

INDEPENDENT BUILDING EXPERT AGREEMENT

for the

NEW LONG BEACH CIVIC CENTER AND PORT ADMINISTRATION BUILDING

among

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

and

P2S ENGINEERING, INC

and

PLENARY PROPERTIES LONG BEACH LLC

Dated March 31, 2016

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INDEPENDENT BUILDING EXPERT AGREEMENT

THIS INDEPENDENT BUILDING EXPERT AGREEMENT is made and entered into March 31, 2016, among CITY OF LONG BEACH (the “City”), CITY OF LONG BEACH, a municipal corporation acting by and through its Board of Harbor Commissioners (the “Port”) (collectively the “City/Port”), P2S ENGINEERING, INC, a corporation organized and existing under the laws of the State of California (the “Independent Building Expert”), and PLENARY PROPERTIES LONG BEACH LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”).

RECITALS

The City, Port and the Project Company have entered into an Early Works Agreement dated February 15, 2016 (“Early Works Agreement”), and anticipate entering into the Project Agreement (defined below) on or about April 20, 2016;

The City, Port and the Project Company wish to appoint the Independent Building Expert, and the Independent Building Expert wishes to accept such appointment, to perform certain services in connection with the Early Works Agreement and the Project Agreement; and

The City, Port, the Project Company and the Independent Building Expert wish to enter into this Agreement in order to record the terms by which the Independent Building Expert will perform such services.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

SECTION 1.1. DEFINITIONS.

Unless otherwise specified or the context otherwise requires, capitalized but otherwise undefined terms in this Agreement shall have the respective meanings given to such terms in the Project Agreement, and the following terms will have the following meanings:

“Additional Insured Parties” shall have the meaning set forth in Section 6.1(A)(2).

“Additional Services” means any additions or changes to the Services.

“Additional Services Order” shall have the meaning set forth in Section 8.2(C).

“Additional Services Price Request” shall have the meaning set forth in Section 8.2(A).

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

“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 Agreement.

“City” shall have the meaning set forth in the preamble.

“City/Port” shall have the meaning set forth in the preamble.

“Commissioning Agent” means the Independent Building Expert in its capacity as “Commissioning Agent” under Appendix 7 of the Project Agreement.

“Early Works Agreement” shall have the meaning set forth in the recitals.

“Facility” shall have the meaning set forth in the Project Agreement.

“Fee” means the fees and disbursements payable to the Independent Building Expert for the Services, as such fees are specified and made payable in Appendix 2 to this Agreement.

“Independent Building Expert” shall have the meaning set forth in the preamble.

“Independent Building Expert Person” shall have the meaning set forth in Section 11.2.

“Liability Payment” shall have the meaning set forth in Section 10.3.

“Occupancy Readiness Certificate” shall have the meaning set forth in Section 4.4(B).

“Occupancy Readiness Notice” shall have the meaning set forth in Section 4.4(A)(2).

“Port” shall have the meaning set forth in the preamble.

“Project Agreement” means the Early Works Agreement, until such time as the Early Works Agreement terminates, after which **“Project Agreement”** means the Project Agreement for the Design, Construction, Financing, Operation and Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters and Revitalized Lincoln Park, to be executed by and among the City, the Port and the Project Company on or about April 20, 2016.

“Project Company” shall have the meaning set forth in the preamble.

“Project Company Indemnitee” means:

- (1) the Project Company;
- (2) any contractor, subcontractor, supplier or vendor of the Project Company;
- (3) any representative, agent or advisor (including legal and financial advisors) of the Project Company or any person referred to in item (2) above, in each case acting in such capacity; and

(4) any manager, official, director or employee of the Project Company or any person referred to in items (2) or (3) above, in each case acting in such capacity.

“Project Documents” means, collectively, the Project Agreement and any other agreement (other than this Agreement) entered into from time to time by the City or the Port and the Project Company (with or without other parties) in connection with the Project; and “Project Document” means any one of the foregoing.

“Project Material” means all material:

(1) provided to the Independent Building Expert or created by or required to be created by the City, the Port or the Project Company; and

(2) provided by or created by or required to be created by the Independent Building Expert as part of, or for the purpose of, performing the Services or the Additional Services,

including documents, equipment, reports, technical information, plans, charts, drawings, calculations, tables, schedules and data (stored and recorded by any means).

“Services” means:

(1) all of the services performed by and obligations conferred on the Independent Building Expert under the Project Agreement;

(2) all of the services performed by and obligations conferred on the Independent Building Expert under this Agreement, including the services described in Appendix 1 to this Agreement;

(3) all other obligations or tasks which the Independent Building Expert is required to do to comply with its obligations under this Agreement;

(4) all of the services proposed by the Independent Building Expert to be performed by the Independent Building Expert as part of its proposal and in all post-proposal submittals, including the documents described in Appendix 6 to this Agreement, which are hereby incorporated by reference into this Agreement; and

(5) all of the Project commissioning services and services required as the Commissioning Agent set forth in Article 7 to the Project Agreement and Appendix 7 of the Project Agreement, which are hereby incorporated by reference into this Agreement.

SECTION 1.2. INTERPRETATION.

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

(A) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, joint ventures, general partnerships, limited partnerships,

limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(G) References to Including. The words “include”, “includes” and including” are to be construed as meaning “include without limitation”, “includes without limitation” and “including without limitation”, respectively.

(H) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, orders, codes of practice or instruments made under the relevant statute.

(I) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes (subject to all relevant approvals and any other provision of this Agreement expressly concerning such agreement, document, standard, principle or other instrument) a reference to that agreement, document, standard, principle or instrument as amended, supplemented, 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 the City, the Port, the Independent Building Expert, the Project Company, or any other Project Company representative, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) Entire Agreement. This Agreement contains the entire agreement among the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the

generality of the foregoing, this Agreement shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

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

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

(O) Severability. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid, unenforceable or illegal to any extent, such provision may be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Agreement. If any such provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.

(P) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(Q) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with generally accepted accounting principles, consistently applied, in the United States.

(R) Consents. Any consent required to be given under this Agreement must be in writing.

ARTICLE 2

ROLE OF THE INDEPENDENT BUILDING EXPERT

SECTION 2.1. ENGAGEMENT.

The City, the Port and the Project Company hereby appoint the Independent Building Expert to serve as Independent Building Expert and as Commissioning Agent, and the Independent Building Expert hereby accepts such appointment as Independent Building Expert and as Commissioning Agent, to carry out the Services in accordance with this Agreement. The Independent Building Expert will perform the Services, including the services in its capacity as Commissioning Agent, in accordance with this Agreement and unless stated otherwise, where there is an inconsistency between this Agreement and the Project Agreement, the terms of the Project Agreement shall prevail.

SECTION 2.2. ACKNOWLEDGEMENT BY INDEPENDENT BUILDING EXPERT.

The Independent Building Expert hereby acknowledges in favor of the City, the Port and the Project Company that it has received a copy of the Project Agreement. The Independent Building Expert acknowledges that the City, the Port and the Project Company shall each rely upon the performance of the Services by the Independent Building Expert, including all determinations and

findings of fact, the expression of all opinions and conclusions, the issuance of all certificates, and accordingly, the Independent Building Expert shall use its best skills and judgment in providing the Services. The Independent Building Expert acknowledges that, in carrying out the Services, it owes a duty of care to the Senior Lenders.

SECTION 2.3. STANDARD OF CARE.

The Independent Building Expert shall in all respects act as an independent professional. The Independent Building Expert represents and warrants that it does and shall at all times during the term of this Agreement possess and exercise the standard of skill, care and diligence in the performance of the Services that would be expected of a professional experienced in providing each of the services falling within the definition of the Services as set forth in Section 1.1 of this Agreement.

SECTION 2.4. DUTY OF INDEPENDENT JUDGMENT.

In exercising the Services, the Independent Building Expert will act:

- (1) impartially and independently of the City, the Port and the Project Company, giving fair consideration to the interests and views of each in accordance with the terms of this Agreement and the Project Agreement;
- (2) reasonably, honestly and professionally in all respects, and in accordance with the highest standards of commercial integrity; and
- (3) in a timely manner in its performance of the Services:
 - (a) in accordance with the times prescribed in this Agreement or the Project Agreement, as applicable; or
 - (b) where no times are prescribed, within five Business Days or such earlier time so as to enable the City, the Port and the Project Company to perform their respective obligations under the Project Agreement.

SECTION 2.5. DETERMINATIONS AND CONCLUSIONS.

(A) Independent Professional Judgment. All determinations of fact and the drawing of conclusion based upon any facts so determined shall be made in the exercise of the Independent Building Expert's independent professional judgment. Although the Independent Building Expert should take account of any opinions or representations made by the City, the Port and the Project Company, and their respective professional advisors and consultants, the Independent Building Expert shall not be bound to comply with any opinions, representations, requests or directions made by the City, the Port, the Project Company, or their respective professional advisors and consultants in connection with any matter on which the Independent Building Expert is required to exercise its professional judgment. Notwithstanding the foregoing, the Independent Building Expert shall accept all agreed statements of fact made by the City, the Port and the Project Company jointly.

(B) Best Skill and Judgment. The Independent Building Expert will use its best skill and judgment in providing the Services and the Additional Services and making any certifications.

SECTION 2.6. AUTHORITY TO ACT.

The Independent Building Expert:

(1) is an independent consultant and is not, and will not purport to be, a partner, joint venturer or agent of the City, the Port or the Project Company;

(2) has no direct or indirect material interest in or connection with, and it will not at any time have any direct or indirect material interest in or connection with, any person, trust, partnership, joint venture or other entity that is not at arm's length to the City, the Port or the Project Company;

(3) has no direct or indirect material interest in, and will not at any time have a direct or indirect interest in, the certification of Occupancy Readiness with respect to the Project except with respect to the performance of the Services under this Agreement and the payment of its Fee;

(4) other than as may be expressly set out in this Agreement or the Project Agreement, has no authority to give any directions to the City, the Port or the Project Company, or any of their officers, employees, contractors, consultants or agents;

(5) has no authority to waive or alter any terms of the Project Agreement, nor to discharge or release the City, the Port or the Project Company from any of its obligations under the Project Agreement unless jointly agreed in writing by the City, the Port and the Project Company;

(6) shall act in accordance with the joint direction of the City, the Port and the Project Company provided that the directions are not inconsistent with the other terms of this Agreement or the terms of the Project Agreement and do not vary or prejudice the Independent Building Expert's authority or responsibility or the exercise by the Independent Building Expert of its professional judgment under this Agreement; and

(7) is not aware of any other circumstances or relationships, having made due inquiries with respect thereto, that could reasonably be perceived to constitute a conflict of interest with respect to the performance of the Services, or its role as Independent Building Expert.

SECTION 2.7. KNOWLEDGE OF CITY/PORT'S AND PROJECT COMPANY'S REQUIREMENTS.

The Independent Building Expert and the Commissioning Agent represents and warrants that:

(1) it has and will be deemed to have informed itself fully of the requirements of the Project Agreement;

(2) it will inform itself fully of the requirements of such other documents and materials as may become relevant from time to time to the performance of the Services;

(3) without limiting items (1) or (2) of this Section, it has and will be deemed to have informed itself fully of all time limits and other requirements for any Services which the Independent Building Expert carries out under the Project Agreement and this Agreement;

(4) it has and will be deemed to have informed itself fully of the nature of the work necessary for the performance of the Services and the means of access to and facilities at the Project and Sites including restrictions on any such access or protocols that are required;

(5) it has satisfied itself as to the correctness and sufficiency of its proposal for the Services and that the Fee covers the cost of complying with all of the obligations under this Agreement and of all matters and things necessary for the due and proper performance and completion of the Services; and

(6) the information supplied by the Independent Building Expert in all submittals made as part of its proposal and in all post-proposal submittals with respect to the Independent Building Expert and its obligations under this Agreement, including the information contained in the documents described in Appendix 6 to this Agreement, are true, correct and complete in all material respects.

