. If required by the Owner, the Project Company shall furnish satisfactory evidence as to the kind and quality of the materials and equipment. Where any warranties provided in connection with the Design-Build Work overlap, conflict, or are duplicative, the Project Company shall be bound by the more stringent requirements. The Project Company, the Project Contractors, Subcontractors, vendors, suppliers and other persons from which the Project Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Project, shall offer any warranty upgrades or extensions that are offered by manufacturers of any equipment or system installed in the Design-Build Work to the Owner.

(B) Procurement and Assignment of City Facilities, Shared Rooms and Shared Facilities Warranties. The Project Company shall, for the protection of the Owner, obtain from the Project Contractors, all Subcontractors, vendors, suppliers and other persons from which the Project Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Project, other than the Port Facilities, all such warranties and guarantees as are normally provided with respect thereto or, to the extent superior in scope or length, as are specifically required in Appendix 5 (D&C Standards) and the Contract Standards, each of which (with respect to warranties and guarantees provided in connection with the City Facilities Design-Build Work, the Shared Facilities Design-Build Work and the Shared Rooms Design-Build Work only) shall be assigned to the FM Contractor and the City on a non-exclusive basis to the full extent of the terms thereof. No such warranty shall relieve the Project Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee, the Port FM Fee or the Port Completion Payment or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to a Relief Event. The Project Company shall enforce such warranties and guarantees as provided in Section 9.9 (Enforcement of Project Warranties).

(C) Procurement and Assignment of Port Facilities Warranties. The Project Company shall, for the protection of the Port, obtain from the Project Contractors, all Subcontractors, vendors, suppliers and other persons from which the Project Company procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Port Facilities all such warranties and guarantees as are normally provided with respect thereto or, to the extent superior in scope or length, as are specifically required in Appendix 5 (D&C Standards) and the Contract Standards, each of which (with respect to warranties and guarantees provided in connection with the Port Facilities Design-Build Work) shall be assigned to the Port, or at the Port’s direction, to the Port’s designee, prior to Port Final Completion, except that such warranties in respect of the Port FM Facilities shall be assigned to the FM Contractor and the Port on a non-exclusive basis to the full extent of the terms thereof. No such warranty shall relieve the Project Company of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee, the Port FM Fee or the Port Completion Payment or excuse any non-performance of the Design-Build Work unless such failure is itself attributable to a Relief Event. The Project Company shall enforce such warranties and guarantees as provided in Section 9.9 (Enforcement of Project Warranties).

(D) Corrections of Design-Build Work Before Expiration of the Warranty Period. The Project Company shall promptly correct any Design-Build Work deemed defective in accordance with Section 7.16(A) before the expiration of the Warranty Period (or such other time period established by any applicable special warranty required by the Contract Standards). Costs of correcting such defective Design-Build Work, including additional testing, inspections, and costs made necessary thereby, shall be at the Project Company’s expense. The Project Company shall commence correction or replacement of such defective Design-Build Work within five Business Days after receipt of written notice from the Owner that such Design-Build Work is defective. If the Project Company fails to commence correction or replacement of such nonconforming Design-Build Work within five Business Days after receipt of written notice, the Owner may proceed to have defects repaired or replaced at the expense of the Project Company plus a mark-up of ten percent (10%) for the Owner’s overhead and administration expenses. Owner may set off such cost against any payment due to the Project Company. If, however, in the opinion of the Owner, defective Design-Build Work creates a dangerous or hazardous condition or requires immediate correction or attention to prevent further loss to the Owner or to prevent interruption of operations of the Owner, the Owner may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Project Company. Such action by the Owner shall not relieve the Project Company of the warranties provided in this Article or elsewhere in the Contract Standards.

(E) No Limitations. The Project Company’s, Project Contractors’ Subcontractors’, vendors’, suppliers’ or other persons’ warranties and guarantees are in addition to all rights and remedies available under this Project Agreement or applicable Law.

SECTION 7.17. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. “Substantial Completion” of a Facility shall occur only when all of the following conditions have been satisfied, as determined by the Independent Building Expert with respect to that Facility, except to the extent that any or all of such conditions have been waived by the Owner:

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

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

(3) Safety and Security Systems. The Facility's security and safety systems are functional in accordance with the requirements set forth in this Project Agreement; and

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

(B) Notice of Substantial Completion. The Project Company shall give the Owner's Representative at least 30 days' prior written notice of the expected date of Substantial Completion of a Facility.

(C) Definition of Owner. For the purposes of specifying the recipients of the notice of Substantial Completion to be delivered pursuant to Section 7.17(B) (Notice of Substantial Completion) only:

(1) the City shall be deemed the Owner in respect of the City Hall Building, the Library, Lincoln Park, and the Shared Rooms;

(2) the Port shall be deemed the Owner in respect of the Port Headquarters Building and the New Parking Facility; and

(3) the City and the Port shall both be deemed Owners in respect of the Shared Facilities.

SECTION 7.18. COMMISSIONING AND TRAINING.

(A) Commissioning Generally. The Project Company shall comply with the Commissioning requirements of Appendix 7 (Project Commissioning) and shall, as provided therein:

(1) prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests, meeting the minimum requirements set forth therein;

(2) include criteria for achieving LEED NC Gold Certification for the Facility (if applicable);

(3) conduct Commissioning activities during design and construction;

(4) perform Commissioning Tests necessary to demonstrate Occupancy Readiness; and

(5) permit the Owner the opportunity to observe commissioning activities upon request and as scheduled.

(B) Commissioning Tests Report. Promptly upon its completion of the Commissioning Tests, the Project Company shall deliver to the Owner and the Independent Building Expert a copy of the Commissioning Tests report prepared by or on behalf of the Project Company pursuant to Appendix 7 (Project Commissioning).

(C) Delivery of Test Reports. For the purposes of specifying the recipients of the Commissioning Tests report to be delivered pursuant to Section 7.18(B) (Commissioning Test Reports) only:

- (1) the City shall be deemed the Owner in respect of the City Hall Building, the Library, Lincoln Park, and the Shared Rooms;
- (2) the Port shall be deemed the Owner in respect of the Port Headquarters Building and the New Parking Facility; and
- (3) the City and the Port shall both be deemed Owners in respect of the Shared Facilities.

(D) Training Generally. The Project Company shall provide the following to Port maintenance staff:

- (1) training for all applicable LEED maintenance and cleaning standards;
- (2) training for building management system software as it relates to Port Facilities control and monitoring of HVAC hot/cold calls and fire and life safety systems; and
- (3) access to FM Services manuals, upon request.

SECTION 7.19. FINAL COMPLETION.

(A) Requirements. “Final Completion” in respect of a Facility shall occur when all of the following conditions have been satisfied:

- (1) Occupancy Readiness. The Project Company has achieved Occupancy Readiness in respect to such Facility in accordance with Article 8 (Occupancy Readiness);
- (2) Design-Build Work Completed. All Design-Build Work in respect to such Facility (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Project Agreement;
- (3) Deliverable Material. The Project Company shall have delivered to the Owner all Deliverable Material required by Section 7.1(H) (Deliverable Material);
- (4) Equipment Warranties and Manuals. The Project Company shall be in possession of, and shall have delivered to the Owner copies of the warranties of equipment and fixtures constituting a part of the Facility required to be obtained under Section 7.16 (Warranties of Design-Build Work), together with copies of all related operating manuals supplied by the equipment supplier;
- (5) Spare Parts In Storage. All spare parts required by the applicable Design Requirements have been delivered and are in storage at the Project;
- (6) Record Drawings. The Project Company has delivered to the Owner a final and complete red-lined set of construction record drawings;

(7) Equipment Manufacturers' Certificate. The Project Company has delivered to the Owner written certification from the equipment manufacturers (including manufacturers of information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Facility have been properly installed and tested in accordance with the manufacturers' recommendations and requirements; and

(8) Claims Statement. The Project Company has delivered to the Owner a claims statement setting forth in detail all outstanding claims known to it of every kind whatsoever of the Project Company connected with, or arising out of, the Design-Build Work pertaining to such Facility, and arising out of or based on events prior to the date when the Project Company gives such statement to the Owner.

(B) Obligation to Achieve Final Completion. The Project Company shall achieve Final Completion in respect of a Facility within 120 days after the Occupancy Date of such Facility (such date, the "Final Completion Deadline").

SECTION 7.20. LEED NC GOLD AND LEED-ND GOLD CERTIFICATIONS.

The Project Company shall obtain LEED NC Gold Certifications in respect of the City Hall Building, the Library and the Port Headquarters Building and LEED-ND Gold Certifications in respect of the Project in accordance with Section 5 of Appendix 5 (D&C Standards) and further as follows:

(A) Registration. Within 120 days of the Contract Date, the Project Company shall register, under the LEED NC Gold requirements, the City Hall Building, the Library, the Port Headquarters Building and the Project with the USGBC. Within 120 days of the Contract Date, the Project Company shall register, under the LEED-ND Gold requirements the Project and the Private Development Sites.

(B) Required Rating. The Project Company shall achieve all necessary prerequisites, record keeping, standards, credits and points necessary to achieve at least a LEED NC Gold Certification for the City Hall Building, the Library, and the Port Headquarters Building and a LEED-ND Gold Certification for the Project.

(C) Changes in LEED Criteria. If, at any time after the Contract Date, the requirements necessary to achieve LEED NC Gold (2009 version 3) or LEED-ND Gold (2015 version 4) Certifications become more or less stringent as applied to the Project, then the Project Company shall forthwith notify the City and the Port of such change and:

(1) if such requirements become more stringent, the change shall be deemed to be an Other Relief Event; and

(2) if such requirements become less stringent, and the Project Company is able to achieve the LEED NC Gold and LEED-ND Gold Certifications required under this Section and otherwise comply with the Contract Standards at a decreased cost, the Service Fee, Port FM Fee or the Port Completion Payment, as the case may be, shall be decreased to reflect any savings in the Project Company's costs as a result of having to comply with the less stringent standards.

(D) Failure to Obtain Certification. The Project Company shall formally apply for LEED NC Gold Certification in respect of the City Hall Building, the Library, and the Port Headquarters Building within 365 days following the Final City Occupancy Date. Thereafter, the Project Company shall pursue the application process with due diligence to completion, and obtain the LEED NC Gold Certifications required under this Section. In furtherance of achievement of the LEED NC Gold Certification required

under this Section, the Project Company shall (1) conduct a LEED kick-off meeting with the City, the Port, their respective consultants and subcontractors, and the LEED Specialist (as defined in Section 2 of Appendix 7) to develop an action plan to achieve LEED NC Gold Certifications, compliance with which could reasonably be expected to achieve the required LEED NC Gold Certifications, (2) file the Project with the USGBC within 120 days after the Contract Date, (3) include LEED NC Gold Certification requirements in each Project Contract and all Subcontracts, (4) perform at least two detailed design credit reviews with USGBC staff during the Design-Build Period and in each case share feedback received from USGBC staff reviews regarding progress towards LEED NC Gold Certification, (5) provide quarterly LEED NC Gold Certification progress reports to the City and the Port, (6) provide waste and indoor air quality management plans for construction of the Project, (7) conduct a commissioning kick-off meeting with the City, the Port, their respective consultants and subcontractors, the Commissioning Agent (as defined in Section 2 of Appendix 7) and the LEED Specialist to establish respective responsibilities and activity schedule required for LEED NC Gold Certification, and (8) complete and submit required LEED NC Gold Certification documentation in LEEDonline (or through such other method as accepted by the USGBC) within 180 days after the Occupancy Date (collectively, the “Required LEED Actions”). The Required LEED Actions expenses, including the cost of the LEED Specialist, application fees, revised applications, appeal fees, expedited review fees, or fees for interpretations, are included in the City Design-Build Agreement Sum and the Port Design-Build Agreement Sum. If the Project Company has performed the Required LEED Actions and thereafter the LEED NC Gold Certifications required by this Section are not obtained for any reason, the Project Company shall pay to the City or the Port, as the case may be, liquidated damages in the amount of \$1,000,000 in respect of the City Hall Building, \$1,000,000 in respect of the Port Headquarters Building, and \$500,000 in respect of the Library. The parties acknowledge that if the Project Company has performed the Required LEED Actions, such payment shall constitute liquidated damages for the failure to achieve LEED NC Gold Certification in respect of the City Hall Building, the Port Headquarters Building and the Library, and the right of the City and the Port to demand such payment shall be the exclusive remedy of the City and the Port for such failure, regardless of legal theory. The parties agree that the City’s and Port’s actual damages in each such circumstances would be difficult or impossible to ascertain, and that such liquidated damages are intended to place the City and the Port in the same economic position as it would have been in had the circumstance not occurred. However, and notwithstanding the foregoing, if the Project Company fails to perform the Required LEED Actions and LEED NC Gold Certifications are not obtained, such failure shall constitute a Project Company Event of Default, subject to the provisions of this Project Agreement, including, without limitation, Articles 21 (Remedies of the Parties and City’s and Port’s Step-In Rights) and 22 (Project Company Events of Default). Other than as set forth above, the Project Company shall have no further obligations in respect of obtaining LEED NC Gold Certification or LEED-ND Gold Certification, except to provide the City with such information and administrative assistance as the City may reasonably require in relation to obtaining LEED NC Gold Certification of a Facility and LEED-ND Gold Certification of the Project.

SECTION 7.21. PAYMENT OBLIGATIONS OF THE CITY AND THE PORT DURING THE DESIGN-BUILD PERIOD.

(A) **Payment Obligation.** The City or the Port, as applicable, shall pay the Project Company during the Design-Build Period, unless otherwise set forth herein:

(1) the amounts specified in Section 7.11 (Design Requirement Changes Made at City or Port Direction) as payable directly by the City because they exceed the available amounts in the City Facilities Design Requirement Change Allowance Account;

(2) the amounts specified in Section 7.11 (Design Requirement Changes Made at City or Port Direction) as payable directly by the Port;

- (3) the amounts specified in Section 7.15(B) (Allowance Account for Audio Visual Equipment) exceeding the available amounts in the AV Equipment Allowance Account;
- (4) the amounts specified in Section 7.15(D) (Allowance Account for Information Technology Equipment) exceeding the available amounts in the IT Equipment Allowance Account;
- (5) the amounts specified in Section 7.24(B) (Allowance Account for Certain Upgrades) hereof for costs of upgrades to Lincoln Garage exceeding the available amounts in the Lincoln Garage Upgrades Allowance Account;
- (6) the amounts set forth in Appendix 24 (City Design-Build Payments) in accordance with Section 18.1(I) (City Design-Build Payments);
- (7) the amounts as specified in Section 16.2(C) (Compensation for Uninsurable Force Majeure Events Occurring Prior to the Occupancy Date in respect of a Facility), which shall be determined by the City and the Project Company or the Port and the Project Company, as applicable, on a negotiated lump sum basis in accordance with Section 18.12 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation);
- (8) the amounts specified in Section 17.1(B) (Compensation Relief for Changes Occurring Prior to the Occupancy Date);
- (9) the amounts specified in Section 17.2(A) (Changes Prior to the Occupancy Date);
- (10) the amounts specified in Section 17.3(B) (Compensation for Other Relief Events Occurring Prior to the Occupancy Date);
- (11) the amounts specified in Sections 7.13(C) and (F) (Construction Monitoring, Observations, Testing and Uncovering of Work; and
- (12) the amounts specified in Section 18.1 (Service Fee, Port FM Fee and Port Completion Payment Generally) (as adjusted pursuant to Section 18.5 (Service Fee Payments Prior to the Project Occupancy Date)).

(B) Limitations. Except as provided or referred to in subsection (A) of this Section, neither the City nor the Port shall have any payment obligations to the Project Company during the Design-Build Period. All City payment obligations under this Section are subject to Section 25.1 (All City Payment Obligations Subject to Appropriation) and all Port payment obligations under this Section are subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation).

(C) City to Request Required Funds. The City shall request an authorization making an appropriation of funds for the purpose of paying all amounts provided or referred to in subsection (A) of this Section.

SECTION 7.22. CERTAIN DESIGN-BUILD PERIOD OBLIGATIONS SUBJECT TO THE AVAILABILITY OF FUNDS.

(A) City Facilities and Shared Rooms. In respect of the City Facilities and the Shared Rooms, the Project Company shall have no obligation to:

- (1) perform any of the work described in Section 7.10 (Design Requirement Changes Made Due to Relief Events) or to incur any increased costs of performing the Design-Build Work as a result of the occurrence of any Other Relief Event;
- (2) perform any of the work described in Section 7.11 (Design Requirement Changes Made at City or Port Direction) where the costs thereof will exceed the remaining amounts in the City Facilities Design Requirement Change Allowance Account to the extent such allowance has not already been utilized;
- (3) provide additional AV Equipment where the costs thereof will exceed the remaining amount in the AV Equipment Allowance Account to the extent such allowance has not already been utilized;
- (4) provide additional IT Equipment where the costs thereof will exceed the remaining amount in the IT Equipment Allowance Account to the extent such allowance has not already been utilized;
- (5) perform the work described in Section 7.23 (Obligation to Complete the Shared Facilities Following Port Partial Termination) or to incur any costs of performing the Shared Facilities Design-Build Work following a termination of all obligations in respect of the Port Facilities and the Shared Facilities and the removal of the Port Facilities and the Shared Facilities from this Project Agreement;
- (6) perform any of the work described in Section 7.24 (Obligations in Respect of Lincoln Garage) where the costs thereof will exceed the remaining amounts in the Lincoln Garage Upgrades Allowance Account to the extent such allowance has not already been utilized;
- (7) perform the work described in Section 16.2(A) (Project Company Reinstatement), as it pertains to Uninsurable Force Majeure Events occurring prior to the Final City Occupancy Date;
- (8) perform the work necessitated by the occurrence of a Change in Law Event for which the Project Company is entitled to payment as provided in Section 17.1(B) (Compensation Relief for Changes Occurring Prior to the Occupancy Date); or
- (9) perform the work necessitated by the occurrence of an Other Relief Event occurring prior to the Final City Occupancy Date for which the Project Company is entitled to payment as provided in Section 17.3(B) (Compensation for Other Relief Events Occurring Prior to the Occupancy Date) (collectively, the “Conditioned City Design-Build Period Obligations”),

unless and until (1) the City and the Project Company have agreed upon a scope, price and schedule for the performance of the Conditioned City Design-Build Period Obligations in accordance with all applicable provisions of this Project Agreement, and (2) the City has provided written assurances acceptable to the Project Company, acting reasonably, that, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation), funds necessary to pay the cost of performing the Conditioned City Design-Build Period Obligations (or an agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties. The schedule changes may include changes to the Scheduled Final City Occupancy Date and the City Longstop Date and the price may include delay costs, and any such changes shall be reflected in a Project Agreement Amendment.

(B) Port Facilities and Shared Facilities. Subject to Section 7.22(C) (Port Unilateral Changes), in respect of the Port Facilities and the Shared Facilities, the Project Company shall have no obligation to:

- (1) perform any of the work described in Section 7.10 (Design Requirement Changes Made Due to Relief Events) or to incur any increased costs of performing the Design-Build Work as a result of the occurrence of any Other Relief Event;
- (2) perform any of the work described in Section 7.11 (Design Requirement Changes Made at City or Port Direction);
- (3) provide Port Moveable Furniture, Fixtures and Equipment;
- (4) perform the work described in Section 16.2(A) (Project Company Reinstatement), as it pertains to Uninsurable Force Majeure Events occurring prior to the Port Occupancy Date;
- (5) perform the work necessitated by the occurrence of a Change in Law Event for which the Project Company is entitled to payment as provided in Section 17.1(B) (Compensation Relief for Changes Occurring Prior to the Occupancy Date); or
- (6) perform the work necessitated by the occurrence of an Other Relief Event occurring prior to the Port Occupancy Date for which the Project Company is entitled to payment as provided in Section 17.3(B) (Compensation for Other Relief Events Occurring Prior to the Occupancy Date) (collectively, the “Conditioned Port Design-Build Period Obligations”),

unless and until (1) the Port and the Project Company have agreed upon a scope, price and schedule for the performance of the Conditioned Port Design-Build Period Obligations in accordance with all applicable provisions of this Project Agreement, and (2) the Port has provided written assurances acceptable to the Project Company, acting reasonably, that, subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), funds necessary to pay the cost of performing the Conditioned Port Design-Build Period Obligations (or an agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the Port and the Project Company. The schedule changes may include changes to the Scheduled Port Occupancy Date and the Port Longstop Date and the price may include delay costs, and any such changes shall be reflected in a Project Agreement Amendment.

(C) Port Unilateral Changes. If the Port and the Project Company are unable to agree upon a scope, price and schedule in respect of any Conditioned Port Design-Build Period Obligation, the Port may issue a Unilateral Change Order directing the Project Company to perform such Conditioned Port Design-Build Period Obligation; provided, however, that the Project Company shall have no obligation to comply with a Unilateral Change Order unless and until the Project Company has secured financing necessary to pay for such Unilateral Change Order, the terms of such financing to be subject to the approval of the Port, not to be unreasonably withheld, conditioned or delayed, and the Port has provided written assurances acceptable to the Project Company, acting reasonably, that, subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), funds necessary to pay the cost of performing the Conditioned Port Design-Build Period Obligations (or an agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the Port and the Project Company. Disputes as to the scope, price and schedule in respect of any Conditioned Port Design-Build Period Obligation shall be resolved in accordance with Article 20 (Dispute Resolution), and any amounts determined to be owing to the Project Company shall be paid by the Port as an adjustment to the Port

Completion Payment. If the Port issues a Unilateral Change Order, Section 7.1(W) (Continued Performance) and this Section 7.22(C) shall apply.

SECTION 7.23. OBLIGATION TO COMPLETE SHARED FACILITIES FOLLOWING PORT PARTIAL TERMINATION.

Notwithstanding anything to the contrary in this Project Agreement, in the event that the Project Company or the Port, as the case may be, terminates all obligations in respect of the Port Facilities and the Shared Facilities and removes the Port Facilities and the Shared Facilities from this Project Agreement, then, in accordance with Section 7.10 (Design-Requirement Changes Made Due to Relief Events), the City shall promptly make or cause to be made all Design Requirement Changes reasonably necessary, if any, for the Project Company, subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds), to design and construct the Shared Facilities as if the Shared Facilities were City Facilities. The Project Company shall be entitled to relief on account thereof and the City shall bear all cost, schedule and performance risk in connection therewith (except that the Project Company shall bear schedule and performance risk following a partial termination resulting from a Project Company Event of Default).

SECTION 7.24. OBLIGATIONS IN RESPECT OF LINCOLN GARAGE.

(A) Excluded Items. Notwithstanding anything to the contrary in this Project Agreement, the Project Company shall have no obligations in respect of (1) the existing restrooms in the B1 area of the Lincoln Garage, or (2) the existing maintenance and service facility located in the Lincoln Garage.

(B) Allowance Account for Certain Upgrades. The Project Company may establish, not later than 30 days after the commencement of construction of the Project and as part of the consideration for the City's obligation to pay the Service Fee, an allowance account (the "Lincoln Garage Upgrades Allowance Account") with the Collateral Agent in the amount of \$500,000. Amounts on deposit in the Lincoln Garage Upgrades Allowance Account shall be used to pay the cost of any upgrades to the mechanical, electrical, plumbing, or fire protection systems in the Lincoln Garage or any upgrades to the B1 and B2 parking areas of the Lincoln Garage required to comply with Applicable Law, and not for any other purpose.

(C) Payment for Certain Upgrades. The design and construction costs resulting from any work described in subsection (B) of this Section shall be paid first from the Lincoln Park Upgrades Allowance Account, and then by the City directly as provided in this subsection. Any related operation, maintenance, repair and replacement costs or savings incurred or realized by the Project Company arising from any work described in subsection (B) of this Section shall be borne by or be to the benefit of the City through an adjustment to the Service Fee. The cost of any work described in subsection (B) of this Section shall be determined either on a negotiated, lump sum basis in accordance with Section 18.12 (Negotiated Lump Sum Pricing of Additional Work) or subject to Cost Substantiation in accordance with Section 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation). All such work shall be deemed Design-Build Work hereunder, and the Project Company shall perform the work in accordance with the Contract Standards. The City shall pay the Project Company directly an amount equal to the amount by which the costs of such work exceed the amount remaining in the Lincoln Park Upgrades Allowance Account, and the Project Company's obligation to perform work described in subsection (B) of this Section, where the costs thereof will exceed the amounts remaining in the Lincoln Park Upgrades Allowance Account, to the extent such allowance has not already been utilized, is subject to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

SECTION 7.25. EXCAVATED MATERIAL.

Prior to the Port Occupancy Date, the Port shall permit the Project Company to place up to 137,965 cubic yards of material excavated from the Old Courthouse Site at a site within the Port of Long Beach to be determined by the Port. Prior to delivering such excavated material, the Project Company shall deliver to the Port a soils quality report in respect of such excavated material. To the extent that the Port does not allow for such placement of excavated materials for any reason, the Port shall reimburse the Project Company for hauling costs at a rate of \$10.87 per cubic yard, up to a total of 137,965 cubic yards, which amount shall be invoiced by the Project Company for each month by the 15th day following the end of such month and paid by the Port within 30 days of receipt of the invoice. The parties acknowledge that such payment shall constitute liquidated damages for such event of non-performance. The right of the Project Company to demand such payment shall be the exclusive remedy of the Project Company for such event of non-performance, regardless of legal theory. The parties agree that the Project Company's actual damages in such circumstance would be difficult or impossible to ascertain, and that such liquidated damages are intended to place the Project Company in the same economic position as it would have been in had the circumstance not occurred.

ARTICLE 8

OCCUPANCY READINESS

SECTION 8.1. INDEPENDENT BUILDING EXPERT.

(A) Engagement. The City, the Port and the Project Company shall, on or after the Contract Date, appoint a suitably qualified and experienced consultant to act as the Independent Building Expert for the purposes of this Project Agreement upon substantially the same terms set forth in Transaction Form D (Form of Independent Building Expert Agreement). The Independent Building Expert shall act impartially and independently of the City, the Port and the Project Company in the performance of its duties as contemplated in this Project Agreement and the Independent Building Expert Agreement.

(B) Qualifications. The Independent Building Expert shall possess skills in design review (including architectural, structural, mechanical, electrical and plumbing design) for compliance with design requirements and technical specifications similar to the Design Requirements; institutional building construction involving complex structural systems similar to the City Facilities, the Shared Facilities, the Shared Rooms and the Port Facilities; construction cost consulting; construction claims adjusting; and structural retrofit construction. Such skills may be acquired through a joint venture, association or, with the approval of the City, the Port and the Project Company, a subcontractor.

(C) Limitations. Nothing in this Project Agreement shall be interpreted as giving the Independent Building Expert any responsibility or authority for any aspect of the Design-Build Work, or as relieving the Project Company of its responsibility for the Design-Build Work as set forth in this Project Agreement, and neither the Project Company nor the Design-Builder nor any Subcontractor shall be entitled to rely on any advice or approvals that the Independent Building Expert may give with respect to the Design-Build Work.

SECTION 8.2. ACTIONS BY THE CITY, THE PORT AND PROJECT COMPANY AFFECTING THE INDEPENDENT BUILDING EXPERT.

(A) Joint Approval Required. The City, the Port and the Project Company shall not, without the prior written approval of each other party, which approval shall not be unreasonably withheld or delayed:

- (1) terminate, repudiate or discharge the Independent Building Expert for any reason;
- (2) waive, settle, compromise or otherwise prejudice any rights or claims which the other may have from time to time against the Independent Building Expert;
- (3) amend or vary the terms of the Independent Building Expert Agreement or the services to be performed by the Independent Building Expert; or
- (4) enter into a separate agreement with the Independent Building Expert in connection with the Project.

(B) Cooperation and Costs. The City, the Port and the Project Company shall cooperate with one another generally in relation to all matters within the scope of or in connection with the appointment of the Independent Building Expert. All instructions and representations issued or made by either the City, the Port or the Project Company shall be simultaneously copied to the other parties hereto. Each of

the Owner and the Project Company shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Building Expert. Except as otherwise provided in the Independent Building Expert Agreement, all costs (including legal fees of any counsel retained by the Independent Building Expert) of the Independent Building Expert shall be borne equally by (1) the Project Company, and (2) the City and the Port.

(C) Replacement of Independent Building Expert. In the event that the Independent Building Expert Agreement expires (and is otherwise not extended), is terminated by the City, the Port and the Project Company or the Independent Building Expert is otherwise unable or unavailable to perform its duties under the Independent Building Expert Agreement, the City, the Port and the Project Company shall cooperate with one another in order to appoint, in accordance with this Section, a replacement consultant to act as the Independent Building Expert as soon as reasonably practicable. The replacement Independent Building Expert shall be agreed to by each of the City, the Port and the Project Company, acting reasonably. In the event that the City, the Port and the Project Company are unable to agree within 20 Business Days of the previous Independent Building Expert's appointment expiring or being terminated, or within 20 Business Days of the Independent Building Expert's inability to perform its duties under the Independent Building Expert Agreement, the matter may be referred to Non-Binding Mediation. To the extent possible, the City, the Port and the Project Company shall work with the Independent Building Expert in order for such Independent Building Expert to continue to fulfill its obligations under the Independent Building Expert Agreement until a replacement Independent Building Expert is appointed by the City, the Port and the Project Company.

SECTION 8.3. INDEPENDENT BUILDING EXPERT AS MEDIATOR PRIOR TO FINAL COMPLETION.

Prior to Final Completion, the Independent Building Expert shall be the Mediator for purposes of any Non-Binding Mediation conducted under Section 20.2 (Non-Binding Mediation Generally) with respect to any request made by any of the City, the Port or the Project Company relating to the interpretation of:

- (1) this Project Agreement as it relates to design development matters and construction matters generally;
- (2) the detailed design and whether any D&C Standards are being complied with and interpretation of the intent of the D&C Standards;
- (3) any proposed Design Requirement Change and delays in construction of the Project resulting from such Design Requirement Change; and
- (4) the cost impact associated with any proposed Design Requirement Change pursuant to Sections Section 7.9 (Design Requirement Changes Made at Project Company Request), 7.10 (Design Requirement Changes Made Due to Relief Events), and 7.11 (Design Requirement Changes Made at City or Port Direction).

Any communications by the Independent Building Expert in his or her capacity as mediator shall be inadmissible in any other proceeding and the Independent Building Expert shall not be permitted to testify or otherwise participate in any such other proceeding.

SECTION 8.4. OCCUPANCY READINESS CONDITIONS.

(A) Conditions. The following conditions shall constitute the “Occupancy Readiness Conditions” in respect of a Facility, each of which shall be and remain satisfied in all material respects by the Project Company in order to achieve Occupancy Readiness in respect of such Facility and establish the Occupancy Date in respect of such Facility:

- (1) Substantial Completion. Substantial Completion has occurred;
- (2) Ready for Use. The Facility in its entirety is ready for use for its intended purpose, except for Punch List Items;
- (3) Architect Letter. The Architect has issued a letter of confirmation to the Independent Building Expert indicating that all buildings and systems forming part of such Facility are ready for use, except for Punch List Items, and to the best of its knowledge have been designed and built in accordance with this Project Agreement;
- (4) No Encumbrances. There are no Encumbrances registered or recorded on the Project Site or any part of the City Site (in the case of a City Facility, the Shared Rooms or the New Parking Facility) or Port Site (in the case of the Port Headquarters Building or a Shared Facility) other than Permitted Encumbrances;
- (5) Successful Commissioning. The Project Company has completed Commissioning the Facility in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the Occupancy Date with respect to such Facility);
- (6) Certificate of Occupancy. A temporary or final certificate of occupancy has been issued for the Facility by the Superintendent of Building and Safety for the City’s Department of Development Services, Building and Safety Bureau or a duly authorized representative in accordance with Applicable Law;
- (7) Governmental Body Readiness Confirmations. All other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Governmental Approvals or other documents in respect thereof) that all buildings and structures forming part of the Facility are ready for occupancy;
- (8) Required Operating Period Insurance. If the Facility is a City Facility, a Shared Facility, a Shared Room or the New Parking Facility, the Project Company has obtained and submitted to the City certificates of insurance for all Required Operating Period Insurance in respect of such Facility as specified in Appendix 9 (Insurance Requirements);
- (9) Operation Procedures Plan. The Project Company has delivered to the Owner a reasonable operation procedures plan in respect of the Facility as required by Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (with respect to the Port FM Facilities), if applicable;
- (10) Master Maintenance Plan. If the Facility is an FM Facility, the Project Company has delivered to the Owner a reasonable Master Maintenance Plan as required by Appendix 8

(FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (with respect to the Port FM Facilities);

(11) Relocation Plan. The Project Company has, at least six months prior to the Scheduled Occupancy Date in respect of such Facility, delivered to the City or the Port, as the case may be, a reasonable Relocation Plan in accordance with Appendix 25 (Relocation), and the City or the Port, as the case may be, has approved such Relocation Plan (such approval not to be unreasonably withheld, conditioned or delayed);

(12) Notice. The Project Company has delivered to the Owner the notice specified in Section 8.4(D) unless the Owner has approved early occupancy pursuant to Section 8.4(A)(13); and

(13) Owner Approval of Early Occupancy. If the Occupancy Readiness date in respect of a Facility is prior to the Scheduled Occupancy Date in respect of such Facility, the Owner has provided written approval of its acceptance of the proposed Occupancy Date.

(B) “Ready for Use”. For purposes of subsection (A) of this Section, in determining whether a Facility or Project Equipment in respect of such Facility are “ready for use,” the following factors shall be taken into account:

- (1) the requirements of this Project Agreement;
- (2) the ability of the public to access the Facility, and the risk of injury to members of the public and all Project Users;
- (3) the security services set forth in Appendices 5 (D&C Standards) and 8 (FM Standards) of this Project Agreement are operational;
- (4) any apparent hazard or nuisance;
- (5) the need to conduct operations in a reasonably quiet and stable environment free from, dust, chemical, smoke and other health and safety concerns; and
- (6) the proper installation and functionality of all Project Equipment in respect of the Facility.

(C) Draft Relocation Plan. The draft Relocation Plan shall be developed in accordance with Appendix 25 (Relocation).

(D) Notice of Occupancy Readiness. The Project Company shall give the Owner’s Representative at least 60 days’ prior written notice of the expected date upon which the Project Company expects to achieve Occupancy Readiness of a Facility.

SECTION 8.5. OCCUPANCY READINESS CERTIFICATE.

(A) Generally. Upon request by the Project Company, the Independent Building Expert shall inspect a Facility and determine whether to issue the Occupancy Readiness Certificate in respect of such Facility in accordance with the Independent Building Expert Agreement and this Project Agreement.

(B) Certificate Issuance. If the Independent Building Expert determines that the Occupancy Readiness Conditions in respect of a Facility have been satisfied, the Independent Building Expert shall deliver a duplicate signed original Occupancy Readiness Certificate to the Owner and the Project Company pursuant to the Independent Building Expert Agreement.

(C) Deficiencies. If, upon inspection and review, the Independent Building Expert determines that any of the Occupancy Readiness Conditions have not been satisfied, the Independent Building Expert shall identify any deficiencies in a written report delivered pursuant to Section 4.3(A)(3)(b) of the Independent Building Expert Agreement. The Project Company shall thereupon rectify all such matters.

(D) Effect of Issuance. The Occupancy Readiness Certificate in respect of a Facility shall establish the Occupancy Date of such Facility and be final and binding on the Owner and the Project Company with respect to the occurrence of the Occupancy Date of such Facility.

(E) Matters Not Affected By Certificate Issuance. Neither the issuance of the Occupancy Readiness Certificate in respect of a Facility, nor any use by the Owner of any part of a Facility or the commencement of any activities under the terms of this Project Agreement, shall:

- (1) be final or conclusive as to whether any of the matters certified are correct, or whether the Occupancy Readiness Conditions in respect of such Facility have in fact been satisfied;
- (2) limit the obligations of the Project Company under this Project Agreement, including its obligation to complete the Design-Build Work in accordance with this Project Agreement and to remedy any defects, deficiencies or items of outstanding Design-Build Work existing or discovered prior to or after the date of such Occupancy Readiness Certificate or the date of the Punch List;
- (3) be construed as an approval by the Owner of the Project or the manner in which the Design-Build Work has been carried out by the Project Company; or
- (4) have any effect other than as specified in subsection (D) of this Section.