SECTION 2.8. COORDINATION BY INDEPENDENT BUILDING EXPERT.

The Independent Building Expert shall:

(1) fully cooperate with the City, the Port, the Project Company and State and local agencies and other Governmental Bodies having jurisdiction;

(2) carefully coordinate the Services with the work and services performed by the City, Port and the Project Company;

(3) perform the Services so as to avoid unreasonably interfering with, disrupting or delaying the work and services performed by the City, the Port and the Project Company; and

(4) provide copies to the City, the Port and the Project Company of all reports, communications, certificates and other documentation that it provides to the City, Port or the Project Company.

SECTION 2.9. CONFLICT OF INTEREST.

The Independent Building Expert represents and warrants that:

(1) in addition to the representations and warranties set out in subsections 2.6(2) and 2.6(7) of this Agreement, at the date of signing this Agreement, no conflict of interest exists or is likely to arise in the performance of its obligations under this Agreement, and, without limitation, the Independent Building Expert has no interest that would constitute a conflict of interest under State or City law or other applicable codes, laws or regulations; and

(2) if, during the term of this Agreement, any such conflict or risk of conflict of interest arises, or there is reasonable apprehension that a conflict of interest has arisen or may arise, the Independent Building Expert shall immediately notify the City, the Port and the Project Company in writing of that conflict or risk of conflict and shall take such steps as may be required by the City, the Port and the Project Company to avoid, or (where it is not possible to avoid that conflict) mitigate that conflict or risk to the greatest extent possible, or (where it is not possible to avoid that conflict, and the City, the Port and the Project Company jointly request) resign.

SECTION 2.10. INDEPENDENT BUILDING EXPERT PERSONNEL.

(A) Personnel to be Used. Subject to subsection (B) of this Section, the Independent Building Expert will use the partners, directors or employees described in Appendix 3 to this Agreement in connection with the performance of the Services and such persons' services will be available for so long as may be necessary to ensure the proper performance by the Independent Building Expert of the Services. Such persons will have full authority to act on behalf of the Independent Building Expert for all purposes in connection with this Agreement.

(B) Removal and Replacement. None of the persons listed in Appendix 3 to this Agreement will be removed or replaced unless such person ceases to work as a partner in or a director or employee of the Independent Building Expert or such person is unable to work because of death or illness. The Independent Building Expert shall notify the City, the Port and the Project Company of any such circumstances and shall be responsible for finding a replacement who will previously have been approved in writing by the City, the Port and the Project Company.

SECTION 2.11. OBLIGATIONS OF OTHERS.

Nothing in this Agreement or the Project Agreement shall be interpreted or construed to render the Independent Building Expert responsible for the performance of the design or construction of the Project, or for the performance of any obligation of the Project Company, or the professional responsibility of any of the other professionals of record (except as Testing Inspector of Record as required by the City Code for Duties as Deputy Inspector), with respect to the Project.

ARTICLE 3

ROLE OF THE CITY/PORT AND THE PROJECT COMPANY

SECTION 3.1. ASSISTANCE.

The City, the Port and the Project Company agree to cooperate with and provide reasonable assistance to the Independent Building Expert to familiarize the Independent Building Expert with all necessary aspects of the Project and to enable the Independent Building Expert to carry out its obligations, including the determination of Occupancy Readiness, under this Agreement. Subject to Section 11.1(D), neither the City, the Port nor the Project Company shall in any way obstruct or otherwise impede or interfere with the performance of the Services by the Independent Building Expert.

SECTION 3.2. INSTRUCTIONS IN WRITING.

All instructions given to the Independent Building Expert by the City, the Port and the Project Company shall be in writing.

SECTION 3.3. OBLIGATIONS AND EXERCISE OF RIGHTS.

Except as otherwise expressly provided in this Agreement:

(1) Where a power, authority or discretion may be exercised by the City, the Port and the Project Company, it shall be exercised by them jointly; and

(2) Any obligation of the City, the Port and Project Company shall be deemed to be a several obligation of the City, Port and the Project Company, acting individually.

SECTION 3.4. INFORMATION AND SERVICES.

The City, the Port and the Project Company will each make available to the Independent Building Expert, as soon as practicable from time to time, all information, documents and particulars necessary for the Independent Building Expert to carry out the Services, including such information, documents and particulars required in order for the Independent Building Expert to determine whether Occupancy Readiness Conditions have been achieved, and will provide copies of all such information, documents and particulars to the other party.

SECTION 3.5. ADDITIONAL INFORMATION.

(A) Requests by Independent Building Expert. If any information, documents or particulars are reasonably required to enable the Independent Building Expert to perform the Services and have not been provided by the Project Company, the City or the Port, as the case may be, then:

(1) the Independent Building Expert will give notice in writing to the City, the Port and the Project Company of the details of the information, documents or particulars demonstrating the need and the reasons why they are required. In such writing, the Independent Building Expert may identify the City, the Port or the Project Company as the lead for providing the information, documents, or particulars;

(2) the City, the Port or the Project Company, as the case may be, will arrange the provision of the required information, documents, or particulars.

(B) Failure to Provide Requested Information. Where any information is requested pursuant to subsection (A) of this Section, and is not provided within 10 Business Days of the date on which it was requested, then the Independent Building Expert shall notify the parties of the failure of the entity previously identified by the Independent Building Expert to provide the information, documents, or particulars. Any failure or refusal to provide such information may be submitted for Non-Binding Mediation.

SECTION 3.6. RIGHT TO ENTER AND INSPECT.

Upon giving reasonable notice to the Project Company, the Independent Building Expert (and any person authorized by it) may enter and inspect the Sites, Project and work in progress at any reasonable time in connection with the exercise or proposed exercise of rights under this Agreement, subject to:

(1) observance of the reasonable rules of the Project Company as to safety and security for the Sites, Project and work in progress;

(2) not causing unreasonable delay to the carrying out of the construction by reason of its presence at the Project; and

(3) not causing any damage to the Sites, Project or work in progress.

SECTION 3.7. PERFORMANCE OF OBLIGATIONS UNDER THE PROJECT AGREEMENT NOT RELIEVED.

Neither the City, the Port nor the Project Company shall be relieved from its obligations to perform their respective obligations, or from any other liabilities, under the Project Agreement at the

time and in the manner contemplated in the Project Agreement by reason of the appointment of or the performance or non-performance of the Services by the Independent Building Expert.

SECTION 3.8. LIABILITY FOR ACTIONS OF INDEPENDENT BUILDING EXPERT.

In no event will the City, the Port or the Project Company be liable to one another for any act or omission by the Independent Building Expert whether under, or purportedly under, a provision of the Project Agreement, this Agreement or otherwise, provided that any such act or omission will not extinguish, relieve, limit or qualify the nature or extent of any right or remedy of the City, the Port or the Project Company against or any obligation or liability of the City, the Port or the Project Company which would have existed regardless of such act or omission.

ARTICLE 4

DUTIES OF INDEPENDENT BUILDING EXPERT

SECTION 4.1. COMMISSIONING OF THE PROJECT.

The Commissioning Agent shall develop a Commissioning Plan, perform duties as the Commissioning Agent, and test and commission the City Facilities, Port Facilities, and Main Library in accordance with Appendix 7 of the Project Agreement, a true and complete copy of which is attached as Appendix 7 to this Agreement.

SECTION 4.2. REVIEWS AND INSPECTION OF THE PROJECT.

(A) Design Development Phase. During the Design Development Phase, the Independent Building Expert shall act in accordance with Section 3.2 of Appendix 6 and Section 8 of Appendix 7 to the Project Agreement.

(B) Construction Drawing Phase. During the Construction Drawing Phase, the Independent Building Expert shall act in accordance with Section 3.3 of Appendix 6 and Section 8 of Appendix 7 to the Project Agreement.

(C) Construction Phase. During the construction phase, the Independent Building Expert shall act in accordance with Section 6.6 of Appendix 6 and Section 9 of Appendix 7 to the Project Agreement and further conduct independent quality assurance as follows:

(1) conduct inspection of the Project as required to verify conformance with construction documents, provided however that the Independent Building Expert may rely on the City's code enforcement inspectors to confirm compliance with code related items;

(2) review the results of tests performed by the Project Company and any independent laboratory testing of materials.

(3) review the results of any special inspections or deputy inspections conducted by the Project Company or its agents as the relate to quality assurance beyond code required items;

(4) confirm that the Project Company is in compliance with the DB Quality Management Plan; and

(5) review the Commissioning Plan, which shall include quality assurance processes with respect to:

- (a) installation;
- (b) start-up;
- (c) functional performance testing; and
- (d) training.

During the construction phase, the Independent Building Expert shall prepare and transmit to the Project Company, the City, and the Port on a quarterly basis, a written report describing the activities and findings of the Independent Building Expert for the quarterly period that is the subject of such report. This reporting shall not substitute the raising of important issues by the Independent Building Expert to the Project Company, the City, and the Port as necessary during the term of this agreement.

(D) Inspection for Occupancy Readiness and Punch List Items. In addition to any obligations imposed under the Project Agreement, the Independent Building Expert shall inspect each Facility (including any re-inspections thereof) to determine whether the Occupancy Readiness Conditions for such Facility have been satisfied in accordance with the procedures for certification set forth in this Agreement and shall prepare a Punch List, if applicable, and otherwise comply with the procedures for certification set forth in this Article.

(E) Notice of Substantial Completion. The Project Company shall give the Independent Building Expert, the City and the Port each not less than 30 days' written notice of the date on which it anticipates a Facility will be in a condition necessary to satisfy the Occupancy Readiness Conditions and the dates on which it is intended that the Independent Building Expert carry out the inspections of such Facility with a view toward issuing the Occupancy Readiness Certificates for such Facility.

SECTION 4.3. PROJECT DEFICIENCIES AND RE-INSPECTION.

If any deficiencies in a Facility with respect to Occupancy Readiness or any part thereof are identified by the Independent Building Expert during the course of an inspection referred to in Section 4.2(D) that require attention so as to enable Occupancy Readiness to be achieved, the Project Company shall attend to the matters contained in the Independent Building Expert's report delivered pursuant to subsection (A)(3)(b) of Section 4.4. The Project Company shall as soon as possible thereafter give notice of re-inspection and: (i) the provisions of Section 4.3 shall apply also to such re-inspection except that the reference to 30 days in Section 4.2(E) shall be construed as 5 Business Days and a new Punch List, as required to be delivered pursuant to Section 4.4(H), shall be prepared and delivered prior to any re-inspection by the Independent Building Expert; (ii) the provisions of Section 4.4 shall also apply to such re-inspection; and (iii) this Section shall be applied repeatedly until the Occupancy Readiness Certificate is issued by the Independent Building Expert.

SECTION 4.4. PROCEDURE FOR CERTIFICATION OF OCCUPANCY
READINESS.

(A) Procedure. The Independent Building Expert shall base its determination of Occupancy Readiness and certify that the Project, or any reasonable portion thereof, has achieved Occupancy Readiness in accordance with the following rules and procedures:

(1) the Project Company shall provide the Independent Building Expert and the City and Port the notice set forth in Section 4.2(E);

(2) within 10 Business Days after the notice referenced in subsection (A)(1) of this Section is provided by the Project Company, and in any event at least 20 Business Days prior to the inspection of the Project by the Independent Building Expert, the Project Company shall give the Independent Building Expert and the City and Port an application for an Occupancy Readiness Certificate (the "**Occupancy Readiness Notice**") in the form set forth in Appendix 4 to this Agreement, together with the Project Company's opinion as to whether the conditions for issuance of the Occupancy Readiness Certificate have been satisfied; and

(3) provided that the Project Company has complied with clauses (1) and (2) of this subsection, upon the written request of the Project Company, the parties shall cause the Independent Building Expert to, no earlier than the thirtieth Business Day after notice has been provided by Project Company pursuant to clause (1) of this subsection (and no later than the thirty-fifth) Business Day after notice has been given), consider whether the Occupancy Readiness Conditions have been satisfied, having regard to the opinions of the Project Company and the City and Port, and to issue to the City and Port and the Project Company either:

(a) the Occupancy Readiness Certificate in accordance with subsection (B) of this Section, stating the date upon which the Independent Building Expert certifies that the Project has satisfied the Occupancy Readiness Conditions; or

(b) a report detailing the matters that the Independent Building Expert considers are required to be performed by the Project Company in order for the Occupancy Readiness Conditions to be satisfied.

(B) Occupancy Readiness Certificate. In the event the Independent Building Expert determines that the Occupancy Readiness Conditions have been satisfied, the Independent Building Expert shall certify that fact by execution of a certification of Occupancy Readiness (the "**Occupancy Readiness Certificate**") in the form set forth in Appendix 5 to this Agreement. The Independent Building Expert shall deliver a duplicate signed original of the Occupancy Readiness Certificate to the City, the Port and the Project Company on the date in which the Independent Building Expert has determined that the Project meets the criteria for Occupancy Readiness.

(C) Occupancy Readiness Certificate - Early Completion. If a Facility is completed prior to the balance of the Design-Build Work, the Project Company may request the Independent Building Expert to certify the completion of such Facility. The parties shall follow the procedures set forth in this Section, upon the issuance, by the Project Company to the Independent Building Expert and the City and Port, of a notice as set forth in Section 4.2(E) . Upon the issuance of an Occupancy Readiness Certification for such Facility, such Facility shall be considered complete.

(D) Independent Building Expert Determination. In determining whether there is an entitlement for the issuance of an Occupancy Readiness Certificate for a Facility, the Independent Building Expert shall:

(1) witness such tests and investigations or review the reports of such tests and investigations, and make such inquiries as seem to the Independent Building Expert to be reasonably necessary or advisable to the question of whether the Occupancy Readiness Conditions for such Facility have been satisfied; and

(2) in connection therewith, consult and consider the views of the Project Company, the City and the Port.

The obligation to carry out tests and investigations and consult and consider the views under this subsection shall not apply where, in the circumstances, a reasonable person in the position of the Independent Building Expert would consider it clear that Occupancy Readiness Conditions for such Facility have not been satisfied.

(E) Occupancy Date. The Occupancy Date shall be deemed to have occurred for a given Facility on the date on which the Independent Building Expert determines that the Occupancy Readiness Conditions have been satisfied and delivers the Occupancy Readiness Certificate for that Facility to the City, the Port and the Project Company.

(F) Independent Assessment. In carrying out its responsibilities under this Section, the Independent Building Expert shall act as an independent professional and in particular shall make an independent assessment of such facts as are relevant to its determination. Where, for any reason, the Independent Building Expert is not available for the purposes of this Section, the City, the Port and Project Company shall jointly appoint a person of equivalent training, experience and competence to perform the role of the Independent Building Expert in accordance with Section 8.2 of the Project Agreement.

(G) Rectification Actions. Where the Independent Building Expert has issued the report referred to in subsection (A)(3)(b) of this Section, the Project Company shall, within seven Business Days of the receipt of such report, provide the Independent Building Expert, the City and the Port with details of all additional rectification actions and Commissioning that need to be performed by the Project Company as a result of all matters raised by the Independent Building Expert in such report, and the Project Company shall perform all such additional rectification actions and the Project Company may give a further Occupancy Readiness Notice and the procedures set out in this Section shall be repeated until the Occupancy Readiness Certificate has been issued except that the parties shall use reasonable efforts to perform their respective obligations within time periods shorter than provided herein.

(H) Punch List Items. In the event that Punch List Items exist when the Project Company applies for the Occupancy Readiness Certificate, the Independent Building Expert, in consultation with the City, the Port and the Project Company, shall prepare a Punch List.

SECTION 4.5. OCCUPANCY READINESS CONDITIONS RELATING TO THE DESIGN-BUILDER.

In the event that the Occupancy Readiness Conditions specified in items (1) through (4) of subsection 8.4(A) of the Project Agreement are satisfied prior to the satisfaction of all of the Occupancy Readiness Conditions, the Project Company may request, and the Independent Building Expert shall consider and may issue, a certificate to that effect, following the same procedures and

applying the same standards to be followed and applied under this Independent Building Expert Agreement generally for the issuance of the Occupancy Readiness Certificate. The issuance of any such certificate shall be for the convenience of the Project Company only in its relationship with the Design-Builder under the Design-Build Agreement, and shall have no bearing or effect on the determination, as among the City, Port and the Project Company, as to whether the entirety of the Occupancy Readiness Conditions have been achieved or whether the Occupancy Readiness Date has occurred.

ARTICLE 5

SUSPENSION OF SERVICES

SECTION 5.1. NOTICE.

The Services (or any part) may be suspended at any time by the City, the Port and the Project Company:

- (1) if the Independent Building Expert fails to comply with its obligations under this Agreement, immediately by the City, the Port and the Project Company giving joint notice in writing to the Independent Building Expert; or
- (2) in any other case, by the City, the Port and the Project Company giving seven Business Days joint notice in writing to the Independent Building Expert.

SECTION 5.2. COSTS OF SUSPENSION.

The Independent Building Expert shall:

- (1) subject to the Independent Building Expert complying with Article 8, be entitled to recover the extra costs incurred by the Independent Building Expert by reason of a suspension directed under Section 5.1(2) of this Agreement valued as Additional Services under Article 8 of this Agreement; and
- (2) have no entitlement to be paid any costs, expenses, losses or damages arising from a suspension under Section 5.1(1) of this Agreement.

SECTION 5.3. RECOMMENCEMENT.

The Independent Building Expert shall immediately recommence the carrying out of the Services (or any part) upon receipt of a joint written notice from the City, the Port and the Project Company requiring it to do so.

ARTICLE 6

INSURANCE AND LIABILITY

SECTION 6.1. INDEPENDENT BUILDING EXPERT'S PROFESSIONAL INDEMNITY INSURANCE.

(A) Required Insurance. The Project Company shall include the Independent Building Expert in its Project specific professional liability insurance. The Independent Building Expert shall have in place at all times during the term of this Agreement the following additional insurance:

(1) a professional liability covering the Independent Building Expert's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Independent Building Expert shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Services which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Services commence pursuant to this Agreement. Such policy must be further endorsed to stipulate that such insurance is primary and is not contributing with any other insurance, self-insurance, or other risk management program maintained by, or for the benefit of the Additional Insured Parties.

(2) commercial general liability insurance in the amount of \$1 million per occurrence and \$2 million in the annual aggregate designated solely for the obligations resulting from this Agreement, no deductible for claims arising out of the performance of the Services, including independent contractors, products and completed operations, personal and advertising injury or, and liability assumed under an insured contract. Such policy shall be provided under terms and conditions than are in no case less than or more restrictive than the ISO Form CG 00 01 10 01 or its equivalent. Such policy must be further endorsed to: (a) name the parties listed in clause (6) below (individually, an "**Additional Insured Party**" and collectively, the "**Additional Insured Parties**") as additional insureds; (b) stipulate that such insurance is primary and is not contributing with any other insurance, self-insurance, or other risk management program maintained by, or for the benefit of the Additional Insured Parties; (c) waive any and all right of recovery or subrogation the insurer may have against any or all of the Additional Insured Parties; (d) apply separately to each insured against whom a claim is made or a lawsuit is brought, subject only to the policy limit of liability; and (e) defense costs shall be in addition to its policy limits.

(3) business automobile liability insurance including Hired and Non-Owned Liability with a limit of no less than \$1,000,000 per accident or loss. Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with, any other insurance self-insurance, or other risk management program maintained by, or for the benefit of the Additional Insureds Parties; (c) waive any and all right of recovery or subrogation the insurer may have against any or all of the Additional Insured Parties; and (d) defense costs shall be in addition to policy limits.

(4) statutory workers' compensation and employer's liability with limits of no less than \$1,000,000 for each accident, \$1,000,000 for each disease, and \$1,000,000 for disease (policy limit). Such policy must be further endorsed to: (a) name the Additional Insured Parties as additional insureds under the employer's liability coverage; and (b) waive any and all right of recovery or subrogation the insured may have against any or all of the Additional Insured Parties.

(5) following form umbrella or excess liability with limits of no less than \$5,000,000 per occurrence providing following form excess over the general liability, automobile liability and employer's liability policies described above. This insurance shall be endorsed to (a) name the Additional Insured Parties as additional insureds; (b) stipulate that such insurance is primary and is not contributing with, any other insurance, self-insurance, or other risk management program maintained by, or for the benefit of the additional insured parties; and (c) waive any and all right of subrogation or recovery against any or all of the Additional Insured Parties.

(6) the “Additional Insured Parties” are (a) the Project Company Indemnitees and (b) the Indemnitees. In addition, the City, Port or the Project Company may notify the Independent Building Expert in writing of other entities it wishes to include as Additional Insured Parties. Upon such notification, the Independent Building Expert shall use commercially reasonable efforts to name such entities as additional insureds and provide evidence of coverage to the City, Port and the Project Company within five working days of such request.

(B) Copies of Policies. The Independent Building Expert shall provide certified copies of its insurance policies containing all of the terms and conditions specified herein to the City, /Port and the Project Company prior to contract execution and at least 10 days prior to policy renewal.

ARTICLE 7

PAYMENT FOR SERVICES

SECTION 7.1. FEE.

(A) Project Company Responsibilities. In consideration of the Independent Building Expert performing the Services in accordance with this Agreement, the Project Company shall pay the Independent Building Expert the Fee (other than adjustments to the Fee determined in accordance with Section 8.3 of this Agreement), including all costs and fees associated with re-inspection and re-testing. Adjustments to the Fee determined in accordance with Section 8.3 of this Agreement shall be paid in equal parts by (1) the City and the Port, and (2) the Project Company, in accordance with Section 7.2(A) of this Agreement and Section 8.2(B) of the Project Agreement.

(B) Sole Compensation to Independent Building Expert. The Fee, as it may be adjusted pursuant to Section 8.3 of this Agreement, includes all taxes, disbursements and expenses (including accommodation, car hire, equipment and travel expenses), overhead and profit to perform the Services.

SECTION 7.2. PAYMENT OF FEE.

(A) Generally. The Project Company shall pay the Fee (other than adjustments to the Service Fee determined in accordance with Section 8.3 of this Agreement) to the Independent Building Expert in accordance with the payment schedule specified in Appendix 2 to this Agreement. Pursuant to Section 8.2(B) of the Project Agreement, the City, the Port and the Project Company shall pay in equal parts any adjustments to the Fee determined in accordance with Section 8.3 of this Agreement.

(B) Certification by Independent Building Expert. The City, the Port and the Project Company acknowledge and agree that if any amount due and payable by the City, the Port or the Project Company to the Independent Building Expert is outstanding, the Independent Building Expert will not have any obligation to make any certification hereunder. Any party may advance any such claimed amounts to the Independent Building Expert with a reservation of rights for a refund, reimbursement or otherwise.

ARTICLE 8

ADDITIONAL SERVICES

SECTION 8.1. NOTICE OF ADDITIONAL SERVICES.