The Owner shall retain all of its rights with respect to any matter not affected by the issuance of the Occupancy Readiness Certificate in respect of a Facility.

(F) Definition of Owner. For the purposes of specifying the recipients of the Occupancy Readiness Certificate to be delivered pursuant to Section 8.5(B) (Certificate Issuance) only (provided that such recipients shall be bound by the delivery of the Occupancy Readiness Certificate in accordance with Section 8.5(D) (Effect of Issuance)):

- (1) the City shall be deemed the Owner in respect of the City Hall Building, the Library, Lincoln Park, and the Shared Rooms;
- (2) the Port shall be deemed the Owner in respect of the Port Headquarters Building and the New Parking Facility; and
- (3) the City and the Port shall both be deemed to be Owners in respect of the Shared Facilities.

SECTION 8.6. PUNCH LIST ITEMS.

(A) Punch List. The Independent Building Expert, in consultation with the Owner and the Project Company, shall, prior to inspection of a Facility to determine whether such Facility has met the Occupancy Readiness Conditions, prepare a list of all Punch List Items (the “Punch List”) identified for such Facility at that time and an estimate of the cost and the time for rectifying such Punch List Items. The Independent Building Expert shall not withhold the Occupancy Readiness Certificate for such Facility by reason solely that there are Punch List Items. The Punch List shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which in the Independent Building Expert’s opinion:

(1) the Project Company can complete the Facility before the relevant Final Completion Deadline provided in Section 7.19 (Final Completion), and with minimal interference to the occupancy and use of the Facility; and

(2) would represent, to perform or complete, a total cost of not more than 1.0% of the portion of the price payable under the Design-Build Agreement (unless the City or the Port, as the case may be, determines that a higher percentage is acceptable).

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

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

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

(E) Failure to Rectify Punch List Items. In the event that the Project Company fails to complete and rectify the Punch List Items specified in the Punch List within the time period specified pursuant to section (D) of this Section:

(1) the City or the Port, as the case may be, may withhold from the Service Fee or the Port Completion Payment, as applicable, a holdback amount that is 200% of the amount estimated by the Independent Building Expert to complete and rectify the Punch List Items (to the extent then outstanding); and

(2) the Owner may engage others to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of the Project Company, and the City may deduct such cost from the holdback amount set forth in subsection (E)(1) of this Section. In the event that the cost to perform such work exceeds the holdback amount, the Project Company shall promptly pay the amount of such excess to the Owner.

Upon completion and rectification of all of the Punch List Items pursuant to this subsection, the Owner shall release to the Project Company the then remaining amount of any holdback.

SECTION 8.7. SCHEDULED OCCUPANCY DATE, SCHEDULED PROJECT OCCUPANCY DATE AND LONGSTOP DATE.

(A) Scheduled Occupancy Date Defined. The Scheduled Occupancy Date is (1) in respect of the City Hall Building, the Library, the Shared Facilities, the Port Facilities and the Shared Rooms, the date that is 1,232 days following Financial Close, and (2) in respect of Lincoln Park, the date that is 1,742 days following Financial Close, and in each case, as such date may be extended as provided in subsection (G) of this Section; provided, however that the Scheduled Occupancy Date for a Facility may be extended in accordance with this Agreement without requiring the Scheduled Occupancy Date of any other Facility with the same initial Scheduled Occupancy Date to be similarly extended. Any changes to the Scheduled Occupancy Date in respect of a Facility shall be set forth in a Change Order.

(B) Scheduled Final City Occupancy Date Defined. The Scheduled Final City Occupancy Date is the date on which the Final City Occupancy Date is scheduled to occur, as such date may be extended as provided in subsection (G) of this Section.

(C) Scheduled Port Occupancy Date Defined. The Scheduled Port Occupancy Date is the date on which the Port Occupancy Date is scheduled to occur, as such date may be extended as provided in subsection (G) of this Section.

(D) Scheduled Project Occupancy Date Defined. The Scheduled Project Occupancy Date is the date on which Occupancy Readiness is scheduled to occur in respect of all the Facilities, as such date may be extended as provided in subsection (G) of this Section.

(E) City Longstop Date Defined. The City Longstop Date is the date 365 days following the Scheduled Project Occupancy Date, as such date may be extended as provided in subsection (G) of this Section.

(F) Port Longstop Date Defined. The Port Longstop Date is the date 365 days following the Scheduled Project Occupancy Date, as such date may be extended as provided in subsection (G) of this Section.

(G) Extension for Relief Events. If a Relief Event occurs between the Contract Date and the Scheduled Project Occupancy Date, the Scheduled Initial Occupancy Date (if applicable), the Scheduled Occupancy Date with respect to a Facility impacted by such Relief Event, the Scheduled Project Occupancy Date, the Scheduled Final City Occupancy Date or the Scheduled Port Occupancy Date, as the case may be, and the City Longstop Date or the Port Longstop Date, as the case may be, shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Relief Event. For the avoidance of doubt, the City and the Port acknowledge and agree that if a Relief Event occurs with respect to one Facility, such occurrence may have an effect on another Facility and such effect on such other Facility may be reflected in the extension of time periods contemplated by this paragraph.

SECTION 8.8. FAILURE TO ACHIEVE INITIAL OCCUPANCY DATE BY SCHEDULED INITIAL OCCUPANCY DATE; FAILURE TO ACHIEVE PORT OCCUPANCY DATE BY SCHEDULED PORT OCCUPANCY DATE.

(1) The obligation of the City to pay the Service Fee shall commence on the Initial Occupancy Date as provided in Section 18.1 (Service Fee, Port FM Fee and Port Completion Payment Generally). The Project Company acknowledges, accordingly, that any delay in achieving the Initial Occupancy Date beyond the Scheduled Initial Occupancy Date will result in the loss of the payment of the Service Fee that the Project Company otherwise would have been entitled during the period of delay and the Expiration Date shall not be extended.

(2) The obligation of the City to pay the Port FM Fee shall commence on the Port Occupancy Date as provided in Section 18.1 (Service Fee, Port FM Fee and Port Completion Payment Generally). The Project Company acknowledges, accordingly, that any delay in achieving the Port Occupancy Date beyond the Scheduled Port Occupancy Date will result in the loss of the payment of the Port FM Fee that the Project Company otherwise would have been entitled during the period of delay and the Expiration Date shall not be extended.

SECTION 8.9. FAILURE TO ACHIEVE FINAL CITY OCCUPANCY DATE BY CITY LONGSTOP DATE; FAILURE TO ACHIEVE PORT OCCUPANCY DATE BY PORT LONGSTOP DATE.

(A) Failure to Achieve Final City Occupancy Date. In the event the Project Company fails to achieve the Final City Occupancy Date (other than the Occupancy Date in respect of Lincoln Park) by the City Longstop Date, a City Partial Termination Project Company Event of Default hereunder shall be deemed to have occurred and the City may pursue all remedies available under Articles 21 (Remedies of the Parties and City and Port Step-In Rights) and 24 (Termination) in accordance with the terms thereof.

(B) Failure to Achieve Occupancy Date of Lincoln Park. In the event the Project Company fails to achieve the Occupancy Date in respect of Lincoln Park by the City Longstop Date, a City Partial Termination Project Company Event of Default hereunder shall be deemed to have occurred and the City may pursue all remedies available under Articles 21 (Remedies of the Parties and City and Port Step-In Rights) and 24 (Termination) in accordance with the terms thereof.

(C) Failure to Achieve Port Occupancy Date. In the event the Project Company fails to achieve the Port Occupancy Date by the Port Longstop Date, a Port Partial Termination Project Company Event of Default hereunder shall be deemed to have occurred and the Port may pursue all remedies available to it under Articles 21 (Remedies of the Parties and City and Port Step-In Rights) and 24 (Termination) in accordance with the terms thereof.

SECTION 8.10. CITY AND PORT RIGHT OF OCCUPANCY.

(A) Commencement of Use and Occupancy. The right of the Owner to occupy and use the Facilities under this Project Agreement shall commence on the relevant Occupancy Date, except as provided in subsection (B) of this Section.

(B) Early Occupancy.

(1) In the event the Project Company determines during the Design-Build Period that the Occupancy Date in respect of a City Facility, a Shared Facility or a Shared Room may occur prior to the Scheduled Occupancy Date for such Facility and that it wishes to offer early

occupancy of such Facility, it shall give notice to the Owner. Subject to Section 18.1(B) (Payment of the Service Fee Where Initial Occupancy Date Occurs Prior to Scheduled Initial Occupancy Date), the Owner shall be under no obligation to take early occupancy of such Facility. The parties may, however, in their discretion, negotiate the terms and conditions of any such early occupancy, which terms and conditions shall be reflected in a Project Agreement Amendment.

(2) In the event the Project Company determines during the Design-Build Period that the Port Occupancy Date may occur prior to the Scheduled Port Occupancy Date and that it wishes to offer early occupancy of the Port Facilities, it shall give notice to the Owner. Subject to Section 18.1(C) (Payment of the Port FM Fee Where Port Occupancy Date Occurs Prior to Scheduled Port Occupancy Date), Owner shall be under no obligation to take early occupancy of the Port Facilities. The parties may, however, in their discretion, negotiate the terms and conditions of any such early occupancy, which terms and conditions shall be reflected in a Project Agreement Amendment.

SECTION 8.11. RELOCATION COSTS.

The relocation of the City and the Port into a Facility is not a condition of Occupancy Readiness in respect of such Facility; however, the Project Company shall be responsible for relocating the City and the Port from their respective existing facilities in accordance with Appendix 25 (Relocation). If the Project Company fails to provide evidence of a binding contract with a moving contractor by the later of (1) 30 days prior to the Scheduled Occupancy Date in respect of a Facility (other than Lincoln Park), or (2) 30 days after approval of the Relocation Plan by the City or the Port, as the case may be, then the Project Company shall make a single payment in the amount of \$500,000 to the City and the Port, and the City and the Port may unilaterally make alternate relocation arrangements. If the Project Company otherwise fails to comply with its material obligations under the Relocation Plan and such noncompliance is not corrected within 90 days of the date set forth for the satisfaction of such obligation in the Relocation Plan or the applicable Scheduled Occupancy Date, whichever occurs first, then the Project Company shall make a single payment of \$250,000 to the City and the Port, in which case the Project Company shall no longer have any obligation to or responsibility for relocating either of the City or the Port. For the avoidance of doubt, the Project Company shall not be obligated to make separate payments to each of the City and the Port under this Section, but shall only be obligated to make a single payment of \$500,000 or \$250,000, as the case may be. The parties acknowledge that such payment shall constitute liquidated damages for such events of non-performance. The right of the City and the Port to demand such payment shall be the exclusive remedy of the City and the Port for such events of non-performance, regardless of legal theory. The parties agree that the City's and Port's actual damages in each such circumstances would be difficult or impossible to ascertain, and that such liquidated damages are intended to place the City and the Port in the same economic position as it would have been in had the circumstance not occurred. For the avoidance of doubt, the Project Company has no obligations to provide relocation services in respect of Lincoln Park.

ARTICLE 9

OPERATION AND MAINTENANCE

SECTION 9.1. PROJECT COMPANY OBLIGATIONS GENERALLY.

(A) Responsibility. Commencing on the respective Occupancy Dates of each FM Facility, the Project Company shall operate, maintain, repair, replace and manage the FM Facilities on a 24-hour per day, 7-day per week basis during the Term in accordance with the FM Requirements and the other Contract Standards.

(B) Scope. The Project Company shall furnish all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery, accounting, record-keeping and other things and kinds of services whatsoever necessary for the full performance of the Project Company's operation, maintenance, repair, replacement, management, obtaining and maintaining Governmental Approvals and related obligations under this Project Agreement.

(C) Moveable Furniture, Fixtures and Equipment and Owner Furnished Equipment. The FM Services do not include the obligation to provide ordinary maintenance or major maintenance, repair or replacement of Moveable Furniture, Fixtures and Equipment or Owner Furnished Equipment, the costs and responsibility for which shall be borne by the City and the Port, as applicable. The Project Company shall be entitled to an Other Relief Event to the extent the City or the Port, as the case may be, does not maintain, repair or replace such Moveable Furniture, Fixtures and Equipment or Owner Furnished Equipment in accordance with Best Management Practice.

(D) Emergency Orders and Directives. The Project Company shall comply with all orders and directives given or issued by the City or any Governmental Body having police power or regulatory jurisdiction based on an emergency condition.

(E) Retention of Personnel. The Project Company, working with the FM Contractor, shall use reasonable efforts to review the qualifications of existing Old City Hall Building and Library custodial, security and engineering employees and consider such employees for employment, provided, however, that the Project Company shall be under no obligation to cause the FM Contractor to hire such personnel. Failure of the Project Company to comply with its obligations under this Section shall not be a Project Company Event of Default.

SECTION 9.2. UTILITIES.

(A) Supply. The Project Company shall arrange for and establish the supply of electric, gas, water, sewer and other utility service required for the Project in accordance with Appendix 5 (D&C Standards). Any utility agreements shall be entered into by the City or the Port, as the case may be.

(B) Alternative Suppliers. The Owner shall have the right, following the Occupancy Date in respect of an FM Facility and upon reasonable notice, to direct the Project Company to change electricity or gas suppliers, and to negotiate and establish electric or gas rates with the replacement supplier. The Project Company shall cooperate with and assist the Owner in making such arrangements, and the Owner shall give reasonable consideration to any requests and recommendations made by the Project Company as to the terms and conditions of electricity or gas supply.

(C) Payment for Utilities.

(1) The Owner shall timely pay all utility bills for the Facilities. Each month, the Project Company shall perform a reconciliation in respect of the City and Port utility bills for the Facilities to reflect the allocable energy consumption for the City and the Port in respect of the Shared Facilities and the Shared Rooms. The Project Company shall provide such reconciliation to the City and the Port for their use in settling their respective energy costs.

(2) After receipt of the final energy bill in a given Contract Year, the Project Company shall perform a reconciliation in respect of the City and Port energy bills for the given year to reflect the allocable energy production of the Facilities' solar energy systems. The Project Company shall provide this reconciliation to the City and the Port for their use in settling their respective energy costs. For this purpose, the City and the Port shall each be assumed to benefit from the energy produced by the Facilities' solar energy systems in accordance with the allocations of Section 7.1(N) (Title and Risk of Loss).

(D) Energy Efficiency. The Project Company shall maintain the energy efficiency of the Project in accordance with the requirements of Appendices 8 (FM Standards) and 21 (Energy).

SECTION 9.3. DOCUMENTS AND KEY PERFORMANCE INDICATORS.

(A) Plans, Programs, Reports and Documents. The Project Company shall provide the City and the Port with the plans, programs, reports and documentation required with respect to the FM Services under Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Appendix 8A (with respect to the Port FM Facilities).

(B) Key Performance Indicators.

(1) Appendix 8 (FM Standards) sets forth Key Performance Indicators for the FM Services in respect of the City Facilities, the Shared Facilities and the Shared Rooms. Such Key Performance Indicators shall be used for determining Deductions for Unavailability Events and FM Service Failures under Appendix 10 (Deductions).

(2) Appendix 8A (FM Standards – Port FM Facilities) sets forth Key Performance Indicators for the FM Services in respect of the Port FM Facilities. Such Key Performance Indicators shall be used for determining Deductions for Unavailability Events and FM Service Failures under Appendix 10A (Port Deductions).

(C) Default Reports. The Project Company shall provide to the City and the Port, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Material Contract with respect to the FM Services.

SECTION 9.4. COMPUTER AIDED FACILITY MANAGEMENT SYSTEM AND CUSTOMER SERVICE CENTER.

The Project Company, in accordance with Section 2.7 of Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Section 2.7 of Appendix 8A (with respect to the Port FM Facilities) shall manage the performance of the FM Services with the assistance of the City and the Port as and to the extent provided therein.

SECTION 9.5. ORDINARY MAINTENANCE.

(A) Ordinary Maintenance and Repair. The Project Company, except as provided in Section 9.1(C) (Moveable Furniture, Fixtures and Equipment and Owner Furnished Equipment) and subsection (B) of this Section, shall perform all normal and ordinary maintenance of the mechanical equipment, structures, improvements, grounds and all other property constituting the FM Facilities, and shall keep each FM Facility in good working order, condition and repair and in a neat and orderly condition all in accordance with the FM Requirements, and shall maintain the aesthetic quality of the FM Facilities as originally constructed and in accordance with the Design Requirements. The Project Company shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the FM Facilities and shall conduct predictive, preventive and corrective maintenance of each FM Facility as required by the Contract Standards.

(B) Vandalism. If any maintenance, repair or replacement of the FM Facilities is required due to Vandalism, the Project Company shall perform such maintenance, repair or replacement, provided that, to the extent the cost of maintenance, repairs or replacement required due to Vandalism exceeds \$10,000 in the aggregate in a Contract Year, the City shall pay the Project Company, as an Extraordinary Item under Section 18.6 (Extraordinary Items), an amount equal to the amount by which such cost exceeds such amount.

SECTION 9.6. MAJOR MAINTENANCE, REPAIR AND REPLACEMENTS.

The Project Company, in addition to its ordinary maintenance obligations described in Section 9.5 (Ordinary Maintenance) and except as provided in Section 9.1(C) (Moveable Furniture, Fixtures and Equipment and Owner Furnished Equipment), shall prepare, maintain and comply with its obligations under the Master Maintenance Plan required pursuant to Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Appendix 8A (with respect to the Port FM Facilities) and shall perform all major maintenance, repair and replacement of the equipment, systems, structures, improvements and all other property constituting the FM Facilities during the Term required by the Contract Standards, including all maintenance, repair and replacement which may be characterized as “major” or “capital” in nature. The Owner’s approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification under Article 10 (Capital Modifications and FM Services Changes). The obligations of the Project Company under this Article are intended to assure that the FM Facilities are fully, properly and regularly maintained, repaired and replaced in order to preserve their long-term reliability, durability and efficiency, and that in any event the FM Facilities are returned to the Owner at the end of the Term in a condition which fully complies with the Handback Requirements.

SECTION 9.7. MAINTENANCE INSPECTIONS AND ASSESSMENTS.

The Project Company, and a third party jointly selected by the Project Company, the City and the Port shall periodically evaluate the condition of the FM Facilities and perform facility assessments, as provided in Section 3.1 of Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Section 3.1 Appendix 8A (with respect to the Port FM Facilities). In addition, the Owner may at any time perform a limited or full-scale inspection and review of the state of repair, working condition and performance capability of an FM Facility, including testing of equipment and systems to determine their physical and operational condition. Any such inspection and review shall be performed at the Owner’s expense and shall take place at such time as the Owner shall determine upon reasonable notice to the Project Company. The inspection may include a concurrent review of all relevant

data, records and reports. The Project Company shall cooperate fully with the inspections, which shall not interfere unreasonably with the Project Company’s performance of the Contract Services.

SECTION 9.8. DISPOSAL OF SURPLUS EQUIPMENT.

The Project Company may, at the direction of the Owner, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Project that is unused or obsolete and no longer needed. All proceeds from any sale, net of the Project Company’s expense in arranging the sale, shall be the property of the Owner.

SECTION 9.9. ENFORCEMENT OF PROJECT WARRANTIES.

During the Term, the Project Company shall be responsible for meeting the maintenance obligations under all manufacturers’ warranties on new equipment purchased and installed in the FM Facilities by the Owner or by the Project Company, and shall be the agent of the Owner in enforcing all equipment warranties and guarantees, including warranties and guarantees of the Design-Build Work obtained by the Project Company pertaining to the FM Facilities pursuant to Section 7.16 (Warranties of Design-Build Work). The Project Company shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Project Company shall cooperate with and assist the Owner if the Owner seeks to enforce such warranties and guarantees through litigation.

SECTION 9.10. PROJECT HANDBACK.

(A) Required Project Condition. On the Termination Date, the FM Facilities and each element comprising the FM Facilities shall be in a condition which is:

(1) consistent with the FM Facilities and each of the elements of the FM Facilities having been designed and constructed in accordance with the applicable design life requirements set forth in Appendix 5 (D&C Standards);

(2) consistent with the Project Company having performed the FM Services in accordance with the FM Requirements, to the extent such work was scheduled to have been performed under the Master Maintenance Plan prior to the Partial Termination Date or Termination Date, as the case may be; and

(3) consistent with the required Facility Condition Index, compliance with which shall be determined using the methodology and criteria set forth in the definition of Facility Condition Index in Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities). So long as the Facility Condition Index for all of the systems and equipment comprising the (i) City Hall Building, Port FM Facilities, Shared Facilities and Shared Rooms as a combined unit; and (ii) the Library and Lincoln Park as a combined unit are, in each case, complied with on a weighted average Facility Condition Index basis for all such systems and equipment per combined unit, it shall not be necessary to comply with the standard for each individual system or piece of equipment.

The requirements of this subsection constitute the “Handback Requirements”.

(B) Handback Survey and Work Plan. In conjunction with the preparation of the annual Master Maintenance Plan for the Contract Year commencing at least five years prior to the Expiration

Date, the Project Company and the Owner shall conduct a joint inspection and survey of the FM Facilities. If such survey provided indicates that any element of the FM Facilities, on the Expiration Date, shall not be in a condition consistent with the Handback Requirements upon the Project Company implementing the plans and programs required under Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) or Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities) over the remainder of the Term, within 60 days of completion of the survey the Project Company shall deliver to the Owner the Project Company’s plan to perform the additional work necessary to meet the Handback Requirements, together with a cost estimate for the work.

(C) Determination of Handback Reserve. Upon completion of the Project condition survey and work plan required by subsection (B) of this Section, the Owner:

(1) may review and comment on the Project Company’s performance plan; and

(2) shall, after giving due consideration to the Project Company’s cost estimate, determine in good faith the amount (the “Handback Reserve”) it reasonably believes necessary to complete the additional work required to meet the Handback Requirements.

(D) Establishment and Use of Handback Reserve Account. The City shall hold back and retain from the Service Fee (in respect of the City Facilities, the Shared Rooms and the Shared Facilities) and from the Port FM Fee (in respect of the Port FM Facilities) an amount equal to the Handback Reserve, and deposit such amount in an interest bearing account held by a Qualified Commercial Bank (the “Handback Reserve Account”). The account shall be the property of the City, subject to the Project Company’s withdrawal rights under this Section. The Project Company shall have the right, upon the submittal of certified requisitions to the City with full supporting receipts or other evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the additional work necessary to meet the Handback Requirements. Notwithstanding the foregoing, the Project Company shall be entitled to post a letter of credit from a Qualified Commercial Bank with the City in an amount equal to the Handback Reserve in lieu of such holdback from the Service Fee or the Port FM Fee, as applicable.

(E) Performance of the Handback Work and Further Inspection. The Project Company shall implement the handback plan proposed under subsection (B) of this Section and take all other steps necessary to assure compliance with the Handback Requirements, notwithstanding the Owner’s participation in the handback survey or review of the Project Company’s work plan or the fact that the actual cost of compliance may be higher than the amount of the Handback Reserve. At least 180 days prior to the Expiration Date, the Project Company and the Owner shall conduct a further joint inspection and survey of the condition of the Project and the progress of the handback work.

(F) Final Owner Condition Assessment. On, or within five Business Days after, the Termination Date, the Owner shall either:

(1) issue to the Project Company a handback certificate confirming compliance with the Handback Requirements, upon which the City shall return any remaining Handback Reserve to the Project Company; or

(2) notify the Project Company of its decision not to issue the handback certificate, setting out each respect in which the Project does not comply with the Handback Requirements and stating the Owner’s estimate of the cost of completing all work required for the FM Facilities to comply with the Handback Requirements.

(G) Final Project Company Condition Assessment. The Project Company may, within 30 days after receipt of the notice given in accordance with subsection (F) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Project Company’s proposals in respect of such matters.

(H) Final Compliance. If any of the FM Facilities did not, at the Termination Date, comply in all respects with the Handback Requirements, the Project Company shall complete any work necessary to cause such compliance within 60 days of the Termination Date or pay to the City no later than 60 days after the Termination Date an amount equal to the City’s reasonable estimate of the cost of completing any outstanding handback work, so that the FM Facilities are in a condition which complies with the Handback Requirements.

(I) Partial Termination or Termination. The Project Company shall only be required to comply with the requirements of this Section 9.10 to the extent that such work was scheduled to have been performed under the Master Maintenance Plan prior to the Partial Termination Date or Termination Date, as the case may be.

ARTICLE 10

CAPITAL MODIFICATIONS AND FM SERVICES CHANGES

SECTION 10.1. CAPITAL MODIFICATIONS GENERALLY.

(A) Owner Approval. The Owner shall have the right, in its discretion, to accept, reject, approve or modify all Capital Modifications. All Capital Modifications and related changes to the terms and conditions of this Project Agreement shall be reflected in a Project Agreement Amendment.

(B) Small Scale Capital Modifications. The Owner's rights under subsection (A) of this Section with respect to Small Scale Capital Modifications shall extend only to those affecting the functional or aesthetic quality of the FM Facilities as originally constructed.

(C) Condition Approvals. The Owner shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom or upon any further term or condition that the Owner may seek to establish with respect thereto.

(D) Responsibility for Costs. All Capital Modifications shall be made and implemented in accordance with this Article. The Project Company shall bear the cost and expense of all Small Scale Capital Modifications and all Capital Modifications required in accordance with Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Project Company Fault). The responsibility for the cost and expense of any Capital Modifications requested by the Project Company in accordance with Section 10.2 (Capital Modifications at Project Company Request) shall be determined by the Owner in its discretion in accordance with its approval rights under this Article. The Owner shall bear the cost and expense of all Capital Modifications made pursuant to Section 10.4 (Capital Modifications Required Due to Relief Events) and pursuant to Section 10.5 (Capital Modifications at Owner Direction).

(E) No Project Company Ownership. In no event shall the Project Company have any ownership interest in the City Facilities, the Shared Facilities, the Port FM Facilities and the Shared Rooms as a result of any Capital Modification.

SECTION 10.2. CAPITAL MODIFICATIONS AT PROJECT COMPANY REQUEST.

The Project Company shall give the Owner written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Project Company's request. To assist the Owner in the exercise of its approval rights under Section 10.1 (Capital Modifications Generally), the notice shall contain sufficient information for the Owner to determine that the Capital Modification:

(1) does not materially diminish the capacity of the FM Facilities to be operated so as to meet the Contract Standards;

(2) does not materially impair the quality, integrity, durability and reliability of the FM Facilities;

(3) is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and

(4) is feasible.

SECTION 10.3. CAPITAL MODIFICATIONS ARISING FROM REPAIRS AND REPLACEMENTS OR REQUIRED TO REMEDY A PROJECT COMPANY FAULT.

In the event that (1) any repair or replacement proposed to be performed by the Project Company in satisfaction of its obligations under Article 9 (Operation and Maintenance), or (2) any capital investment, improvement or modification required to be made by the Project Company in order to remedy a breach of this Project Agreement, can be reasonably expected to result in a material change to the FM Facilities, such repair, replacement, capital investment, improvement or modification shall constitute a Capital Modification. In no event shall the rejection or modification of any such Capital Modification by the Owner relieve the Project Company of its obligation to perform maintenance, repair and replacement required under Article 9 (Operation and Maintenance) or perform any other obligation hereunder. Except as otherwise agreed to by the Owner, the design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Project Company.

SECTION 10.4. CAPITAL MODIFICATIONS REQUIRED DUE TO RELIEF EVENTS.

Upon the occurrence of a Relief Event, the Project Company shall promptly proceed to make or cause to be made all repairs, replacements and restoration to the FM Facilities reasonably necessary to address the Relief Event, as provided in Articles 15 (Relief Event Procedures), 16 (Insurable and Uninsurable Force Majeure Events), and 17 (Change in Law Events and Other Relief Events), as applicable. The Owner shall have the right, but not the obligation, to direct the Project Company to make Capital Modifications in connection with any such repair, replacement or restoration work. The design and construction costs attributable to any such Capital Modification and any related operation, maintenance, repair and replacement costs shall be borne by the Owner. The Project Company shall not be required to undertake any Capital Modification under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Project Agreement including Section 10.6 (Primary Procedure for Implementing Capital Modifications), and (2) the Owner has provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Capital Modification (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties.

SECTION 10.5. CAPITAL MODIFICATIONS AT OWNER DIRECTION.

The Owner shall have the right to make Capital Modifications at any time and for any reason whatsoever after the Occupancy Date in respect of an FM Facility, whether and however the exercise of such rights affects this Project Agreement so long as the implementation of such Capital Modification does not contravene the limitations referred to in Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications and FM Services Changes). The design and construction costs of any such Capital Modification made at the Owner's direction under this Section, and any related operation, maintenance, repair and replacement costs, shall be borne by the Owner pursuant to this Article. The Project Company shall not be required to undertake any Capital Modification under this Section unless and until (1) the Project Company and the Owner have agreed upon a scope, price and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Project Agreement including Section 10.6 (Primary Procedure for Implementing Capital Modifications), and (2) the Owner has provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Capital Modification (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the Project Company and the Owner.

SECTION 10.6. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. Subject to Section 10.7 (Alternative Procedures for Implementing Capital Modifications), the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications except Small Scale Capital Modifications, which the Project Company may implement by means of its own choosing in accordance with Applicable Law.

(B) Project Company Conceptual Plan and Owner Review. At the request of the Owner and at the cost and expense of the Project Company, the Project Company shall prepare and deliver to the Owner a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Project Company's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Project Company or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and management practices which the Project Company is recommending. The Owner shall review the Project Company's conceptual plan and recommendations, and undertake discussions with the Project Company in order to reach agreement on a basic approach to the Capital Modification.

(C) Project Company Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the Owner and, except with respect to Capital Modifications pursuant to Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Project Company Fault), at the Owner's expense, the Project Company shall submit a formal implementation proposal to the Owner for its consideration. With respect to any Capital Modification to be undertaken at the Owner's expense and as otherwise required by Applicable Law, the implementation proposal shall contain (1) a Project Company services element, to be implemented through a Project Agreement Amendment, and (2) a third-party services element, to be implemented through third-party contracting.

(1) Project Company Services Element. The Project Company services element shall contain (a) the Project Company's offer to perform design, construction management and commissioning test services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a commissioning test and a guaranteed maximum construction price if so requested by the Owner and agreed to by the Project Company, and (b) as applicable, the Project Company's offer to operate, maintain, repair, replace, obtain and maintain Governmental Approvals for, and manage the Capital Modification following construction and commissioning for an Index-Linked fixed fee to be added to the Service Fee or Port FM Fee, as the case may be, and shall include long-term performance guarantees with respect to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Project Company to conduct, as allowed by Applicable Law, either qualification-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Owner or the Project Company, as determined by the Owner in compliance with Applicable Law. A "competitive proposal process" referred to herein may include a request for proposals and a Design-Build contract award to the most advantageous proposer.

With respect to any Capital Modification to be undertaken at the Owner’s expense and as otherwise required by Applicable Law, the Owner shall be a party to all such design and construction contracts or design-build contracts unless the Owner determines otherwise.

(D) Negotiation and Finalization of Project Company Implementation Proposal. The parties shall proceed, promptly following the Owner’s review of the Project Company’s submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Project Agreement. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

- (1) design requirements;
- (2) construction management services;
- (3) commissioning tests, standards and procedures;
- (4) a guarantee of completion;
- (5) performance guarantees;
- (6) any changes to the Contract Standards to take effect as a consequence of the Capital Modification;
- (7) a payment schedule for the design and construction management-related services;
- (8) any adjustments to the Service Fee or Port FM Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs;
- (9) a financing plan; and
- (10) any other appropriate amendments to this Project Agreement.

The Project Company shall not be obligated to undertake any Capital Modification under Section 10.4 (Capital Modifications Required Due to Relief Events) or Section 10.5 (Capital Modifications at Owner Direction) except following agreement upon scope, price and schedule and the delivery by the Owner of assurances as to the availability of funds, as provided in such Sections. The Owner shall have no obligation to reimburse the Project Company for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Project Agreement or pursuant to part (C) of this Section.

(E) Implementation Procedures. With respect to each Capital Modification to be made by the Project Company, other than Small Scale Capital Modifications, the Owner shall have the same substantive and procedural rights that it has with respect to the design, construction, commissioning, final completion and handback of the Project, as set forth in this Project Agreement.

SECTION 10.7. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS.

With respect to any Capital Modification to be undertaken at the Owner’s expense and as otherwise required by Applicable Law, the Owner shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 10.6 (Primary Procedure for Implementing Capital Modifications), and may instead, in its discretion, utilize any other implementation

procedure available to it or required under Applicable Law. Alternative implementation procedures may include contracting with the Project Company or any third party to implement the Capital Modification on a sole source or any competitive basis using any project delivery method available under Applicable Law. The Owner may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Project Company under the primary implementation procedure specified under Section 10.6 (Primary Procedure for Implementing Capital Modifications). No alternative implementation procedure for Capital Modifications shall contravene the limitations referred to in Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications and FM Services Changes).

SECTION 10.8. FM SERVICES CHANGES.

(A) Generally. The Owner may at any time during the Term, subject to Section 4.6 (Restrictions on City-Directed and Port-Directed Design Requirement Changes, Capital Modifications and FM Services Changes), require the Project Company to implement an FM Services Change in accordance with this Section. The implementation procedure set forth in this Section shall apply with respect to all FM Services Changes which the Owner may require during the Term. In the event the Owner requests an FM Services Change, the Owner shall issue to the Project Company a written notice including a sufficient description of the contemplated FM Services Change.

(B) Project Company FM Services Change Report. Within 15 Business Days, or such longer period as the parties agree acting reasonably, after receipt of the Owner's notice delivered pursuant to subsection (A) of this Section, the Project Company shall prepare and deliver to the Owner a report for the contemplated FM Services Change ("FM Services Change Report"). An FM Services Change Report shall include, to the extent that it is relevant to the proposed FM Services Change:

- (1) a description of the scope of the contemplated FM Services Change with respect to the FM Services;
- (2) a comparison of the scope of FM Services as a result of the contemplated FM Services Change as compared to the scope prior to the FM Services Change;
- (3) an estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated FM Services Change, as further described in subsection (C) of this Section, including the following, as applicable:
 - (a) all FM Services labor, material and equipment costs, supported as the case may be by quotations from the applicable FM Contractor and Subcontractors;
 - (b) any costs related to the Project Company's management and oversight of the Project that should reasonably be included in the contemplated FM Services Change;
 - (c) all costs of an amendment or renewal of a Governmental Approval required by the contemplated FM Services Change; and
 - (d) all financing costs;
- (4) an estimate of the cost savings, if any, resulting from the contemplated FM Services Change;

- (5) a description of any changes to the Financing Documents that would be required to reflect a change in the risk profile of the Project arising from the contemplated FM Services Change;
- (6) a description of any changes to the Service Fee or Port FM Fee that are required to reflect any costs or cost savings described in items (3) and (4) above;
- (7) identification of any amounts payable by the Owner to the Project Company, if any, other than the Service Fee or Port FM Fee;
- (8) the Project Company's proposal as to how any increased costs to the Project Company resulting from the contemplated FM Services Change may be funded;
- (9) the value of the loss or reduction of benefits resulting from the contemplated FM Services Change;
- (10) a description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated FM Services Change;
- (11) a description of any impact on the obligations of the Project Company under any Material Contracts;
- (12) a description of the extent to which the contemplated FM Services Change or the implementation thereof would interfere with the Project Company's ability to comply with any of its obligations under this Project Agreement, the Material Contracts or any Governmental Approvals;
- (13) the name of the Subcontractor, if any, which the Project Company intends to engage for the purposes of implementing the contemplated FM Services Change;
- (14) a description of any further effects (including without limitation benefits and impairments) which the Project Company foresees as being likely to result from the contemplated FM Services Change or the implementation thereof;
- (15) a description of any actions that would be reasonably required by the Owner to implement the contemplated FM Services Change;
- (16) a description of the steps the Project Company will take to implement the contemplated FM Services Change, in such detail as is reasonable and appropriate; and
- (17) a description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years.

If the Project Company prepares an FM Services Change Report pursuant to this subsection and the Owner elects not to proceed with the contemplated FM Services Change, then the Owner shall pay the Project Company's FM Services Change Report costs subject to Cost Substantiation. Notwithstanding the foregoing, the Owner shall not be responsible for any Project Company costs associated with an FM Services Change Report prepared pursuant to subsection (J) of this Section.

(C) Valuation of FM Services Changes. The Owner and the Project Company shall negotiate in good faith the costs or savings associated with any FM Services Change in accordance with subsection (E) of this Section. If the parties fail to agree on the costs or savings of such FM Services Change, the costs or savings shall be determined as set forth in this subsection. The costs or savings of an FM Services Change shall be the net incremental additional costs or savings of implementing the FM Services Change, calculated as the aggregate cost, if any, of any additions to the Project Company's FM Services obligations required to implement the FM Services Change minus the aggregate cost savings, if any, from all reductions in the Project Company's FM Services obligations resulting from the implementation of such FM Services Change. An FM Services Change may have a net cost, a net saving, or may result in no net cost or saving. The costs of an FM Services Change are the aggregate of the costs reasonably incurred by the Project Company to implement the FM Services Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:

- (1) the amounts of all Subcontractor or supplier agreements;
- (2) the direct costs incurred for the FM Services personnel, based on the number of personnel hours required to undertake the FM Services Change;
- (3) the direct costs incurred for the procurement of materials, consumables and equipment, for the supply and delivery of such materials, consumable and equipment, including the costs of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering costs;
- (4) the costs incurred for the evaluation of proposals and award of a contract for work associated with the FM Services Change, and the supervision and management of such contracts;
- (5) all direct costs incurred by the Project Company in procuring and managing the FM Services Change (including costs of advisers and extra costs under any management services agreements entered into by the Project Company); and
- (6) all other additional direct costs pertaining to the FM Services Change, including disposal, insurance, bonding, financing, Governmental Approvals and directly attributable overheads, calculated at the direct cost to the entity that directly incurs such costs, and the costs incurred or borne by the Project Company in preparing a FM Services Change Report.

The costs applied pursuant to this subsection shall be no greater than the market rates prevailing at the time of the implementation of the FM Services Change paid between parties contracting at arms-length. In addition to the costs incurred by the Project Company described above in this subsection, a mark-up shall be applied without duplication to such aggregate costs as full payment for all other costs, including indirect overhead costs and profit in accordance with Section 18.13(E) (Mark-Ups) of this Project Agreement.

(D) Justification and Supporting Documentation. The Project Company shall use, or will cause the FM Contractor to use, reasonable efforts to obtain competitive quotations and proposals for all work, equipment and materials required to implement an FM Services Change. The cost estimates included in an FM Services Change Report shall be in sufficient detail to allow evaluation by the Owner and will include such supporting information and justification as is necessary to demonstrate that:

(1) the Project Company has used all reasonable efforts, including utilizing competitive quotes or proposals, to minimize the cost of a contemplated FM Services Change and maximize potential related cost savings;

(2) the Project Company and FM Contractor have valued the FM Services Change as described in subsection (C) of this Section, and have not included other margins or mark-ups;

(3) the full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and

(4) the Project Company has mitigated or will mitigate the impact of the contemplated FM Services Change, including on the performance of the FM Services, the expected usage of Utilities, and the direct costs to be incurred.

(E) Agreement on an FM Services Change. Within 15 Business Days, or such longer period as the parties agree acting reasonably, following receipt by the Owner of an FM Services Change Report prepared in accordance with subsection (B) of this Section, the Owner may deliver to the Project Company any requests for clarifications or amendments, and the parties' representatives shall meet and use all reasonable efforts to agree to the FM Services Change Report. Such agreement shall include the costs, payments (including payment of direct costs and adjustments to the Service Fee and Port FM Fee, if any) and other information contained in the FM Services Change Report. If the Owner would be required by Applicable Law to require the Project Company to competitively solicit any contract in relation to a contemplated FM Services Change, the Owner may require the Project Company to seek and evaluate competitive proposals for the proposed FM Services Change. The Owner may modify any FM Services Change request notice delivered pursuant to subsection (A) of this Section, in writing, at any time prior to the parties reaching an agreement on the FM Services Change Report pursuant to this subsection. In the event the Owner delivers notice of any such modification to the Project Company, the Project Company shall notify the Owner of any significant changes to the FM Services Change Report within 20 Business Days after receipt of such modification notice.

(F) FM Services Change Certificate. Upon agreement of the parties with respect to the FM Services Change in accordance with subsection (E) of this Section, the Owner shall issue a signed FM Services Change Certificate to the Project Company. In the event the Owner and the Project Company do not agree on the FM Services Change, the Owner may issue an FM Services Change Certificate in accordance with subsection (G) of this Section. The Project Company shall not proceed with an FM Services Change prior to receiving a signed FM Services Change Certificate from the Owner. An FM Services Change Certificate issued in accordance with this subsection shall be binding upon the Owner and the Project Company. Upon receipt of an FM Services Change Certificate the Project Company shall implement the FM Services Change, without prejudice to the Project Company's right to refer any dispute concerning the FM Services Change to Non-Binding Mediation, including valuation of the FM Services Change in accordance with subsection (C) of this Section.

(G) Disagreement on FM Services Change Report. In the event the Owner and the Project Company cannot agree on an FM Services Change Report, the Owner may elect not to proceed with the FM Services Change described in the notice delivered to the Project Company in accordance with subsection (A) of this Section. Alternatively, the Owner may issue the FM Services Change Certificate to the Project Company stating the Owner's determination of the matters referred to in the FM Services Change Report, and if the Project Company disagrees with all or any of the determinations set forth in the FM Services Change Certificate, then the Project Company may deliver the Owner a notice identifying any such disagreements within five Business Days of receipt of the FM Services Change Certificate. Following delivery of the notice to the Owner identifying any points of disagreement to the FM Services

Change Certificate, the Project Company shall, without prejudice to its rights with respect to such disagreements, use all reasonable efforts to implement the FM Services Change as directed in the FM Services Change Certificate. If the Project Company fails to timely deliver the notice to the Owner identifying any points of disagreement with the FM Services Change Certificate as set forth in this subsection, the Project Company shall be deemed to have waived any such objections to the FM Services Change Certificate.

(H) Responsibility and Payment for FM Services Changes. Except as specifically provided in this Project Agreement, the Owner shall bear no risk or liability whatsoever arising from any FM Services Change other than the liability to make payment in connection therewith. The Owner shall bear the cost and expense of all FM Services Changes made pursuant to this Section. Payments by the Owner and any adjustments to the Service Fee and the Port FM Fee with respect to FM Services Changes shall be made in accordance with Sections 18.6 (Extraordinary Items) and 18.13 (Cost Substantiation of Additional Work Not Subject to Lump Sum Price Negotiation).

(I) Cost Savings. In the event any FM Services Change is reasonably expected to result in a net cost savings to the Project Company, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the Owner, and the Service Fee or Port FM Fee, as the case may be, shall be reduced accordingly.

(J) FM Services Changes at Project Company Request. The Project Company may give the Owner written notice of, and reasonable opportunity to review and comment upon, any FM Services Change proposed to be made at the Project Company's request. The Owner shall have the right, in its discretion, to accept, reject, approve or modify all such FM Services Change requests made by the Project Company. The responsibility for the cost and expense of any FM Services Change requested by the Project Company in accordance with this subsection shall be as finally determined by the Owner, in its sole discretion, following a joint review with the Project Company of the costs and benefits of such FM Services Change; provided, however, that the Project Company may withdraw its proposed FM Services Change if it disagrees with the Owner's determination of the cost and expense of such FM Services Change. The written notice provided by the Project Company shall contain sufficient information for the Owner to determine that the FM Services Change:

- (1) does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) does not impair the quality, integrity and reliability of the FM Services;
- (3) is reasonably necessary or is advantageous for the Project Company to fulfill its obligations under this Project Agreement; and
- (4) is feasible.

The Owner shall not unreasonably deny any FM Service Change request made by the Project Company that complies with the requirements of this subsection and will result in cost savings to both the Owner and the Project Company. Any FM Service Change proposed to be made at the Project Company's request, and accepted by the Owner, shall be implemented as set forth in this Section, except that the notice provided by the Project Company pursuant to this subsection shall take the place of the notice provided by the Owner pursuant to subsection (A) of this Section.

ARTICLE 11

CONTRACTING AND LABOR PRACTICES

SECTION 11.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. The City and the Port acknowledge that the Project Company may carry out the Design-Build Work and the FM Services by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Use of Project Contractors and Key Individuals. The Project Company shall use the Project Contractors and Key Individuals listed in Appendix 13 (Project Company and Project Contractors Information) or such others as the Owner may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Services in the roles indicated in Appendix 13 (Project Company and Project Contractors Information).

(C) Restricted Persons. In providing the Contract Services, the Project Company shall not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any person that, in the reasonable opinion of the Owner, is a Restricted Person.

SECTION 11.2. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Project Company shall retain full responsibility to the Owner under this Project Agreement for all matters related to the Contract Services. No failure of any Project Contractor or Subcontractor used by the Project Company in connection with the provision of the Contract Services shall relieve the Project Company from its obligations hereunder to perform the Contract Services. The Project Company shall be responsible for settling and resolving with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Project Company or a Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Project Company shall pay or cause to be paid to the Project Contractors and all Subcontractors all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against the City or the Port for labor, services, materials or equipment furnished for the Contract Services. The Project Company acknowledges that its indemnity obligations under Section 27.1 (Project Company's Obligation to Indemnify) shall include all claims for payment or damages by any Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services to the extent that those claims fall within the scope of the indemnity in Section 27.1 (Project Company's Obligation to Indemnify).

(C) Assignability. All Project Contracts or Subcontracts entered into by the Project Company with respect to the Project shall be assignable to Owner, solely at the Owner's election and without cost or penalty, upon the expiration or termination of this Project Agreement, subject to the terms of the City Direct Agreement (Design-Builder), the Port Direct Agreement (Design-Builder) or the City Direct Agreement (FM Contractor), as the case may be, and provided that no Termination Payment is outstanding.

SECTION 11.3. MATERIAL CONTRACTS.

(A) City and Port Consents. Unless the Project Company has, at its earliest practicable opportunity, submitted to the Owner notice of the proposed course of action (and any relevant documentation) and the Owner has consented to such course of action, such consent not to be unreasonably withheld or delayed, the Project Company shall not:

- (1) terminate, or agree to or permit the termination of, all or any material part of any Material Contract;
- (2) make, or agree to or permit the making of:
 - (a) any material amendment of any Material Contract; or
 - (b) any departure by any party from any material provision of any Material Contract;
- (3) permit any Material Contract Party to assign or transfer to any person any of such Material Contract Party's rights or obligations under a Material Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Material Contract; or
- (4) enter into, or permit the entering into of, any Material Contract other than those entered on or before the Contract Date.

(B) Timeframe for Consents. The Owner shall give or deny such consent within:

- (1) 10 Business Days of receipt of such notice and all relevant documentation, if the Project Company is seeking to terminate a Material Contract immediately; and
- (2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

If the Owner fails to give or deny its consent within such time periods it shall be deemed to have given its consent. The giving or denial of consent by the Owner shall not create any liability of the Owner to the Project Company or to any third party.

(C) Costs of Request for Consent. The Project Company shall pay, without duplication, Owner's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any request for consent by the Project Company pursuant to this Section. At the time of the request for consent from the Port, the Project Company shall make a payment to the Port against its obligation under this Section of \$10,000 (Index Linked). After the Port's decision is rendered, the Port will either refund any overpayment or invoice the Project Company for any additional amounts due under this Section. The City's costs shall be paid as an Extraordinary Item credit against the Service Fee.

SECTION 11.4. REPLACEMENT MATERIAL CONTRACTS.

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project, the Project Company:

- (1) will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable); and
- (2) will forthwith enter into, or cause the replacement Material Contract Party to enter into, a Material Contract Party Direct Agreement.

SECTION 11.5. DELIVERY OF AMENDED OR REPLACEMENT MATERIAL CONTRACTS.

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, the Project Company shall deliver to the Owner a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Project Company.

SECTION 11.6. WAGES.

(A) Payment of Prevailing Wages During the Design-Build Period. The Project Company, the Project Contractors and any Subcontractors shall pay not less than prevailing rates of wages with respect to the construction portion of the Design-Build Work in accordance with Section 1720 et. seq. of the California Labor Code for workers at the Project Site in job classifications covered thereby, including all applicable shift, weekend, holiday, foreman, health and welfare, pension, vacation, travel, training, subsistence and other pay established for each classification of work. The Project Company shall cause a copy of the prevailing rates of wages to be posted at the City Site and the Port Site, shall keep and maintain payroll and other relevant information in order to permit the City and the Port to monitor compliance with this requirement, and shall furnish certified copies of such payrolls and other information to the City and the Port or its designee upon request. The Project Company shall cause the Design-Builder to enter into a Project Labor Agreement with the unions anticipated to participate in the Project in the form set forth in Transaction Form A.

(B) Non-Compliance with Design-Build Period Prevailing Wage Obligations. The Project Company shall forfeit as a penalty to the Owner the amount of \$50, or such other sum as may be determined according to the California Labor Code, for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rates for the construction portion of any Design-Build Work done in violation of the California Labor Code. The difference between such stipulated prevailing rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage shall be paid to each worker by the Project Company.

(C) Payment of Prevailing Wages During the Operating Period. The Project Company, the FM Contractor and any Subcontractors shall pay not less than the prevailing rate of wages with respect to the FM Services, as provided in Section 2.5 of Appendix 8 (FM Standards) (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Appendix 8A (FM Standards – Port FM Facilities) (with respect to the Port FM Facilities).

(D) Special Notice. The Project Company shall, and shall cause each Project Contractor and Subcontractor to, furnish electronic certified payroll records to the California Division of Industrial Relations in accordance with Applicable Law.

SECTION 11.7. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. The Project Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Contract Services. The Project Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Project Company, the Project Contractor and Subcontractors. Neither the City nor the Port shall have any responsibility whatsoever for any such disputes or issues and the Project Company shall indemnify, defend and hold harmless the City, the Port, and the Indemnitees in accordance with Section 27.1 (Project Company's Obligation to Indemnify) from any and all Loss-and Expense resulting from any such labor dispute, except to the extent that such labor dispute is an Other Relief Event.

(B) Labor Disputes. If the Project Company has knowledge of an actual or potential labor dispute that may affect any of the Contract Services, the Project Company shall promptly:

- (1) give notice thereof to the Owner, including all relevant information related to the dispute of which the Project Company has knowledge; and
- (2) take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Services including by applying for relief to appropriate tribunals or courts.

The Project Company acknowledges that if the labor dispute involves workers of a Project Contractor or Subcontractor, or of anyone employed by or through them, neither the City nor the Port will be required to provide any facilities, space or assistance in the Project or on the City Site or the Port Site for the purposes of such workers or any applicable union.

SECTION 11.8. PAYMENT AND PERFORMANCE BONDS.

(A) P&P Bonds (City). The Project Company shall cause the Design-Builder to provide the payment bond and the performance bond in the forms set forth in Appendix 26A (Form of P&P Bonds (City)), in an amount equal to the City Design-Build Agreement Sum. The payment and performance bonds shall include a multiple obligee rider in favor of the City and the City Facilities Senior Lenders in the form set forth in Attachment 26A to Appendix 26A (Form of P&P Bonds).

(B) P&P Bonds (Port). The Project Company shall cause the Design-Builder to provide the payment bond and the performance bond in the forms set forth in Appendix 26B (Form of P&P Bonds (Port)), in an amount equal to the Port Design-Build Agreement Sum. The payment and performance bonds shall include a multiple obligee rider in favor of the Port and the Port Facilities Senior Lenders in the form set forth in Attachment 26B to Appendix 26B (Form of P&P Bonds).

ARTICLE 12

PRIVATE DEVELOPMENT SITES

SECTION 12.1. PRIVATE DEVELOPMENT SITES.

(A) Conveyance Agreements. Concurrently with the execution and delivery of this Project Agreement, the City, as seller, and the Project Company (or an Affiliate or an assignee approved by the City), as purchaser, shall execute and deliver the Conveyance Agreements for the conveyance of the Private Development Sites.

(B) Conveyance of Private Development Sites.

(1) Pacific Site. Subject to Section 12.1(H) (Closing Conditions and Timing) and pursuant to the Pacific Site Conveyance Agreement, on the Contract Date (or at such later time as requested by the Project Company), the City shall convey the Pacific Site to the Project Company or its Affiliate or designee.

(2) Mid-Block Site. Subject to Section 12.1(H) (Closing Conditions and Timing) and pursuant to the Mid-Block Site Conveyance Agreement, upon the later of the Occupancy Date in respect of the City Hall Building or the Library (or at such later date as is agreed by the City and the Project Company), the City shall convey the Mid-Block Site to the Project Company or its Affiliate or designee.

(C) Consideration for Conveyance. The consideration for the conveyance of the Pacific Site and the Mid-Block Site includes the Project Company's performance of its obligations under this Project Agreement. In particular, the Project Company acknowledges and agrees that the Lincoln Park improvements (which form part of the Project) shall be funded by the Project Company from the proceeds it receives from selling its rights to develop, or from developing, the Mid-Block Site. In the event that the Project Company fails to achieve Occupancy Readiness in respect of Lincoln Park by the Scheduled Occupancy Date for Lincoln Park, the City shall be entitled to an Extraordinary Item credit against the Service Fee in an amount equal to [\$2,508]⁸ (Index Linked) per day until such time as Occupancy Readiness of Lincoln Park is achieved. 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. It is also acknowledged that the Mid-Block Site Conveyance Agreement will require the following:

(1) the demolition and removal of the Old City Hall Building, which shall be completed no later than nine months (or, if a hotel complex is under consideration for the Mid-Block Site, with the consent of the City (such consent not to be unreasonably withheld, conditioned, or delayed), at such later time as may be requested by the Project Company) after the later of (i) the Occupancy Date for the City Hall Building, (ii) the date on which the Old City Hall Building is vacated, or (iii) the date of conveyance of the Mid-Block Site to the Project Company or its Affiliate or designee. If 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 [\$1,672]⁹ (Index Linked) per day until such time as such demolition is completed and the City may make a claim to the surety under the Demolition Performance Bond

⁸ To be updated prior to execution and delivery of this Project Agreement.

⁹ To be updated prior to execution and delivery of this Project Agreement.

described in Section 12.1(H)(2). 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;

(2) the redevelopment of Cedar Avenue between W. Broadway and W. Ocean Boulevard; and

(3) the construction of a new access ramp structure off Chestnut Avenue or Cedar Avenue to service the loading docks for the Library and provide permanent access to the Lincoln Garage.

(D) Use of Funds Received for Conveyance.

(1) Pacific Site.

(a) If the conveyance of the Pacific Site occurs prior to the date of Financial Close, the Project Company shall deposit the net proceeds (as determined in accordance with the Pacific Site Conveyance Agreement) into an escrow account held by the City (the “Pacific Site Escrow Account”). To the extent that the net proceeds are less than \$8,000,000, the Project Company shall contribute funds or post a letter of credit issued by a Qualified Commercial Bank such that \$8,000,000 is deposited to the Pacific Site Escrow Account. Of the funds in the Pacific Site Escrow Account, \$8,000,000 shall be transferred to the Collateral Agent at Financial Close, and any amounts in excess of \$8,000,000 shall be transferred to a separate account for use in respect of the Project (the “Pacific Site Excess Account”) as required, which shall be held by a Qualified Commercial Bank and be subject to a security interest in favor of the City. Amounts in the Pacific Site Escrow Account may not be disbursed by the Collateral Agent for any reason other than to construct the Project without the City’s consent. If Financial Close does not occur, all amounts in the Pacific Site Escrow Account (other than any letter of credit issued as described above, which letter of credit shall be returned to the Project Company) and the Pacific Site Excess Account (if any) shall be remitted to the City.

(b) If the conveyance of the Pacific Site has not occurred by the date of Financial Close, the Project Company shall contribute funds or post a letter of credit issued by a Qualified Commercial Bank in the amount of \$8,000,000 to the Collateral Agent as a condition to achieving Financial Close. To the extent that net proceeds from the conveyance of the Pacific Site exceed \$8,000,000, any amounts in excess of \$8,000,000 shall be transferred to the Pacific Site Excess Account, which shall be held by a Qualified Commercial Bank and be subject to a security interest in favor of the City. Amounts in the Pacific Site Escrow Account may not be disbursed by the Collateral Agent for any reason other than to construct the Project without the City’s consent.

(c) Amounts held in the Pacific Site Excess Account may be invested in Permitted Investments at the discretion of the Project Company. Any amounts remaining in the Pacific Site Excess Account as of the date of conveyance of the Mid-Block Site will be contributed towards the Required Amount described in Section 12.1(D)(2) as required and will otherwise accrue solely to the Project Company and may be disbursed or distributed by the Project Company in its sole discretion.

(2) Mid-Block Site. Upon conveyance of the Mid-Block Site, the Project Company shall deposit an amount equal to \$13,703,960 (“Required Amount”) of the net proceeds from the conveyance of the Mid-Block Site into an account which shall be held by a Qualified Commercial Bank and be subject to a security interest in favor of the City (the “Mid-Block Site Proceeds Account”). To the extent that the net proceeds from the conveyance of the Mid-Block Site are less than the Required Amount, the Project Company shall contribute funds or post a letter of credit issued by a Qualified Commercial Bank such that the Required Amount is deposited to the Mid-Block Site Proceeds Account. To the extent that net proceeds from the conveyance of the Mid-Block Site exceed the Required Amount, such excess amount shall accrue solely to the Project Company and may be disbursed or distributed by the Project Company in its sole discretion. Amounts in the Mid-Block Site Proceeds Account shall not be disbursed for any reason other than to construct the Lincoln Park without the City’s consent.

(E) Condition of Property. The Private Development Sites shall be conveyed to the Project Company “as is”, without representations or warranty of any kind, other than (1) in respect of the Pacific Site, the City's requirement to relocate existing Los Angeles County storm water pipe and subject to agreed upon covenants, and (2) in respect of the Mid-Block Site, the obligation of the parties to the Mid-Block Site Conveyance Agreement to use best efforts to treat or manage up to 10,000 yards of impacted soil on the Mid-Block Site and the obligation of the City to secure a no further action letter in relation to such impacted soil without additional costs to the Project Company. The Conveyance Agreements shall include standard disclaimer of liability and litigation release provisions to that effect.

(F) Project Approvals. The Conveyance Agreements will provide for preliminary design submittals by the Project Company including a conceptual design, drawings (including plans and outline specifications), each of which shall be subject to review and approval by the City in its proprietary capacity under the Conveyance Agreements and by various public agencies, including the City, in their regulatory capacities for the site plan approval. The Project Company shall be responsible for compliance with CEQA and any identified mitigation measures relating thereto. Nothing in this Project Agreement shall limit or eliminate the obligation of the Project Company to obtain all Governmental Approvals from the City, in its regulatory capacity (and payment of applicable fees in connection therewith, provided, however, to the extent there are fee credits available from the development of the Facilities, those fee credits shall be used to offset any new fees incurred pursuant to this subsection), for development of the Private Development Sites.

(G) Access to Private Development Sites Prior to the conveyance of the Private Development Sites, representatives of the Project Company shall have the right of access to the Private Development Sites in accordance with that certain Access and Due Diligence Agreement, dated as of January 8, 2015, executed by and between the City and the Project Company (“Private Development Sites Access Agreement”). The Project Company and the City hereby amend the Private Development Sites Access Agreement so that the term thereof shall be extended until both Private Development Sites have been conveyed to the Project Company or its approved assignee.

(H) Closing Conditions and Timing. A Private Development Site shall only be conveyed to the Project Company (or an Affiliate or approved assignee) upon satisfaction of the following conditions in respect of such Private Development Site:

(1) in respect of the Pacific Site only, the City has entered into an agreement in a form acceptable to the Project Company for the relocation of the County storm water pipe located along the east edge of the Pacific Site, which shall provide, *inter alia*, that such work will commence by April 1, 2016 and be complete by August 31, 2016;

(2) in respect of the Mid-Block Site only, the Old City Hall Building shall have been vacated of all occupants, a demolition plan for the Old City Hall Building shall have been approved, and a demolition permit shall be ready for issuance by the City (in its regulatory capacity), subject only to the payment of fees and posting of a performance and payment bond in an amount equal to 110% of the Old City Hall Building demolition cost (including any directly related costs such as remediation), naming the City as beneficiary, and otherwise in form and substance reasonably acceptable to the City (the “Demolition Performance Bond”);

(3) in respect of the Mid-Block Site only, the Project Company shall have satisfied its obligations under Section 6.7 (Prepayment of Existing Bonds);

(4) in respect of the Mid-Block Site only, the City shall have obtained a no further action letter in relation to impacted soils at the Mid-Block Site;

(5) in respect of the Mid-Block Site only, a reasonable financing plan for the development of the Mid-Block Site has been submitted to the City and CEQA clearance including Planning Commission approval of a site plan and any sub-division actions consistent with the terms of the applicable Conveyance Agreement for the proposed project has been received;

(6) a title company acceptable to the Project Company has irrevocably committed to issue a CLTA title policy insuring that fee title to the Private Development Site in question will be vested in the Project Company or its assignee subject only to known and recorded Encumbrances and other agreed upon exceptions to title;

(7) the Project Company has approved, in its sole and absolute discretion, the environmental, geological and soils condition of the Private Development Site, including any mitigation measures and monitoring requirements which may be required for the applicable Private Development Site pursuant to the certified SEIR;

(8) the Project Company has received a certificate from the City’s authorized representative stating that each representation and warranty of the City set forth in Section 2.1(A) (City Representations and Warranties) is true and correct at the time of the conveyance of the applicable Private Development Site; and

(9) the City has not, prior to the date of the conveyance:

(a) sold, leased or otherwise encumbered any part of the applicable Private Development Site;

(b) introduced any new Hazardous Substance or exacerbated any existing Hazardous Substance, or otherwise contaminated any portion of the applicable Private Development Site;

(c) modified the zoning or taken any action (or failed to take any action) that violates any Applicable Law (including, without limitation, CEQA mitigation measures);

(d) failed to properly maintain any part of the applicable Private Development Site; or

(e) altered the physical conditions of the applicable Private Development Site, except as may be required to comply with any of the foregoing requirements.

(I) Scope of Project Development. Development at the Private Development Sites shall be subject to the following:

(1) development on each Private Development Site shall conform to the SEIR/PD-30 Zoning Code and be compatible with existing and planned adjacent uses;

(2) any residential development located on a Private Development Site must provide ten percent (10%) of the total units as moderate income restricted and otherwise comply with the requirements of the applicable Conveyance Agreement;

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

(4) the development must meet the City's Sustainable City Action Plan's requirements for sustainable development in effect as of the Contract Date and contribute to the Project's LEED-ND Gold Certification; and

(5) as part of the development of the Mid-Block Site, the Project Company shall construct W. 1st Street between Cedar Avenue and Chestnut Avenue, and complete the construction of Cedar Avenue between Broadway and W. Ocean Boulevard, and complete or cause to be completed the Library loading dock and the permanent Lincoln Garage ramp.

(J) Assignment of Rights. The Project Company may assign its right to receive the conveyance of the Private Development Sites under the Conveyance Agreements to a third-party developer subject to the City's reasonable approval. In determining whether to give its approval, the City may consider the financial capability, relevant experience and other factors relating to the proposed assignee's ability to develop and complete an approved project on the Private Development Sites. All conditions and provisions included in the applicable Conveyance Agreement that relate to the development or conveyance of a Private Development Site shall transfer to the third-party developer with the land subject to the assignee's assumption of the Project Company's obligations in respect thereof. No assignment pursuant to this subsection shall release the Project Company from any of its obligations under this Project Agreement.

(K) Closing Procedures for the Private Development Sites. Conveyance of the Private Development Sites shall be accomplished through a title company escrow, or other closing procedure mutually agreeable to the City and the Project Company, upon satisfaction of all closing conditions. The Project Company shall pay all title premiums, transfer taxes (if any) and other third party costs of closing. Fee title to Private Development Sites shall be conveyed to the Project Company or its assignee at closing free and clear of Liens and Encumbrances, other than those Encumbrances to be agreed upon following a title review and due diligence process.

(L) Marketing Materials in Respect of the Mid-Block Site. The Project Company shall obtain the approval of the City, such approval not to be unreasonably withheld, conditioned or delayed, with respect to all marketing materials in respect of the Mid-Block Site before use or distribution of such marketing materials to prospective purchasers or developers.

ARTICLE 13

THE PARKING FACILITIES

SECTION 13.1. OWNERSHIP.

The Existing Parking Facilities (and all revenue with respect thereto) are and shall remain owned by the City. The New Parking Facility and any revenue with respect thereto shall be owned as set forth in Section 7.1(N) (Title and Risk of Loss).

SECTION 13.2. MANAGEMENT AND MAINTENANCE.

(A) Management. Notwithstanding anything else to the contrary in this Project Agreement, the City shall be responsible for all revenue collection with the Existing Parking Facilities. Notwithstanding anything else to the contrary in this Project Agreement, the Port shall be responsible for any revenue collection and security with respect to the New Parking Facility.

(B) Maintenance. Upon the Occupancy Date in respect of the City Hall Building, the Project Company shall assume maintenance responsibility for the Existing Parking Facilities and thereafter maintain the Existing Parking Facilities in accordance with Appendix 8 (FM Standards). On the Occupancy Date of the New Parking Facility, the Project Company shall assume maintenance responsibility for the New Parking Facility and thereafter maintain the New Parking Facility in accordance with Appendix 8A (FM Standards – Port FM Facilities).

SECTION 13.3. PARKING DURING CONSTRUCTION.

The City shall provide temporary parking for any council member, officer, employee or agent of the City at City-owned lots during limited phases of the Design-Build Work in accordance with the approved phasing plan as set forth in the Project Schedule.

ARTICLE 14

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 14.1. INSURANCE.

(A) Required Insurance. At all times during the Design-Build Period and the Operating Period, the Project Company shall obtain, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

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

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

(D) Failure to Provide Insurance Coverage. If the Project Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the Project Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, the Owner shall pay such premium or procure similar insurance coverage from another insurer and upon such payment by the Owner the amount thereof shall be reimbursable to the Owner by the Project Company through an adjustment to the Service Fee, except that such payment by the Owner for one or more builder's risk policies that are Required Insurance shall be immediately reimbursable to the Owner by the Project Company. The failure of the Project Company to obtain and maintain any Required Insurance shall not (1) relieve the Project Company of its liability for any losses intended to be insured thereby, (2) be a satisfaction of any Project Company liability under this Project Agreement, or (3) in any way limit, modify or satisfy the Project Company's indemnity obligations hereunder.

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

(F) Property Insurance Proceeds. Property Insurance Proceeds shall be deposited, held and applied as provided in Article 16 (Insurable and Uninsurable Force Majeure Events).

SECTION 14.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) Protection. The Project Company shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Project Company shall report to the Owner and the insurers, immediately upon obtaining knowledge

thereof, any damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to the City or the Port (as the case may be). The Project Company shall also submit to the Owner within 72 hours of receipt copies of all accident and other reports filed with, or given to the Project Company by, any insurer, adjuster or Governmental Body.

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

(C) Damage or Destruction from Uninsurable Force Majeure Events. Unless this Project Agreement is partially terminated in accordance with Section 16.2(F) (City and Project Company Partial Termination Rights) or Section 16.2(G) (Port and Project Company Partial Termination Rights), where damage or destruction of the Project is caused by the occurrence of an Uninsurable Force Majeure Event, the Owner shall be responsible for paying the cost of the Reinstatement Works (including expenses) in accordance with Section 16.2 (Uninsurable Force Majeure Events).

(D) Damage or Destruction from Other Relief Events. Unless this Project Agreement is partially terminated in accordance with Section 17.3(D) (City and Project Company Partial Termination Rights) or Section 17.3(E) (Port and Project Company Partial Termination Rights), where damage or destruction of the Project is caused by the occurrence of an Other Relief Event, the Owner shall be responsible for paying the cost of the Reinstatement Works (including expenses) in accordance with Section 17.3 (Other Relief Events).

(E) Damage or Destruction to City Facilities or Shared Rooms from Insurable Force Majeure Events. Prior to achieving Occupancy Readiness in respect of the City Facilities and the Shared Rooms, where damage or destruction to a City Facility or a Shared Room is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may withdraw any Insurance Proceeds standing to the credit of the City Insurance Trust Account, together with interest accrued thereon, from the City Insurance Trust Account as required to enable it to comply with its obligations under Section 16.3 (Project Company's Obligations Upon Material Damage or Destruction), and the parties shall comply with the signatory requirements governing the City Insurance Trust Account to permit such payments to be made. Subsequent to achieving Occupancy Readiness in respect of the City Facilities and the Shared Rooms, where damage or destruction to a City Facility or a Shared Room is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may withdraw any Insurance Proceeds standing to the credit of the City Insurance Trust Account and the Port Insurance Trust Account, together with interest accrued thereon, from the City Insurance Trust Account and the Port Insurance Trust Account as required to enable it to comply with its obligations under Section 16.3 (Project Company's Obligations Upon Material Damage or Destruction), and the parties shall comply with the signatory requirements governing the City Insurance Trust Account and the Port Insurance Trust Account to permit such payments to be made.

(F) Damage or Destruction to Port Facilities or Shared Facilities from Insurable Force Majeure Events. Prior to achieving Occupancy Readiness in respect of a Port Facility or Shared Facility, where damage or destruction to such Port Facility or Shared Facility is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may withdraw any Insurance Proceeds standing to the credit of the Port Insurance Trust Account, together with interest accrued thereon, from the Port Insurance Trust Account, as required to enable it to comply with its obligations under Section 16.3 (Project Company's Obligations Upon Material Damage or Destruction), and the parties shall comply with the signatory requirements governing the Port Insurance Trust Account to permit such payments to

be made. Subsequent to achieving Occupancy Readiness in respect of a Shared Facility, where damage or destruction to such Shared Facility is caused by the occurrence of an Insurable Force Majeure Event, the Project Company may withdraw any Insurance Proceeds standing to the credit of the City Insurance Trust Account and the Port Insurance Trust Account, as required to enable it to comply with its obligations under Section 16.3 (Project Company's Obligations Upon Material Damage or Destruction), and the parties shall comply with the signatory requirements governing the City Insurance Trust Account and the Port Insurance Trust Account to permit such payments to be made.

SECTION 14.3. PROJECT AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION.

Except as otherwise expressly provided herein or (with respect to the use of insurance proceeds) in the Lenders' Direct Agreements, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit any party to terminate this Project Agreement or entitle the Project Company to surrender possession of the Project or to demand any increase in any amounts payable to the Project Company under this Project Agreement.

ARTICLE 15

RELIEF EVENT PROCEDURES

SECTION 15.1. RELIEF EVENTS GENERALLY.

(A) Extent of Relief Available to the Project Company. If a Relief Event occurs, the Project Company may seek relief from its obligations and extensions of time, may claim compensation, and may exercise a termination right under this Project Agreement, as and to the extent provided in this Article, Article 16 (Insurable and Uninsurable Force Majeure Events), and Article 17 (Change in Law Events and Other Relief Events) and in accordance with Section 16.3 (Project Company's Obligations Upon Material Damage or Destruction).

(B) Mitigation Given Effect. Any relief to which the Project Company is entitled under this Project Agreement on account of Relief Events shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Project Company in compliance with its duty to mitigate under Section 28.5 (General Duty to Mitigate).

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

SECTION 15.2. PROCEDURES UPON THE OCCURRENCE OF A RELIEF EVENT.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of a Relief Event, the Project Company shall give notice of the occurrence of the Relief Event to the Owner as soon as practicable, and in any event within 10 Business Days of the date the Project Company has knowledge that the Relief Event has caused or is likely to cause an entitlement under this Project Agreement. The Project Company's notice shall include a written report:

- (1) describing the Relief Event and the cause thereof, to the extent known;
- (2) stating the date on which the Relief Event began and its estimated duration;
- (3) explaining the mitigation measures that the Project Company is taking or planning to take to minimize the impact of the Relief Event;
- (4) summarizing the consequences of the Relief Event and the expected impact on the performance of the Project Company's obligations under this Project Agreement; and
- (5) indicating the nature and scope of the Project Company's potential entitlement to relief.

(B) Updates. The Project Company shall provide the Owner with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Relief Event and the matters described in subsection (A) of this Section. In particular, the Project Company shall notify the Owner as soon as the Relief Event has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Project Company shall submit to the Owner a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested

relief within 30 days after the notice referred to in subsection (A) of this Section. If the specific relief cannot reasonably be ascertained within such 30-day period, the Project Company shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

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

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

(F) Burden of Proof and Mitigation. The Project Company shall bear the burden of proof in establishing the occurrence of a Relief Event and the entitlement to relief based thereon, and shall demonstrate that the Project Company complied with its mitigation obligations under Section 28.5 (General Duty to Mitigate).