(A) Notice and Claim Submittals. If the Independent Building Expert believes, other than an Additional Services Order under Section 8.2(C), that any direction by the City, Port or the Project Company constitutes or involves Additional Services it shall:

(1) within seven Business Days after receiving the direction and before commencing work on the subject matter of the direction, give notice to the City, Port and the Project Company that it considers that the direction constitutes or involves Additional Services; and

(2) within 21 days after giving the notice under subsection (A)(1) of this Section, submit a written claim to the City, the Port and the Project Company which includes detailed particulars of the claim, the amount of the claim and how it was calculated.

(B) Continuance of Services. Regardless of whether the Independent Building Expert considers that a direction given by the City, the Port and the Project Company constitutes or involves Additional Services, the Independent Building Expert shall continue to perform the Services in accordance with this Agreement and all directions, including any direction in respect of which notice has been given under this Section.

SECTION 8.2. ADDITIONAL SERVICES PROCEDURE.

(A) Additional Services Price Request. The City, the Port and the Project Company may jointly issue a request to the Independent Building Expert (an “**Additional Services Price Request**”) which shall set out details of proposed Additional Services which the City, the Port and the Project Company are considering.

(B) Notice of Effects of Additional Services Price Request. Within seven Business Days after the receipt of an Additional Services Price Request, the Independent Building Expert shall provide the City, the Port and the Project Company with a written notice in which the Independent Building Expert sets forth the effect which the proposed Additional Services will have on the Fee.

(C) Additional Services Order. Following the receipt of the notice delivered pursuant to subsection (B) of this Section, the City, Port and the Project Company may jointly direct the Independent Building Expert to carry out Additional Services by written order (an “**Additional Services Order**”) which shall state either that:

(1) the Fee shall be adjusted as set out in the Independent Building Expert’s notice provided pursuant to subsection (B) of this Section; or

(2) the adjustment (if any) to the Fee will be determined under Section 8.3 of this Agreement.

SECTION 8.3. COST OF ADDITIONAL SERVICES.

(A) Adjustment of Fee. Subject to Section 8.2, the Fee shall be adjusted for all Additional Services or suspensions under Section 5.1(2) of this Agreement carried out by the Independent Building Expert by:

(1) the amount (if any) stated in the Additional Services Order in accordance with Section 8.2(C) of this Agreement;

(2) if subsection (A)(1) of this Section is not applicable, an amount determined pursuant to the fee schedule for Additional Services set forth in Appendix 2 to this Agreement;

(3) where such rates or prices are not applicable, a reasonable amount to be agreed among the City, the Port, the Project Company and the Independent Building Expert or, failing agreement, an amount determined pursuant to the Non-Binding Mediation; or

(4) the amount of actual direct costs incurred, without mark-up and within the budget prepared by the Independent Building Expert, for long distance travel (defined for this purpose as travel outside the Los Angeles metropolitan area), but only if the long distance travel is required by the City, the Port and the Project Company, and only to the extent the travel budget conforms with the travel expense policies of the City and the Port. Any failure of the Independent Building Expert to seek pre-approval of the travel budget from the City, Port and Project Company is at the Independent Building Expert's own risk and expense should the City, Port or Project Company in its sole and absolute discretion determine not to reimburse all or any part of the costs.

(B) Fee Reductions. Any reductions in the Fee due to Additional Services or suspensions under Section 5.1(2) of this Agreement shall be calculated on the same basis as any increases as set forth in subsection (A) of this Section.

(C) No Adjustment for Failure to Comply. If the Independent Building Expert fails to comply with Section 8.1 of this Agreement, the Fee shall not be adjusted as a result of the relevant direction.

SECTION 8.4. NON-BINDING MEDIATION.

(A) Non-Binding Mediation. Pursuant to Section 2.1 of this Agreement and Section 8.3 of the Project Agreement, the Independent Building Expert shall be the Mediator for purposes of any Non-Binding Mediation conducted under Section 20.2 of the Project Agreement. The Fee, as presented in Appendix 2 to this Agreement, does not contain allowances for such mediation services. All mediation services shall be treated as Additional Services and the fee for such Additional Services shall be determined in accordance with Section 8.3. The Independent Building Expert shall provide such Services and shall separately account for the costs associated with such Additional Services as Mediator.

(B) Estimate of Costs for Non-Binding Mediation. The Independent Building Expert shall prepare an estimate of the costs to complete the known mediation services and provide the estimate to the City, the Port and the Project Company for review and approval.

(C) Adjustment of Fee. Following an agreement among the City, the Port and the Project Company with respect to the scope for the Additional Services relating to Non-Binding Mediation, the Fee shall be adjusted for such Additional Services in accordance with Section 8.2 of this Agreement.

ARTICLE 9

TERM AND TERMINATION

SECTION 9.1. TERM.

Subject to earlier termination pursuant to this Article 9, this Agreement shall commence 60 days after the Contract Date and continue in full force until:

- (1) 60 days after the completion of the Services; or
- (2) such later date as may be mutually agreed in writing among the City, the Port, the Project Company and the Independent Building Expert.

SECTION 9.2. NOTICE OF BREACH.

If the Independent Building Expert commits a breach of this Agreement, the City, the Port and the Project Company may give written notice to the Independent Building Expert:

- (1) specifying the breach; and
- (2) directing the Independent Building Expert to rectify the breach in the period specified in the notice, such period being not less than five Business Days from the date of receipt of such notice by the Independent Building Expert.

SECTION 9.3. TERMINATION FOR BREACH.

In the event the Independent Building Expert fails to rectify a breach within the period specified in the notice issued under Section 9.2 of this Agreement, the City, the Port and the Project Company may, without prejudice to any other rights of the City, the Port and the Project Company, or either of them, immediately terminate this Agreement.

SECTION 9.4. TERMINATION FOR FINANCIAL DIFFICULTY.

The City, the Port and the Project Company may, without prejudice to any other rights which the City, the Port and the Project Company, or any of them may have, terminate this Agreement immediately if:

- (1) events have occurred or circumstances exist which, in the opinion of the City, the Port and the Project Company, may result in or have resulted in insolvency or the control of the Independent Building Expert passing to another body or corporation; or
- (2) the Independent Building Expert has communications with its creditors with a view toward entering into, or enters into, any form of compromise, arrangement or moratorium of any debts whether formal or informal, with its creditors.

SECTION 9.5. TERMINATION FOR CONVENIENCE.

(A) Generally. Notwithstanding anything to the contrary in this Agreement and subject to subsection (B) of this Section, the City, the Port and the Project Company may at any time

jointly terminate this Agreement upon 30 days written notice to the Independent Building Expert stating that termination is for convenience pursuant to this Section.

(B) Independent Building Expert's Rights. Upon a termination under subsection (A) of this Section, the Independent Building Expert shall:

(1) be entitled to be reimbursed for the value of the Services performed by the Independent Building Expert through the date of termination; and

(2) not be entitled to any damages or other compensation with respect to the termination and (without limitation) any amount with respect to:

(a) the lost opportunity to earn a profit with respect to the Services not performed at the date of termination; and

(b) any lost opportunity to recover overhead from the revenues which would have been generated under this Agreement but for it being terminated.

SECTION 9.6. PROCEDURE UPON TERMINATION.

Upon completion of the Independent Building Expert's engagement under this Agreement or earlier termination of this Agreement (whether under Sections 9.3, 9.4 or 9.5 or otherwise) the Independent Building Expert shall:

(1) cooperate with the City, the Port and the Project Company;

(2) hand to the City, the Port and the Project Company all Project Material and all other information concerning the Project held or prepared by the Independent Building Expert; and

(3) as and when required by the City, the Port and the Project Company, meet with the City, the Port and the Project Company and such other persons nominated by them with a view to providing them with sufficient information to enable the City, the Port and the Project Company to execute the Project or the persons nominated to provide the Services.

SECTION 9.7. EFFECT OF TERMINATION.

Except as otherwise expressly provided in this Agreement, the termination of this Agreement by the City, the Port and the Project Company shall be without prejudice to any accrued rights and obligations under this Agreement as of the date of termination (including the right of the City, the Port and the Project Company to recover damages from the Independent Building Expert).

SECTION 9.8. SURVIVAL.

Termination of this Agreement shall not affect the continuing rights and obligations of the City, Port or the Project Company and the Independent Building Expert under Sections 9.5, 9.6, 9.7, 11.7, 11.8 and this Section or Articles 5, 6, and 10 or under any other Section of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

ARTICLE 10

INDEMNITY

SECTION 10.1. INDEPENDENT BUILDING EXPERT'S OBLIGATION TO INDEMNIFY.

(A) Generally. The Independent Building Expert shall indemnify and keep each Indemnitee and Project Company Indemnitee indemnified at all times from and against any and all actual loss, liability, claims, forfeiture, obligation, defense, fine, penalty, judgment, deposit, charge, assessment, tax, cost or expense that any Indemnitee or Project Company Indemnitee may sustain to the extent arising out of:

- (1) the breach of any representation, warranty, covenant, term, duty or obligation of the Independent Building Expert set forth in, or arising under, this Agreement or the Project Agreement;
- (2) any malfeasance, misfeasance or nonfeasance of the Independent Building Expert in connection with the subject matters of this Agreement or the Project Agreement;
- (3) willful misconduct of the Independent Building Expert; or
- (4) breach by the Independent Building Expert of, or non-compliance by the Independent Building Expert with, Applicable Law.

(B) Rights of Indemnitees and Project Company Indemnitees. This Section may be relied upon by the Indemnitees and the Project Company Indemnitees and may be enforced directly by any of them against the Independent Building Expert in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Independent Building Expert.

SECTION 10.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If an Indemnitee or a Project Company Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the Indemnitee or Project Company Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the entire claim, the Indemnitee or the Project Company Indemnitee will give notice in writing to the Independent Building Expert as soon as reasonably practicable and in any event within 15 Business Days of receipt thereof.

(B) Independent Building Expert Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Independent Building Expert shall be entitled to dispute the claim in the name of the Indemnitee or the Project Company Indemnitee, as applicable, at the Independent Building Expert's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Indemnitee or the Project Company Indemnitee, as applicable, will give the Independent Building Expert 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 Independent Building Expert and an Indemnitee or a Project Company Indemnitee, the Indemnitee or the Project Company Indemnitee, as applicable, may appoint independent legal counsel in respect of such claim and, if it is determined that

such Indemnitee or such Project Company Indemnitee is entitled to indemnification by or compensation from the Independent Building Expert, all reasonable costs and expenses incurred by the Indemnitee or the Project Company Indemnitee, as applicable, in so doing will be included in the indemnity or compensation from the Independent Building Expert.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Independent Building Expert pursuant to subsection (B) of this Section:

(1) The Independent Building Expert shall keep the Indemnitee or Project Company Indemnitee, as applicable, fully informed and consult with it about material elements of the conduct of the claim;

(2) The Independent Building Expert shall demonstrate to the Indemnitee or the Project Company Indemnitee, as applicable, at the reasonable request of such Indemnitee or such Project Company Indemnitee, that the Independent Building Expert has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) The Independent Building Expert shall not pay or settle such claims without the consent of the Indemnitee or the Project Company Indemnitee, as applicable, such consent not to be unreasonably withheld or delayed;

(E) Indemnitee and Project Company Indemnitee Rights to Conduct Defense. The Indemnitee or the Project Company Indemnitee, as applicable, may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) the Independent Building Expert is not entitled to take conduct of the claim in accordance with subsection (B) of this Section; or

(2) the Independent Building Expert fails to notify the Indemnitee or the Project Company Indemnitee, as applicable, of its intention to take conduct of the relevant claim within 15 Business Days of the notice from the Indemnitee or the Project Company Indemnitee under subsection (B) of this Section or notifies such Indemnitee or such Project Company Indemnitee that it does not intend to take conduct of the claim; or

(3) the Independent Building Expert fails to comply in any material respect with subsection (D) of this Section.