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

(H) Project Company Information. The Owner shall provide the Project Company information reasonably requested in order for the Project Company to reasonably assert a Relief Event claim.

(I) City and Port Response. Within 45 days after receipt of a relief request by the Project Company pursuant to subsection (C) of this Section, the Owner shall issue a written determination as to the extent, if any, to which it concurs with the Project Company's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Project Company on account of a Relief Event shall be evidenced by a Contract Administration Memorandum, a Project Agreement Amendment or a Change Order, as applicable. Any party may refer any dispute to Non-Binding Mediation.

ARTICLE 16

INSURABLE AND UNINSURABLE FORCE MAJEURE EVENTS

SECTION 16.1. INSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If (1) prior to the expiration of the Term, all or any part of a City Facility or, subject to Section 16.1(G) (Damage or Destruction of a Shared Room Following Occupancy Readiness), a Shared Room is damaged or destroyed on account of an Insurable Force Majeure Event, (2) prior to achieving Occupancy Readiness in respect of a Port Facility or a Shared Facility, such Port Facility or Shared Facility is damaged or destroyed on account of an Insurable Force Majeure Event, or (3) subject to Section 16.1(F) (Damage or Destruction of a Shared Facility Following Occupancy Readiness), after achieving Occupancy Readiness in respect of a Shared Facility, such Shared Facility is damaged or destroyed on account of an Insurable Force Majeure Event then, in each case, the Project Company shall promptly repair, replace or restore such Facility so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction, and in compliance with Applicable Law, and in accordance with the requirements of Section 16.3 (Project Company's Obligation Upon Material Damage or Destruction).

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

(1) the Scheduled Initial Occupancy Date (if applicable), the Scheduled Occupancy Date with respect to each affected Facility, the Scheduled Final City Occupancy Date, the Scheduled Port Occupancy Date, the Scheduled Project Occupancy Date, the City Longstop Date and the Port Longstop Date shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Date, Scheduled Project Occupancy Date and Longstop Date); and

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

(C) No Compensation Relief. If an Insurable Force Majeure Event occurs,

(1) neither the Service Fee nor the Port FM Fee shall be increased, nor shall any other compensation be payable, on account of the occurrence of the Insurable Force Majeure Event;

(2) the City shall continue to have the right to impose Deductions for FM Service Failures and Unavailability Events; provided, however, that Deductions in respect of a Facility due to an Insurable Force Majeure Event shall be reduced by the percentage of the Port's interest in such Facility, as set forth in Section 7.1(N) (Title and Risk of Loss);

(3) the Project Company shall comply with its obligations under subsection (A) of this Section notwithstanding the insufficiency for any reason of any Insurance Proceeds; and

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

(D) Insurance Trust Accounts. The parties shall cause the City Insurance Trust Account and the Port Insurance Trust Account to be created and held by the Collateral Agent, in each case pursuant to the terms of the Insurance Trust Agreement.

(E) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. Upon the occurrence of an Insurable Force Majeure Event, all property Insurance Proceeds available for the repair, replacement or restoration of the City Facilities and the Shared Rooms shall be deposited in the City Insurance Trust Account and, prior to Occupancy Readiness of each Port Facility and Shared Facility all property Insurance Proceeds available for the repair, replacement or restoration of such Port Facilities and Shared Facilities shall be deposited in the Port Insurance Trust Account, and in each case (1) applied to such repair, replacement or restoration purposes in accordance with the terms of this Project Agreement, (2) with respect to funds in the City Insurance Trust Account, paid to the City upon a termination of the Insurance Trust Agreement in accordance with the terms thereof, (3) with respect to funds in the Port Insurance Trust Account, paid to the Port upon the termination of the Insurance Trust Agreement in accordance with the terms thereof, or (4) with respect to funds in the City Insurance Trust Account and the Port Insurance Trust Account, paid to the Project Company upon termination of the Insurance Trust Agreement in accordance with the terms thereof. After the Occupancy Date in respect of the New Parking Facility, all property Insurance Proceeds received by the City or the Project Company with respect to the City's share of the New Parking Facility shall be immediately paid to the Port.

(F) Damage or Destruction of a Shared Facility Following Occupancy Readiness.

(1) The Project Company's obligations to repair, replace or restore a Shared Facility following the Occupancy Date of such Shared Facility pursuant to Section 16.1(A)(3) are contingent on the Port contributing to the Port Insurance Trust Account funds (not to exceed the Port's allocable ownership interest in such Shared Facilities) that, when taken together with any insurance proceeds received from the Required Insurance in respect of the City's share of such Shared Facility, are sufficient to repair, restore or replace such Shared Facility, recognizing that consistent with Section 16.1(C)(4) that as regards the City's share of such Shared Facilities, the Project Company shall bear all costs resulting from the occurrence of an Insurable Force Majeure Event. Within 30 days of the occurrence of an Insurable Force Majeure Event impacting a Shared Facility following the Occupancy Date in respect of such Shared Facility, the Port shall either (1) contribute funds (not to exceed the Port's allocable ownership interest in such Shared Facilities) as described in this paragraph, or (2) partially terminate this Project Agreement for its convenience in accordance with Section 24.1(C)(1).

(2) Following a partial termination of this Project Agreement by the Port pursuant to Section 16.1(F)(1), the City shall, within 10 days, either (1) initiate a Capital Modification to cause the Project Company to repair, replace or restore such Shared Facility pursuant to Section 10.5 (Capital Modifications at Owner Direction), or (2) partially terminate this Project Agreement for its convenience in accordance with Section 24.1(B)(1).

(G) Damage or Destruction of a Shared Room Following Occupancy Readiness. The Project Company's obligations to repair, replace or restore a Shared Room following the Occupancy Date of such Shared Room pursuant to Section 16.1(A)(1) are contingent on the Port contributing to the City Insurance Trust Account funds (not to exceed the Port's allocable ownership interest in such Shared Room) that, when taken together with any insurance proceeds received from the Required Insurance in respect of the City's share of such Shared Room, are sufficient to repair, restore or replace such Shared Room, recognizing that consistent with Section 16.1(C)(4) that as regards the City's share of such Shared Room, the Project Company shall bear all costs resulting from the occurrence of an Insurable Force Majeure

Event. Within 30 days of the occurrence of an Insurable Force Majeure Event impacting a Shared Room following the Occupancy Date in respect of such Shared Room, the Port shall either (1) contribute funds (not to exceed the Port's allocable ownership interest in such Shared Room) as described in this paragraph, or (2) the City shall partially terminate the Project Agreement for its convenience pursuant to Section 24.1(B)(1) and remove such Shared Room from the Project.

SECTION 16.2. UNINSURABLE FORCE MAJEURE EVENTS.

(A) Project Company Reinstatement. If, (1) prior to the expiration of the Term, all or any part of a City Facility or a Shared Room is damaged or destroyed on account of an Uninsurable Force Majeure Event, (2) prior to achieving Occupancy Readiness in respect of a Port Facility or a Shared Facility, such Port Facility or Shared Facility is damaged on account of an Uninsurable Force Majeure Event, or (3) subject to Section 16.1(F) (Damage or Destruction Following Occupancy Readiness), after achieving Occupancy Readiness in respect of a Shared Facility, such Shared Facility is damaged or destroyed on account of an Uninsurable Force Majeure Event then, in each case, the Project Company shall, but specifically excluding any Port Facility damaged or destroyed after the Occupancy Date for such Port Facility, promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition thereof existing immediately prior to the damage or destruction and in compliance with Applicable Law and in accordance with subsections (C) to (F) of this Section and Section 16.3 (Project Company's Obligations Upon Material Damage or Destruction). The obligation of the Project Company to perform the work described in this subsection (including under any Reinstatement Plan), as it pertains to Uninsurable Force Majeure Events with respect to a Facility, is conditioned on the availability of funds as provided in Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

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

(1) the Scheduled Occupancy Date with respect to such Facility, the Scheduled Final City Occupancy Date and the Scheduled Port Occupancy Date, as the case may be, the Scheduled Project Occupancy Date and the City Longstop Date and the Port Longstop Date, as the case may be, shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Date, Scheduled Project Occupancy Date and Longstop Date); and

(2) the occurrence of an Uninsurable Force Majeure Event shall operate to extend the Expiration Date, and accordingly shall extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee and the Port FM Fee.

(C) Compensation for Uninsurable Force Majeure Events Occurring Prior to the Occupancy Date in respect of a Facility. If any Uninsurable Force Majeure Event occurs prior to the Occupancy Date in respect of a City Facility or a Shared Room (in respect of an Uninsurable Force Majeure Event impacting a City Facility or a Shared Room) or the Occupancy Date in respect of a Port Facility or a Shared Facility (in respect of an Uninsurable Force Majeure Event impacting a Port Facility or a Shared Facility), subject to Section 16.2(F) (City and Project Company Partial Termination Rights) and Section 16.2(G) (Port and Project Company Partial Termination Rights), the Owner, shall pay the Project Company, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation) or Section 25.2 (All Port Payment Obligations Subject to Appropriation), as the case may be:

(1) an amount equal to (a) the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company’s own increased costs as well as increased amounts payable to the Design-Builder and the costs of any Reinstatement Works in accordance with the Reinstatement Plan), plus (b) any increase in the cost of performing the FM Services (including the Project Company’s own increased costs as well as increased amounts payable to the FM Contractor), to the extent resulting from the Uninsurable Force Majeure Event, which amount shall be payable pursuant to Section 6.6(A) (Owner Financing) as soon as practicable by the Owner, following agreement of the parties, pursuant to Section 18.12 (Negotiated Lump Sum Pricing Of Additional Work) or Section 18.13 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable, as to such cost and the Reinstatement Plan or other appropriate relief measures;

(2) from the City, the amount of debt service payable with respect to the City Facilities Senior Debt from the Scheduled Occupancy Date, without taking into account the extension of such date in accordance with Section 8.7(G) (Extension for Relief Events) through the Project Occupancy Date, invoiced by the Project Company for each month by the 15th day following the end of such month, and paid by the City within 30 days of receipt of the invoice;

(3) from the Port, the amount of interest payable on debt service with respect to the Port Facilities Senior Debt from the Scheduled Port Occupancy Date, without taking into account the extension of such date in accordance with Section 8.7(G) (Extension for Relief Events) through the Port Occupancy Date, which amount shall be invoiced by the Project Company for each month by the 15th day following the end of such month and paid by the Port within 45 days of receipt of the invoice; and

(4) to the extent that the Scheduled Occupancy Date in respect of a Facility has been extended pursuant to Section 16.2(B) (Schedule and Performance Relief), no later than 20 days following the Occupancy Date in respect of such Facility, the Project Company and the City or the Port, as the case may be, shall calculate the extent to which the Project Company was left in a better or worse position as a result of each such extension of the Scheduled Occupancy Date in respect of a Facility and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to Section 18.1(H) (Mandatory Set-Off)), the City, or the Port, as the case may be, shall reimburse the other party so as to ensure that the Project Company is left in a no better and no worse position.

Such amounts shall be paid by the City or the Port, as the case may be, to the Project Company separate from and in addition to the Service Fee, the Port FM Fee or the Port Completion Payment. No amounts other than those provided for in this subsection shall be payable by the City or the Port on account of the Uninsurable Force Majeure Event that occurs prior to the Occupancy Date in respect of the applicable Facility or the Port Occupancy Date.

(D) Compensation Relief for Uninsurable Force Majeure Events Occurring On and After the Occupancy Date in respect of a Facility. If an Uninsurable Force Majeure Event occurs on or after the Occupancy Date in respect of a Facility:

- (1) the Service Fee or Port FM Fee, as applicable, shall be:
 - (a) reduced by an amount equal to Avoidable Costs; and
 - (b) increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Services

(including the costs of any Reinstatement Works in accordance with the Reinstatement Plan), to the extent resulting from the Uninsurable Force Majeure Event;

(2) the City shall not have the right to impose Deductions for FM Service Failures or Unavailability Events caused by Uninsurable Force Majeure Events; and

(3) in lieu of all or a portion of the adjustment to the Service Fee or the Port FM Fee, the City and the Project Company may mutually agree that the City shall compensate the Project Company for specific costs, pursuant to Section 18.12 (Negotiated Lump Sum Pricing Of Additional Work) or Section 18.13 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable.

(E) Disaster Relief Funds. Upon the occurrence of an Uninsurable Force Majeure Event, the City and the Port shall, if a disaster proclamation or declaration is issued that makes disaster relief funds available, promptly apply for and use all reasonable efforts to obtain any available State and federal disaster relief funds in order to repair, replace or rebuild the damaged or destroyed Facilities. The City and the Port shall, except as to Port Facilities after the Port Occupancy Date, deposit any such funds they receive into the City Insurance Trust Account or the Port Insurance Trust Account, as the case may be, promptly upon receipt.

(F) City and Project Company Partial Termination Rights. If:

(1) prior to the Project Occupancy Date (a) the City Facilities or the Shared Rooms are completely or substantially destroyed, or if an Uninsurable Force Majeure Event occurs and is continuing and persists, or its effects are continuing and persisting so as to render the City Facilities or the Shared Rooms, or a substantial part thereof, unusable, and (b) a period of 180 days expires during which (i) the City or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, (ii) the parties have not reasonably agreed upon a scope, price and schedule for the Reinstatement Plan, and (iii) the City has not provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Reinstatement Plan will be available for such purposes in the amounts and on the schedule agreed upon by the parties, as contemplated by Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds), then either party may, by notice to the other party, terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services obligations under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project, in which case the City shall pay compensation to the Project Company in accordance with Section 5 (No-Fault Partial Termination by City, Port or Project Company) of Appendix 20 (Compensation on Termination); provided, however, that the City's right to terminate its obligations under this Project Agreement under this subsection shall not be effective unless an appropriation of funds by the City Council has been made for the purpose of the City making the applicable Partial Termination Payment due under this Section; or

(2) on or after the Project Occupancy Date (a) the FM Facilities are completely or substantially destroyed, or if an Uninsurable Force Majeure Event occurs and is continuing and persists, or its effects are continuing and persisting so as to render the FM Facilities, or a substantial part thereof unusable, and (b) a period of 180 days expires during which (i) the Owners or the Project Company has been denied the benefits of this Project Agreement intended hereby, (ii) the parties have not reasonably agreed upon a scope, price and schedule for the Reinstatement Plan, and (iii) the Owner has not provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Reinstatement

Plan will be available for such purposes in the amounts and on the schedule agreed upon by the parties, then either Owner or the Project Company may, by notice to the other parties, terminate all of the obligations in respect of the FM Facilities from the Project, in which case the Owners shall pay compensation to the Project Company in accordance with Section 5 (No-Fault Partial Termination by City, Port or Project Company) of Appendix 20 (Compensation on Termination); provided, however, that Owner right to terminate its obligations under this Project Agreement under this subsection shall not be effective unless an appropriation funds by the City Council has been made for the purpose of City making the applicable Partial Termination Payment due under this Section and an appropriation of funds by the City Council and the Board of Harbor Commissioners has been made for the purpose of the Port making the applicable Partial Termination Payment under this Section, respectively.

(G) Port and Project Company Partial Termination Rights. If, prior to the Port Occupancy Date, (1) the Port Facilities or the Shared Facilities are completely or substantially destroyed, or if an Uninsurable Force Majeure Event occurs and is continuing and persists, or its effects are continuing and persisting so as to render the Port Facilities or the Shared Facilities, or a substantial part thereof, unusable, and (2) a period of 180 days expires during which (a) the Port or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, (b) the parties have not reasonably agreed upon a scope, price and schedule for the Reinstatement Plan, and (c) the Port has not provided written assurances acceptable to the Project Company, acting reasonably, that funds necessary to pay the cost of the Reinstatement Plan will be available for such purposes in the amounts and on the schedule agreed upon by the parties, as contemplated by Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds), then either party may, by notice to the other party, terminate all of the obligations in respect of the Port Facilities and, subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities under this Project Agreement and fully remove the Port Facilities and the Shared Facilities from the Project, in which case the Port shall pay compensation to the Project Company in accordance with Section 5 (No-Fault Partial Termination by City, Port or Project Company) of Appendix 20 (Compensation on Termination); provided, however, that the Port's right to terminate its obligations under this Project Agreement under this subsection shall not be effective unless an appropriation of funds has been made by the City Council and the Board of Harbor Commissioners for the purpose of the Port making the applicable Partial Termination Payment due under this Section.

(H) Earthquakes. The parties acknowledge that Public Contracts Code Section 7105 is not applicable to the Project or this Project Agreement. The parties further acknowledge that earthquakes are defined as and shall be treated as Uninsurable Force Majeure Events, regardless of whether the City or the Port elect to self-insure or procure insurance against such peril. The City shall deposit any earthquake insurance proceeds it receives into the City Insurance Trust Account. Prior to the Port Occupancy Date, the Port shall deposit any earthquake insurance proceeds it receives into the Port Insurance Trust Account. After the Port Occupancy Date, the Port shall deposit any earthquake insurance proceeds it receives in respect of the Shared Rooms into the City Insurance Trust Account and any earthquake insurance proceeds it receives in respect of the Shared Facilities into the Port Insurance Trust Account.

(I) Port Facilities, Shared Facilities and Shared Rooms. The parties acknowledge that any peril occurring after the applicable Occupancy Date with respect to the Port Headquarters Building and the Port's interest in the Shared Rooms, New Parking Facility and the Shared Facilities are defined as and shall be treated as Uninsurable Force Majeure Events, regardless of whether the Port elects to self-insure or procure insurance against such peril. If the Port elects to procure insurance against such perils, then the Project Company shall be named as an additional insured on any policy procured by the Port with respect to such perils. The Port shall deposit any insurance proceeds it receives with respect to the Shared Rooms

and the Shared Facilities following the Occupancy Date in respect of such Facilities into the City Insurance Trust Account or the Port Insurance Trust Account, as the case may be.

SECTION 16.3. PROJECT COMPANY’S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.

(A) Draft Reinstatement Plan. If the City Facilities, the Shared Facilities or the Shared Rooms or, prior to the Port Occupancy Date, the Port Facilities, suffer damage or destruction that is likely to cost more than \$1,000,000 (Index Linked) to repair, replace and restore, the Project Company shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued provision of the FM Services to other parts of the Project), provide the Owner with a draft plan (the “Draft Reinstatement Plan”) for the carrying out of the works necessary (the “Reinstatement Works”) to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under subsection (C) of this Section.

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

(1) shall provide the Project Company with any comments it may have on the Draft Reinstatement Plan; and

(2) if it has decided that the damaged or destroyed Facility is not required to be reinstated in the same form as prior to the damage or destruction, will issue a preliminary Capital Modification instruction to that effect.

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

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

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

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

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

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

- (5) the impact of any Capital Modification requested by the Owner as part of the reinstatement.

Thereafter, unless the damage or destruction was caused by an Uninsurable Force Majeure Event and a party elects to terminate its obligations under this Project Agreement in accordance with the provisions of Section 24.1 (Termination and Partial Termination Rights), the Project Company shall repair, replace or restore the City Facility or, subject to Section 16.1(G) (Damage or Destruction of a Shared Room Following Occupancy Readiness), Shared Room or, if such damage or destruction occurs prior to achieving Occupancy Readiness in respect of a Port Facility or a Shared Facility, the Port Facility or Shared Facility, or if such damage or destruction occurs after achieving Occupancy Readiness in respect of a Shared Facility (subject to Section 16.1(F) (Damage or Destruction of a Shared Facility Following Occupancy Readiness)), the Shared Facility, in each case subject to Applicable Law and, if the Uninsurable Force Majeure Event occurred prior to the Occupancy Date of a City Facility or the Port Occupancy Date, as applicable, to Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

SECTION 16.4. STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Sections 16.1 (Insurable Force Majeure Events) or 16.2 (Uninsurable Force Majeure Events) shall be made or done in compliance with the D&C Standards and the requirements set forth in Appendix 6 (Design-Build Work Review Procedures), subject to any agreement made between the City, the Port and the Project Company to revise the D&C Standards or the requirements set forth in Appendix 6 (Design-Build Work Review Procedures) as they pertain to the replacement, repair or reconstruction work.

SECTION 16.5. AVAILABILITY OF INSURANCE FOR UNINSURABLE FORCE MAJEURE EVENTS.

(A) Additional Insurance. If during the Term insurance is or has become available for a risk constituting an Uninsurable Force Majeure Event, the City may itself, or may direct the Project Company to, take out and maintain insurance on terms which are in accordance with the requirements of this Project Agreement. The premiums for such additional insurance coverage shall be paid, as applicable, by the City to the insurer or by an adjustment to the Service Fee or Port FM Fee, as applicable, pursuant to Section 18.6 (Extraordinary Items).

(B) Additionally Insured Risk to Constitute an Insurable Force Majeure Event; Qualifications. In any period during which additional insurance is maintained pursuant to subsection (A) of this Section, the occurrence of the additionally insured risk shall be deemed to constitute an Insurable Force Majeure Event for the purposes hereof, and any Insurance Proceeds available due to the occurrence thereof shall be applied as provided in Section 16.1(E) (Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration).

SECTION 16.6. UNAVAILABILITY OF INSURANCE FOR INSURABLE FORCE MAJEURE EVENTS OR FOR THIRD PARTY LIABILITY.

(A) Insurance Unavailability Event. If during the Term:

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

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

then such circumstance shall, subject to the confirmation of the City and the Port (not to be unreasonably withheld, conditioned or delayed), constitute an “Insurance Unavailability Event” hereunder.

(B) Partial Termination or Termination by City and Port. If and for so long as an Insurance Unavailability Event has occurred and is continuing, (1) the City may by notice to the Project Company terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services obligations under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project, and (2) to the extent such right arises prior to the Port Occupancy Date, the Port may by notice to the Project Company terminate all of the obligations in respect of the Port Facilities and the Shared Facilities under this Project Agreement and fully remove the Port Facilities and, subject to Section 7.23 (Obligation to Complete the Shared Facilities Following Port Partial Termination), the Shared Facilities from the Project, whereupon the Project Company shall be entitled to compensation upon termination as provided in Section 5 (No-Fault Partial Termination by City, Port or Project Company) of Appendix 20 (Compensation on Termination), provided, however, that the City’s right to terminate its obligations under this Project Agreement pursuant to this subsection shall not be effective unless an appropriation of funds has been made by the City Council for the purpose of the City making the Termination Payment due under this Section and the Port’s right to terminate its obligations under this Project Agreement pursuant to this subsection shall not be effective unless an appropriation of funds has been made by the City Council and the Board of Harbor Commissioners for the purpose of the Port making the Termination Payment due under this Section.

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

(1) the Project Company will not be obligated to maintain such Required Insurance and references in this Project Agreement to such Required Insurance will be construed accordingly. During such period the Service Fee and Port FM Fee shall be adjusted in accordance with Section 18.6 (Extraordinary Items) by agreement of the parties acting reasonably, to reflect any savings in the Project Company’s insurance cost as a result of the Project Company not having to provide such Required Insurance; and

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

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

(b) by notice to the Project Company, terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services obligations in respect of the Port FM Facilities under this Project Agreement and fully remove the City

Facilities and the Shared Rooms and the FM Services from the Project, whereupon the Project Company shall be entitled to compensation on termination as provided in Section 5 (No-Fault Partial Termination by City, Port or Project Company) of Appendix 20 (Compensation on Termination); provided, however, that the City shall not have the right to terminate its obligations under this Project Agreement under this subsection if the Project Company (1) releases the City from all obligations under subsection (C)(2)(a) of this Section, and (2) deposits into the City Insurance Trust Account an amount equal, in the reasonable opinion of the City, to the Insurance Proceeds, and all amounts in respect of deductibles and waiting periods, that would have been the responsibility of the Project Company under Appendix 9 (Insurance Requirements), that would have been payable in respect of such Insurable Force Majeure Event that occurred or third party claim that was made had the relevant insurance continued to be available and in effect, and such payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant insurance continued to be available and in effect.

(D) Subrogation. If the City makes any payment to the Project Company pursuant to subsection (C)(2)(a) of this Section, then the City, to the extent of the amount paid, will be subrogated to the Project Company's rights against any third party (other than Project Company Persons) in respect of the occurrence or claim as a result of which the payment was made.

SECTION 16.7. CONTINUING ATTEMPTS TO OBTAIN INSURANCE. During any period when an Insurance Unavailability Event has occurred and is continuing, the Project Company shall approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Required Insurance remains unavailable.

ARTICLE 17

CHANGE IN LAW EVENTS AND OTHER RELIEF EVENTS

SECTION 17.1. CHANGE IN LAW EVENTS.

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

(1) the Scheduled Initial Occupancy Date, the Scheduled Occupancy Date in respect of each Facility affected by such Change in Law Event, the Scheduled Final City Occupancy Date and the Scheduled Port Occupancy Date, as the case may be, the Scheduled Project Occupancy Date and the City Longstop Date and the Port Longstop Date, as the case may be, shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Date, Scheduled Project Occupancy Date and Longstop Date); and

(2) the occurrence of a Change in Law Event shall operate to extend the Expiration Date, and accordingly shall extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee or the Port FM Fee.

(B) Compensation Relief for Changes Occurring Prior to the Occupancy Date. If a Change in Law Event occurs prior to:

(1) the Occupancy Date in respect of a City Facility or the Shared Rooms, the City shall pay the Project Company, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation), an amount equal to (a) the increase in the cost to the Project Company of performing the City Facilities Design-Build Work and the Shared Rooms Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder), plus (b) any increase in the cost of performing the FM Services (including the Project Company's own increased costs as well as increased amounts payable to the FM Contractor), to the extent resulting from such Change in Law Event, which amount shall be payable pursuant to Section 6.6(A) (Owner Financing) as soon as practicable by the Owner, following agreement of the parties, as to such cost or other appropriate relief measures; and

(2) the Port Occupancy Date or the Occupancy Date in respect of a Shared Facility, the Port shall pay the Project Company, subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), an amount equal to (a) the increase in the cost to the Project Company of performing the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder), plus (b) any increase in the cost of performing the FM Services (including the Project Company's own increased costs as well as increased amounts payable to the FM Contractor), to the extent resulting from such Change in Law Event, which amount shall be payable pursuant to Section 6.6(A) (Owner Financing) as an adjustment to the Port Completion Payment, following agreement of the parties, as to such cost or other appropriate relief measures.

To the extent the Scheduled Occupancy Date in respect of a Facility has been extended pursuant to subsection (A) of this Section (Schedule and Performance Relief), no later than 20 days following the Occupancy Date in respect of a Facility, the parties shall calculate the extent to which the Project

Company was left in better or worse position as a result of each such extension of the Scheduled Occupancy Date in respect of a Facility and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to Section 18.1(H) (Mandatory Set-Off)), the City, or the Port, as the case may be, shall reimburse the other party so as to ensure that the Project Company is left in a no better and no worse position.

Such amounts shall be paid (1) by the Project Company and the Port, as the case may be, separate from and in addition to the Port Completion Payment, (2) by the City to the Project Company, separate from and in addition to the Service Fee, and (3) from the Project Company to the City, as an adjustment to the Service Fee. No amounts other than those provided for in this subsection shall be payable by the Project Company, the City or the Port on account of such Change in Law Event that occurs prior to the Occupancy Date in respect of a Facility. The obligation of the Project Company to perform the work necessitated by the occurrence of a Change in Law Event occurring prior to the Occupancy Date in respect of a Facility for which the Project Company is entitled to compensation as provided in this subsection is conditioned on the availability of funds as provided in Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

(C) Compensation Relief for Changes On or After the Occupancy Date. If a Change in Law Event occurs on or after the Occupancy Date in respect of a Facility:

(1) the Service Fee and the Port FM Fee, as applicable, shall be:

(a) reduced by an amount equal to Avoidable Costs;

(b) increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Services in compliance with Applicable Law, to the extent resulting from the Change in Law Event; and

(2) the City shall not have the right to impose Deductions for FM Service Failures or Unavailability Events, to the extent caused by a Change in Law Event; and

(3) in lieu of all or a portion of the adjustment to the Service Fee and the Port FM Fee, as the case may be, the City and the Project Company may mutually agree that the City shall compensate the Project Company for specific costs, pursuant to Section 18.12 (Negotiated Lump Sum Pricing Of Additional Work) or 18.13 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable.

SECTION 17.2. DISCRIMINATORY CHANGES IN LAW.

(A) Changes Prior to the Occupancy Date. If a Discriminatory Change in Law Event occurs prior to the Occupancy Date in respect of a Facility, the Project Company, the City or the Port, as the case may be, shall be entitled to additional compensation for any revenue loss or revenue gain for the Project Company directly attributable thereto, and the Project Company shall be entitled to additional compensation for any increased costs incurred or additional work required in order to comply with such Discriminatory Change in Law Event, such additional compensation to the Project Company shall be payable by the City, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation), directly to the Project Company pursuant to Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), or the Port, subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), by adjustment to the Port Completion Payment.

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

SECTION 17.3. OTHER RELIEF EVENTS.

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

(1) the Scheduled Initial Occupancy Date, the Scheduled Occupancy Date in respect of each Facility affected by the Other Relief Event, the Scheduled Final City Occupancy Date and the Scheduled Port Occupancy Date, as the case may be, the Scheduled Project Occupancy Date and the City Longstop Date and the Port Longstop Date, as the case may be, shall be extended as and to the extent provided in Section 8.7 (Scheduled Occupancy Date, Scheduled Project Occupancy Date and Longstop Date); and

(2) the occurrence of an Other Relief Event shall operate to extend the Expiration Date, and accordingly shall extend the period of time during which the Project Company is obligated to provide the Contract Services and entitled to receive the Service Fee or the Port FM Fee.

(B) Compensation for Other Relief Events Occurring Prior to the Occupancy Date. If an Other Relief Event occurs prior to the Occupancy Date, the City or the Port, as the case may be, shall pay the Project Company, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation) or Section 25.2 (All Port Payment Obligations Subject to Appropriation), as the case may be,

(1) an amount equal to the increase in the cost to the Project Company of performing the Design-Build Work (including the Project Company's own increased costs as well as increased amounts payable to the Design-Builder), to the extent resulting from such Other Relief Event;

(2) from the City, the amount of debt service payable with respect to the City Facilities Senior Debt from the Scheduled Project Occupancy Date, without taking into account the extension of such date in accordance with Section 8.7(G) (Extension for Relief Events) through the Project Occupancy Date, which amount shall be invoiced by the Project Company for each month by the 15th day following the end of such month and paid by the City within 30 days of receipt of the invoice; and

(3) from the Port, the amount of interest payable on debt service with respect to the Port Facilities Senior Debt from the Scheduled Port Occupancy Date, without taking into account the extension of such date in accordance with Section 8.7(G) (Extension for Relief Events) through the Port Occupancy Date, which amount shall be invoiced by the Project Company for each month by the 15th day following the end of such month and paid by the Port within 30 days of receipt of the invoice; and

(4) any increase in cost of performing the FM Services (including the Project Company's own increased costs as well as increased amounts payable to the FM Contractor) to the extent resulting from such Other Relief Event, which amount shall be payable pursuant to Section 6.6(A) (Owner Financing) as soon as practicable by the Owner.

To the extent the Scheduled Occupancy Date in respect of a Facility has been extended pursuant to subsection (A) of this Section (Schedule and Performance Relief), no later than 20 days following the Occupancy Date in respect of a Facility, the parties shall calculate the extent to which the Project Company was left in better or worse position as a result of each such extension of the Scheduled Occupancy Date in respect of a Facility and, to the extent that the Project Company was left in a better or worse position, the Project Company (subject to Section 18.1(H) (Mandatory Set-Off)), the Owner or the Project Company shall reimburse the other party so as to ensure that the Project Company is left in a no better and no worse position.

Such amounts shall be paid by the City or the Port, as the case may be, to the Project Company separate from and in addition to the Service Fee, the Port FM Fee or the Port Completion Payment. No amounts other than those provided for in this subsection shall be payable by the City or the Port, as the case may be, on account of such Other Relief Event that occurs prior to the Occupancy Date in respect of the relevant Facility. The obligation of the Project Company to perform the work necessitated by the occurrence of an Other Relief Event occurring prior to the Occupancy Date in respect of the Facility for which the Project Company is entitled to compensation as provided in this subsection is conditioned on the availability of funds as provided in Section 7.22 (Certain Design-Build Period Obligations Subject to the Availability of Funds).

(C) Compensation Relief for Other Relief Events Occurring On and After the Occupancy Date. If an Other Relief Event occurs on or after the Occupancy Date,

(1) the Service Fee and the Port FM Fee, as applicable, shall be:

(a) reduced by an amount equal to Avoidable Costs; and

(b) increased by an amount necessary to compensate the Project Company for any increase in the cost to the Project Company of performing the Contract Services to the extent resulting from the Other Relief Event;

(2) the City shall not have the right to impose Deductions for FM Service Failures or Unavailability Events, to the extent caused by an Other Relief Event; and

(3) in lieu of all or a portion of the adjustment to the Service Fee and the Port FM Fee, the City and the Project Company may mutually agree that the City shall compensate the Project Company for specific costs, pursuant to Section 18.12 (Negotiated Lump Sum Pricing Of Additional Work) or Section 18.13 (Cost Substantiation of Additional Work Not Subject To Lump Sum Price Negotiation), as applicable.

(D) City and Project Company Partial Termination Rights. If (1) an Other Relief Event occurs and such Other Relief Event materially impacts the City Facilities and the Shared Rooms, and (2) a period of 365 days elapses after the date on which notice thereof is first delivered by the Project Company pursuant to Section 15.2 (Procedures Upon the Occurrence of a Relief Event) during which the City or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, then the City or the Project Company may, by notice to the other party, terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project, in which case the City shall pay compensation to the Project Company in accordance with Section 5 (No-Fault Partial Termination by City, Port or Project Company) of Appendix 20 (Compensation on Termination); provided, however, that the City's right to terminate its obligations under this Project Agreement under

this subsection shall not be effective unless an appropriation of funds by the City Council has been made for the purpose of the City making the applicable Partial Termination Payment due under this Section.

(E) Port and Project Company Partial Termination Rights. If, (1) an Other Relief Event occurs and such Other Relief Event materially impacts the Port Facilities or the Shared Facilities, and (2) a period of 365 days elapses after the date on which notice thereof is first delivered by the Project Company pursuant to Section 15.2 (Procedures Upon the Occurrence of a Relief Event) during which the Port or the Project Company has been denied the benefits of this Project Agreement substantially as intended hereby, then the Port (prior to the Port Occupancy Date) or the Project Company, by notice to the other party, may terminate all of the obligations in respect of the Port Facilities and, subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities under this Project Agreement and fully remove the Port Facilities and the Shared Facilities from the Project in which case the Port shall pay compensation to the Project Company in accordance with Section 5 (No-Fault Partial Termination by City, Port or by Project Company) of Appendix 20 (Compensation on Termination); provided, however, that the Port's right to terminate its obligations under this Project Agreement under this subsection shall not be effective unless an appropriation of funds has been made by the City Council and the Board of Harbor Commissioners for the purpose of the Port making the applicable Partial Termination Payment due under this Section.

ARTICLE 18

SERVICE FEE, PORT FM FEE, PORT COMPLETION PAYMENT AND OTHER PAYMENTS

SECTION 18.1. SERVICE FEE, PORT FM FEE AND PORT COMPLETION PAYMENT GENERALLY.

(A) Obligation to Pay the Service Fee. Subject to Section 18.5 (Service Fee Payments Prior to Project Occupancy Date), from and after the Initial Occupancy Date and through the Termination Date, the City shall pay the Service Fee to the Project Company as compensation for the Project Company's performance of the Contract Services.

(B) Payment of the Service Fee Where Initial Occupancy Date Occurs Prior to Scheduled Initial Occupancy Date. Notwithstanding anything in this Project Agreement to the contrary, in the event that the Initial Occupancy Date occurs prior to the Scheduled Initial Occupancy Date, the City shall have the obligation to pay the Service Fee in accordance with Section 18.1(A) (Obligation to Pay the Service Fee).

(C) Obligation to Pay the Port FM Fee. From and after the Port Occupancy Date and through the Termination Date, the City shall pay the Port FM Fee to the Project Company as compensation for the Project Company's performance of FM Services at the Port FM Facilities.

(D) Payment of the Port FM Fee Where Port Occupancy Date Occurs Prior to Scheduled Port Occupancy Date. Notwithstanding anything in this Project Agreement to the contrary, in the event that the Port Occupancy Date occurs prior to the Scheduled Port Occupancy Date, the City shall have the obligation to pay the Port FM Fee in accordance with Section 18.1(C) (Obligation to Pay the Port FM Fee).

(E) Port Completion Payment Obligation. The Port shall pay to the Project Company the Port Completion Payment within two Business Days after the Port Occupancy Date as compensation for the Project Company's performance of the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work. For the avoidance of doubt, the Port Completion Payment shall not be subject to Deductions.

(F) Limitation on Payments. Other than the Service Fee, the Port FM Fee, the Port Completion Payment, and any other payments or compensation expressly provided for herein, the Project Company shall have no right to any further payment from the City or the Port in connection with the Contract Services.

(G) Payments Subject to Appropriation. The Service Fee, the Port FM Fee, the Port Completion Payment, the Partial Termination Payments payable by the City or the Port, the Termination Payments payable by the City or the Port and any other amounts payable by the City or the Port hereunder are subject to appropriation as provided in Article 25 (Appropriation).

(H) Set-Off. The Service Fee and Port FM Fee payable by the City to the Project Company under this Project Agreement shall be reduced by the City's set-off against any amounts, including Deductions or by way of indemnification, payable by the Project Company to the City under this Project Agreement. Once such amounts payable by the Project Company are so set-off, such amounts will be discharged promptly and in all respects. This subsection (H) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of

law, contract or otherwise). For the avoidance of doubt, the Port shall only have a right of set-off or counterclaim against amounts owing to the Project Company by the Port with respect to any act or omission by the Project Company with respect to the design and construction of the Port Facilities and the Shared Facilities, and the City shall only have a right of set-off or counterclaim against amounts owing to the Project Company by the City with respect to any act or omission by the Project Company with respect to design and construction of the City Facilities and the Shared Rooms and with respect to the FM Services.

(I) City Design-Build Payments. The City shall pay the amounts indicated under the heading “Lump Sum City Contributions” in Appendix 24 (City Design-Build Payments) to the Project Company by the date that is the tenth Business Day of each corresponding month.

SECTION 18.2. SERVICE FEE FORMULA.

Subject to Section 18.1(H) (Mandatory Set-Off), the City shall pay the Service Fee, which shall be calculated as follows: Subject to Section 18.5 (Service Fee Payments Prior to Project Occupancy Date), from the Initial Occupancy Date through the end of the Term, the Service Fee shall, for month X, be an amount equal to:

- (1) the Base Service Fee, *plus*
- (2) the Base Port Allocable FM Fee, *plus or minus*
- (3) the Energy Gainshare or Energy Painshare as applicable, *plus or minus*
- (4) Extraordinary Items, *minus*
- (5) Deductions, as contemplated in Appendix 10 (Deductions).

SECTION 18.3. PORT FM FEE.

Subject to Section 18.1(H) (Mandatory Set-Off), the Port FM Fee shall be calculated as follows, for month X:

- (1) the Base Port FM Fee, *plus or minus*
- (2) Extraordinary Items, *minus*
- (3) Deductions, as contemplated in Appendix 10A (Port Deductions).

SECTION 18.4. DEDUCTIONS.

(1) The Deductions amount for the purposes of Section 18.2(5) shall be the sum of all Deductions imposed pursuant to Appendix 10 (Deductions) hereunder. Examples of the calculation of Deductions are included in Appendix 15 (Example Deductions Calculations and Example Calculations). The maximum aggregate amount of Deductions in respect of the City Facilities, the Shared Facilities and the Shared Rooms with respect to any Billing Period shall not exceed the amount equal to the Base Service Fee minus the Capital Fee for such Billing Period.

(2) The Deductions amount for the purposes of Section 18.3(3) shall be the sum of all Deductions imposed pursuant to Appendix 10A (Port Deductions) hereunder. Examples of the calculation of Deductions are included in Appendix 15 (Example Deductions Calculations and

Example Calculations). The maximum aggregate amount of Deductions in respect of the Port FM Facilities with respect to any Billing Period shall not exceed the Base Port FM Fee for such Billing Period. The Port shall be entitled to notify the City of FM Service Failures and Unavailability Events that the Port reasonably believes to have occurred in respect of the Port FM Facilities and the City shall consider such events in determining the Deductions to the Port FM Fee.

SECTION 18.5. SERVICE FEE PAYMENTS PRIOR TO PROJECT OCCUPANCY DATE.

The City will begin paying the Service Fee to the Project Company as follows:

- (1) commencing one month after the Occupancy Date of the Library an amount equal to 15% of the Service Fee;
- (2) commencing one month after the Occupancy Date of the City Hall Building an amount equal to 85% of the Service Fee; and
- (3) commencing one month after the Occupancy Date of both the City Hall Building and the Library an amount equal to 100% of the Service Fee.

SECTION 18.6. EXTRAORDINARY ITEMS.

The Extraordinary Items of the Service Fee and Port FM Fee, as the case may be, which may be a charge or credit, shall be equal to the net amount of the following items (each an “Extraordinary Item” hereunder):

- (1) the amounts payable by the City for increased operation, maintenance or other costs incurred on account of the occurrence of a Relief Event or on account of a City-directed Design-Requirement Change which is chargeable to the City hereunder, net of any Avoidable Costs;
- (2) any adjustments to the Service Fee or Port FM Fee, as the case may be, resulting from a Capital Modification or an FM Services Change under the provisions of Article 10 (Capital Modifications and FM Services Changes);
- (3) any adjustment reflecting previous overpayments of the Service Fee or the Port FM Fee, as the case may be, pursuant to Section 4.8(B) (Inspection, Audit and Adjustment);
- (4) any adjustment resulting from Vandalism pursuant to Section 9.5(B) (Vandalism);
- (5) any adjustment resulting from the exercise by the City or the Port of their respective rights under Article 21 (Remedies of the Parties and City and Port Step-In Rights);
- (6) any indemnification payments owed by the Project Company to the City or an Indemnitee pursuant to Section 27.1 (Project Company’s Obligation to Indemnify) or any other provision hereof;
- (7) any adjustments reflecting additional insurance costs incurred by the Project Company pursuant to Section 16.5 (Availability of Insurance for Uninsurable Force Majeure Events);

(8) any adjustments reflecting savings in insurance costs, or additional insurance costs paid by the City for replacement insurance coverage, pursuant to Section 16.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third Party Liability);

(9) any amounts specified in Section 18.10(B) (Possessory Interest Tax), to the extent such amounts are payable during the Operating Period; and

(10) any other increase or reduction in the Service Fee or Port FM Fee provided for under any other provision of this Project Agreement.

SECTION 18.7. BILLING AND PAYMENT.

(A) Service Fee and Port FM Fee. The City shall pay the Service Fee and the Port FM Fee in monthly installments in an amount equal to the sum of the Service Fee for month x calculated in accordance with Section 18.2 (Service Fee Formula) and the Port FM Fee for month x calculated in accordance with Section 18.3 (Port FM Fee); provided, however, that prior to the Project Occupancy Date, the amount of the Service Fee shall be adjusted in accordance with Section 18.5 (Service Fee Payments Prior to Project Occupancy Date). Any overpayment of the Service Fee from prior periods shall be credited against the next periodic payment of the Service Fee. Any overpayment of the Port FM Fee from prior periods shall be credited against the next periodic payment of the Port FM Fee.

(B) Invoicing and Service Fee Due Date. The Project Company shall provide the City with an invoice for each Billing Period by the 15th day following the end of such Billing Period. The invoice shall set forth the amount of the Service Fee and Port FM Fee due with respect to such Billing Period and, in addition, shall state the annual Service Fee and Port FM Fee and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such invoice and such other documentation or information as the City may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Project Agreement. The City shall pay the invoice within 30 days of receipt.

(C) Late Payment of the Service Fee, Port FM Fee or Port Completion Payment. In the event the City fails to make a payment of the Service Fee or Port FM Fee when due under subsection (B) of this Section or the Port fails to pay the Port Completion Payment when due, then interest shall accrue thereon, as and to the extent provided in Section 18.15 (Interest on Overdue Amounts).

SECTION 18.8. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Budgeting. For City budgeting purposes, no later than 90 days preceding each Contract Year, the Project Company shall provide to the City a written statement setting forth for such Contract Year its reasonable estimate of the aggregate Service Fee and Port FM Fee, each component thereof, and the Inflation Index. The estimate shall not be binding on the Project Company but, upon concurrence by the City, shall establish the basis for Billing Period invoicing for such Contract Year, subject to annual settlement pursuant to this Article.

SECTION 18.9. ANNUAL SETTLEMENT.

Within 60 days after the end of each Contract Year, the Project Company shall provide to the City an annual settlement statement (the “Annual Settlement Statement”) setting forth the actual aggregate Service Fee and Port FM Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the City with respect to such Contract Year. The City or the Project Company, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Project Company of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Project Company shall file with the City an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 18.10. TAXES.

(A) Sales/Use Tax. The Project Company acknowledges that construction materials, fixtures and supplies initially acquired by the Project Company, the Project Contractors or any Subcontractor in connection with the Design-Build Work or any Capital Modification, and operating supplies relating to the performance of the FM Services, are subject to State and local sales and use Tax, and that these Taxes have been priced into the Service Fee, the Port FM Fee, and the Port Completion Payment, as the case may be. The Project Company shall pay all such Taxes without reimbursement from the City or the Port. The following additional sales Tax provisions shall apply:

(1) in order to enable the City to optimize local Tax revenues allowable under the applicable State Board of Equalization guidelines, to the extent that such guidelines apply to the Project Company, the Project Company shall (a) obtain necessary sales/use Tax jobsite sub-permit(s), (b) comply with associated reporting requirements, and (c) procure tangible personal property when commercially reasonable in a manner that directs the local Tax to the City. Such procurement procedures include but are not limited to the Project Company ordering purchases from its vendors’ and suppliers’ sales offices located in the City if commercially reasonable. The Project Company agrees with respect to any individual purchases of property subject to sales/use Tax in an amount equal to or greater than \$500,000 to be used, stored or consumed in the City, to allocate the local sales/use Tax with respect to such property to the City if commercially reasonable and applicable law so permits. The Project Company further agrees to include in each Project Contract and Subcontract a provision obligating the Project Contractors or any Subcontractor to comply with the State Board of Equalization jobsite sub-permitting, reporting requirements and procurement procedures set forth in this paragraph so as to assist the City in optimizing its local Tax revenue allowable under California law;

(2) sales/use Tax, if any, on engineering and/or construction services and on tangible personal property provided under or pursuant to this Project Agreement by the Project Company, the Project Contractors, or any Subcontractor shall be remitted to the State on a timely basis and reported to the City on a periodic basis. It is the Project Company’s responsibility to familiarize itself with the taxation of services and tangible personal property covered under this Project Agreement and under California law. The Project Company shall require the Project Contractors and any Subcontractor to comply with the requirements of this paragraph, and shall include or cause to be included in each Project Contract or Subcontract a provision such that no Project Contractor or Subcontractor shall bring any claim against the City for reimbursement of Taxes. The Project Company shall require Project Contractors or any Subcontractor to separately

identify to the Project Company all sales/use Tax paid by such Project Contractor or Subcontractor for services and tangible personal property related to the Project or the Project Company;

(3) the Project Company shall identify classifications of major tangible personal property components (materials, fixtures, and machinery/equipment) to be furnished by the Project Company pursuant to this Project Agreement. The Project Company shall issue a resale certificate to vendors of tangible personal property classified as fixtures and machinery/equipment to the extent allowable by law. The Project Company shall require all of the Project Contractors, and shall cause Project Contractors to require all Subcontractors, to issue resale certificates to vendors of tangible personal property classified as fixtures and machinery/equipment to the extent allowable by law; and

(4) any penalties imposed or interest due as a result of the Project Company's late payment, nonpayment, or incorrect payment of sales/use Tax will be the responsibility of and for the account of the Project Company.

(B) Possessory Interest Tax. The City shall compensate the Project Company (through an adjustment of the Service Fee or Port FM Fee, as applicable) for any possessory interest Tax imposed on or assessed against the Project Company in respect of the Project Company's interest in and under this Project Agreement.

SECTION 18.11. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

There shall be no adjustment of the Service Fee, the Port FM Fee or any other amount payable to, and no relief from any obligation of, the Project Company hereunder on account of:

(1) except as provided in Section 17.1 (Change in Law Events) with respect to a Change in Law Event or as provided in Section 17.2 (Discriminatory Changes in Law) with respect to a Discriminatory Change in Law Event, any change in any provision of Income Tax law to take effect after the Contract Date pertaining to the transactions contemplated hereby which affects the Project Company or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Service Fee, the Port FM Fee or any other payment between the parties), notwithstanding any assumptions made by the Project Company in entering into this Project Agreement or any Material Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Project Company or such other person;

(2) any administrative or judicial determination which is adverse to the Project Company or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income;

(3) any inability of the Project Company or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby; or

(4) any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application

thereof which may have been assumed by the Project Company or any other person in connection with such transactions.

SECTION 18.12. NEGOTIATED LUMP SUM PRICING OF ADDITIONAL WORK.

This Project Agreement obligates the City and the Port to pay for certain additional costs resulting from Relief Events and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the City and the Port will pay for such costs on a lump sum basis, and that the lump sum price will be negotiated in advance of the Project Company's performance of the work. For example, if a Change in Law Event occurs, as required under Article 17 (Change in Law Events and Other Relief Events), the parties will assess the impact of the Change in Law Event, take all appropriate mitigation steps, determine any necessary Capital Modifications and FM Services Changes, and agree upon lump sum pricing therefor. To facilitate such negotiations, the Project Company shall furnish the City or the Port, as the case may be, with all information reasonably required by the City or the Port, as the case may be, regarding the Project Company's expected costs of performing the work and its mark-up. Once the parties agree upon the lump sum price, the Project Company's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Project Company's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 18.13. COST SUBSTANTIATION OF ADDITIONAL WORK NOT SUBJECT TO LUMP SUM PRICE NEGOTIATION.

(A) Costs Requiring Cost Substantiation. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been incurred by the Project Company. Examples of costs which require substantiation include:

- (1) work done on an emergency basis to respond to a Relief Event, where it is not reasonably practicable for the parties in advance to negotiate a lump sum price for the work;
- (2) work done by the Project Company pursuant to a Work Directive or Unilateral Change Order; and
- (3) work done by the Project Company under Article 24 (Termination) upon the expiration or termination of this Project Agreement, to the extent such costs are the responsibility of the City under Article 24 (Termination).

Cost Substantiation shall also be required where the parties agree that the Project Company shall perform additional work on a cost-plus basis, subject to the limitations set forth in subsection (E) of this Section.

(B) Cost Substantiation Methodologies. Costs requiring substantiation as set forth in subsection (A) of this Section shall be substantiated as follows:

- (1) Materials. The cost of materials shall include cost of transportation and delivery. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the jobsite in the quantities involved, plus sales Tax, freight, and delivery. The Owner reserves the right to supply materials to the Project Company, if necessary, for the progress of the work. No markup shall be applied to any material provided by the Owner;

(2) Labor. The cost of labor shall include social security, old age and unemployment insurance, and fringe benefits required by agreement and worker’s compensation insurance. The costs of labor shall be in accordance with Section 11.6 (Wages), plus employer payments of payroll Taxes, worker’s compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of labor classification, which would increase the extra work cost, will not be permitted, unless (a) otherwise required under this Project Agreement, (b) required by Applicable Law, or (c) the Project Company establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice equipment rental; and

(3) Equipment. The rental value of equipment and machinery shall be exclusive of hand tools. No payment will be made for the use of tools, which have a replacement value of \$400.00 or less. Rates for Project Company-owned, Project Contractor-owned and Subcontractor-owned equipment shall be calculated as the lesser of:

(a) the rates published by the State, Department of Transportation, Division of Construction (Caltrans Blue Book) in the latest edition in effect at the time the equipment is in use;

(b) the rates paid by the Project Company, Project Contractor or Subcontractor pursuant to an arm’s length transaction with the equipment supplier; or

(c) the internal rates the Project Company, Project Contractor or Subcontractor charges to the work according to its usual and customary accounting practices. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs, maintenance of any kind, depreciation, storage, insurance, and all incidentals. The reported rental time for equipment already at the jobsite shall be the duration of its use for the work requiring Cost Substantiation pursuant to subsection (A) of this Section, commencing at the time it is first put into actual operation on such work, plus the time required to move such equipment from its previous location and return it to its previous location.

Necessary loading and transportation costs for equipment used on the extra work shall be included.

If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the City Site or Port Site, it shall be returned, unless the Project Company, Project Contractor or Subcontractor elects to keep such equipment at the respective Site, at no expense to the Owner.

All equipment shall be in good working condition, and suitable for the purpose for which it is to be used. Manufacturer’s ratings and manufacturer’s approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Project Agreement under which such cost is chargeable to the City or the Port, as the case may be, shall describe the competitive or other process utilized by the Project Company to obtain the commercially reasonable price, and shall state that such

services and materials are reasonably required pursuant to this Project Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the City or the Port, as the case may be, and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

- (1) the amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes;
- (2) a statement of the equipment used and any rental payable therefor;
- (3) employee hours, duties, wages, salaries, benefits and assessments; and
- (4) profit, administration costs, bonds, insurance, Taxes, premiums overhead, and other expenses.

The Project Company's entitlement to reimbursement for the costs of self-performed work shall be subject to cost substantiation and the limitations set forth in this Section.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs subject to Cost Substantiation, the Project Company shall keep daily detailed and accurate records itemizing each element of cost, and shall provide copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, to the City or the Port, as the case may be.

(E) Mark-Ups. For any self-performed work requiring Cost Substantiation, the Project Company shall be entitled to a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its own personnel, and for subcontracted work a mark-up of 10% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors.

SECTION 18.14. BILLING STATEMENT DISPUTES.

If the City disputes in good faith any amount billed by the Project Company, the City shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Project Company with a written objection indicating the amount being disputed and the reasons then known to the City for the dispute. When any billing dispute is finally resolved, if payment by the City to the Project Company of amounts withheld is required, such payment shall be made within 45 days of the date of resolution of the dispute, without interest.

SECTION 18.15. INTEREST ON OVERDUE AMOUNTS.

If payment of any amount payable under this Project Agreement (except amounts billed by the Project Company being disputed in good faith by the City) is not made when due (including Termination Payments), simple interest will be payable on such amount at the Prime Rate and shall be calculated on the basis of a 365-day year from the date such payment is due under this Project Agreement until paid. The party to whom payment is owed and overdue shall notify the other party at least monthly of the overdue amount.

ARTICLE 19

FINANCIAL MODEL

SECTION 19.1. FINANCIAL MODEL.

(A) Copy Attached. A copy of the Financial Model is attached hereto as Appendix 16 (Financial Model).

(B) Risk of Errors or Omissions. The Project Company shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation from or other redress against the City or the Port in relation to any loss or damage that it suffers in consequence of such error or omission.

(C) No Guaranteed Return. In no event shall the agreement of the parties to establish and maintain the Financial Model for certain purposes hereunder be construed to mean that the Project Company is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

SECTION 19.2. FINANCIAL MODEL UPDATES.

(A) Updates. The Financial Model shall be updated from time to time to reflect changes as required by this Project Agreement. The Financial Model update shall become the Financial Model and shall be attached to this Project Agreement.

(B) Project Company Preparation. The Project Company shall prepare the Financial Model updates and shall provide the City and the Port with all Financial Model updates and a complete set of the updated and revised assumptions and other data that form a part of the Financial Model as updated, including updated and revised projections and calculations with respect to revenues, expenses, the repayment of the applicable Senior Debt and Distributions.

(C) Access and Challenges. The City and the Port shall have the right at all times to gain access, on an open book basis, to the Financial Model and all Financial Model updates and the set of updated and revised assumptions and other data that form part of each such model. The City and the Port shall have the right to challenge the validity, accuracy or reasonableness of any Financial Model update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Financial Model update that has not been challenged (or, if there has been no unchallenged Financial Model update, the Financial Model) shall remain in effect pending the outcome or the challenge or until a new Financial Model update is issued and unchallenged.

(D) Changes to Financial Model Formulas. In no event shall the Financial Model formulas be changed except with the prior written agreement of the City and the Port.

(E) City and Port Audit. Prior to making any use of the output of the Financial Model, the City or the Port may, at its own expense, review and audit the revised Financial Model and all amendments and updates thereto prepared by the Project Company. The Project Company shall provide such information as is reasonably required by the City and the Port to conduct the audits described in this Section.

ARTICLE 20

DISPUTE RESOLUTION

SECTION 20.1. FORUM FOR DISPUTE RESOLUTION.

It is the express intention of the parties that all Legal Proceedings related to this Project Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in the County of Los Angeles, California except to the extent the Port or the City reasonably need to file an action in another jurisdiction (i.e., to enforce a judgment or take a deposition). The Project Company, the City and the Port each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding. The parties agree that the dispute resolution procedures under this Article exclusively govern claims under this Project Agreement, notwithstanding the California Government Claims Act (California Government Code Section 900 et seq.), Section 2.83.020 of the Municipal Code of the City or any requirement to first submit a claim against the City or the Port to the City Council.

SECTION 20.2. NON-BINDING MEDIATION GENERALLY.

(A) Rights to Request and Decline. Any party may request Non-Binding Mediation of any dispute arising under this Project Agreement, whether technical or otherwise. Except as provided in Section 20.3 (Non-Binding Mediation of Certain Technical Disputes During the Operating Period), the non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the parties to the mediation.

(B) Procedure. The Mediator shall be a professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Project Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Project Agreement by any other party or in respect of any dispute under this Project Agreement, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 20.3. NON-BINDING MEDIATION OF CERTAIN TECHNICAL DISPUTES DURING THE OPERATING PERIOD.

(A) Obligation to Participate. In the event either party requests Non-Binding Mediation with respect to certain technical matters as described in subsection (B) of this Section, the non-requesting party shall participate in Non-Binding Mediation as and to the extent provided in Section 20.2 (Non-Binding Mediation Generally).

(B) Certain Technical Matters Defined. “Technical Matters”, for purposes of this Section, shall mean disputes arising under this Project Agreement relating to matters pertaining to the proper functioning or maintenance of the physical assets comprising the Project during the Operating Period.

SECTION 20.4. SOVEREIGN IMMUNITY.

The City and the Port are not entitled to claim governmental immunity in a breach of contract action initiated by the Project Company with respect to this Project Agreement.

ARTICLE 21

REMEDIES OF THE PARTIES AND CITY AND PORT STEP-IN RIGHTS

SECTION 21.1. REMEDIES FOR BREACH.

(A) Generally. The parties may exercise their rights and remedies for breach as and to the extent provided in Section 21.8 (Exercise of Remedies). No party shall have the right to partially terminate or terminate this Project Agreement for breach except as provided or referred to in Section 22.3 (City and Port Termination Right), Section 22.4 (City Partial Termination Right), Section 22.5 (Port Partial Termination Right), Section 23.2 (Project Company Options Upon City Event of Default), Section 23.4 (Project Company Options Upon Port Event of Default), or Article 24 (Termination). The foregoing is subject to the provisions of Section 21.10 (No Special, Consequential or Punitive Damages) and Section 21.1(B) (Deductions).

(B) Deductions. This Project Agreement provides the City with the right to impose certain Deductions from the Service Fee, calculated in accordance with Appendix 10 (Deductions), and the Port FM Fee, calculated in accordance with Appendix 10A (Port Deductions), in each case for certain specified events of non-performance. The parties acknowledge that such Deductions shall constitute liquidated damages for such events of non-performance. The right of the City to impose such Deductions shall be the exclusive remedy of the City for such events of non-performance, regardless of legal theory, without prejudice, however, to the City's step-in rights under Section 21.2 (City's and Port's Temporary Step-In-Rights) or the City's rights upon a Project Company Event of Default under Article 22 (Project Company Events of Default). The parties agree that the City's actual damages in each such circumstances 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.

SECTION 21.2. CITY'S AND PORT'S TEMPORARY STEP-IN RIGHTS.

(A) Rights. If the Owner reasonably determines that a breach by the Project Company of any obligation under this Project Agreement or an event (a) is likely to create an immediate and serious threat to the health or safety of any Project User, any property, the environment or the reputation, integrity of, or public confidence in, the Project and any related operations, or (b) is prejudicial to the ability to carry on City Activities or Port Activities, as the case may be, to a material degree, then the City or the Port, as the case may be, acting reasonably, may either:

(1) if it determines that there is sufficient time and that it is likely that the Project Company shall be willing and able to provide assistance, require the Project Company by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any Project Contract or Subcontract, suspension of the Project Contractor or Subcontractor, and the Project Company shall use all reasonable efforts to comply with the City's or the Port's requirements, as the case may be, as soon as reasonably practicable; or

(2) if it determines there is not sufficient time, or that the Project Company is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Contract Services to the standards required by this Project Agreement (or as close as possible to those standards as the circumstances permit). The City or the Port, as the case may be, will carry out such steps as quickly as is practicable, and in such

manner as will minimize interference with the Project Company's performance of its obligations under this Project Agreement.

The Project Company shall ensure that all Project Contracts and Subcontracts permit the City and the Port to exercise their rights under this Article.

SECTION 21.3. CITY'S AND PORT'S RECTIFICATION RIGHTS.

If the City or the Port gives notice to the Project Company under Section 21.2 (City's and Port's Temporary Step-In Rights) and the Project Company either:

(1) does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the City or the Port, as the case may be, to mitigate, rectify and protect against such circumstances then the City or the Port, as the case may be, may, within five further Business Days, accept or reject such alternative plan, acting reasonably; or

(2) fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set forth in such notice or accepted alternate plan or within such time as the City or the Port, as applicable, acting reasonably, will stipulate,

then the City or the Port, as the case may be, may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Project Company to provide the relevant Contract Services, but only for so long as the circumstances referred to in Section 21.2 (City's and Port's Temporary Step-In Rights) subsist.

SECTION 21.4. NOTICE OF CAPITAL MODIFICATION.

The City or the Port, as the case may be, shall notify the Project Company of any Capital Modification which the City or the Port intends to make pursuant to the exercise of the City's or the Port's rights under Sections 21.2 (City's and Port's Temporary Step-In Rights) or 21.3 (City's and Port's Rectification Rights) and provide the Project Company a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, the City or the Port, as the case may be, will reasonably consider comments received in a timely manner from the Project Company on the proposed Capital Modification.

SECTION 21.5. NO EFFECT ON CONTRACT SERVICES.

The exercise by the City or the Port of any of their rights under this Article 21 (Remedies of the Parties and City and Port Step-In Rights) shall not reduce or affect in any way the Project Company's responsibility hereunder to perform the Contract Services.

SECTION 21.6. ALLOCATION OF COSTS FOR CITY'S AND PORT'S EXERCISE OF STEP-IN RIGHTS.

To the extent that any of the circumstances set forth in Section 21.2 (City's and Port's Temporary Step-In Rights) arise as a result of any breach by the Project Company of its obligations under this Project Agreement, then the Project Company shall pay the City (through an adjustment of the Service Fee payable solely following the Initial Occupancy Date or the Port FM Fee payable solely following the Port

Occupancy Date, or if this Project Agreement is partially terminated or terminated prior to the applicable Occupancy Date, set off against the applicable Termination Payment or Partial Termination Payment) or the Port (through an adjustment to the Port Completion Payment, or if this Project Agreement is partially terminated or terminated prior to the applicable Occupancy Date, set off against the applicable Termination Payment or Partial Termination Payment), as the case may be, the amount of all costs and expenses reasonably incurred by the City or the Port, as the case may be, in exercising its rights under Sections 21.2 (City's and Port's Temporary Step-In Rights) or 21.3 (City's and Port's Rectification Rights). In all other cases, the City or the Port, as the case may be, shall compensate the Project Company for actions taken under Section 21.2 (City's and Port's Temporary Step-In Rights) or 21.3 (City's and Port's Rectification Rights) in the manner provided in Article 17 (Change in Law Events and Other Relief Events) as if such circumstances constituted a Relief Event affecting the Project Company.

SECTION 21.7. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Project Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 21.8. EXERCISE OF REMEDIES.

(A) Remedies Exclusive. The respective rights and remedies of the parties set forth in this Project Agreement shall be the exclusive rights and remedies for breach of this Project Agreement, and the parties shall have no obligations or liabilities in connection with this Project Agreement and the Contract Services except as expressly set forth in this Project Agreement.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 21.9. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.

Every right to claim compensation, indemnification or reimbursement under this Project Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Agreement. No party shall be entitled to make any claim against any other party for compensation, indemnification or reimbursement other than as provided under this Project Agreement.

SECTION 21.10. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall any party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Project Agreement, or any representation made in this Project Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory. This Section shall not limit the recovery of any such losses or damages under Article 27 (Indemnification) in respect of claims by third parties.

ARTICLE 22

PROJECT COMPANY EVENTS OF DEFAULT

SECTION 22.1. PROJECT COMPANY EVENTS OF DEFAULT.

(A) Project Company Events of Default Defined. For the purposes of this Project Agreement, “Project Company Event of Default” means any of the following events or circumstances:

- (1) the occurrence of a Project Company Bankruptcy-Related Event;
- (2) the Project Company breaches Section 26.1 (Limitation on Assignment by Project Company) or a sale, assignment or transfer of units occurs which is prohibited by Section 26.2 (Limitations on Sale, Assignment and Transfer of Units);
- (3) the Project Company fails to commence the City Facilities Design-Build Work or the Shared Rooms Design-Build Work within 90 days after Financial Close;
- (4) the Project Company abandons the City Facilities or the Shared Rooms for a period in excess of 30 days, other than pursuant to its right to suspend performance in accordance with this Project Agreement;
- (5) the Final City Occupancy Date (except in respect of Lincoln Park) does not occur on or before the City Longstop Date as provided in Section 8.9(A) (Failure to Achieve Final City Occupancy Date);
- (6) the Occupancy Date in respect of Lincoln Park does not occur on or before the City Longstop Date as provided in Section 8.9(B) (Failure to Occupancy Date of Lincoln Park);
- (7) the Project Company accumulates Deductions of \$1,400,000 (Index Linked) or more in any 12 consecutive month period during the Operating Period (except that (a), for purposes of this subsection, Deductions accumulated due to an Insurable Force Majeure Event shall not be taken into account, and (b), if a replacement FM Contractor is appointed by the Project Company with the approval of the City pursuant to Section 11.3 (Material Contracts), any Deductions that arose prior to the time of replacement shall not be taken into account after the replacement for the purposes of this item (7));
- (8) the Project Company fails to take appropriate timely action following receipt of notice from the City of a potential or existing public health or safety emergency caused by Project Company’s failure to fulfill its obligations under this Project Agreement in any material respect;
- (9) the occurrence of any material Project Company breach not otherwise described in items (1) through (8), inclusive, or (10) through (13), inclusive, of subsection (A) of this Section and pertaining to the Project Company’s obligations under this Project Agreement and such breach is not remedied or in the process of being remedied and diligently pursued within 30 days (or such longer period as agreed between the parties) after notification by the City in accordance with the remedial procedures set forth in this Project Agreement;
- (10) the Project Company fails to commence the Port Facilities Design-Build Work or the Shared Facilities Design-Build Work within 90 days after Financial Close;

(11) the Project Company abandons the Port Facilities or the Shared Facilities for a period in excess of 30 days, other than pursuant to its right to suspend performance in accordance with this Project Agreement;

(12) the Port Occupancy Date does not occur on or before the Port Longstop Date as provided in Section 8.9(C) (Failure to Achieve Port Occupancy Date); or

(13) the occurrence of any material Project Company breach not otherwise described in items (1) through (12), inclusive, of subsection (A) of this Section and pertaining to the Project Company's obligations in respect of the Port Facilities (excluding the FM Services obligations in respect of the Port FM Facilities), and such breach is not remedied or in the process of being remedied and diligently pursued within 30 days (or such longer period as agreed between the parties) after notification by the City in accordance with the remedial procedures set forth in this Project Agreement.

(B) Project Company Bankruptcy-Related Event Defined. For purposes of this Project Agreement, "Project Company Bankruptcy-Related Event" means any of the following events:

(1) a receiver, receiver manager or other Encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of the Project Company;

(2) any proceedings with respect to the Project Company being commenced under the Bankruptcy Law and if such proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 days of such proceedings being instituted;

(3) the Project Company making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Project Company under the Bankruptcy Law or otherwise and, if proceedings are commenced against the Project Company and are disputed by the Project Company, such proceedings are not stayed, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(4) the Project Company ceasing to carry on business.

SECTION 22.2. NOTIFICATION BY THE PROJECT COMPANY.

The Project Company shall notify:

(1) the City and the Port of the occurrence and details of any Termination Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Termination Project Company Event of Default, promptly on the Project Company becoming aware of its occurrence;

(2) the City of the occurrence and details of any City Partial Termination Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a City Partial Termination Project Company Event of Default, promptly on the Project Company becoming aware of its occurrence; and

(3) the Port of the occurrence and details of any Port Partial Termination Project Company Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to such a Port Partial Termination Project Company Event of Default, promptly on the Project Company becoming aware of its occurrence.

SECTION 22.3. CITY AND PORT TERMINATION RIGHT.

(A) Termination Right. If any Termination Project Company Event of Default occurs then the City or (prior to the Port Occupancy Date) the Port may (if the Termination Project Company Event of Default continues unwaived and unremedied), subject to Section 24.1(N) (Continued Performance) and the terms of the Lenders' Direct Agreement, terminate this Project Agreement by notice to the Project Company. The rights of the City and the Port to terminate this Project Agreement under this Section are in addition, and without prejudice, to any other right which the City and the Port may have in connection with the Project Company's non-compliance with this Project Agreement, including those set forth in Article 21 (Remedies of the Parties and City and Port Step-In Rights).

(B) Lenders' Direct Agreement. The rights of the City and the Port under this Section are subject to the terms of the Lenders' Direct Agreements.

SECTION 22.4. CITY PARTIAL TERMINATION RIGHT.

(A) Partial Termination Right. If any City Partial Termination Project Company Event of Default occurs as set forth in Section 22.1(A) (Project Company Events of Default Defined); then the City may (if the City Partial Termination Project Company Event of Default continues unwaived and unremedied), subject to Section 24.1(N) (Continued Performance) and the terms of the Lenders' Direct Agreement (City), by notice to the Project Company, terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project. The right of the City to terminate obligations under this Project Agreement with respect to the City Facilities, the Shared Rooms and the FM Services under this Section is in addition, and without prejudice, to any other right which the City may have in connection with the Project Company's non-compliance with this Project Agreement, including those set forth in Article 21 (Remedies of the Parties and City and Port Step-In Rights).

(B) Lenders' Direct Agreement. The rights of the City under this Section are subject to the terms of the Lenders' Direct Agreement (City).

SECTION 22.5. PORT PARTIAL TERMINATION RIGHT.

(A) Partial Termination Right. Subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), if any Port Partial Termination Project Company Event of Default occurs as set forth in Section 22.1(A) (Project Company Events of Default Defined); then (prior to the Port Occupancy Date) the Port may (if the Port Partial Termination Project Company Event of Default continues unwaived and unremedied), subject to Section 24.1(N) (Continued Performance) and the terms of the Lenders' Direct Agreement (Port), by notice to the Project Company, terminate all of the obligations in respect of the Port Facilities under this Project Agreement (including the FM Services Obligations in respect of the Port FM Facilities) and the Shared Facilities (prior to the Port Occupancy Date) and fully remove the Port Facilities and the Shared Facilities (prior to the Port Occupancy Date) from the Project. The right of the Port to terminate obligations with respect to the Port Facilities and the Shared Facilities (prior to the Port Occupancy Date) under this Project Agreement under this Section is in addition, and without prejudice, to any other right which the Port may have in connection with the Project

Company's non-compliance with this Project Agreement, including those set forth in Article 21 (Remedies of the Parties and City and Port Step-In Rights).

(B) Lenders' Direct Agreement. The rights of the Port under this Section are subject to the terms of the Lenders' Direct Agreement (Port).

SECTION 22.6. CITY PERMANENT STEP-IN RIGHT.