(F) Independent Building Expert Right to Settle Claims. In the case of clause (3) of subsection (D) of this Section, the Indemnitee or the Project Company Indemnitee, as applicable, may pay or settle any claim on such terms as it thinks fit (provided such settlement is in monetary terms only) and without prejudice to its rights and remedies under this Agreement. Otherwise the Indemnitee or the Project Company Indemnitee, as applicable, shall not pay or settle such claims without the consent of the Independent Building Expert, such consent not to be unreasonably withheld or delayed.

(G) Transfer of Conduct of Claim to Indemnitee or Project Company Indemnitee. The Indemnitee or the Project Company Indemnitee, as applicable, may at any time give notice to the Independent Building Expert 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 Independent Building Expert will promptly take all steps necessary to transfer the conduct of such claim to the Indemnitee or the Project Company Indemnitee, as applicable, and will provide to such Indemnitee or such Project

Company Indemnitee all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim. If an Indemnitee or a Project Company Indemnitee gives any notice pursuant to this subsection, then the Independent Building Expert will be released from any liability under its indemnity obligations under Section 10.1.

SECTION 10.3. GENERAL OBLIGATION TO PURSUE THIRD PERSON RECOVERY.

If the Independent Building Expert has paid to an Indemnitee or a Project Company Indemnitee an amount in respect of any indemnity hereunder (a “**Liability Payment**”), and such Indemnitee or such Project Company Indemnitee has a bona fide claim for recovery of any such Liability Payment from a third person or under any insurance required pursuant to this Agreement, the Indemnitee or the Project Company Indemnitee, as applicable, shall:

(1) as directed by the Independent Building Expert either:

(a) promptly make all reasonable efforts to pursue and recover such claim and provide evidence of such efforts to the Independent Building Expert; or

(b) assign to the Independent Building Expert the right to pursue and recover such claim and, at the Independent Building Expert’s cost, provide reasonable cooperation in connection with the pursuit and recovery of such claim; and

(2) if it subsequently recovers, or the Independent Building Expert makes recovery on its behalf, (whether by payment, discount, credit, saving, relief or other benefit or otherwise) an amount which is directly referable to the fact, matter, event or circumstances giving rise to the payment of the Liability Payment, forthwith repay to the Independent Building Expert an amount equal to the lesser of:

(a) an amount equal to the sum recovered (or of the value of the saving or benefit obtained) less any out of pocket costs and expenses properly incurred by the Indemnitee or the Project Company Indemnitee, as applicable, in recovering such sum; and

(b) the Liability Payment,

provided that the Independent Building Expert will be repaid only to the extent that the amount of such recovery plus the Liability Payment exceeds the total loss or liability of the Indemnitee or the Project Company Indemnitee, as applicable, in respect of the fact, matter or circumstance giving rise to the Liability Payment.

ARTICLE 11

MISCELLANEOUS PROVISIONS

SECTION 11.1. RELATIONSHIP OF THE PARTIES.

(A) Generally. The Independent Building Expert is an independent contractor of the City, the Port and the Project Company and the relationship among the parties shall be limited to performance of this Agreement in accordance with its terms. No party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by any other party.

(B) No Partnership or Employment Relationship. The Independent Building Expert, its officers, employees, representatives and agents and any other persons engaged by the Independent Building Expert in the performance of the Services will not by virtue of this Agreement or the performance of the Services become a partner, agent, legal representative or employee of the City, the Port and the Project Company for any purpose.

(C) Independent Building Expert Employees. The Independent Building Expert will be responsible for all matters requisite as employer or otherwise in relation to such officers, employees, servants and agents and other persons who are engaged by the Independent Building Expert. 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 the City, the Port or the Project Company as a result of this Agreement or the performance thereof.

(D) City as Regulatory Agency. The parties acknowledge and agree that the City executes this Agreement in its proprietary capacity as owner of the City Site and party to the Project Agreement, and not in its capacity as local regulatory agency.

SECTION 11.2. INDEPENDENT BUILDING EXPERT PERSONS.

The Independent Building Expert shall, as among itself and the City, the Port and the Project Company, be responsible for, and not relieved of its Independent Building Expert obligations hereunder by, the acts, omissions, breaches, defaults, non-compliance, negligence and willful misconduct of any of its directors, officers, employees, agents, subcontractors, representatives, or advisors (each an “**Independent Building Expert Person**”), and all references in this Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of the Independent Building Expert shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or willful misconduct committed by an Independent Building Expert Person.

SECTION 11.3. GENERAL INDEPENDENT BUILDING EXPERT ASSUMPTION OF RISK.

Except to the extent expressly allocated to the City, the Port or the Project Company or otherwise provided for under this Agreement, all risks, costs and expenses in relation to the performance by the Independent Building Expert of its obligations under this Agreement are allocated to, and accepted by, the Independent Building Expert as its entire and exclusive responsibility.

SECTION 11.4. WAIVER.

Failure by the City, the Port, the Project Company or the Independent Building Expert to enforce a provision of this Agreement shall not be construed as a waiver by that party of any right with respect to that provision, or any other provisions of this Agreement.

SECTION 11.5. NOTICES.

(A) Procedure. All notices, consents, certifications, approvals or written communications given pursuant to the terms of this Agreement 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 in subsection (B) 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, upon receipt, and if not delivered 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) Notice Addresses. Any notice or communication required or permitted to be given under this Agreement shall be addressed as follows:

if to the City:

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

with a copy to:

Office of the City Attorney
City of Long Beach
333 W. Ocean Blvd., 11th Floor
Long Beach, California 90802
Attention: Charles Parkin, City Attorney
Telephone No.: (562) 570-2200
Fax No.: (562) 436-1579

if to the Port:

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

if to the Independent Building Expert:

P2S Engineering, Inc
5000 E. Spring Street, 8th Floor
Long Beach, CA 90815
Attention: Kent Peterson
E-Mail: kent.peterson@p2seng.com
Telephone No.: (562) 497-2999
Fax No.: (562) 497-2990

if to the Project Company:

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

or to such other address as any party may, from time to time, designate in the manner set forth in subsection (A) of this Section.

SECTION 11.6. TRANSFER AND ASSIGNMENT.

(A) Independent Building Expert Actions. The Independent Building Expert:

(1) Shall not assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement without the prior written consent of the City, the Port and the Project Company, which the City, the Port or the Project Company may give or withhold in their absolute discretion; and

(2) agrees that any assignment, transfer, mortgage, charge or encumbrance will not operate to release or discharge the Independent Building Expert from any obligation or liability under this Agreement.

(B) Change in Control of Independent Building Expert. For the purposes of this Section, an assignment will be deemed to have occurred where there is a change in control of the Independent Building Expert after the date of this Agreement.

(C) City, Port and Project Company Actions. The City, the Port and the Project Company may assign, transfer, mortgage, charge or encumber any right or obligation under this Agreement in accordance with the terms of the Project Agreement.

SECTION 11.7. CONFIDENTIALITY.

(A) Independent Building Expert Responsibilities. Except as required by law, the Independent Building Expert shall ensure that:

(1) neither it nor any of its officers, employees, servants and agents disclose, or otherwise make public, any Project Material or any other information or material acquired in connection with or during the performance of the Services without prior written approval of the City, the Port and the Project Company; and

(2) no Project Material is used, copied, supplied or reproduced for any purpose other than for the performance of the Services under this Agreement.

(B) Confidentiality Agreements. The City, the Port and the Project Company may at any time require the Independent Building Expert to give and to arrange for its officers, employees, servants and agents engaged in the performance of the Services to give written undertakings, in the form of confidentiality agreements on terms required by the City, the Port and the Project Company, relating to the non-disclosure of confidential information, in which case the Independent Building Expert will promptly arrange for such agreements to be executed and delivered.

SECTION 11.8. PROJECT MATERIAL.

(A) Rights. The City, the Port, the Project Company and the Independent Building Expert agree that the Independent Building Expert does not and will not have any rights, including any Intellectual Property, in any Project Material provided to the Independent Building Expert or created or required to be created by the City, the Port or the Project Company.

(B) Title. All title and ownership, including all Intellectual Property, in and to the Project Material created or required to be created by the Independent Building Expert as part of, or for the purposes of performing the Services, is hereby assigned jointly to the City, the Port and the Project Company on creation, or where such title, ownership and Intellectual Property cannot be assigned before creation of the Project Material, it will be assigned to the City, the Port and the Project Company on creation. In addition, to the extent that there may be any copyright rights in such Project Material so created by the Independent Building Expert, the Independent Building Expert hereby waives all past, present and future moral rights therein and the Independent Building Expert will ensure that any agent or employee of Independent Building Expert will have waived all such moral rights. The Independent Building Expert shall do all such things and execute all such documents as reasonably requested by the City, Port and the Project Company in order to confirm or perfect the assignment of Intellectual Property in the Project Material referred to in this subsection.

SECTION 11.9. TIME OF THE ESSENCE.

Time will be of the essence of this Agreement and of the transactions contemplated by this Agreement.

SECTION 11.10. AMENDMENT.

No change or modification of this Agreement will be valid unless it is in writing and signed by each party to this Agreement.

SECTION 11.11. BINDING EFFECT.

Subject to the restrictions on transfer contained in this Agreement, this Agreement shall inure to the benefit of and shall be binding on the City, the Port, the Project Company and the Independent Building Expert and their respective heirs, executors, administrators, successors and assigns.

SECTION 11.12. REPRESENTATIONS AND WARRANTIES OF THE INDEPENDENT BUILDING EXPERT.

(A) Representations and Warranties. The Independent Building Expert warrants that:

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

(2) No Conflict of Interest. As further specified in subsections 2.6(2) and 2.6(7) and Section 2.9 of this Agreement, the Independent Building Expert has no interest that would constitute a conflict of interest.

(3) Compliance with Applicable Law Generally. The Independent Building Expert is in compliance in all material respects with Applicable Law and possesses the required License(s) pertaining to the Independent Building Expert's business and services.

(4) Non-Discrimination. The Independent Building Expert does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental and physical) including HIV and AIDS, domestic partner or marital status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender identity), sexual orientation, status as a veteran or any other basis prohibited by Applicable Law.

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

(6) Other Law Compliance. The Independent Building Expert and any personnel performing Contract Services are able to work legally in the United States and possess valid proof of work eligibility. The Independent Building Expert 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.

(7) Drug-Free Workplace. The Independent Building Expert provides a drug-free workplace as required by California Government Code sections 8355-8357.


(B) Continuing Effect. During the term of this Agreement, the Independent Building Expert shall not take any action, or omit to perform any act, that results in a representation and warranty made in this Section becoming untrue. The Independent Building Expert shall promptly notify the City, Port if any such representation and warranty becomes untrue. From time to time, the Independent Building Expert shall provide the City and Port, upon the City or Port's request, with proof of the continuing accuracy of these representations and warranties.