(A) City's Right to Self-Perform Upon City Partial Termination Project Company Event of Default. If the City has a right to terminate all of the obligations in respect of the City Facilities and the Shared Rooms and the FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project due to the occurrence of a City Partial Termination Project Company Event of Default pursuant to Section 22.4(A) (Partial Termination Right), then the City shall also have the right, by notice to the Project Company and immediately effective upon the delivery of such notice, to assume responsibility for the performance itself (or by City subcontract) of all of the City Facilities Design-Build Work, Shared Rooms Design-Build Work and FM Services. Upon delivery of such notice, the right and obligation of the Project Company to perform the City Facilities Design-Build Work, Shared Rooms Design-Build Work and FM Services shall be suspended for the remainder of the Term, without right of reinstatement. The Project Company shall ensure that all Project Contractors and Subcontractors permit the City to exercise its rights under this Section, subject to the terms of the applicable Material Contract Party Direct Agreement.

(B) Service Fee and Port FM Fee Adjustment. Following the exercise by the City of its permanent step-in right under subsection (A) of this Section and for the remainder of the Term, the City shall continue to pay the Service Fee and Port FM Fee but shall be entitled to offset against the Service Fee a charge in an amount equal to the cost to the City of performing (1) the Design-Build Work in respect of the City Facilities and the Shared Rooms (if any), and (2) the FM Services.

(C) Vacating the City Facilities and the Shared Rooms and Transition Arrangements. Immediately upon the delivery of notice as provided in subsection (A) of this Section, the Project Company shall, and shall cause all Project Contractors and Subcontractors to, vacate the City Facilities and the Shared Rooms and comply with Sections 24.3 (Transfer to City and Port of Assets, Contracts and Documents), 24.4 (Transitional Arrangements), and 24.5 (Project Company to Cooperate), as if the Termination Date had occurred.

(D) Retention of Partial Termination Rights and Termination Rights. The City shall retain the right, at any time following the exercise of its permanent step-in rights under this Section, to terminate this Project Agreement as provided in Section 22.3 (City and Port Termination Right) or to terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project under this Project Agreement as provided in Section 22.4 (City Partial Termination Right).

(E) Lenders' Direct Agreement. The rights of the City under this Section are subject to the terms of the Lenders' Direct Agreement (City). Accordingly, the City's permanent step-in right under this Section may not be exercised until a City Partial Termination Project Company Event of Default has occurred and the City Facilities Senior Lenders have failed to cure the City Partial Termination Project Company Event of Default, resulting in a right of the City to terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all obligations to provide the FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project under Section 4.5 of the Lenders' Direct Agreement (City).

SECTION 22.7. PORT PERMANENT STEP-IN RIGHTS.

(A) Port's Right to Self-Perform Upon Port Partial Termination Project Company Event of Default. If the Port has a right to terminate all of the obligations in respect of the Port Facilities and, to the extent such right arises prior to the applicable Occupancy Date and subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities under this Project Agreement and fully remove the Port Facilities and the Shared Facilities from the Project due to the occurrence of a Port Partial Termination Project Company Event of Default pursuant to Section 22.5(A) (Partial Termination Right), then the Port shall also have the right, by notice to the Project Company and immediately effective upon the delivery of such notice, to assume responsibility for the performance itself (or by Port subcontract) of all of the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work. Upon delivery of such notice, the right and obligation of the Project Company to perform the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work shall be suspended for the remainder of the Term, without right of reinstatement. The Project Company shall ensure that all Project Contractors and Subcontractors permit the Port to exercise its rights under this Section, subject to the terms of the applicable Material Contract Party Direct Agreement.

(B) Port Completion Payment Adjustment. Following the exercise by the Port of its permanent step-in right under subsection (A) of this Section, the Port shall continue to be obligated to pay the Port Completion Payment but shall be entitled to offset against the Port Completion Payment a charge in an amount equal to the cost to the Port of performing the Port Facilities Design-Build Work and the Shared Facilities Design-Build Work.

(C) Vacating the Port Facilities and Transition Arrangements. Immediately upon the delivery of notice as provided in subsection (A) of this Section, the Project Company shall, and shall cause all Project Contractors and Subcontractors to, vacate the Port Facilities and the Shared Facilities and comply with Sections 24.3 (Transfer to City and Port of Assets, Contracts and Documents), 24.4 (Transitional Arrangements), and 24.5 (Project Company to Cooperate), as if the Termination Date had occurred.

(D) Retention of Partial Termination Rights and Termination Rights. The Port shall retain the right, at any time following the exercise of its permanent step-in rights under this Section, to terminate this Project Agreement as provided in Section 22.3 (City and Port Termination Right) or to terminate all of the obligations in respect of the Port Facilities and, to the extent such right arises prior to the applicable Occupancy Date, the Shared Facilities, and fully remove the Port Facilities and, subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities from this Project Agreement as provided in Section 22.5 (Port Partial Termination Right).

(E) Lenders' Direct Agreement. The rights of the Port under this Section are subject to the terms of the Lenders' Direct Agreement (Port). Accordingly, the Port's permanent step-in right under this Section may not be exercised until a Port Partial Termination Project Company Event of Default has occurred and the Port Facilities Senior Lenders have failed to cure the Port Partial Termination Project Company Event of Default, resulting in a right of the Port terminate all of the obligations in respect of the Port Facilities and the Shared Facilities under this Project Agreement and fully remove the Port Facilities and subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities from the Project under Section 4.5 of the Lenders' Direct Agreement (Port).

ARTICLE 23

CITY AND PORT EVENTS OF DEFAULT

SECTION 23.1. CITY EVENTS OF DEFAULT.

For the purposes of this Project Agreement, “City Event of Default” means any of the following events or circumstances:

(1) subject to Section 25.1 (All City Payment Obligations Subject to Appropriation), the failure of the City to pay the Service Fee, the Port FM Fee, the Port Site Proceeds Amount, any Partial Termination Payment, any Termination Payment or any other payment due to the Project Company on the due date for such payment under this Project Agreement; or

(2) except as provided in the paragraph (1), a breach, or series of breaches, by the City of any term, obligation, covenant or undertaking to the Project Company or any representation or warranty made by the City to the Project Company in this Project Agreement being incorrect when made, which has a material and adverse effect on the Project Company.

SECTION 23.2. PROJECT COMPANY OPTIONS UPON CITY EVENT OF DEFAULT.

After the occurrence of a City Event of Default and while a City Event of Default is continuing, the Project Company may, at its option, serve notice on the City of the occurrence and specifying the details of such a City Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the City:

(1) in the case of a City Event of Default under Section 23.1(1), within 30 days of such notice; or

(2) in the case of a City Event of Default under Section 23.1(2), within 30 days of such notice or within such longer period as is reasonably required for the City to rectify or remedy such City Event of Default as long as the City is diligently pursuing such rectification or remedy,

then the Project Company may serve a further notice on the City terminating all of the obligations in respect of the City Facilities and the Shared Rooms and all obligations in respect of the FM Services at the Port Facilities under this Project Agreement and fully removing the City Facilities and the Shared Rooms from this Project Agreement with immediate effect and, in the case of a City Event of Default under Section 23.1(1), within 30 days of such notice, the Project Company also may bring an action to enforce payment of the amount due.

SECTION 23.3. PORT EVENTS OF DEFAULT.

For the purposes of this Project Agreement, “Port Event of Default” means any of the following events or circumstances:

(1) subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), failure of the Port to pay the Port Completion Payment, any Partial Termination Payment, any Termination Payment or any other payment due to the Project Company within 45 days of the date for such payment under this Project Agreement; or

(2) Except as provided in paragraph (1) above, a breach, or series of breaches, by the Port of any term, covenant or undertaking to the Project Company or any representation or warranty made by the Port to the Project Company in this Project Agreement being incorrect when made, which has a material and adverse effect on the Project Company.

SECTION 23.4. PROJECT COMPANY OPTIONS UPON PORT EVENT OF DEFAULT.

After the occurrence of a Port Event of Default and while a Port Event of Default is continuing, the Project Company may, at its option, serve notice on the Port of the occurrence and specifying the details of such a Port Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the Port:

(1) in the case of a Port Event of Default under Section 23.3(1), within 30 days of such notice; or

(2) in the case of a Port Event of Default under Section 23.3(2), within 30 days of such notice or within such longer period as is reasonably required for the Port to rectify or remedy such Port Event of Default as long as the Port is diligently pursuing such rectification or remedy,

then the Project Company may serve a further notice on the Port terminating all of the obligations in respect of the Port Facilities under this Project Agreement and fully removing the Port Facilities from this Project Agreement with immediate effect and, in the case of a Port Event of Default under Section 23.3(1), within 30 days of such notice, the Project Company also may bring an action to enforce payment of the amount due.

ARTICLE 24

TERMINATION

SECTION 24.1. TERMINATION AND PARTIAL TERMINATION RIGHTS.

(A) City and Port Termination Rights. This Project Agreement may be terminated in its entirety (i) prior to the Port Occupancy Date, by mutual agreement of the City and the Port, and (ii) on and after the Port Occupancy Date, by the City:

(1) in connection with a Termination Project Company Event of Default, pursuant to Article 22 (Project Company Events of Default);

(2) upon the condemnation or taking by eminent domain of the whole or substantially all of the Shared Facilities; or

(3) if an injunction or any other final order is issued by a court of competent jurisdiction which results in either the City, the Port or the Project Company being permanently enjoined from performing its material obligations in respect of the Shared Facilities under this Project Agreement and the period for all appeals has expired; provided, however, that following the Port Occupancy Date, the consent of the Port shall not be required to terminate this Project Agreement in accordance with this paragraph.

(B) City Partial Termination Rights. The City may terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all obligations in respect of the FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project:

(1) at its discretion and for its convenience at any time, but only following the making of an appropriation of funds for the purpose of making the applicable Partial Termination Payment calculated pursuant to Section 1 (Partial Termination by Project Company for City Event of Default or Port Event of Default or Partial Termination by City for its Convenience) of Appendix 20 (Compensation on Termination), by notice to the Project Company stating that the partial termination is for the convenience of the government;

(2) in connection with a City Partial Termination Project Company Event of Default, pursuant to Article 22 (Project Company Events of Default);

(3) in connection with an Uninsurable Force Majeure Event impacting the City Facilities and the Shared Rooms, pursuant to Section 16.2 (Uninsurable Force Majeure Events);

(4) in connection with the unavailability of Required Insurance for an Insurable Force Majeure Event or Third Party Liability, pursuant to Section 16.6 (Unavailability of Insurance for Insurable Force Majeure Events or for Third Party Liability);

(5) upon the condemnation or taking by eminent domain of the whole or substantially all of the City Site, the Shared Rooms or the City Facilities; or

(6) if an injunction or any other final order is issued by a court of competent jurisdiction which results in either the City or the Project Company being permanently enjoined

from performing its material obligations in respect of the City Facilities or the Shared Rooms under this Project Agreement and the period for all appeals has expired;

(7) in connection with the occurrence and persistence of an Other Relief Event pursuant to Section 17.3(D) (City and Project Company Partial Termination Rights) if such Other Relief Event impacts the Shared Facilities.

(C) Port Partial Termination Rights. At any time prior to the Port Occupancy Date, the Port may terminate all of the obligations in respect of the Port Facilities and the Shared Facilities under this Project Agreement and fully remove the Port Facilities, and subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities, from the Project:

(1) at its discretion and for its convenience, by notice to the Project Company stating that the partial termination is for the convenience of the Port;

(2) in connection with a Port Partial Termination Project Company Event of Default, pursuant to Article 22 (Project Company Events of Default);

(3) in connection with an Uninsurable Force Majeure Event impacting the Port Facilities or the Shared Facilities, pursuant to Section 16.2 (Uninsurable Force Majeure Events);

(4) upon the condemnation or taking by eminent domain of the whole or substantially all of the Port Site, the Port Facilities or the Shared Facilities;

(5) if an injunction or any other final order is issued by a court of competent jurisdiction which results in either the Port or the Project Company being permanently enjoined from performing its material obligations in respect of the Port Facilities or the Shared Facilities under this Project Agreement, and the period for all appeals has expired; or

(6) in connection with the occurrence and persistence of an Other Relief Event pursuant to Section 17.3(E) (Port and Project Company Partial Termination Rights).

(D) Project Company Partial Termination Rights. The Project Company may elect at any time prior to the Expiration Date:

(1) to terminate all of the obligations in respect of the City Facilities and the Shared Rooms and all FM Services under this Project Agreement and fully remove the City Facilities and the Shared Rooms and the FM Services from the Project:

(a) in connection with a City Event of Default, pursuant to Article 23 (City and Port Events of Default);

(b) in connection with an Uninsurable Force Majeure Event impacting the City Facilities and the Shared Rooms, pursuant to Section 16.2 (Uninsurable Force Majeure Events);

(c) upon the condemnation or taking by eminent domain of the whole or substantially all of the City Site, the City Facilities or the Shared Rooms;

(d) if an injunction or any other final order is issued by a court of competent jurisdiction which results in either the City or the Project Company being permanently

enjoined from performing its material obligations under this Project Agreement, and the period for all appeals has expired; or

(e) in connection with the occurrence and persistence of an Other Relief Event impacting the City Site, the City Facilities or the Shared Rooms pursuant to Section 17.3(D) (City and Project Company Partial Termination Rights); or

(2) to terminate all of the obligations in respect of the Port Facilities and, subject to Section 7.23 (Obligation to Complete Shared Facilities Following Port Partial Termination), the Shared Facilities under this Project Agreement and fully remove the Port Facilities and the Shared Facilities from the Project:

(a) in connection with a Port Event of Default, pursuant to Article 23 (City and Port Events of Default);

(b) in connection with an Uninsurable Force Majeure Event impacting the Port Site, the Port Facilities or the Shared Facilities, pursuant to Section 16.2 (Uninsurable Force Majeure Events);

(c) if an injunction or any other final order is issued by a court of competent jurisdiction which results in either the Port or the Project Company being permanently enjoined from performing its material obligations under this Project Agreement, and the period for all appeals has expired;

(d) in connection with the occurrence and persistence of an Other Relief Event impacting the Port Site, the Port Facilities or the Shared Facilities pursuant to Section 17.3(E) (Port and Project Company Partial Termination Rights); or

(e) upon the condemnation or taking by eminent domain of the whole or substantially all of the Port Site, the Port Facilities or the Shared Facilities.

(E) Project Company Termination Rights. This Project Agreement may be terminated in its entirety by the Project Company prior to the Expiration Date:

(1) if an injunction or any other final order is issued by a court of competent jurisdiction which results in either the City, the Port or the Project Company being permanently enjoined from performing its material obligations in respect of the Shared Facilities under this Project Agreement and the period for all appeals has expired;

(2) upon the condemnation or taking by eminent domain of the whole or substantially all of the Shared Facilities; or

(3) in connection with a City Non-Appropriation Event pursuant to Section 25.1(F)(2) (City Non-Appropriation Events) or a Port Non-Appropriation Event pursuant to Section 25.2(E)(2) (Port Non-Appropriation Events).

(F) Extent of Termination and Partial Termination Rights. Except as provided or referred to in subsections (A), (B), (C), (D), or (E) of this Section, no party shall have the right to terminate or partially terminate this Project Agreement.

(G) Termination Date and Partial Termination Date. The Termination Date for any early termination of this Project Agreement as provided in subsection (A) or (E) of this Section and the Partial Termination Date for any party’s partial termination of any obligations under this Project Agreement as provided in subsections (B), (C) or (D) of this Section shall be the date notice of termination or notice of partial termination is given by one party to the other party in accordance herewith. It shall not be a condition to the establishment of the Termination Date or Partial Termination Date that the City or the Port, as the case may be, shall have made the applicable Termination Payment or Partial Termination Payment.

(H) Termination Payment Due Date; Partial Termination Payment Due Date. Within 30 days of the delivery to or receipt by the City or the Port, as the case may be, of any notice of termination or notice of partial termination given pursuant to subsection (G) of this Section (except as described in item (2) below), the City or the Port, as the case may be, shall establish in its discretion the Termination Payment Due Date or the Partial Termination Payment Due Date and deliver written notice thereof to the Project Company. The Termination Payment Due Date shall be the date specified, or shall be within the range of dates specified, in the table below for the particular circumstances of termination.

	<u>Termination or Partial Termination Circumstance</u>	<u>Termination Payment Due Date or Partial Termination Payment Due Date</u>
1.	Termination by the City and the Port for Termination Upon Project Company Event of Default (Section 22.3)	Not less than 60 days, nor more than 365 days, following the Termination Date
2.	Partial termination by the Project Company for a City or Port Event of Default (Sections 23.2 and 23.4)	The Partial Termination Payment Due Date shall be deemed to be the Partial Termination Date
3.	Partial termination by the City for City Partial Termination Project Company Event of Default (Section 22.4)	Not less than 60 days, nor more than 365 days, following the Partial Termination Date
4.	Partial termination by the Port for Port Partial Termination Project Company Event of Default (Section 22.5)	Not less than 60 days, nor more than 365 days, following the Partial Termination Date
5.	Partial termination by the City or the Port for its convenience (Sections 24.1(B)(1) and 24.1(C)(1))	The Partial Termination Payment Due Date shall be deemed to be the Termination Date
6.	No-fault partial termination by City or Port (Sections 16.2(F), 16.2(G), 16.6(B), 17.3(D), 17.3(E), 24.1(B)(5), 24.1(B)(6), 24.1(C)(4) and 24.1(C)(5))	Not less than 60 days, nor more than 270 days (90 in the case of a termination by the City or the Port pursuant to Sections 16.2(F) or 16.2(G)) following the Partial Termination Date
7.	No-fault partial termination by Project Company (Sections 16.2(F), 16.2(G), 17.3(D), 17.3(E), 24.1(D)(1)(c), 24.1(D)(1)(d), 24.1(D)(2)(c) and 24.1(D)(2)(e))	Not less than 60 days, nor more than 365 days (180 in the case of a termination by the Project Company pursuant to Sections 16.2(F) or 16.2(G)) following the Partial Termination Date

	<u>Termination or Partial Termination Circumstance</u>	<u>Termination Payment Due Date or Partial Termination Payment Due Date</u>
8.	Termination for taking or injunction impacting Shared Facilities (Sections 24.1(A)(2), 24.1(A)(3), 24.1(E)(1) and 24.1(E)(2))	Not less than 60 days, nor more than 365 days following the Termination Date
9.	Termination by the Project Company for a City Non-Appropriation Event (Section 25.1(F)(2)) or for a Port Non-Appropriation Event (Section 25.2(E)(2))	The Termination Payment Due Date shall be deemed to be the Termination Date

The City or the Port, as the case may be, may, at any time prior to the Termination Payment Due Date or Partial Termination Payment Due Date, as the case may be, so established and upon 10 Business Days written notice to the Project Company, change the Termination Payment Due Date or Partial Termination Payment Due Date to any earlier or later date not earlier nor later than the earliest or latest date for the Termination Payment Due Date or Partial Termination Payment Due Date set forth in the table above.

(I) Payment of Termination Payment and Partial Termination Payment. The City, subject to Section 25.1 (All City Payment Obligations Subject to Appropriation), or the Port, subject to Section 25.2 (All Port Payment Obligations Subject to Appropriation), as the case may be, shall pay the Project Company (1) on the Termination Payment Due Date or Partial Termination Payment Due Date, as the case may be, the applicable Termination Payment or Partial Termination Payment, and (2) interest on the Termination Payment or Partial Termination Payment, as the case may be, or any outstanding part thereof, at the Prime Rate during the period between the Termination Date or Partial Termination Date, as the case may be, and the date of actual payment of the Termination Payment or Partial Termination Payment. The Project Company shall provide the City or the Port, as the case may be, with an invoice for each month during such period by the 15th day following the end of such month. The City or the Port, as the case may be, shall pay the invoice within 30 days of receipt of the invoice.

(J) Adequacy of Termination Payment and Partial Termination Payment. The Project Company agrees that the applicable Termination Payment and Partial Termination Payment provided for in this Article shall fully and adequately compensate the Project Company for all costs, foregone potential profits and any charges of any kind whatsoever (whether foreseen or unforeseen), including initial transition and mobilization costs and demobilization, employee transition and other similar wind-down costs, attributable to the termination or partial termination of the Project Company’s right to perform this Project Agreement.

(K) Reliance on Senior Debt Certification.

(1) The City shall be entitled to rely on one or more certificates of officers of the City Facilities Senior Lenders or their agents as conclusive evidence of the amount of the City Facilities Senior Debt outstanding in any calculation of a Termination Payment or Partial Termination Payment. The receipt of this amount by the Project Company, the City Facilities Senior Lenders or their agents shall discharge the City’s obligation to pay any portion of compensation due to the Project Company that is attributable to the City Facilities Senior Debt.

(2) The Port shall be entitled to rely on one or more certificates of officers of the Port Facilities Senior Lenders or their agents as conclusive evidence of the amount of the Port Facilities Senior Debt outstanding in any calculation of a Termination Payment or Partial Termination Payment.

Termination Payment. The receipt of this amount by the Project Company, the Port Facilities Senior Lenders or their agents shall discharge the Port's obligation to pay any portion of compensation due to the Project Company that is attributable to the Port Facilities Senior Debt.

(L) Termination Payment and Partial Termination Payment Subject to Appropriation. Any Termination Payment or Partial Termination Payment obligation owing by the City is subject to appropriation as provided in Article 25 (Appropriation).

(M) Consideration for Convenience Partial Termination Payment. The right of the City to fully or partially remove the City Facilities and the Shared Rooms and the FM Services obligations from this Project Agreement and the right of the Port to fully or partially remove the Port Facilities from this Project Agreement for their respective convenience and in their respective discretion in accordance with this Article constitutes an essential part of the overall consideration for this Project Agreement, and the Project Company shall not be entitled to any damages (other than damages for failure to make the Partial Termination Payment provided for in Sections 1 and 6 of Appendix 20 (Compensation on Termination)) by reason of a City breach or Port breach of this Project Agreement, including a breach of the City's and Port's implied covenant of good faith and fair dealing in the exercise of its right to fully or partially remove the City Facilities, the Shared Rooms, the FM Services or the Port Facilities from this Project Agreement under Sections 24.1(B)(1) (City Partial Termination Rights) and 24.1(C)(1) (Port Partial Termination Rights) for the convenience of the government.

(N) Continued Performance. The parties shall continue to perform their obligations under this Project Agreement (including the City continuing to pay the Service Fee and the Port FM Fee) until the Termination Date or Partial Termination Date, as applicable, notwithstanding the giving of any notice of default.

(O) Completion or Continuance by City or Port. After the Termination Date or the Partial Termination Date, as applicable, subject to Section 24.4 (Transitional Arrangements), the City (in respect of the City Facilities and the Shared Rooms) and the Port (in respect of the Port Facilities and the Shared Facilities) may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other operators and contractors.

SECTION 24.2. FULL SETTLEMENT UPON PAYMENT OF A TERMINATION PAYMENT OR PARTIAL TERMINATION PAYMENT.

(A) Full Settlement. Any and all amounts paid by the City or the Port, as the case may be, to the Project Company under Appendix 20 (Compensation on Termination) will be in full and final settlement of each party's rights and claims against the other for termination of this Project Agreement, whether under contract, tort, restitution or otherwise, but without prejudice to:

(1) any antecedent liability of any party to any other that arose prior to the date of termination of this Project Agreement (but not from the termination itself) to the extent such liability has not already been taken into account in determining the Termination Payment; and

(2) any liability of any party to the other that may arise after the Termination Date of this Project Agreement (but not from the termination itself), including liabilities arising under the provisions of this Project Agreement which are intended by Section 3.2 (Survival) to survive termination, to the extent any such liability has not already been taken into account in determining the Termination Payment.

(B) No Suit in Restitution Upon Payment of Termination Payment. In the event this Project Agreement is partially terminated or terminated for any reason, and the City or the Port, as the case may be, makes the applicable Partial Termination Payment or Termination Payment, the Project Company covenants that it shall make no claim upon or otherwise pursue the City or the Port, as the case may be, for restitution based in any way upon the value of the Project to the City or the Port or in the market exceeding the amount of the Partial Termination Payment or Termination Payment paid to the Project Company. Without limiting the preceding sentence, the Project Company acknowledges and agrees that it is the mutual intention of the parties that the Partial Termination Payment or Termination Payment, as the case may be, is intended to operate as an unconditional and irrevocable discharge and release of any and every claim in restitution of which the Project Company may hereafter be possessed in such circumstances of partial termination or termination and payment of the applicable Partial Termination Payment or Termination Payment, including all restitutionary claims by the Project Company (despite a Project Company Event of Default having occurred) based upon the value of the Project to the City or the Port in the market exceeding the Partial Termination Payment or the Termination Payment (or any element of the calculation thereof) payable under Section 2 (Partial Termination or Termination by City for Project Company Event of Default Prior to the Final City Occupancy Date) of Appendix 20 (Compensation on Termination) or Section 3 (Termination by City for Project Company Event of Default After the Final City Occupancy Date) of Appendix 20 (Compensation on Termination).

SECTION 24.3. TRANSFER TO CITY AND PORT OF ASSETS, CONTRACTS AND DOCUMENTS.

(A) Transfer Responsibilities. On or promptly after the Partial Termination Date or Termination Date:

(1) if the Partial Termination Date or Termination Date occurs prior to the Occupancy Date in respect of a Facility:

(a) the Project Company shall preserve and protect the structures, equipment, materials and other property comprising the Project as so far constructed; and

(b) insofar as any transfer will be necessary to fully and effectively transfer property to the Owner, the Project Company shall transfer to, and there will vest in, the Owner, free from all financial Encumbrances, such part of the Project as has been constructed on or has become affixed to the Project Site and, if the Owner so elects:

(i) the construction plant and equipment will remain available to the Owner for the purposes of completing the Design-Build Work; and

(ii) all other Project-related plant and all materials on or near the Project Site will remain available to the Owner for the purposes of completing the Design-Build Work, subject to payment by the Owner of the Design-Builder's reasonable charges;

(2) if the Owner so elects, the Project Company shall cause any or all of the Project Contracts related to the applicable Design-Build Work (and any related contracts which govern the obligations between the Project Company and the Project Contractor whose obligations have been assigned (such as a coordination or interface agreement)) to be novated or assigned to the Owner, provided that if termination occurs under Section 23.2 (Project Company's Options Upon City Event of Default) or Section 23.4 (Project Company's Options Upon Port Event of Default) the consent of the applicable Project Contractor will be required;

(3) the Project Company shall, or will cause any Material Contract Party to, offer to sell to the Owner at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Project Company or any Material Contract Party and reasonably required by the Owner in connection with the operation of the FM Facilities or the provision of the Contract Services;

(4) the Project Company shall deliver to the Owner:

(a) all existing designs, plans and other documents produced in connection with the City Facilities, the Shared Facilities, the Shared Rooms or the Port Facilities, as applicable, and in the control of the Project Company;

(b) one complete set of existing construction drawings showing all alterations made to the City Site or the Port Site since the commencement of operation of the Project;

(c) one complete set of existing, up-to-date maintenance, operation and training manuals for the applicable Facilities, subject to reasonable generally applicable third party licensing terms;

(d) relevant information pertaining to any Legal Proceedings against the Project Company by the Project Contractors, any Subcontractor or other third parties relating to the termination of the Design-Build Work or the FM Services (or any Subcontracts) (or, in the case of a partial termination, such portion of the Design-Build Work or the FM Services as has been terminated); and

(e) copies of all Subcontracts in respect of the City Facilities, the Shared Facilities, the Shared Rooms or the Port Facilities, together with a statement of:

(i) the items ordered and not yet delivered pursuant to each agreement;

(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment; and

(iv) the estimated cost of canceling each agreement;

(5) the Project Company shall use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment used or made available by the Project Company under this Project Agreement and included in the Project but not previously assigned or licensed to the City or the Port, as the case may be, are assigned, licensed or otherwise transferred to the City or the Port;

(6) to the extent permitted by Applicable Law, the Project Company shall assign to the Owner all Governmental Approvals applicable to the City Facilities, the Shared Facilities and the Shared Rooms or the Port Site and the Port Facilities;

(7) the Project Company shall deliver to the Owner all books, records and files required to be kept by the Project Company hereunder in respect of the City Site, the Port Site,

the City Facilities, the Port Facilities, the Shared Facilities and the Shared Rooms (the Project Company having the right to retain copies thereof) unless such documents are:

(a) required by Applicable Law to be retained by the Project Company or a Project Contractor or Subcontractor, in which case complete copies will be delivered to the City; or

(b) privileged from production pending resolution of any outstanding dispute, in which case such records will be delivered forthwith upon resolution of such dispute, provided that any records that are necessary for the performance of the Contract Services will be delivered to the City no later than the Partial Termination Date or Termination Date (as the case may be);

(8) the Project Company shall give written notice of termination, effective as of the Partial Termination Date or the Termination Date, as applicable, promptly under each policy of Required Insurance (with a copy of each such notice to the City or the Port), but permit the City or the Port to continue such policies thereafter at their own expense, if possible; and

(9) the Project Company shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the City's or Port's costs, and take no action which shall increase any amount payable by the City or the Port under this Project Agreement.

(B) No Additional Compensation. The Project Company shall ensure, subject to the security interest of the Senior Lenders, that provision is made in all applicable contracts to ensure that the City and the Port will be in a position to exercise their rights, and the Project Company shall be in a position to comply with its obligations, under this Section without additional payment or compensation to any person.

(C) Use of City Facilities Design Documents or Port Facilities Design Documents Following Termination or Partial Termination During the Design-Build Period. If this Project Agreement is partially terminated or terminated during the Design-Build Period and the City (or any designee of the City) or the Port (or any designee of the Port) uses any City Facilities Design Documents, Port Facilities Design Documents or other Intellectual Property developed by or on behalf of the Project Company without the involvement of the Project Company, the Design-Builder and the Architect for such work, then:

(1) the Project Company, the Design-Builder and the Architect are hereby thereupon released from all liability on account of such use, except to the extent caused by any of the matters referred to in subsections (1) through (5), inclusive, of Section 27.1 (Project Company's Obligation to Indemnify); and

(2) the City or the Port, as the case may be, shall reimburse the Project Company, the Design-Builder and the Architect for all losses, liabilities, damages, fines, costs and expenses that any of the Project Company, the Design-Builder, or the Architect may sustain in connection with any loss of or physical damage to property of any Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property) or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any Indemnitee, arising by reason of such use or the results of such use, except to the extent caused by any of the matters referred to in subsections (1) through (5), inclusive, of Section 27.1 (Project Company's Obligation to Indemnify).

SECTION 24.4. TRANSITIONAL ARRANGEMENTS.

(A) Vacating the City Site and the Port Site and Stoppage of Contract Services. The Project Company shall, in connection with the partial termination, expiration or termination of this Project Agreement:

(1) stop the Contract Services on the Termination Date or the affected Contract Services on the Partial Termination Date;

(2) on the Partial Termination Date or the Termination Date deliver to the Owner:

(a) all keys, access codes or other devices required to operate the City Facilities, Shared Facilities, the Shared Rooms or the Port Facilities (as applicable); and

(b) any Project Intellectual Property required to be delivered by the Project Company pursuant to Section 24.3(A)(5) (Transfer Responsibilities);

(3) as soon as practicable after the Termination Date or the Partial Termination Date vacate, and cause the Project Company Persons to vacate, the City Site and the Port Site, and leave the City Site, the Port Site and the Project in a safe, clean and orderly condition;

(4) on request by the City or the Port, as the case may be, and on payment of the Project Company's reasonable costs by the City or the Port, for a period not to exceed 90 days after the Termination Date or Partial Termination Date, co-operate fully with the City or the Port and any successor providing to the City or the Port services in the nature of any of the Contract Services or any part of the Contract Services, in order to achieve a smooth transfer of the manner in which the City or the Port obtains services in the nature of the Contract Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the City, the employees of the Port, and members of the public;

(5) as soon as practicable following the Partial Termination Date or Termination Date, remove from the City Site or Port Site all property of the Project Company or any Project Company Person that is not acquired by the City or the Port pursuant to Section 24.3 (Transfer to City and Port of Assets, Contracts and Documents) (or not belonging to the City or Port) and if it has not done so within 60 days after any notice from the City or Port requiring it to do so, the City or the Port may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Project Company; and

(6) comply with all requirements of Section 9.10 (Project Handback).

SECTION 24.5. PROJECT COMPANY TO COOPERATE.

If the City or the Port wishes to conduct a competition prior to the Partial Termination Date or Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Contract Services or any of them) following the Partial Termination Date or Termination Date, the Project Company shall prior to the Partial Termination Date or Termination Date co-operate with the City or the Port fully in such competition process, including by:

(1) providing any information in the Project Company's control or possession which the City or the Port may reasonably require to conduct such competition, except that information

which is commercially sensitive to the Project Company or a Project Company Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Project Company or a Project Company Person give that competitor a material competitive advantage over the Project Company or the Project Company Person and thereby prejudice the business of the Project Company or the Project Company Person); and

(2) assisting the City or the Port by providing any participants in such competition process with access to the Project Site and the Project provided such access does not affect the Contract Services in a way that results in any reduction in the Service Fee or the Port FM Fee.

The Project Company shall be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services.

ARTICLE 25

APPROPRIATION

SECTION 25.1. ALL CITY PAYMENT OBLIGATIONS SUBJECT TO APPROPRIATION.

(A) Appropriation Required. All payments due from the City to the Project Company under this Project Agreement, including any payments referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), the Service Fee, the Port FM Fee and any Partial Termination Payment or Termination Payment owing by the City, shall be paid solely from moneys made available to the City from an appropriation of funds for the purpose of making all such payments coming due in such Fiscal Year. The obligation of the City to make any payment referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), any payment of the Service Fee, the Port FM Fee or any other payment owing by the City under this Project Agreement in any Fiscal Year is subject in all respects to the making of an appropriation of funds for the purpose of making all such payments coming due in such Fiscal Year. The City Council shall have the absolute and unconditional right, to be exercised in its discretion, for any reason, not to appropriate such funds.

The obligation of the City to make a Partial Termination Payment or Termination Payment under this Project Agreement shall, in all cases, be absolutely subject in all respects to, and contingent upon, the City Council making an appropriation of funds for the purpose of making such Partial Termination Payment or Termination Payment to the Project Company. Notwithstanding anything in this Project Agreement to the contrary, in the event of the failure of the City Council to appropriate moneys to pay a Partial Termination Payment or Termination Payment (the “Non-Appropriated City Termination Payment”), there shall be no contractual obligation of the City to pay such Non-Appropriated City Termination Payment that exists or may be enforced; such contractual payment obligation shall arise only if and when any such amounts have been appropriated by the City Council. Accordingly, the Project Company shall have no right or remedy to enforce payment of any Non-Appropriated City Termination Payment, and nothing in this Project Agreement shall be construed as providing the Project Company, directly or indirectly, with any such right or remedy; no such right or remedy shall arise unless and until such time as any such amounts have been appropriated by the City Council.

(B) City Budget Requests – Service Fee and Port FM Fee. The City shall cause the City Manager (1) to make a timely submission for the Fiscal Year in which the Initial Occupancy Date will occur of a budget change proposal to the City Council requesting a budget adjustment that includes the initial Service Fee, (2) to make a timely submission for the Fiscal Year in which the Port Occupancy Date will occur of a budget change proposal to the City Council requesting a budget adjustment that includes the initial Port FM Fee, and (3) to make a timely submission of a budget change proposal to the City Council requesting a budget adjustment for any subsequent change to the Service Fee or the Port FM Fee.

(C) City Budget Requests – Other Payments. The City shall request an appropriation of funds for the purpose of paying any amount referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), any Termination Payment or Partial Termination Payment payable by the City or any other amount due from the City hereunder other than the Service Fee and the Port FM Fee (as to which the City shall take the budget request actions referred to in subsection (B) of this Section).

(D) Notice. The City shall provide written notice to the Project Company no later than 10 Business Days following the enactment of any City budget with respect to a particular Fiscal Year that does not make an appropriation of funds for the purpose of paying the Service Fee or the Port FM Fee due for such Fiscal Year. The City shall also respond promptly in writing to any reasonable written request

submitted by the Project Company for information regarding the status of any request the City is obligated to make under sections (B) and (C) of this Section.

(E) City Non-Compliance With Notice and Request Covenant. Non-compliance by the City with its obligations under subsections (B), (C) and (D) of this Section shall constitute a breach of this Project Agreement, upon which (1) the Project Company may exercise its options in accordance with Section 23.2 (Project Company Options Upon City Event of Default), and (2) the Project Company shall be further entitled to specific performance and injunctive relief as a remedy for any such breach. The City further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

(F) City Non-Appropriation Events. Upon the occurrence of a City Non-Appropriation Event:

(1) the Project Company shall have the right to suspend the performance of the Contract Services, in which case such failure to appropriate shall constitute an Other Relief Event; or

(2) by notice of termination to the City and the Port, to terminate this Project Agreement, whether or not the Project Company has exercised or is exercising its rights under item (1) of this subsection (F), in which case the City or the Port, as applicable, shall pay compensation to the Project Company in accordance with Section 9 (Termination by Project Company for City Non-Appropriation Event) of Appendix 20 (Compensation on Termination).

(G) Payments Under this Project Agreement Not a City Debt. The obligation of the City to make any payments hereunder does not constitute a debt of the City under Applicable Law and does not constitute a liability of or a lien or charge upon the funds or property of the City beyond the Fiscal Year for which there has been an appropriation of funds to make such payments. The obligation of the City to make payments hereunder does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

SECTION 25.2. ALL PORT PAYMENT OBLIGATIONS SUBJECT TO APPROPRIATION.

(A) Appropriation Required. All payments due from the Port to the Project Company under this Project Agreement, including any payments referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), the Port Completion Payment, and any Partial Termination Payment or Termination Payment, shall be paid solely from moneys made available to the Port from an appropriation of funds for the purpose of making all such payments coming due in such Fiscal Year. The obligation of the Port to make any payment referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), the Port Completion Payment, or any other payment owing by the Port under this Project Agreement in any Fiscal Year is subject in all respects to the making of an appropriation of funds for the purpose of making all such payments coming due in such Fiscal Year. Each of the Board of Harbor Commissioners and the City Council shall have the absolute and unconditional right, to be exercised in its discretion, for any reason, not to appropriate such funds.

The obligation of the Port to make a Partial Termination Payment or Termination Payment under this Project Agreement shall, in all cases, be absolutely subject in all respects to, and contingent upon, each of the Board of Harbor Commissioners and the City Council making an appropriation of funds for the purpose of making such Partial Termination Payment or Termination Payment to the Project

Company. Notwithstanding anything in this Project Agreement to the contrary, in the event of the failure of either of the Board of Harbor Commissioners or the City Council to appropriate moneys to pay a Partial Termination Payment or Termination Payment (the “Non-Appropriated Port Termination Payment”), there shall be no contractual obligation of the Port to pay such Non-Appropriated Port Termination Payment that exists or may be enforced; such contractual payment obligation shall arise only if and when any such amounts have been appropriated by the City Council and the Board of Harbor Commissioners. Accordingly, the Project Company shall have no right or remedy to enforce payment of any Non-Appropriated Port Termination Payment, and nothing in this Project Agreement shall be construed as providing the Project Company, directly or indirectly, with any such right or remedy; no such right or remedy shall arise unless and until such time as any such amounts have been appropriated by the City Council.

(B) Port Budget Requests – Other Payments. The Port shall request an appropriation of funds for the purpose of paying any amount referred to in Section 7.21 (Payment Obligations of the City and the Port During the Design-Build Period), the Port Completion Payment, any Termination Payment or Partial Termination Payment payable by the Port or any other amount due from the Port hereunder.

(C) Notice. The Port shall provide written notice to the Project Company no later than 10 Business Days following the enactment of any City or Port budget with respect to the particular Fiscal Year in which the Port Occupancy Date is scheduled to occur that does not make an appropriation of funds for the purpose of paying the Port Completion Payment. The Port shall also respond promptly in writing to any reasonable written request submitted by the Project Company for information regarding the status of any request the Port is obligated to make under subsection (B) of this Section.

(D) City and Port Non-Compliance With Notice and Request Covenant. Non-compliance by the Port with its obligations under Section 25.2(B) shall constitute a breach of this Project Agreement, upon which (1) the Project Company may exercise its options in accordance with Section 23.4 (Project Company Options Upon Port Event of Default), and (2) the Project Company shall be further entitled to specific performance and injunctive relief as a remedy for any such breach. The Port further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy.

(E) Port Non-Appropriation Events. Upon the occurrence of a Port Non-Appropriation Event:

(1) the Project Company shall have the right to suspend the performance of the Contract Services, in which case such failure to appropriate shall constitute an Other Relief Event; or

(2) by notice of termination to the City and the Port, to terminate this Project Agreement, whether or not the Project Company has exercised or is exercising its rights under item (1) of this subsection (E), in which case the City or the Port, as applicable, shall pay compensation to the Project Company in accordance with Section 9 (Termination by Project Company for City Non-Appropriation Event or Port Non-Appropriation Event) of Appendix 20 (Compensation on Termination).

(F) Payments Under this Project Agreement Not a City or Port Debt. The obligation of the Port to make any payments hereunder does not constitute a debt of the Port under Applicable Law and does not constitute a liability of or a lien or charge upon the funds or property of the Port beyond the Fiscal Year for which there has been an appropriation of funds to make such payments. The obligation of the Port to make payments hereunder does not constitute an obligation of the Port for which the Port is

obligated to levy or pledge any form of taxation or for which the Port has levied or pledged any form of taxation.

SECTION 25.3. NON-RELOCATION.

Commencing on the Occupancy Date in respect of the City Hall Building, the City shall not cease to occupy the City Hall Building during the Term. Notwithstanding the foregoing, subject to Section 24.1(B)(1), the City may cease to occupy the City Hall Building upon 12 months prior written notice to the Project Company. The delivery of such notice shall be deemed to be partial termination of this Project Agreement by the City for its convenience pursuant to Section 24.1(B)(1).

ARTICLE 26

ASSIGNMENT AND TRANSFER OF UNITS

SECTION 26.1. LIMITATION ON ASSIGNMENT BY PROJECT COMPANY.

The Project Company shall not assign, transfer or otherwise dispose of any interest in this Project Agreement or a Project Contract except:

(1) as security, substantially in a form approved by the City, acting reasonably, for any part of the City Facilities Financing, made to the Project Company under any City Facilities Financing Document and provided the City Facilities Senior Lenders enter into the Lenders' Direct Agreement (City);

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

(3) as security, substantially in a form approved by the Port, acting reasonably, for any part of the Port Construction Facilities Financing, made to the Project Company under any Port Facilities Construction Financing Document and provided the Port Facilities Senior Lenders enter into the Lenders' Direct Agreement (Port);

(4) in connection with the exercise of rights of the Port Facilities Senior Lenders under the Port Facilities Construction Financing Documents in accordance with the Lenders' Direct Agreement (Port) or the exercise by the Port of its step-in rights under this Project Agreement; or

(5) otherwise:

(a) prior to the fifth anniversary of Final Completion (the "Transfer Restriction Date"), with the prior written consent of the City, which may be given or withheld in the City's discretion; and

(b) after the Transfer Restriction Date, with the prior written consent of the City, which will not be unreasonably withheld or delayed,

provided that in the case of an assignment under subsections (2), (4) or (5) of this Section, the assignee assumes all the obligations of the Project Company under this Project Agreement.

In determining whether to give its consent to any assignment, transfer or other disposition under paragraph (5)(b) above, the City shall take into consideration the following factors: (i) the financial strength and integrity of the proposed transferee; (ii) the backgrounds and reputations of the proposed transferee (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on other projects); (iii) compliance with the City's conflict of interest requirements; and (iv) the ability of the Project Company to meet its obligations under this Project Agreement after the transfer.

SECTION 26.2. LIMITATIONS ON SALE, ASSIGNMENT AND TRANSFER OF UNITS.

(A) Limitations. Any sale, assignment or transfer of Units shall be subject to the following restrictions:

(1) The Initial Unit Holders shall maintain a controlling interest (equal to or greater than 51% shareholding or limited liability company membership, a majority of seats and votes of the Board of Directors and a majority economic interest) in the Project Company until the fifth anniversary of Final Completion of the Project, unless otherwise approved by the City in its absolute discretion;

(2) the Initial Unit Holders shall retain their investment until the first anniversary of Project Final Completion (but any Initial Unit Holder may transfer its investment to any other Initial Unit Holder prior to the first anniversary of Final Completion of the Project), unless otherwise approved by the City in its absolute discretion;

(3) the total number of unaffiliated shareholders or members of the Project Company shall not exceed five before the first anniversary of Final Completion of the Project or 10 before the fifth anniversary of Final Completion of the Project, unless otherwise approved by the City in its absolute discretion; and

(4) any sales or transfer of Units, other than those permitted under paragraphs (1) and (2) above, shall be subject to the prior written consent of the City, such approval not to be unreasonably withheld or delayed.

In determining whether to give its consent to any sale, assignment or transfer of Units under paragraph (4) above, the City shall take into consideration the following factors: (i) the financial strength and integrity of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners and each of their respective Affiliates; (ii) the backgrounds and reputations of the proposed transferee, its direct or indirect beneficial owners, any proposed managers or operating partners, each of their respective officers, directors, and employers and each of their respective Affiliates (including the absence of criminal, civil, or regulatory claims or actions against any such person and the quality of any such person's past or present performance on the other projects); (iii) compliance with the City's conflict of interest requirements; and (iv) the ability of the Project Company to meet its obligations under this Project Agreement after the transfer.

(B) No Validity. Any sale, assignment or transfer made in violation of subsection (A) of this Section shall be *void ab initio*.

(C) Transfers to Senior Lenders. The restrictions on transfers contained in subsection (A) of this Section shall not apply in connection with the exercise of the rights of the Senior Lenders under the Financing Documents in accordance with the applicable Lenders' Direct Agreement.

SECTION 26.3. LIMITATION ON ASSIGNMENT BY THE CITY AND THE PORT.

Neither the City nor the Port shall assign, transfer or otherwise dispose of any interest in this Project Agreement except to another Governmental Body which assumes, and is legally capable of discharging, all the obligations of the City and the Port under this Project Agreement, and such transfer will not result in a reduction of the credit rating of the applicable Senior Debt, if any, incurred under the Port Facilities Construction Financing or the City Facilities Financing.

SECTION 26.4. COSTS OF REQUEST FOR CONSENT.

If the Project Company requests consent to an assignment, transfer or disposition pursuant to Section 26.1 (Limitation on Assignment by Project Company) or to a sale, assignment or transfer of Units pursuant to Section 26.2 (Limitations on Sale, Assignment and Transfer of Units), the Project Company shall pay the City's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. At the time of the request the Project Company shall make a payment to the City against its obligation under this Section of \$25,000 (Index Linked). After the decision of the City is rendered, the City will either refund any over payment or invoice the Project Company for any additional amounts due under this Section.

ARTICLE 27

INDEMNIFICATION

SECTION 27.1. PROJECT COMPANY'S OBLIGATION TO INDEMNIFY.

The Project Company shall indemnify and keep each Indemnitee indemnified at all times from and against all Loss-and-Expense that any Indemnitee may sustain in connection with any loss of or physical damage to property or assets of any Indemnitee, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any Indemnitee, arising by reason of any:

- (1) breach of any representation or warranty by the Project Company under this Project Agreement;
- (2) negligent act or omission of the Project Company;
- (3) willful misconduct of the Project Company;
- (4) non-compliance by the Project Company with any of the provisions of this Project Agreement or any document, instrument or agreement delivered to the City or the Port as required under this Project Agreement; or
- (5) Project Company Hazardous Substances,

except to the extent caused by City Fault, Port Fault, City Event of Default, or Port Event of Default. The Project Company's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Project Company which is intended to respond to such events. This Section may be relied upon by the Indemnitees and may be enforced directly by any of them against the Project Company in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Project Company.

SECTION 27.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If an Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the Indemnitee is, or may become entitled to, indemnification or compensation under this Project Agreement in respect of the entire claim, the Indemnitee shall give notice in writing to the Project Company as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof.

(B) Project Company Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Project Company shall be entitled to dispute the claim in the name of the Indemnitee at the Project Company's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Indemnitee will give the Project Company all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection (B) of this Section in which there is a conflict of interest between the Project Company and the Indemnitee, the

Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the Indemnitee is entitled to indemnification by or compensation from the Project Company, all reasonable costs and expenses incurred by the Indemnitee in so doing will be included in the indemnity or compensation from the Project Company.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Project Company pursuant to subsection (B) of this Section:

(1) the Project Company shall keep the Indemnitee fully informed and consult with it about material elements of the conduct of the claim;

(2) the Project Company shall demonstrate to the Indemnitee, at the reasonable request of the Indemnitee, that the Project Company has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) the Project Company shall not pay or settle such claims without the consent of the Indemnitee, such consent not to be unreasonably withheld or delayed.

(E) Indemnitee Rights to Conduct Defense. The Indemnitee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) the Project Company is not entitled to take conduct of the claim in accordance with subsection (B) of this Section;

(2) the Project Company fails to notify the Indemnitee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the Indemnitee under subsection (B) of this Section or notifies the Indemnitee that it does not intend to take conduct of the claim; or

(3) the Project Company fails to comply in any material respect with subsection (D) of this Section.

(F) Transfer of Conduct of Claim to Indemnitee. The Indemnitee may at any time give notice to the Project Company that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection (B) of this Section applies. On receipt of such notice the Project Company will promptly take all steps necessary to transfer the conduct of such claim to the Indemnitee, and will provide to the Indemnitee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(G) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Project Company may replace such infringing or allegedly infringing item provided that:

(1) the replacement is performed without additional cost to the City or the Port; and

(2) the replacement has at least equal quality performance capabilities when used in conjunction with the Project.

ARTICLE 28

MISCELLANEOUS PROVISIONS

SECTION 28.1. OWNERSHIP OF THE PROJECT.

(A) City Site and City Facilities. The City Site and the City Facilities shall be deemed to be owned by the City at all times.

(B) Port Site and Port Headquarters Building. The Port Site and the Port Headquarters Building shall be deemed to be owned by the Port at all times.

(C) New Parking Facility.

(1) With respect to the Design-Build Work, prior to Final Completion, the New Parking Facility shall be deemed to be owned by the Port.

(2) With respect to any Design-Build Work occurring after Final Completion to correct any defective Design-Build Work, the New Parking Facility shall be deemed to be owned by the Port; and

(3) Otherwise, prior to the Occupancy Date in respect of the New Parking Facility, the New Parking Facility shall be deemed to be owned by the Port, and after the Occupancy Date in respect of the New Parking Facility, the New Parking Facility shall be deemed to be owned by the City (but not in its regulatory capacity) and the Port; and

(D) Shared Facilities.

(1) With respect to the Design-Build Work, prior to Final Completion, the Shared Facilities shall be deemed to be owned by the Port.

(2) With respect to any Design-Build Work occurring after Final Completion to correct any defective Design-Build Work, the Shared Facilities shall be deemed to be owned by the Port.

(3) Otherwise, prior to the Occupancy Date in respect of the Shared Facilities, the Shared Facilities shall be deemed to be owned by the Port and after the Occupancy Date in respect of the Shared Facilities, the Shared Facilities shall be deemed to be owned jointly by the City and the Port.

(E) Shared Rooms.

(1) With respect to the Design-Build Work, prior to Final Completion, the Shared Rooms shall be deemed to be owned by the City.

(2) With respect to any Design-Build Work occurring after Final Completion to correct any defective Design-Build Work, the Shared Rooms shall be deemed to be owned by the City.

(3) Otherwise, prior to the Occupancy Date in respect of the Shared Rooms, the Shared Rooms shall be deemed to be owned by the City and after the Occupancy Date in respect

of the Shared Rooms, the Shared Rooms shall be deemed to be owned jointly by the City and the Port.

SECTION 28.2. RELATIONSHIP OF THE PARTIES.

The Project Company is an independent contractor of the City and the Port and the relationship between the parties shall be limited to performance of this Project Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by any other party. Nothing in this Project Agreement shall be deemed to constitute any party a partner, agent or legal representative of any other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Project Agreement or the performance thereof.

SECTION 28.3. NO OTHER BUSINESS.

The Project Company shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or otherwise as expressly permitted hereunder.

SECTION 28.4. PROJECT COMPANY PERSONS.

The Project Company shall, as between itself, the City and the Port, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and willful misconduct of each Project Company Person, and all references in this Project Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of the Project Company shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or willful misconduct committed by a Project Company Person.

SECTION 28.5. GENERAL DUTY TO MITIGATE.

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

(B) Mitigation by the City and the Port. In all cases where the City or the Port is entitled to receive from the Project Company any compensation, costs or damages, but not in any other cases, the City and the Port shall use all reasonable efforts to mitigate such amount required to be paid by the Project Company to the City and the Port under this Project Agreement, provided that such obligation shall not require the City or the Port to:

(1) take any action which is contrary to the public interest, as determined by the City or the Port, as the case may be, in its discretion;

- (2) undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or
- (3) alter the amount of deductions for Deductions it is entitled to make in accordance with Appendix 10 (Deductions) or Appendix 10A (Port Deductions), as the case may be.

Neither the City nor the Port shall have any obligation to mitigate, implied or otherwise, except as set forth in this subsection or otherwise as expressly provided in this Project Agreement. Upon request by the Project Company, the City shall promptly submit a detailed description, supported by all such documentation as the Project Company may reasonably require, of the measures and steps taken by the City or the Port, as the case may be, to mitigate and meet its obligations under this subsection.

SECTION 28.6. OPPORTUNITIES.

Except as expressly provided herein, or as may be specifically agreed in writing (1) between the City and the Project Company during the Term, the City reserves the right to all commercial and other opportunities for, or related to, the City Facilities and the Shared Rooms and (2) between the Port and the Project Company during the Term, the Port reserves the right to all commercial and other opportunities for, or related to, the Port Facilities and the Shared Facilities.

SECTION 28.7. PROJECT AGREEMENT ADMINISTRATION.

(A) Authority of City and Port Representatives. The Project Company understands and agrees that the City Representative and the Port Representative have only limited authority with respect to the implementation of this Project Agreement, and cannot bind the City and the Port, respectively, with respect to any Project Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Project Company shall be entitled to rely on the written directions of the City Representative and the Port Representative. The City Representative and the Port Representative shall have the right at any time to issue the Project Company a written request for information relating to this Project Agreement. Any written request designated as a “priority request” shall be responded to by the Project Company within three Business Days.

(B) Operating Notices. Operating Notices hereunder shall be given by fax or e-mail, and may be given personally or by telephone promptly followed by fax or e-mail confirmation. Operating Notices to the Project Company shall be given by the City Representative and the Port Representative and Operating Notices to the City or the Port shall be given by the Project Company Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Project Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Project Agreement between the parties which do not require a Project Agreement Amendment shall be a “Contract Administration Memorandum.” A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City, the Port and the Project Company as to matters of interpretation and

application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

- (1) issues as to the meaning, interpretation or application of this Project Agreement in particular circumstances or conditions;
- (2) calculations required to be made;
- (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and
- (4) other similar routine contract administration matters.

(E) Procedure. Any party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the City reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the City Representative, the Port Representative and the Project Company Representative. The City, the Port and the Project Company each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from this Project Agreement Amendments and all other documents relating to the administration and performance of this Project Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Project Agreement.

SECTION 28.8. PROJECT AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 28.7 (Project Agreement Administration), no material change, alteration, revision or modification of the terms and conditions of this Project Agreement shall be made except through a written amendment to this Project Agreement (a “Project Agreement Amendment”) duly authorized, approved or ratified by the City and the Port and duly authorized by the Project Company. Project Agreement Amendments shall be dated and signed by the City, the Port and the Project Company.

(B) Amendments during the Operating Period. Notwithstanding anything in this Project Agreement to the contrary, during the Operating Period, the approval and ratification of the Port shall not be required to enter into a Project Agreement Amendment unless such Project Agreement Amendment would implement a Capital Modification in respect of the Shared Facilities, the Shared Rooms or the Port FM Facilities or otherwise impact the FM Services to be provided to the Shared Facilities, the Shared Rooms or the Port FM Facilities.

(C) Project Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Project Agreement, when a Project Agreement Amendment or other agreement with respect to this Project Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging this Project Agreement Amendment or other agreement, but need not be executed by the parties.

SECTION 28.9. CITY AND PORT APPROVALS AND CONSENTS.

When this Project Agreement requires any approval or consent by the City or the Port to a Project Company submittal, request or report, the approval or consent shall, within the limits of the authority of subsection (A) of Section 28.7 (Project Agreement Administration), be given by the City Representative (in respect of a submittal, request or report pertaining to the City Site, City Facilities or the Shared Rooms) or the Port Representative (in respect of a submittal, request or report pertaining to the Port Site, the Port Facilities or the Shared Facilities) in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the City or the Port, as the case may be, with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Project Agreement, and except for (1) approvals provided for in Section 4.3 of Appendix 6 (Design-Build Work Review Procedures), which shall be governed by the terms of such Appendix, and (2) requests, reports and submittals made by the Project Company that do not, by their terms or the terms of this Project Agreement, require a response or action, if the City or the Port, as the case may be, does not find a request, report or submittal acceptable, it shall provide written response to the Project Company describing its objections and the reasons therefor within 15 days of the City's or Port's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the City's or Port's approval or consent may not be unreasonably delayed by the express terms hereof, and the Project Company may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the City or the Port, as the case may be, pursuant to some specific term of this Project Agreement shall be deemed acceptable to the City or the Port, as the case may be, if the City or the Port, as the case may be, shall not have objected thereto within 15 days of the receipt thereof.

SECTION 28.10. PROPERTY DOCUMENTS.

It is the Project Company's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Project Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any information contained in the Property Documents upon which it places reliance and to assess all risks related to the Project. The Project Company shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Project Agreement on the grounds:

- (1) of any misunderstanding or misapprehension in respect of any information contained in the Property Documents;
- (2) that any information contained in the Property Documents was incorrect or insufficient; or
- (3) that incorrect or insufficient information relating to any information contained in the Property Documents was given to it by any person other than the City or the Port,

nor will the Project Company be relieved from any obligation imposed on or undertaken by it under this Project Agreement on any such ground.

SECTION 28.11. ACTIONS OF THE CITY OR THE PORT IN THEIR GOVERNMENTAL CAPACITY.

Nothing in this Project Agreement shall be interpreted as limiting the rights and obligations of the City or the Port (or any department or agency thereof) under Applicable Law in their governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Project Company to bring any action against the City or the Port (or any department or agency thereof), not based on this Project Agreement, arising out of any act or omission of the City or the Port (or any department or agency thereof) in their governmental capacity.

SECTION 28.12. NO OBLIGATION TO PROVIDE FM SERVICES AT PORT FACILITIES FOLLOWING A PARTIAL TERMINATION OF PORT FACILITIES.

Notwithstanding anything in this Project Agreement to the contrary, the Project Company shall not be obligated to provide any FM Services to the Port FM Facilities following the termination by the Port or the Project Company of all obligations in respect of the Port Facilities and the full removal of the Port Facilities from the Project.

SECTION 28.13. CONFIDENTIALITY.

(A) Confidential Information. Subject to subsection (B) of this Section, each party will hold in confidence any Confidential Information received from any other party, except that this Section will not restrict any party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project Agreement, and provided further that the Project Company may, subject to obtaining confidentiality restrictions similar to those set forth in this Project Agreement:

(1) provide to the City Facilities Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the City Facilities Financing Documents or related agreements;

(2) provide to the Port Facilities Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, monoline insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Port Facilities Construction Financing Documents or related agreements; and

(3) provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Project Company to perform (or to cause to be performed) its obligations under this Project Agreement.

(B) Exceptions. Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Agreement;

(2) to the extent any person is required to disclose such Confidential Information by Applicable Law or, in the case of the City or the Port, by generally applicable City or Port information disclosure policies;

(3) to the extent consistent with the City's or the Port's policy concerning the City's or the Port's Confidential Information, the details of which have been provided to the Project Company in writing prior to the disclosure;

(4) any Governmental Body which requires the information in relation to the Project;
or

(5) that the City or the Port may be entitled to receive from the Project Company pursuant to this Project Agreement for the operation, maintenance or improvement of the Project in the event of, or following, termination of this Project Agreement.

(C) Security Plan. If requested by the City or the Port, the Project Company shall prepare a security plan to assure that Confidential Information obtained from the City or the Port or as a consequence of the performance of the Contract Services is not used for any unauthorized purpose or disclosed to unauthorized persons. The Project Company shall advise the City and the Port of any request for disclosure of information or of any actual or potential disclosure of information.

(D) Public Communications of Confidential Information. Unless expressly provided in this Project Agreement or otherwise required by Applicable Law (but only to that extent), no party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information, without the written consent of the other parties (which will not be unreasonably withheld or delayed). The parties will comply with Appendix 14 (Public Communications).

(E) Equitable Relief. Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of subsection (A) of this Section, and that the other parties will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of subsection (A) of this Section.

SECTION 28.14. PERSONAL INFORMATION.

The Project Company shall, and will require the Project Contractors and Subcontractors to, only collect, hold, process, use, store and disclose Personal Information:

(1) with the prior consent of the City and the Port;

(2) to the extent necessary to perform the Project Company's obligations under this Project Agreement; and

(3) in accordance with Applicable Law, including the Public Records Act as if the provisions of such Applicable Law applied directly to the Project Company, the Project Contractors and Subcontractors.

The Project Company shall allow the City and the Port on reasonable notice to inspect the measures of the Project Company and its Project Contractors and Subcontractors to protect Personal Information.

SECTION 28.15. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Project Company shall comply with its obligations under agreements of the Project Company which are material to the performance of its obligations under this Project Agreement. The City and the Port shall each comply with their obligations under their respective agreements which are material to the performance of its obligations hereunder.

SECTION 28.16. BINDING EFFECT.

This Project Agreement shall inure to the benefit of and shall be binding upon the City, the Port and the Project Company and any assignee acquiring an interest hereunder consistent with Article 26 (Assignment and Transfer of Units).

SECTION 28.17. CONSENTS. Any consent required to be given under this Project Agreement shall be in writing.

SECTION 28.18. NOTICES.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Project Agreement (other than Operating Notices as provided in Section 28.7(B) (Operating Notices) will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by facsimile or electronic transmission to the address, facsimile number or electronic mail address of each party set forth below in this Section, or to such other address, facsimile number or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(1) if delivered by hand during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(2) if sent by facsimile transmission during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, during business hours, upon the commencement of business hours on the next Business Day following confirmation of the transmission; and

(3) if delivered by electronic mail during business hours (and in any event, at or before 5:00 pm local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(B) City Notice Address. Notices (other than Operating Notices) required to be given to the City shall be addressed as follows:

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., 11th Floor
Long Beach, California 90802
Telephone No.: (562) 570-2200
Fax No.: (562) 436-1579

(C) Port Notice Address. Notices required to be given to the Port shall be addressed as follows:

Long Beach Harbor Department
PO Box 570
Long Beach, California 90801
Attention: Chief Executive
Telephone No: (562) 283-7097
Fax No: (562) 283-7067

with a copy to:

Long Beach Harbor Department
PO Box 570
Long Beach, California 90801
Attention: Managing Director of Finance & Administration
Telephone No: (562) 283-7091
Fax No: (562) 283-7067

and an additional copy to:

Long Beach Harbor Department
PO Box 570
Long Beach, California 90801
Attention: Chief Harbor Engineer
Telephone No: (562) 283-7275
Fax No: (562) 283-7276

(D) Project Company Notice Address. Notices required to be given to the Project Company shall be addressed as follows:

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

SECTION 28.19. NOTICE OF LITIGATION.

In the event the City, the Port or the Project Company receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other parties timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 28.20. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other may reasonably request for the purpose of giving effect to this Project Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Agreement.

SECTION 28.21. SEVERAL LIABILITY.

Notwithstanding anything in this Project Agreement to the contrary, the liability of the City and the Port hereunder shall be several, and not joint and several.

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

IN WITNESS WHEREOF, the parties have caused this Project Agreement to be executed by their duly authorized representatives on the day and year first above written.

APPROVED AS TO FORM
City Attorney

CITY OF LONG BEACH

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVED AS TO FORM
City Attorney

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

By: _____
Name:
Title:

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

By: _____
Name:
Title:

TRANSACTION FORM A
FORM OF PROJECT LABOR AGREEMENT

PROJECT LABOR AGREEMENT
FOR THE
NEW LONG BEACH CIVIC CENTER PROJECT
BY AND BETWEEN
CLARK CONSTRUCTION GROUP –
CALIFORNIA, LP
AND
LOS ANGELES/ORANGE COUNTIES BUILDING AND
CONSTRUCTION TRADES COUNCIL
AND THE
CRAFT UNIONS & DISTRICT COUNCILS
SIGNATORY TO THIS AGREEMENT

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PROJECT LABOR AGREEMENT

PREAMBLE

This Agreement is entered into by and between Clark Construction Group – California, LP (hereinafter General Contractor) selected by Plenary Edgemoor Civic Partners, LLC (hereinafter Owner) and the signatory subcontractors for the construction of the New Long Beach Civic Center project (collectively hereinafter Employers) and the Los Angeles/Orange Counties Building and Construction Trades Council (hereinafter Council) and the Local Unions and District Councils signatory to this Agreement and having members employed on the project (collectively hereinafter Unions).

ARTICLE 1

PURPOSE

1.1. The purpose of this Agreement is to insure that all work on this Project shall proceed continuously and without interruption.

1.2. It is the objective of the parties that the construction of this Project may be a benefit to the Owner, the General Contractor, the Employers, the Unions, and the community and it is recognized by all parties that harmonious labor-management relations are the result of responsible conduct by the Unions and the Employers employing building trades people, and it is our mutual desire to promote these relationships on this Project.

1.3. The parties hereby agree and do establish and put into practice effective and binding methods for the settlement of all misunderstandings, disputes or grievances that may arise so that the parties are assured of complete continuity of operation, without slowdown or interruption of any kind or for any reason and that labor-management peace is maintained for the life of this construction project, except as provided in section 7.4., below.

1.4. The parties agree that this Agreement is a valid Section 8(f) pre-hire agreement within the meaning of Section 8 [29 U.S.C. § 158(f)] of the National Labor Relations Act.

ARTICLE 2

SCOPE AND DURATION OF AGREEMENT

2.1. This Agreement shall apply to all construction work performed by the Employers at the site of the New Long Beach Civic Center (hereinafter called the Project) located in the City of Long Beach, California, being constructed for the Owner by General Contractor, as more particularly described below. This Agreement shall not apply to any other construction work performed by General Contractor at any other site or for any other owner.

2.1.1. The scope of the work to be performed under this Agreement includes the demolition and redevelopment of a 9.5 acre site to include a new City Hall Building, a new Main Library, the revitalization of Lincoln Park, a new headquarters for the Port of Long Beach as the shared spaces between the Port and the City. The scope of work under the Agreement specifically excludes all the private development property (Private Development Sites) including any future projects situated on either the Mid Block site located on the 6.3 acre parcel in the

middle of the Long Beach Civic Center site or the Pacific Site located at the parcel bounded by Cedar Ave/Pacific Ave/ and 3rd Street.

2.2. This Agreement shall become effective upon issuance of the first building and/or demolition permit for Project Work, whichever occurs first (the “Effective Date”) and shall continue in full force and effect until all of the work to be performed on the Project is completed and the Owner takes beneficial occupancy. This Agreement shall automatically terminate at the conclusion and acceptance of the Project by the Owner.

2.3. This Agreement shall not apply to work of non-manual employees, including but not limited to: superintendents, supervisors, staff engineers, time keepers, mail carriers, clerks, office workers, messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory and management employees.

2.4. This Agreement shall not apply to the work of persons, firms and other entities that perform consulting, planning, scheduling, management or other supervisory services on the Project.

2.5. This Agreement shall not apply to the off-site manufacture, fabrication and handling of materials, supplies, equipment or machinery and the delivery of such to or from the site; provided, however, that lay down or storage areas for equipment or material and manufacturing (prefabrication) sites, dedicated solely to the Project or Project Work, and the movement of materials or goods between locations on a Project site are within the scope of this Agreement. Off-site fabrication work, if set forth in a Union’s Master Labor Agreement, shall be considered as Covered Work under this Agreement

ARTICLE 3 MANAGEMENT RIGHTS

3.1. The Employers retain full and exclusive authority for the management of their operations. This includes, but is not limited to, the right to direct their working force and to establish coordinated working hours and starting times, which shall not be in conflict with the Unions’ Collective Bargaining Agreements (hereinafter Master Labor Agreements) or in conflict with the City of Long Beach work hours.

3.2. There shall be no limit on production by workmen or restrictions on the full use of tools or equipment. Craftsmen using tools shall perform any of the work of the trades and shall work under the direction of the craft foremen. There shall be no restrictions on efficient use of manpower other than as may be required by safety regulations. The Employers may utilize the most efficient methods or techniques of construction, tools or other labor-saving devices to accomplish the work. Practices not a part of the terms and conditions of this Agreement will not be recognized.

3.3. The Employers shall be the sole judge of the number and classifications of employees required to perform work subject to this Agreement and shall have the absolute right to hire, promote, suspend, discharge or layoff employees at their discretion and to reject any

applicant for employment, subject to the provisions of the respective Unions' collective bargaining agreement between the particular Employer and Union.

3.4. Nothing in this Agreement shall be construed to limit the right of any of the Employers to select the lowest bidder such Employer deems qualified for the award of contracts or subcontracts or material or equipment purchase orders on the Project. The right of ultimate selection remains solely with the Employers, subject to section 4.2 of this Agreement.

3.5. It is recognized that certain equipment and systems of a highly technical and specialized nature may have to be installed at the Project. The nature of the equipment and systems, together with requirements of manufacturer's warranty, dictate that it be prefabricated, pre-piped, and/or pre-wired and that it be installed under the supervision and direction of Owner's and/or manufacturer's personnel. The Unions agree to install such material, equipment and systems without incident.

3.6 Companies delivering aggregates and concrete which pay their employees not less than the wage rates and employee benefit costs set forth in the collective bargaining agreement between Teamsters Local 986 and National Ready Mix Concrete Co. for all of their deliveries throughout Los Angeles and Orange Counties shall be used on the project.

ARTICLE 4 EFFECT OF OTHER AGREEMENTS

4.1. This Agreement is not intended to supersede collective bargaining agreements between any of the Employers performing construction work on the Project and a Union signatory thereto except to the extent the provisions of this Agreement are inconsistent with such collective bargaining agreement, in which event the provisions of this Agreement shall apply. However, such does not apply to work performed under the National Cooling Tower Agreement, the National Stack Agreement, the National Transit Division Agreement (NTD), work within the jurisdiction of the International Union of Elevator Constructors, and all instrument calibration and loop checking work performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians except that Articles dealing with Work Stoppages and Lock-Outs, Work Assignments and Jurisdictional Disputes, and Settlement of Grievances and Disputes shall apply to such work. Where a subject is covered by a provision of a Master Labor Agreement and not covered by this Agreement, the provisions of the Master Labor Agreement shall prevail. It is specifically agreed that no later agreement shall be deemed to have precedence over this Agreement unless signed by all parties signatory hereto who are then currently employed or represented at the Project.

4.2. General Contractor will require all contractors and subcontractors who are awarded or are performing jobsite work on the Project, to become signatory to this Agreement and will not allow any such contractors or subcontractors to start work unless they become signatory to this Agreement. In addition to becoming signatory to this Agreement, each contractor and subcontractor will also be or become party to the current Master Labor Agreement(s) with the Union(s) representing the employees employed or to become employed by such contractor(s) and subcontractor(s), upon commencing jobsite work.

4.3. By accepting the award of a construction contract or entering into a contract to perform any project work pursuant to a construction contract whether as a contractor or subcontractor, Employer agrees to sign the Letter of Assent as shown in Attachment A and be bound by each and every provision of this Agreement.

4.4 It is understood and agreed that Building/Construction Inspectors and Field Soils and Materials Testers (Inspectors) are a covered craft under the PLA. (This inclusion applies to the scope of work defined in the State of California Wage Determination for said Craft. This shall also specifically include such work where it is referred to by utilization of such terms as "quality control" or "quality assurance." Every Inspector performing under the Wage classification of Building/Construction Inspector and Field Soils and Material Testers under a professional services agreement or a construction contract shall be bound to all applicable requirements of the PLA.) Covered Work as defined by this Agreement shall be performed pursuant to the terms and conditions of this Agreement regardless of the manner in which the work was awarded. This provision shall apply only to the scope of work contained in Clark's contract with the Owner.