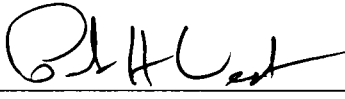
[SIGNATURE PAGE FOLLOWS]

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

APPROVED AS TO FORM:
Charles Parkin, City Attorney

CITY OF LONG BEACH

By: 
Name: Richard F. Anthony
Title: Deputy 3.30.16

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

APPROVED AS TO FORM:
Charles Parkin, City Attorney

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

P2S ENGINEERING, INC

By: _____
Name: _____
Title: _____

PLENARY PROPERTIES LONG BEACH LLC

By: _____
Name: _____
Title: _____

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

APPROVED AS TO FORM:
Charles Parkin, City Attorney

CITY OF LONG BEACH

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
Charles Parkin, City Attorney

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

By: Charles M. Gale
Name: Charles M. Gale
Title: Principal Deputy City Atty
4-4-06

By: Noelia Rodriguez
Name: NOELIA RODRIGUEZ
Title: MA, COMMUNICATIONS & Government Relations
managing DIRECTOR

P2S ENGINEERING, INC

By: _____
Name: _____
Title: _____

PLENARY PROPERTIES LONG BEACH LLC

By: _____
Name: _____
Title: _____

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

APPROVED AS TO FORM:
Charles Parkin, City Attorney

CITY OF LONG BEACH

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM:
Charles Parkin, City Attorney

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

By: _____

By: _____

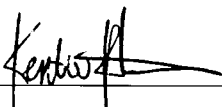
Name: _____

Name: _____

Title: _____

Title: _____

P2S ENGINEERING, INC

By:  _____

Name: Kent W Peterson, PE

Title: Vice President

PLENARY PROPERTIES LONG BEACH LLC

By: _____

Name: _____

Title: _____

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

APPROVED AS TO FORM:
Charles Parkin, City Attorney

CITY OF LONG BEACH

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:
Charles Parkin, City Attorney

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

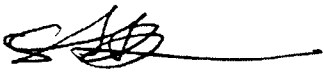
By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

P2S ENGINEERING, INC

By: _____
Name: _____
Title: _____

PLENARY PROPERTIES LONG BEACH LLC

By:  _____
Name: STUART MARKS
Title: SENIOR V.P.

APPENDIX 1

SERVICES

The Independent Building Expert shall, subject to and without limiting the other provisions of this Agreement and the Project Agreement, provide the services as set out below.

Part 1 – Pre-Occupancy Date Services

1.1 The Independent Building Expert shall carry out the responsibilities assigned to the Independent Building Expert and Commissioning Agent under this Agreement and the Project Agreement.

1.2 Without limitation to the obligations set forth in Section 1.1, prior to the Occupancy Date, the Independent Building Expert shall:

(i) attend meetings relating to the Project, review minutes and participate as necessary to remain informed of Project issues, or as requested by the City, the Port or the Project Company in connection with the Project Agreement;

(ii) prior to any reporting on the Project, consider the views and comments of the City, the Port and the Project Company in relation to the satisfaction that the Design-Build Work is proceeding in accordance with the requirements of the Project Agreement;

(iii) review and monitor reports of the Architect or of the Project Company and of any inspection agency retained by the City, the Port (including regulatory inspection agency reports and approvals) and the Project Company with respect to the Design-Build Work;

(iv) make any determinations set forth in the Project Agreement to be determined or reviewed by the Independent Building Expert;

(v) carry out inspections (including re-inspections if necessary) in order to determine whether the Occupancy Readiness Conditions for a given Facility have been satisfied and comply with the rules and procedures set forth in this Agreement and the Project Agreement in order to make such determination provided however that the Independent Building Expert may rely on the City's code enforcement inspectors to confirm compliance with code related items;

(vi) will take the lead role in coordinating the entire Commissioning process on behalf of the Project Company, from preparation of the Commissioning Plan through to the completion of Commissioning. The Commissioning Agent shall also be responsible for all items identified in Section 6 of Appendix 7 to the Project Agreement relating to the achievement of LEED NC Gold Certifications for each of the City Hall Building, the Port Headquarters Building and the Library. The Commissioning Agent shall be the Project Company's only representative with respect to the Commissioning process, and shall be the only point of contact in respect of Commissioning matters for the City and the Port throughout the Commissioning process

(vii) carry out inspections in order to determine Substantial Completion and Occupancy Readiness of any reasonable portion of the work (a Facility) that is completed, if earlier than the balance of the Design-Build Work provided however that the Independent Building Expert may rely on the City's code enforcement inspectors to confirm compliance with code related items; and

(viii) prepare, in consultation with the City, the Port and the Project Company, as soon as reasonably practicable and, in any event, within the time period specified in the Project Agreement, the Punch List, which shall include an estimate of the time for rectifying the Punch List Items and a schedule for the completion and rectification of the Punch List Items.

1.3 Prior to the Occupancy Date, the parties may request the Independent Building Expert to provide the following Additional Services, among others:

(i) provide any determination contemplated by this Agreement and the Project Agreement (to the extent such determinations relate to aspects of the Project which are not specifically identified in Part 2 of this Appendix), which determinations may, except as otherwise expressly provided in the Project Agreement, be subject to resolution among the City, the Port and the Project Company pursuant to Non-Binding Mediation;

(ii) provide advice on other matters that may arise that the City, the Port and the Project Company may jointly require to the extent such matters relate to the Project and which are not specifically identified in Part 2 of this Appendix;

(iii) at the request of the City, the Port and the Project Company, review information relating to Relief Events as they relate to the Project that occur prior to an Occupancy Date; and

(iv) participate in and give the City, the Port, the Project Company and their respective counsel, reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings among the City, the Port and the Project Company that relate to the Services identified in this Part 1 of this Appendix.

Part 2 – Post Occupancy Date Services

2.1 The Independent Building Expert shall perform any duties and responsibilities and make such determinations as may be specifically provided for in the Project Agreement after the Occupancy Dates of the Project and the determinations as may be specifically provided for in the Commissioning Plan, once accepted, in accordance with the terms of the Project Agreement (where applicable or as the City, the Port and the Project Company may jointly request from time to time).

2.2 The Independent Building Expert shall provide any determination contemplated by this Agreement and the Project Agreement (to the extent such determinations relate to aspects of the Project to be performed after the Occupancy Dates), which determinations may, except as expressly provided in the Project Agreement, be subject to resolution pursuant to Non-Binding Mediation.

2.3 Subsequent to an Occupancy Date in respect of a Facility, the parties may request the Independent Building Expert to provide the following Additional Services, among others:

(i) provide advice on other matters that may arise that the City, the Port and the Project Company may jointly require to the extent such matters relate to aspects of such Facility to be completed after the Occupancy Date of such Facility;

(ii) assist with the resolution of disputes among the City, the Port and the Project Company relating to the Commissioning Plan;

(iii) participate in and give the City, the Port and the Project Company and their respective counsel, reasonable cooperation, access and assistance (including providing or making available documents, information and witnesses for attendance at hearings and other proceedings) in connection with any proceedings among the City, the Port and the Project Company that relate to the Services identified in this Part 2 of this Appendix.

APPENDIX 2

FEE

Base Fee Schedule

\$637,000 in total payable as follows:

- 42 monthly installments of \$13,500 payable monthly in arrears; plus
- \$25,000 upon Occupancy Date of the City Hall Building; plus
- \$25,000 upon Occupancy Date of the Port Headquarters Building; plus
- \$20,000 upon Occupancy Date of the Library and Lincoln Park,

in each case payable within 30 days of receipt of invoice.

Hourly Rates for Additional Services

Principal/IBE	\$291
Project Manager (CxA3)	\$197
Sr. Commissioning Agent (CxA2)	\$236
Structural Engineer (SE)	\$220
Commissioning Agent (CxA2)	\$170
Staff/Technician (CxT)	\$122
Administration	\$84

APPENDIX 3

INDEPENDENT BUILDING EXPERT PERSONNEL

The following personnel shall be involved in the performance of the Services:

Name	Company	Role
Kent Peterson PE	P2S Engineering Inc.	Independent Building Expert
Aravind Batra PE	P2S Engineering Inc.	Independent Building Expert
Lance Kenyon SE	MHP Structural Engineers	Independent Building Expert
David Howard CCP	P2S Engineering Inc.	Project Manager
Gerry Massey PE, CxA	P2S Engineering Inc.	Sr. Commissioning Agent
Lawrence DeHart CxA	P2S Engineering Inc.	Commissioning Agent
Bryant Mercado EIT, CxT	P2S Engineering Inc.	Commissioning Technician

APPENDIX 4

OCCUPANCY READINESS NOTICE

To: P2S ENGINEERING, INC, _____, California, with copies to the City and Port

From: PLENARY PROPERTIES LONG BEACH LLC, 10100 Santa Monica Blvd., Suite 410
Los Angeles, California 90067, with a copy to the Architect

Re: Project Agreement, dated [●], 2016, among CITY OF LONG BEACH, CITY OF LONG BEACH, by and through its Board of Harbor Commissioners (the "City/Port") and PLENARY PROPERTIES LONG BEACH LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Project Company").

Note: This Notice of Occupancy Readiness is subject to the terms and conditions of the Independent Building Expert Agreement and the Project Agreement and any revision required by such either should be made to this Notice of Occupancy Readiness, if applicable.

Under and subject to the terms and conditions of the Project Agreement, the undersigned hereby applies for the certification of Occupancy Readiness of the [●] [INSERT APPLICABLE FACILITY]. In support of that application, I hereby certify that:

- (a) Substantial Completion has occurred;
- (b) such Facility is ready for use or is being used for the purposes of normal office operations except for Punch List Items;
- (c) the Architect has issued a letter of confirmation to the City and Port and the Independent Building Expert indicating that all buildings and systems at 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 the Project Agreement;
- (d) there are no encumbrances registered or recorded on the Sites or any part of the Facility other than Permitted Encumbrances;
- (e) the Project Company has completed Commissioning of such 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);
- (f) a temporary or final certificate of occupancy has been issued for such Facility by the authorities having jurisdiction;
- (g) all other Governmental Bodies having jurisdiction have confirmed (and issued all pertinent Government Approvals or other documents in respect thereof) that all buildings and structures at such Facility are ready for occupancy;
- (h) the Project Company has obtained and submitted to the City and Port certificates of insurance for all Required Operating Period Insurance specified in Appendix 9 (Insurance Requirements);

(i) the Project Company has delivered to the City and Port a reasonable operation procedures plan as required by Appendix 8 (FM Standards) and Appendix 8A (FM Standards – Port FM Facilities);

(j) the Project Company has delivered to the City and the Port a reasonable Master Maintenance Plan as required by Appendix 8 (FM Standards) and Appendix 8A (FM Standards – Port FM Facilities); and

Without limiting the generality of the foregoing, it is further certified that:

(i) All work to be done with respect to the design and construction of such Facility that is the subject of this review for Substantial Completion has been completed in accordance with the terms of the Project Agreement (other than Punch List Items), and in so doing has been carried out in a competent and professional manner.

(ii) Attached to this certificate is evidence confirming the delivery of:

(A) the applications programming and related documentation for all microprocessor based controllers for such Facility;

(B) copies of all operating instructions, maintenance manuals, spare parts and materials relating to such Facility and operation thereof as well record drawings relating to security systems at such Facility (including, without limitation, perimeter security, locking systems, camera and television security systems and related security systems); and

(iii) The estimated cost of completion of Punch List Items described in section (c) is \$_____.

It is hereby acknowledged that the issuance of an Occupancy Readiness Certificate does not constitute, and shall not be construed, as a waiver of any defect in the work or in the materials supplied in connection therewith (whether latent or otherwise), or any other breach by the Project Company of any of its obligations under the Project Agreement, whether known or not known to the City or the Port at the time of the issue of an Occupancy Readiness Certificate in respect of this Notice of Occupancy Readiness.

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

PLENARY PROPERTIES LONG BEACH LLC

By: _____
(Name and Signature of Authorized Signatory)

APPENDIX 5

OCCUPANCY READINESS CERTIFICATE

This certificate is delivered pursuant to Section 4.4(B) of the Independent Building Expert Agreement dated _____, 2016, among the undersigned, CITY OF LONG BEACH (“City”), CITY OF LONG BEACH, acting by and through its Board of Harbor Commissioners (“Port”) and PLENARY PROPERTIES LONG BEACH LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of California (the “Project Company”) in connection with the Project Agreement among the City, Port and the Project Company, dated [●], 2016, with respect to the Long Beach Civic Center (the “Project Agreement”).

Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Project Agreement.

I hereby certify that the Occupancy Readiness Conditions specified in Section 8.4 of the Project Agreement have been satisfied with respect to [●] [INSERT APPLICABLE FACILITY], and accordingly that the Occupancy Date of such Facility has occurred.

This certificate is issued on _____, which shall be considered the Occupancy Date of such Facility for the purposes of the Project Agreement.

P2S ENGINEERING, INC

By: _____
Name: _____
Title: _____

APPENDIX 6

PROPOSAL MATERIALS

- Proposal & Statement of Qualifications for Independent Building Expert Services, dated February 19, 2016, in response to Request for Proposal for Independent Building Expert Services in respect of the New Long Beach Civic Center dated January 29, 2016.

APPENDIX 7

PROJECT COMMISSIONING

1. PURPOSE

1.1 Purpose. The purpose of Commissioning is to provide a systematic process of assuring by verification and documentation, from the design phase and throughout the Term, that all Project systems perform interactively in accordance with the Contract Standards. The parties acknowledge that because many Project systems are integrated, a deficiency in one or more components can result in sub-optimal operation and performance among other components. Remediating these deficiencies can result in a variety of benefits including: (i) improved productivity of Project Users; (ii) lower utility bills through energy savings; (iii) increased satisfaction of Project Users; (iv) enhanced environmental conditions, health conditions and comfort of Project Users; (v) improved Project system and Project Equipment function; (vi) improved Project operation and maintenance; (vii) increased safety for Project Users; (viii) better Project documentation; (ix) shortened occupancy transition period; and (x) significant extension of Project Equipment and Project systems life cycles.

1.2 Minimum Requirements. This Appendix sets forth the minimum Commissioning requirements to be incorporated into the Commissioning Plan with which the Project Company is required to comply with respect to testing equipment and sub-systems as well as conducting Project operations.

2. DEFINITIONS

2.1 Definitions. In this Appendix, in addition to the definitions set forth in this Project Agreement:

“**Commissioning Agent**” has the meaning set forth in Section 4.1 of this Appendix.

“**Commissioning Tests**” means the quality assurance process implemented by the Project Company to achieve, verify and document that the planning, design, construction and operational processes and all components of the Project (including Project Equipment) are functional and in compliance with the Contract Standards.

“**LEED Specialist**” means the individual with Leadership in Energy and Environmental Design accredited professional status named by the Project Company and approved by the City and the Port, in their reasonable discretion.

All other capitalized terms used in this Appendix and not otherwise defined shall have the meanings given to them in Section 1.1 of this Project Agreement.

3. COMMISSIONING PLAN OBJECTIVES

3.1 Commissioning Plan. Pursuant to Section 7.18 (Commissioning and Training) of this Project Agreement, the Project Company shall prepare and submit to the Owner for its approval a detailed Commissioning Plan for the conduct of Commissioning Tests that will ensure:

- (a) the planning, design, construction and operational processes have achieved their intended outcome;

- (b) in respect of the FM Facilities, the continued efficient operation of each such Facility during the Operating Period;
- (c) all participants follow an approved plan to ensure a completed Facility will realize its intended level of comfort for Project Users and operational efficiency by the Occupancy Date for such Facility and, in respect of the FM Facilities, throughout the Operating Period;
- (d) all stakeholders in a Facility understand their responsibilities for Commissioning Tests prior to the Occupancy Date for such Facility and during Commissioning;
- (e) all Project Users will be fully familiar with the Facility and will understand their continuous role in its efficient operation;
- (f) the completed Facility allows the Project Users to carry out activities in a secure and efficient manner and achieves a balance between the circulation, proximity, appropriate room adjacencies and the security requirements for such Facility in accordance with the Contract Standards; and
- (g) in respect of the City Hall Building, the Port Headquarters Building and the Library, the intended LEED NC Gold Certification for the Facility can be achieved and maintained through the Operating Period.

4. COMMISSIONING AGENT

4.1 Commissioning Agent Background. The Project Company shall engage the services of a Commissioning Agent having technical background and in depth expertise with the Commissioning process including verification techniques, functional performance testing, system equipment and operation and maintenance knowledge (the "Commissioning Agent"). The Commissioning Agent shall be acceptable to the City and the Port and have specialized experience in commissioning recently constructed buildings of similar complexity, size and type to the City Facilities and the Port Facilities. The Commissioning Agent must be a person that specializes in building commissioning and shall be commercially independent of any person already engaged by the Project Company for provision of the Contract Services (other than the Independent Building Expert). In the event that the Project Company proposes a Commissioning Agent that the City or the Port reasonably believes cannot meet the requirements stated in this Appendix, the Project Company shall propose an alternative Commissioning Agent that is acceptable to the City and the Port. If the parties are unable to agree with the Commissioning Agent, the Commissioning Agent shall be selected in accordance with the dispute resolution procedures set forth in Article 20 of this Project Agreement.

4.2 Commissioning Agent Knowledge. The Commissioning Agent shall bring a total building commissioning perspective to the Project and be knowledgeable in (and where applicable, federal, State and local): (i) building fire codes; (ii) water-based extinguishing systems; (iii) detection systems; (iv) LEED; (v) energy efficiency imperatives; and (vi) other building requirements.

4.3 Commissioning Agent Roles. The Commissioning Agent will take the lead role in coordinating the entire Commissioning process on behalf of the Project Company, from preparation of the Commissioning Plan through to the completion of Commissioning. The Commissioning Agent shall also be responsible for all items identified in Section 6 of this Appendix relating to each of the City Hall Building, the Port Headquarters Building and the Library capable of achieving LEED NC Gold Certification. The Commissioning Agent shall be the Project Company's only representative with respect

to the Commissioning process, and shall be the only point of contact in respect of Commissioning matters for the City, the Port and the Independent Building Expert throughout the Commissioning process.

4.4 Commissioning Agent Selection. The Project Company shall propose a person acceptable to the City and the Port who can act as a substitute for the named Commissioning Agent in the event that the Commissioning Agent is unavailable or otherwise unable to complete this role.

4.5 Commissioning Agent Restriction. The Commissioning Agent shall not be the same person as the LEED Specialist and shall be subject to the qualifications and restrictions as set forth in Section 4.1 and 4.2 of this Appendix.

5. COMMISSIONING PLAN REQUIREMENTS AND FORMAT

5.1 Purpose. The object of conducting Commissioning Tests is to provide documented confirmation that each Facility fulfills the functional and performance requirements set forth in this Project Agreement. To attain this goal, it is necessary to address all Owner requirements and criteria relating to system function, performance and maintainability as set forth in the Contract Standards.

5.2 Commissioning Plan Preparation. The preparation of the Commissioning Plan shall begin as early as practicable in the design process and shall be submitted to the Owner in accordance with Section 7.18 (Commissioning and Training) of this Project Agreement and this Appendix. Table 7-1 below provides a minimum framework for the types of requirements that shall be considered by the Commissioning Agent and the Project Company when preparing the Commissioning Plan.

Table 7-1
Minimum Commissioning Plan Requirements

<u>Category</u>	<u>Requirement</u>
Accessibility	Access and use by children, aged and disabled persons
Acoustics	Control of internal and external noise and intelligibility of sound
Comfort	Identify and document those comfort problems that have caused complaints in the past and which will be avoided in the Project (i.e., glare, uneven air distribution, water pressure, etc.)
Durability	Retention of performance over required service life
Energy	Conformance with goals for energy efficiency
Fire Protection and Life Safety	Fire protection and life safety systems
Flexibility	For future Project changes and expansions
Green Building Concepts	Sustainability concepts, including LEED certification goals
Health and Hygiene	Protection from contamination from wastewater, garbage and other

	wastes, emissions and toxic materials
Indoor Environment	Including hydrothermal, air temperature, humidity, condensation, indoor air quality and weather resistance
Maintenance Requirements	Varied level of knowledge of maintenance staff and the expected complexity of the proposed systems
Security	Protection against intrusion (physical, thermal, sound, etc.) and vandalism and chemical/biological/radiological threats
Standards Integration	Integration of approved federal, State, and local standards and requirements

5.3 Additions to Commissioning Plan. The Commissioning Plan shall also provide for Commissioning Tests to be conducted with respect to major equipment and building systems, relating to the following:

- (a) installation verification and quality checks;
- (b) start-up;
- (c) functional testing;
- (d) representative sampling, where appropriate;
- (e) acceptance reports;
- (f) deficiency documentation and correction process;
- (g) user instruction, where appropriate;
- (h) orientation, classroom and field training to be provided by the Project Company for Project Users prior to the Occupancy Date of the Facility to be commissioned, such training to be acceptable to the Owner, in its reasonable discretion. Such training and orientation shall include, among other things: security systems, audio-visual systems, communications systems and Project Equipment installed by the Project Company. Additional orientation, classroom and field training on other specific requirements regarding building orientation and security and communications systems shall also be provided by the Project Company, as requested by Owner, in its reasonable discretion;
- (i) recorded media for demonstration and training for the City, the Port and Project Users, where appropriate; and
- (j) preparation of operating and maintenance manuals for each component of a Facility and Project Equipment installed in such Facility and each complete system to be tested in such Facility, notwithstanding the fact that, in respect of the FM Facilities, the Project Company shall be responsible for such operation and maintenance during the Term.

5.4 Commissioning Standards. The Project Company shall prepare the Commissioning Plan by taking into account the Contract Standards as well as the items in Table 7-1, and the Commissioning Plan shall set forth how Commissioning Tests will be handled and managed for each Facility. In general, the Commissioning Plan shall include a discussion of the Commissioning process, schedule, team and team member responsibilities, communication structures and a general description of the systems to be tested.

5.5 Commissioning Agent Duties. The Commissioning Agent shall be engaged sufficiently early in the design process to ensure that the Project Company is eligible for all LEED credits associated with the Commissioning Tests of the Project. The Commissioning Agent shall work closely with the LEED Specialist to inform the design process, ensure Commissioning Tests requirements are considered in design selections and appropriate Commissioning Tests instructions are included in the construction specifications for each aspect of the Design-Build Work.

5.6 Monthly Reports. Prior to the commencement of the Commissioning Tests for a Facility, the Commissioning Agent shall prepare monthly reports to record the progress made on Commissioning decisions and procedures. The Project Company shall provide the Owner with at least 30 days' prior written notice of the expected initiation of such Commissioning Tests.