ARTICLE 5 UNION RECOGNITION, SECURITY, WAGES AND BENEFITS

5.1. The Employers recognize the Union(s) as the sole and exclusive collective bargaining representative for craft employees employed on the Project.

5.2. Employees referred by the Union(s) and hired by the Employer(s), shall, as a condition of employment, become and remain members in good standing of the appropriate Union on or by the 8th day of employment. Membership under this section shall be satisfied by the tendering of periodic dues and fees uniformly required.

5.3. Authorized representatives of the Union(s) shall have access to the Project provided that they do not unduly interfere with the work of the craft employees and further provided that such representatives fully comply with established Project rules including the project safety rules.

5.4. Each Union shall have the right to designate a working craft employee as steward for each Employer employing such craft on the Project. Such designated steward shall be a qualified workman assigned to a crew and shall perform the work of that craft. The steward shall not perform supervisory duties. Under no circumstances shall there be nonworking stewards. Stewards shall be permitted a reasonable amount of time during working hours to perform applicable union duties.

5.5. Wages and Fringe Benefits

5.5.1 All employees covered by this Agreement shall be classified in accordance with work performed and paid by the Employers, as a minimum, the hourly wage rates for those classifications in compliance with the applicable prevailing wage rate determination established pursuant to the California Labor Code by the Department of Industrial Relations. Notwithstanding the above, this Agreement does not relieve Employers directly signatory to one

or more of the craft Master Labor Agreements from paying all of the wages and fringe benefits set forth in the applicable Master Labor Agreement(s).

5.5.2 All employees covered by this Agreement shall be paid, as a minimum, the applicable overtime rate in compliance with the applicable prevailing wage rate determination established pursuant to applicable law. Notwithstanding the above, this Agreement does not relieve Employers directly signatory to one or more of the craft Master Labor Agreements from paying the overtime rate provided in the appropriate Master Labor Agreement(s).

5.6 Employment of Local Area residents

5.6.1 The Unions and Employers agree that, to the extent allowed by law, and as long as they possess the requisite skills and qualifications, the Unions will exert their best efforts to refer and/or recruit sufficient numbers of skilled craft “Local Residents” as defined herein, to fulfill the requirements of the Employers. In recognition of the fact that the communities surrounding the Project will be impacted by the construction of the Project, the parties agree to support the hiring of workers from the residents of these surrounding areas. Towards that end, the Unions agree that they will exert their best efforts to encourage and provide referrals and utilization of qualified workers residing, first, in those first tier zip codes which include all of the City of Long Beach, as set forth in “Attachment B” attached hereto. If the Unions cannot provide the Employers in the attainment of a sufficient number of workers from within the first tier zip codes, the Unions shall exert their best efforts to then recruit and identify for referral workers residing, second, in those second tier zip codes which reflect the Gateway Cities, as set forth in “Attachment B” attached hereto. If the Unions have not provide the Employers in the attainment of a sufficient number of workers from within the first two (2) tiers above, the Unions will exert their best efforts to then recruit and identify for referral workers residing within Los Angeles and Orange counties. For Dispatch purposes, employees residing within either of these three (3) areas shall be referred to as “Local Residents.”

5.6.2 The following percentages shall be the good faith targeted hiring for the Project:

5.6.2.1 At least 30% of the positions for Project Work shall be filled by “Local Residents,” residing within the areas described in section 5.6.1, above.

5.6.3 Employers agree to use the attached Craft Request Form as shown in Attachment B, and the procedures written therein to request any and all workers from Unions, including workers qualified as Local Residents, Apprentices and/or general dispatch.

5.6.4 When Local Residents are requested by the Employers, the Unions will refer such workers regardless of their place in the Unions’ hiring halls’ list and normal referral procedures.

ARTICLE 6
HELMETS TO HARDHATS

6.1 The Employers and Unions recognize a desire to facilitate the entry into the building and construction trades, veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (“Center”), a Joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center’s “Helmets to Hardhats” program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

6.1.1. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans and members of the National Guard and Reserves interested in working on this Project and apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans and members of the National Guard and Reserves for bona fide, provable past experience.

6.1.2. In recognition of the work of the Center and the value it will bring to the Project, within 10 days of the first hour of Project Work being performed on the Project, General Contractor shall make a onetime contribution of \$5,000 to the Center on behalf of itself and all other Employers employing workers under the terms of this Agreement.

6.1.3. The Center shall function in accordance with, and as provided in the Agreement and Declaration of Trust creating the fund, and any amendments thereto, and any other of its governing documents. Each Employer performing work covered by this Agreement approves and consents to the appointment of the Trustees designated pursuant to the Trust Agreement establishing the Center and hereby adopts and agrees to be bound by the terms and provisions of the Trust Agreement.

ARTICLE 7
CONTINUITY OF THE WORK

7.1. The principal purpose of this Agreement is that it provides the Employers, Unions, and the Owner with the assurance that there will be no strike, sympathy strike, picketing, lockout, slowdown, withholding of work, refusal to work, walk--off, sick--out, sit-down, stand-in, wobble, boycott, other work stoppage or other labor action of any kind for any reason for the duration of this Agreement. It is agreed, therefore, as follows:

7.2. During the existence of this Agreement, there shall be no strike, sympathy strike, picketing, slowdown, withholding of work, refusal to work, walk-off, sit-down, stand-in, wobble, boycott, work stoppage or other labor action of any kind for any reason, and there shall be no lockout by the Employers. It is agreed, however, that the Employers may lay off employees for

lack of work, or in the event that a strike, picketing or other work stoppage impedes the work of the Project.

7.3. No picket lines or other actions of the type described in section 7.2 will be established at the Project by any of the Unions. The Unions agree that they will not sanction in any way any picket line, organized or endorsed and will affirmatively take all measures necessary to effectively induce its members to cross the picket line and report for work as scheduled and that responsible representatives of the Unions who are employed on the Project will also do so themselves.

7.4. Notwithstanding the provisions of section 7.2, it is agreed that the particular Union involved retains the right to withhold the services of its members (but not a right to picket) from a particular Employer who fails to make timely payments to the Unions' Health & Welfare, Pension, Vacation and Holiday, Apprentice and Training, or Industry Funds in accordance with the provisions of that particular Employer's current Master Labor Agreement with the particular Union or who fails to timely pay its weekly payroll. However, prior to withholding its members' services on account of a failure to make timely payments to the Unions' Health & Welfare, Pension, Vacation and Holiday, Apprentice and Training, or Industry Funds, the Union involved will give ten (10) days (unless a lesser period is provided within the applicable craft union agreement, but in no event less forty-eight (48) hours) written notice of such failure to pay by registered or certified mail, return receipt requested, to the involved Employer and to General Contractor. Representatives of the parties to the dispute will meet within the ten-day period to attempt to resolve the dispute.

7.5. It is specifically agreed that there shall be no strike, sympathy strike, picketing, lockout, slowdown, withholding of work, refusal to work, walk-off, sick-out, sit-down, stand-in, wobble, boycott or other work stoppage or other labor action of any kind as a result of the expiration of any local, regional or other applicable labor agreement having application at the Project and/or failure of the parties to that agreement to reach a new contract. In the event that such a local, regional, or other applicable labor agreement does expire and the parties to that agreement have failed to reach agreement on a new contract, work will continue on the Project on one of the following two basis, both of which will be offered by the Union(s) involved to and the Employers affected:

7.5.1. Each of the Union(s) with a contract expiring must offer to continue working on the Project under interim agreements that retain all the terms of the expiring contract, except that the Union(s) involved in such expiring contract(s) may each propose wage rates and employer contribution rates to employee benefit funds under the prior contract different from what those wage rates and employer contributions rates were under the expiring contract(s). Said interim agreement(s) would be superseded by any subsequently reached industry agreement(s) as of the date the industry agreement is reached. The terms of the Union's interim agreement offered to General Contractor and the Employers will be no less favorable than the terms offered by the Union to any other employer or group of employers covering similar construction work in Los Angeles County; and

7.5.2 Each of the Union(s) with a contract expiring must offer to continue working on the Project under all the terms of the expiring contract, including the wage rates and employer contribution rates to the employee benefit funds, if the Employer(s) affected by that

contract agree to the following retroactivity provision: if a new local, regional or other applicable labor agreement for the industry having application at the Project is ratified and signed during the term of this Agreement and if such new labor agreement provides for retroactive wage increases, then each affected Employer shall pay to its employees who performed work covered by this Agreement at the Project during the hiatus between the effective dates of such labor agreements, an amount equal to any such retroactive wage increase established by such new labor agreement, retroactive to whatever date is provided by the new local, regional or other applicable agreement for such increase to go into effect, for each employee's hours worked on the Project during the retroactivity period. All parties agree that such affected Employer shall be solely responsible for any retroactive payments to its employees and that neither General Contractor nor the Owner has any obligation, responsibility or liability whatsoever for any such retroactive payments or collection of any such retroactive payments from any other employer.

7.5.3. Some Employers may elect to continue to work on the Project under the terms of the interim agreement option offered under section 7.5.1., above and other Employers may elect to continue to work on the Project under the retroactivity option offered under section 7.5.2., above. To decide between the two options, Employers will be given one week after the particular labor agreement has expired or one week after the Union has personally delivered to the Employer, in writing, its specific offer of terms of the interim agreement pursuant to section 7.5.1., above, whichever is the later date. If the Employer fails to timely select one of the two options, the Employer shall be deemed to have selected the option of section 7.5.2., above.

ARTICLE 8 JURISDICTIONAL DISPUTES

8.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

8.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

8.3 If a dispute arising under this Article involves the Southwest Regional Council of Carpenters or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the applicable Building and Construction Trades Council within 14 days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

8.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Employer's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

ARTICLE 9
GRIEVANCE AND ARBITRATION PROCEDURE

9.1. The parties hereby agree that all dispute or grievances between Employers and Unions, other than disputes arising from any strike, picketing, slowdown, lockout or other work stoppages of any kind under Article 7 or any trade jurisdictional disputes under Article 8, shall be handled in accordance with the following procedures:

9.2. Step 1. If there is a dispute or grievance involving one of the Employers, the business representative of the local union involved shall first attempt to settle the matter by oral discussion with the particular Employer's project superintendent or General Foreman no later than five (5) working days after the occurrence first giving rise to the dispute or grievance. If the matter is not resolved with the superintendent within five (5) working days after the oral discussion with the superintendent, the dispute or grievance shall be reduced to writing by the grieving union.

9.3. Step 2. If the matter is not resolved in step 1, above, the written grievance shall be given to the particular employer involved, to General Contractor and to the business representative of the local union involved no later than five (5) working days after the oral discussion set forth above for Step 1, and the business representative of the local union involved shall refer the matter to his Business Manager. The Business Manager, or his designee, shall meet with responsible representative(s) of the particular Employer involved in the grievance, who shall attempt to settle the matter. This shall be referred to as Step 2 of the Grievance and Arbitration Procedure.

9.4. In the event a dispute cannot be satisfactorily resolved within the time limits established above in Step 2, either party may submit the dispute to arbitration by written notice to the other party of their intent to submit the dispute to arbitration within ten (10) business days (or such longer time as mutually agreed) of the date on which the parties met for the Step 2 meeting. An arbitrator shall be selected by the parties to the grievance from the following list of permanent arbitrators: (1) Edna Francis, (2) Fred Horowitz, (3) Walter Daugherty, (4) Sara Adler, and (5) Louis Zigman. The grieving party shall strike one of the arbitrators from the list, and the responding party shall strike the next arbitrator from the list, until one arbitrator is left, who shall hear the case. The arbitrator's decision shall be final and binding upon the parties. The arbitrator shall not have the authority to alter, amend, add to, or delete from the provisions of this Agreement in any way. The failure of any party to attend said hearing shall not delay the hearing of evidence or the issuance of any decision by the arbitrator. The fees and expenses incurred by the arbitrator, as well as those jointly utilized by the parties (i.e. conference room, court reporter, etc.) in arbitration, shall be divided equally by the Parties to the arbitration. Should any party seek confirmation of the award made by the arbitrator, the prevailing party shall be entitled to receive its reasonable attorney fees and costs.

9.5. Failure to timely raise, file or appeal any grievance within the time limits set forth above will result in the grievance being waived.

ARTICLE 10
EXPEDITED ARBITRATION

10.1. In lieu of, or in addition to, any other action at law or equity, which is also available, any party may institute the following procedure when a breach or violation of sections 7.2, 7.3 or Article 8 is alleged:

10.2. The party invoking this procedure shall notify either Joseph Gentile or Louis Zigman who the parties agree shall be the two permanent Arbitrators under this procedure. In the event that none of the two permanent Arbitrators is available for a hearing within 24 hours, either of the two permanent Arbitrators who is notified shall appoint his alternate to hear the matter. Notice to the Arbitrator shall be by the most expeditious means available, including telephone, with notice by e-mail, facsimile, overnight or telegram to the party alleged to be in violation.

10.3. Upon receipt of said notice, anyone of the two Arbitrators named above (whichever one is notified by the invoking party) or his alternate shall set and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists.

10.4. The Arbitrator shall notify the parties by telegram of the place and time he has chosen for this hearing. Said hearing shall be completed in one session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.

10.5. The sole issue at the hearing shall be whether or not a violation of sections 7.2, 7.3 or Article 8 has in fact occurred and the Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an Opinion. If any party desires an Opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement, of the Award. If the Arbitrator finds that a violation of sections 7.2, 7.3 or Article 8 has occurred, then the Arbitrator in his written Award shall order cessation of the violation and a return to work and other appropriate relief, and such Award shall be served on all parties by hand or registered mail upon issuance. The Award will be final and binding on all parties to this Agreement.

10.6. Such Award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to herein above in the following manner. Telegraphic notice or facsimile of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the Arbitrator's Award as issued under Section 10.5 of this Article all parties waive the right to hearing and agree that such proceedings may be ex parte with at least 24 hours' notice of the time and place. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The Court's order or orders enforcing the Arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.

10.7. Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance therewith are hereby waived by the parties to whom they accrue.

10.8. The fees and expenses of the Arbitrator shall be divided equally between the moving party or parties and the party or parties' respondent unless determined otherwise by the arbitrator.

10.9. The procedures contained in this Article shall be applicable to alleged violations of sections 7.2, 7.3 or Article 8. Disputes alleging violation of any other provision of this Agreement, including any underlying disputes alleged to be in justification, explanation or mitigation of any violation of sections 7.2, 7.3 or Article 8, shall be resolved under the grievance adjudication procedures of Article 9.

ARTICLE 11 BENEFICIAL OCCUPANCY BY THE OWNER

11.1. It is anticipated that the Owner and/or Owner's tenant may commence operations with its property managers and vendors prior to the substantial completion of all phases of the construction work. It may therefore be necessary for the Owner and/or Owner's tenant to take over various portions of the buildings, systems, and equipment while construction of various other portions continues. The procedure to be employed in such a takeover is as follows: When the Owner and/or Owner's tenant determines that a portion of the work is mechanically or operationally complete, Owner shall identify such areas, systems or equipment by use of a tagging system. Work will be considered "complete" when it is reasonably ready for its intended use, and the Owner shall thereafter have beneficial occupancy of the involved areas, systems, or equipment.

11.2. It is intended that Owner's tenant, property managers and vendors will commence working in such areas after the takeover by the Owner. Thereafter, any remaining original "construction" work, such as painting, installing missing parts, insulation and work normally performed by the respective Unions shall be completed by the responsible Employers and their employees without incident.

ARTICLE 12 COMPETITIVE BID REQUIREMENTS

12.1 There shall be no limitations whatsoever (except as provided by this Agreement) on the General Contractor's right to select the most qualified bidder for a construction contract.

12.2 Nothing shall preclude General Contractor from rejecting any bids received for Project Work and soliciting new bids. Should General Contractor fail to receive bids for Project Work from at least three (3) separate Union signatory qualified contractors, General Contractor may extend the time to receive bids for such contracts and put the contracts out for bid. The Local Union(s) having craft jurisdiction over the Project Work being bid shall be given notice that General Contractor received fewer than three (3) separate Union signatory qualified bids at the close of the bid date with a full description of the scope of the Project Work to be bid. Upon receipt of such notification, the Local Union(s) shall be given five (5) business days to contact Local Union signatory contractors to advise them of the second solicitation for bids. General Contractor shall take all reasonable steps to ensure that plans and specifications for the second solicitation of bids shall be made available on an expedited basis to any Local Union signatory contractor indicating an interest in submitting a bid during the second solicitation period. After

the initial five (5) day period, potential bidders shall be given (10) business days (the “Additional Time”) to submit a bid to General Contractor. If after the Additional Time, General Contractor shall have received such additional bids so that the General Contractor received at least three (3) bids from Local Union signatory contractors, the contract shall be awarded to one of the Union signatory qualified bids. If after the Additional Time, General Contractor does not receive bids on the work from at least three (3) qualified Local Union signatory contractors, the work may be awarded to and performed by an Employer who is not a signatory to a MLA; however, prior to commencing such work, the successful bidder shall sign a Letter of Assent to this Agreement and agree to comply with all of the terms and conditions of the Master Labor Agreement, for the Project only, with the Union(s) which regularly and customarily represents the employees employed or to become employed by the Employer on this Project only.

12.3 For purposes of this Article 12, the term “qualified contractor” or “qualified bidder” shall refer to a licensed, financially qualified contractor with experience in the type of work required and that is capable of meeting the job schedule, has submitted a commercially reasonable bid, is bondable, carries appropriate insurance, including Workers’ Compensation insurance (or participates in a State recognized Workers’ Compensation ADR Program), and is otherwise capable of satisfying all requirements of the bid. The General Contractor shall in its sole and absolute discretion determine whether a “qualified contractor” or “qualified bidder” satisfies these requirements.

ARTICLE 13 SAFETY

13.1. All Federal and State safety rules, regulations, orders, and decisions shall be binding upon the Employers and shall be applied to all work covered by this Agreement.

13.2 It will not be a violation of this Agreement, when an Employer considers it necessary to shut down to avoid the possible loss of human life, because of an emergency situation that could endanger the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby the Employer requests employees to stand by, the employees will be compensated for the "stand by time."

13.3 General Contractor shall have the right to enforce its health, environmental, safety, security policies and visitor access policies. These policies shall be posted in a conspicuous place of the Project. The Parties to this Agreement further adopt the Los Angeles/Orange Counties Building and Construction Trades Council Approved Drug and Alcohol Testing Policy, a copy of which is attached hereto as Attachment “C.”

ARTICLE 14 GENERAL SAVING CLAUSE

14.1. It is not the intention of the parties hereto to violate the laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of this Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of this Agreement shall remain in force and effect unless the part so found to be void is wholly inseparable from the remaining portions of this Agreement.

14.2. Further, all parties agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by a court of competent jurisdiction, an effort will be made to then promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of any applicable law and the intent of the parties hereto.

ARTICLE 15
NON DISCRIMINATION

15.1. The Unions shall refer all applicants for employment without discrimination against any applicant by reason of age, race, color, creed, religion, sex or national origin. Where governmental agencies impose equal employment obligations on the Employers on the Project, referral procedures shall be subordinate to such obligations.

15.2. It is agreed that affirmative action shall be taken to afford employment opportunity to all qualified persons without regard to age, race, creed, color, sex or national origin. Furthermore, the parties agree to cooperate to the fullest extent to achieve the intent and purpose of the applicable equal employment opportunity and affirmative action laws, regulations and requirements.

ARTICLE 16
PRE-JOB CONFERENCE

General Contractor will conduct a pre-job conference with the Union(s), the Council and the demolition subcontractors before demolition work is commenced. Thereafter, the General Contractor will conduct a pre-job conference with the Union(s), the Council and all other subcontractors prior to commencing work. General Contractor shall notify the Council of all subcontractors that have been awarded project work with in at least five (5) days in advance of all such conferences and each such subcontractor shall participate in such conferences. If requested by the Union(s), all work assignments shall be disclosed by each subcontractor at the pre-job conference and such assignments shall be made in accordance with industry practice. Should additional project work not previously included within the scope of the project work be added, the contractors performing such work will conduct a separate pre-job for such newly included work.

ARTICLE 17
PARKING

Employee parking shall be designated by each subcontractor which shall be made available at no cost for workers who are employed at the jobsite.

ARTICLE 18
ASSIGNMENT

18.1 The General Contractor will construct the Project through its own employees and/or through the employees of the subcontractors awarded Project Work. General Contractor will control labor relations on the Project by entering into this Agreement, which establishes the

terms and conditions of employment for employees performing Covered Work on the Project, and by making decisions within the scope of the General Contractor's authority on the Project. For example, General Contractor will, in conjunction with the Owner, prepare bid specifications and bid packages, select subcontractors, award subcontracts for construction work, and determine and coordinate the scheduling of work.

18.2 Should Owner or the General Contractor assign all or any portion of the Project or Project work to another Owner, general contractor or construction manager, the Project or Project work shall only be assigned to an Owner, general contractor or construction manager which agrees to sign and signs the Agreement prior to their commencement of any Project work. The Owner or General Contractor shall give the Council ninety (90) days written notice of any intended or actual assignment of all or any portion of the Project or Project work.

ARTICLE 19
ENTIRE UNDERSTANDING

The parties agree that the total results of their bargaining are embodied in this Agreement and neither party is required to render any performance not set forth in the working of this Agreement, or to bargain during the term of this Agreement about any matters unless required to do so by the terms of this Agreement. This Agreement may be amended only by written agreement signed by the parties.

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

The officials signing this Agreement warrant and collectively bargain on behalf of the organizations whom they represent and the members of such organizations.

CLARK CONSTRUCTION GROUP –
CALIFORNIA, LP

LOS ANGELES/ORANGE
COUNTIES BUILDING &
CONSTRUCTION TRADES
COUNCIL

Ron Miller
Executive Secretary

ATTACHMENT "A"
LETTER OF ASSENT

Clark Construction Group – California, LP
(Address)
(City, State)

Re: New Long Beach Civic Center Project Labor Agreement – Letter of Assent

Dear Sir:

This is to certify that the undersigned Employer has examined a copy of the Project Labor Agreement for Construction of the New Long Beach Civic Center Project between Clark Construction Group – California, LP and the Los Angeles/Orange Counties Building and Construction Trades Council and the Craft Unions and District Councils.

The undersigned Employer hereby agrees to comply with all of the terms and conditions of the aforementioned Project Labor Agreement. It is understood that the signing of this Letter of Assent shall be as binding on the undersigned Employer as though the Employer had signed the above referred to Agreement.

This Letter of Assent shall become effective and binding upon the undersigned Employer this ____ day of _____, 2015 and shall remain in full force and effect until the completion of the above stated project.

Name of Employer

Address of Employer

Signature - Officer of Employer

Title of Signatory Officer of Employer

Contractor's State License No.

ATTACHMENT B

**NEW LONG BEACH CIVIC CENTER
CRAFT REQUEST FORM**

TO THE CONTRACTOR: Please complete and fax this form to the applicable union to request craft workers that fulfill the hiring requirements for this project. After faxing your request, please call the Local to verify receipt and substantiate their capacity to furnish workers as specified below. Please print your Fax Transmission Verification Reports and keep copies for your records.

The New Long Beach Civic Center Project Labor Agreement establishes a goal that 30% of all of the labor and craft positions shall be from workers residing: first, in those first tier zip codes which include all of the City of Long Beach, as set forth below, second, in those second tier zip codes which reflect the Gateway Cities, as set forth below, and third, within Los Angeles and Orange Counties. A list of the zip codes for the first and second tiers is attached hereto. For Dispatch purposes, employees residing within any of these three (3) areas shall be referred to as Local Residents.

TO THE UNION: Please complete the “Union Use Only” section on the next page and fax this form back to the requesting Contractor. Be sure to retain a copy of this form for your records.

CONTRACTOR USE ONLY

To: Union Local # _____ **Fax#** () _____ **Date:** _____
Cc: Project Labor Coordinator
From: Company: _____ Issued By: _____
 Contact Phone: () _____ Contact Fax: () _____

PLEASE PROVIDE ME WITH THE FOLLOWING UNION CRAFT WORKERS.

Craft Classification (i.e., plumber, painter, etc.)	Journeyman or Apprentice	Local Resident or General Dispatch	Number of workers needed	Report Date	Report Time
TOTAL WORKERS REQUESTED = _____					

Please have worker(s) report to the following work address indicated below:

Project Name: _____ Site: _____ Address: _____
 Report to: _____ On-site Tel: _____ On-site Fax: _____
 Comment or Special Instructions: _____

UNION USE ONLY

Date dispatch request rec'd:
Dispatch received by:
Classification of worker requested:
Classification of worker dispatched:

WORKER REFERRED

Name:		
Date worker was dispatched:		
Is the worker referred a:		(check all that apply)
JOURNEYMAN	Yes _____	No _____
APPRENTICE	Yes _____	No _____
LOCAL RESIDENT (SEE ZIP CODES ATTACHED)	Yes _____	No _____
REGULAR DISPATCH FROM OUT OF WORK LIST	Yes _____	No _____

[This form is not intended to replace a Local Union's Dispatch or Referral Form normally given to the employee when being dispatched to the jobsite.]

**First Tier Zip Codes
City of Long Beach**

90802	90807	90814
90803	90808	90815
90804	90809	90822
90805	90810	
90806	90813	

**Second Tier Zip Codes
Gateway Cities**

90001	Florence/South Central	90605	Whittier/South Whittier
90022	East Los Angeles	90606	Whittier
90023	East Los Angeles	90638	La Mirada
90040	Commerce	90639	La Mirada
90058	Vernon	90640	Montebello
90201	Bell/Bell Gardens/Cudahy	90650	Norwalk
90220	Compton/Rancho Dominguez	90660	Pico Rivera
90221	Compton/East Rancho Dominguez	90670	Santa Fe Springs
90222	Compton/Rosewood/Willowbrook	90701	Artesia/Cerritos
90240	Downey	90703	Cerritos
90241	Downey	90704	Avalon
90242	Downey	90706	Bellflower
90262	Lynwood	90712	Lakewood
90270	Maywood	90713	Lakewood
90280	South Gate	90715	Lakewood
90601	Whittier	90716	Hawaiian Gardens
90602	Whittier	90723	Paramount
90603	Whittier	90755	Signal Hill
90604	Whittier	91744	Industry

ATTACHMENT C

LOS ANGELES/ORANGE COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL APPROVED DRUG AND ALCOHOL TESTING POLICY

The Parties recognize the problems which drug and alcohol abuse have created in the construction industry and the need to develop drug and alcohol abuse prevention programs. Accordingly, the Parties agree that in order to enhance the safety of the work place and to maintain a drug and alcohol free work environment, individual Employers may require applicants or employees to undergo drug and alcohol testing.

1. It is understood that the use, possession, transfer or sale of illegal drugs, narcotics, or other unlawful substances, as well as being under the influence of alcohol and the possession or consuming alcohol is absolutely prohibited while employees are on the Employer's job premises or while working on any jobsite in connection with work performed under the Project Labor Agreement ("PLA").

2. No Employer may implement a drug testing program which does not conform in all respects to the provisions of this Policy.

3. No Employer may implement drug testing at any jobsite unless written notice is given to the Union setting forth the location of the jobsite, a description of the project under construction, and the name and telephone number of the Project Supervisor. Said notice shall be addressed to the office of each Union signing the PLA. Said notice shall be delivered in person or by registered mail before the implementation of drug testing. Failure to give such notice shall make any drug testing engaged in by the Employer a violation of the PLA, and the Employer may not implement any form of drug testing at such jobsite for the following six months.

4. An employer who elects to implement drug testing pursuant to this Agreement shall require all employees on the Project to be tested. With respect to individuals who become employed on the Project subsequent to the proper implementation of this drug testing program, such test shall be administered upon the commencement of employment on the project, whether by referral from a Union Dispatch Office, transfer from another project, or another method. Individuals who were employed on the project prior to the proper implementation of this drug testing program may only be subjected to testing for the reasons set forth in Paragraph 5(f) (1) through 5(f) (3) of this Policy. Refusal to undergo such testing shall be considered sufficient grounds to deny employment on the project.

5. The following procedure shall apply to all drug testing:

a. The Employer may request urine samples only. The applicant or employee shall not be observed when the urine specimen is given. An applicant or employee, at his or her sole option, shall, upon request, receive a blood test in lieu of a urine test. No employee of the Employer shall draw blood from a bargaining unit employee, touch or handle urine specimens, or

in any way become involved in the chain of custody of urine or blood specimens. A Union Business Representative, subject to the approval of the individual applicant or employee, shall be permitted to accompany the applicant or employee to the collection facility to observe the collection, bottling, and sealing of the specimen.

b. The testing shall be done by a laboratory approved by the Substance Abuse & Mental Health Services Administration (SAMHSA), which is chosen by the Employer and the Union.

c. An initial test shall be performed using the Enzyme Multiplied Immunoassay Technique (EMZT). In the event a question or positive result arises from the initial test, a confirmation test must be utilized before action can be taken against the applicant or employee. The confirmation test will be by Gas Chromatography Mass Spectrometry (GC/MS). Cutoff levels for both the initial test and confirmation test will be those established by the SAMHSA. Should these SAMHSA levels be changed during the course of this agreement or new testing procedures are approved, then these new regulations will be deemed as part of this existing agreement. Confirmed positive samples will be retained by the testing laboratory in secured long-term frozen storage for a minimum of one year. Handling and transportation of each sample must be documented through strict chain of custody procedures.

d. In the event of a confirmed positive test result the applicant or employee may request, within forty-eight (48) hours, a sample of his/her specimen from the testing laboratory for purposes of a second test to be performed at a second laboratory, designated by the Union and approved by SAMHSA. The retest must be performed within ten (10) days of the request. Chain of custody for this sample shall be maintained by the Employer between the original testing laboratory and the Union's designated laboratory. Retesting shall be performed at the applicant's or employee's expense. In the event of conflicting test results the Employer may require a third test.

e. If, as a result of the above testing procedure, it is determined that an applicant or employee has tested positive, this shall be considered sufficient grounds to deny the applicant or employee his/her employment on the Project.

f. No individual who tests negative for drugs or alcohol pursuant to the above procedure and becomes employed on the Project shall again be subjected to drug testing with the following exceptions:

1. Employees who are involved in industrial accidents resulting in damage to plant, property or equipment or injury to him/herself or others may be tested pursuant to the procedures stated hereinabove.

2. The Employer may test employees following thirty (30) days advance written notice to the employee(s) to be tested and to the applicable Union. Notice to the applicable Union shall be as set forth in Paragraph 3 above and such testing shall be pursuant to the procedures stated hereinabove.

3. The Employer may test an employee where the Employer has reasonable cause to believe that the employee is impaired from performing his/her job. Reasonable cause shall be defined as exhibiting aberrant or unusual behavior, the type of which is a recognized and accepted symptom of impairment (i.e., slurred speech, unusual lack of muscular coordination, etc.). Such behavior must be actually observed by at least two persons, one of whom shall be a Supervisor who has been trained to recognize the symptoms of drug abuse or impairment and the other of whom shall be the job steward. If the job steward is unavailable or there is no job steward on the project the other person shall be a member of the applicable Union's bargaining unit. Testing shall be pursuant to the procedures stated hereinabove. Employees who are tested pursuant to the exceptions set forth in this paragraph and who test positive will be removed from the Employer's payroll.

g. Applicants or employees who do not test positive shall be paid for all time lost while undergoing drug testing. Payment shall be at the applicable wage and benefit rates set forth in the applicable Union's Master Labor Agreement. Applicants who have been dispatched from the Union and who are not put to work pending the results of a test will be paid waiting time until such time as they are put to work. It is understood that an applicant must pass the test as a condition of employment. Applicants who are put to work pending the results of a test will be considered probationary employees.

6. The employers will be allowed to conduct periodic job site drug testing on the Project under the following conditions:

a. The entire jobsite must be tested, including any employee or subcontractor's employee who worked on that project three (3) working days before or after the date of the test;

b. Jobsite testing cannot commence sooner than thirty (30) days after start of the work on the Project;

c. Prior to start of periodic testing, a business representative will be allowed to conduct an educational period on company time to explain periodic jobsite testing program to affected employees;

d. Testing shall be conducted by a SAMHSA certified laboratory, pursuant to the provisions set forth in Paragraph 5 hereinabove.

e. Only two periodic tests may be performed in a twelve month period.

7. It is understood that the unsafe use of prescribed medication, or where the use of prescribed medication impairs the employee's ability to perform work, is a basis for the Employer to remove the employee from the jobsite.

8. Any grievance or dispute which may arise out of the application of this Agreement shall be subject to the grievance and arbitration procedures set forth in the PLA.

9. The establishment or operation of this Policy shall not curtail any right of any employee found in any law, rule or regulation. Should any part of this Agreement be found unlawful by a court of competent jurisdiction or a public agency having jurisdiction over the parties, the remaining portions of the Agreement shall be unaffected and the parties shall enter negotiations to replace the affected provision.

10. Present employees, if tested positive, shall have the prerogative for rehabilitation program at the employee's expense. When such program has been successfully completed the Employer shall not discriminate in any way against the employee. If work for which the employee is qualified exists he/she shall be reinstated.

11. The Employer agrees that results of urine and blood tests performed hereunder will be considered medical records held confidential to the extent permitted or required by law. Such records shall not be released to any persons or entities other than designated Employer representatives and the applicable Union. Such release to the applicable Union shall only be allowed upon the signing of a written release and the information contained therein shall not be used to discourage the employment of the individual applicant or employee on any subsequent occasion.

12. The Employer shall indemnify and hold the Union harmless against any and all claims, demands, suits, or liabilities that may arise out of the application of this Agreement and/or any program permitted hereunder.

13. Employees who seek voluntary assistance for substance abuse may not be disciplined for seeking such assistance. Requests from employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Employees enrolled in substance abuse programs shall be subject to all Employer rules, regulations and job performance standards with the understanding that an employee enrolled in such a program is receiving treatment for an illness.

14. This Memorandum, of Understanding shall constitute the only Agreement in effect between the parties concerning drug and alcohol abuse, prevention and testing. Any modifications thereto must be accomplished pursuant to collective bargaining negotiations between the parties.

DRUG ABUSE PREVENTION AND DETECTION

APPENDIX A

CUTOFF LEVELS

DRUG	SCREENING METHOD	SCREENING LEVEL **	CONFIRMATION METHOD	CONFIRMATION LEVEL
Alcohol	EMIT	0.02%	CG/MS	0.02%
Amphetamines	EMIT	1000 ng/m*	CG/MS	500 ng/ml*
Barbiturates	EMIT	300 ng/ml	CG/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	CG/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml*	CG/MS	150 ng/ml*
Methadone	EMIT	300 ng/ml	CG/MS	100 ng/ml
Methaqualone	EMIT	300 ng/ml	CG/MS	300 ng/ml
Opiates	EMIT	2000 ng/ml*	CG/MS	2000 ng/ml*
PCP (Phencyclidine)	EMIT	25 ng/ml*	CG/MS	25 ng/ml*
THC (Marijuana)	EMIT	50 ng/ml*	CG/MS	15 ng/ml*
Propoxyphene	EMIT	300 ng/ml	CG/MS	100 ng/ml

* SAMHSA specified threshold

** A sample reported positive contains the Indicated drug at or above the cutoff level for that drug. A negative sample either contains no drug or contains a drug below the cutoff level.

EMIT - Enzyme Immunoassay

CC/MS - Gas Chromatography/Mass Spectrometry

SIDE LETTER OF AGREEMENT
TESTING POLICY FOR DRUG ABUSE

It is hereby agreed between the parties hereto that an Employer who has otherwise properly implemented drug testing, as set forth in the Testing Policy for Drug Abuse, shall have the right to offer an applicant or employee a "quick" drug screening test. This "quick" screen test shall consist either of the "ICUP" urine screen or similar test or an oral screen test. The applicant or employee shall have the absolute right to select either of the two "quick" screen tests, or to reject both and request a full drug test.

An applicant or employee who selects one of the quick screen tests, and who passes the test, shall be put to work immediately. An applicant or employee who fails the "quick" screen test, or who rejects the quick screen tests, shall be tested pursuant to the procedures set forth in the Testing Policy for Drug Abuse. The sample used for the "quick" screen test shall be discarded immediately upon conclusion of the test. An applicant or employee shall not be deprived of any rights granted to them by the Testing Policy for Drug Abuse as a result of any occurrence related to the "quick" screen test.