5.7 Commissioning Plan. The Commissioning Plan shall:

- (a) identify the names, roles, and where appropriate, the qualifications of all persons proposed to perform a role in the Commissioning process;
- (b) contain provisions which ensure successful completion of all Commissioning Tests and all other Commissioning activities required for the proper Commissioning of the relevant Facility and all Project Equipment (both prior to the Occupancy Date for such Facility and during Commissioning), to the satisfaction of the Owner and the Independent Building Expert, in their reasonable discretion;
- (c) contain provisions which will ensure successful completion of all Commissioning Tests and other Commissioning activities required prior to the Occupancy Date for such Facility, to the satisfaction of the Owner and the Independent Building Expert, in their reasonable discretion;
- (d) contain provisions which will ensure successful completion of all Commissioning Tests and other Commissioning activities during Commissioning, to the satisfaction of the Owner and the Independent Building Expert, in their reasonable discretion;
- (e) contain provisions which will ensure employment by Project Company of commissioning procedures that are prescribed by Applicable Law using methodologies so prescribed and methodologies prescribed in the Contract Standards;
- (f) contain provisions which will ensure that standards or results to be achieved in each test, for such tests to be successful, shall satisfy all standards or results applicable to such Commissioning Tests as contained in the Contract Standards and those recommended by the manufacturer of that part of the Facility or the Project Equipment with respect to which the Commissioning Tests is to be performed;
- (g) contain provisions which ensure that the Commissioning Plan shall not propose a test or procedure that deviates from any procedure, standard, or specification intended by the

Contract Standards unless specifically approved in writing by the Owner and the Independent Building Expert;

- (h) contain provisions which require that all Commissioning Tests results and copies of all certificates and Governmental Approvals received by the Project Company in connection with any Commissioning Tests shall be provided to the Owner and the Independent Building Expert;
- (i) contain an achievable schedule for the Commissioning Tests which shows the name, timing and dependencies of each step in the critical path schedule to achieve Occupancy Readiness of the relevant Facility;
- (j) ensure that the prescribed prerequisites and credits necessary for the intended LEED NC Gold Certifications can be achieved and that in respect of the City Hall Building, the Port Headquarters Building and the Library, the FM Contractor or the Port, as the case may be, can maintain such Facilities in accordance with LEED-EB Gold criteria through the Operating Period; and
- (k) contain provisions providing that where Commissioning Tests have been successfully completed as required by the approved Commissioning Plan and where such Commissioning Tests are identical to Commissioning Tests that are required to satisfy any subsequent approved Commissioning Plan requirement and such test would be redundant, the Commissioning Tests do not need to be repeated unless specifically required by a Governmental Body or Applicable Law.

5.8 Plan Structure. The suggested structure of the Commissioning Plan is set forth in Table 7-2. The Project Company may prepare a Commissioning Plan that deviates from this suggested structure. Any Commissioning Plan shall, however, be approved by the Owner, acting reasonably.

Table 7-2
Suggested Commissioning Plan Structure

<u>Section</u>	<u>Description</u>
Introduction	Purpose and general summary of the Commissioning Plan
General Project and Facility Information	Overview of the Project and the particular Facility, emphasizing key Project and Facility information and delivery method characteristics
Commissioning Scope	The Commissioning scope including which Facility assemblies, systems, subsystems and equipment will be tested
Team Contacts	The Commissioning Agent's contact information as well as any other relevant Commissioning team member's contact information
Communication Plan and Protocols	Documentation of the communication channels to be used throughout the Project with respect to Commissioning Tests

<u>Section</u>	<u>Description</u>
Commissioning Process	Detailed description of the specific tasks to be accomplished during the Design-Build Period and, in respect of FM Facilities, during the Operating Period
Commissioning Documentation	List of Commissioning Test documents required to identify expectations, track conditions and decisions and validate/certify performance
Commissioning Schedule	Specific sequences of events and relative timeframes, dates and durations

6. COMMISSIONING FOR LEED CERTIFICATION

6.1 LEED Requirements Preparation. Pursuant to this Project Agreement and as set forth in Appendix 5 (D&C Standards), the Project shall achieve a LEED NC Gold Certification. The Project Company shall ensure that the Commissioning process activities comply with the prerequisite criteria for fundamental building Commissioning to achieve LEED NC Gold Certification.

6.2 LEED Requirements and the Commissioning Plan. In accordance with all applicable LEED Commissioning Tests requirements, the following items shall be addressed in the Commissioning Plan for each Facility: (i) independent review of design development documents; (ii) independent review of construction documents; (iii) focused review of contractor submittals to verify compliance with requirements; (iv) an indexed systems manual; and (v) post-Occupancy Date review of the Facility.

7. EXCLUSIONS FROM THE COMMISSIONING PLAN

7.1 Exclusions from Commissioning Plan. The following items shall not be included in the Commissioning Plan:

- (a) the Broadway Garage and the Lincoln Garage (except to the extent modified by the Library construction);
- (b) City, Port and other Project Users telephone equipment that is not installed by the Project Company;
- (c) City, Port and other Project Users active electronic information technology equipment that is not installed by the Project Company;
- (d) any other City, Port or other Project User provided equipment without the Project Company's contractual involvement; and
- (e) City, Port or other Project User leased equipment such as copiers, fax machines, printers provided without the Project Company's involvement.

8. COMMISSIONING ACTIVITIES DURING DESIGN

8.1 Design Responsibilities. The Commissioning Agent shall be familiar with all Contract Standards and shall review the Project Company’s proposed design as it is developed to assure such design complies with the Contract Standards. The Commissioning Agent may recommend changes to ensure compliance with the Contract Standards or to improve energy efficiency, operation and maintenance and equipment reliability to the Project Company so that any necessary changes may be made by the Project Company prior to, rather than after, installation. Notwithstanding the foregoing, the Commissioning Agent is responsible for reviewing the design from a Commissioning perspective and shall not be responsible for design concepts and criteria that do not comply with the Contract Standards as such are the responsibility of the Project Company pursuant to this Project Agreement.

8.2 Scope of Review. The general scope of the Commissioning Agent’s review during the design phase shall be as set forth in Table 7-3. The design review scope set forth in Table 7-3 shall demonstrate the minimum scope to be set forth in the Commissioning Plan and shall not preclude additional review responsibilities of the Commissioning Agent agreed upon by the parties in the approved Commissioning Plan.

Table 7-3
Commissioning Agent Design Review Scope

<u>Design Aspect</u>	<u>Review Scope</u>
Certification Facilitation	Review Design Documents to facilitate Project certification goals (i.e., does design meet LEED criteria)
Commissioning Facilitation	Review Design Documents to facilitate effective Commissioning Tests
Commissioning Specifications	Verify that Design Documents adequately specify Commissioning, including testing requirements by equipment type
Electrical	Review the electrical concepts and systems for possible enhancements
Energy Efficiency	Review of adequacy of the effectiveness of building layout and efficiency of system types and components for building shell, HVAC systems and lighting systems
Envelope	Review envelope design and assemblies for thermal and water integrity, moisture vapor control and assembly life, including impacts of interior surface finishes and impacts and interaction with HVAC systems
Fire Protection and Life Safety	Review the Design Documents to facilitate effective Commissioning Tests of fire protection and life safety systems and to aid in system testing to obtain any related Governmental Approvals

<u>Design Aspect</u>	<u>Review Scope</u>
City Design Guidelines and Standards	Verify that the Design Documents comply with the Contract Standards
Functionality	Ensure the design maximizes the functional needs of the Project Users
Indoor Environmental Quality	Review to ensure that system relating to thermal, visual, acoustical, air quality, comfort, and air distribution maximize comfort and are in compliance with the Contract Standards
Life Cycle Costs	Review a life cycle assessment of the primary competing mechanical systems relative to energy efficiency, operation and maintenance, indoor environmental quality, functionality, and sustainability
Mechanical	Review Design Documents to ensure flexible and efficient operation as required by the Contract Standards, including off-peak heating/cooling, air handling unit operations, size and zoning of air handling units, and thermostated areas
Operations and Maintenance	Review for effects of specified systems and layout toward facilitating operations and maintenance (equipment accessibility, system control, etc.)
Operations and Maintenance Documentation	In respect of FM Facilities, verify adequate Facility operations and maintenance documentation requirements and furnish such documentation to the Owner
City's and Port's Requirements	Verify that the Design Documents and, in respect of FM Facilities, the Operating Protocol comply with the Owner's requirements set forth in this Project Agreement
Structural	Review the structural concepts and design for potential enhancements
Sustainability	Review to ensure that the building materials, landscaping, water and waste management create less of an impact on the environment, contribute to creating a healthful and productive workspace, and are in compliance with this Project Agreement
Training	Verify adequate operator training requirements

9. COMMISSIONING ACTIVITIES DURING CONSTRUCTION

9.1 Construction Responsibilities. During the course of construction activities throughout the Design-Build Period, the Commissioning goal shall be to assure the levels of quality

required by the Contract Standards are satisfied. The Commissioning activities during construction shall be a well orchestrated quality assurance process and shall be set forth in the Commissioning Plan, and shall include:

- (a) installation;
- (b) start-up;
- (c) functional performance testing; and
- (d) training.

9.2 Construction Compliance with Contract Standards. The Commissioning Agent shall review those items that are critical to the focus of the Commissioning process. This review shall allow the Commissioning Agent to review the construction process for compliance with the Contract Standards. The Commissioning Agent shall only comment to the extent that there is a perceived or reported deviation from the Contract Standards, and all such comments shall be reviewed by the Project Company, the Owner and the Independent Building Expert who shall all cooperate with each other and the Commissioning Agent to ensure compliance with the Contract Standards.

9.3 Functional Performance Tests. Functional performance testing occurs after the components have been installed and the construction checklists have been completed. Functionally testing the systems of the Project as a whole evaluates the ability of the components in a system to work together to achieve compliance with the Contract Standards. The functional performance tests are the most important aspect of the Commissioning process and system troubleshooting based upon such tests shall be a critical function of the Commissioning Agent. If the Commissioning Agent discovers equipment or systems that are not performing in accordance with the Contract Standards prior to Occupancy Readiness of a Facility, the Project Company shall correct and re-test such equipment or systems pursuant to Article 8 of this Project Agreement.

10. PERFORMANCE OF COMMISSIONING TESTS

10.1 Notice and Execution of Tests. Under the direction of the Commissioning Agent, appropriately qualified personnel of the Project Company shall implement all Commissioning Tests as set forth in the Commissioning Plan. The Project Company shall give a minimum of 30 days notice as to when the Commissioning Test will begin, and shall invite the Owner and the Independent Building Expert to witness and to comment on each aspect of the Commissioning Tests up until all Commissioning Tests are fully complete (which includes all Commissioning Tests up until the end of Commissioning). The Project Company shall, together with such notice to the Owner and the Independent Building Expert, provide them with all information they may reasonably require in relation thereto, including, without limitation: (i) tests proposed; (ii) test methodology; and (iii) expected test results. In addition, the Owner and the Independent Building Expert shall be provided with full and reasonable access to all Commissioning activities to ensure they remain fully informed of the process.

10.2 Test Results. Within 15 Business Days following the last day of the Commissioning Tests performed pursuant to this Section, the Project Company shall provide the Owner and the Independent Building Expert with two copies of a written Commissioning Test setting forth the results of such Commissioning Tests, certified as true, complete and correct by the Project Company.

10.3 Commissioning Agent Not to Perform Tests. The Commissioning Agent shall not perform any of the Commissioning Tests and the Commissioning Agent's actions shall not relieve the Project Company from any of the Project Company's obligations under this Project Agreement.

11. OTHER COMMISSIONING ACTIVITIES

11.1 Other Activities. Other Commissioning activities to be performed by the Project Company shall include but not be limited to:

- (a) the implementation of building orientation and information sessions for Project Users after the Occupancy Date in respect of a Facility;
- (b) the initiation of the facilities management help desk operation and orientation of Project Users, as described in Appendix 8 (FM Standards) of this Project Agreement (with respect to the City Facilities, the Shared Facilities and the Shared Rooms) and Appendix 8A (FM Standards – Port FM Facilities) of this Project Agreement (with respect to the Port FM Facilities) of this Project Agreement, after the Initial Occupancy Date;
- (c) the review of the Project Company's emergency procedure and life safety plans prior to the Initial Occupancy Date;
- (d) prior to the Occupancy Date in respect of a Facility, submit to the Owner and Independent Building Expert for review relevant Project records including, but not limited to:
 - (i) copies of all Governmental Approvals prior to the Occupancy Date for such Facility;
 - (ii) a certified schedule of final Facility areas calculated in accordance with the Contract Standards;
 - (iii) final Commissioning Test acceptance reports relating to Commissioning Tests conducted prior to the Occupancy Date for such Facility; and
 - (iv) record drawings relating to security systems at the Facility; and
- (e) as soon as practicable after the completion of Commissioning, but no later than 100 days after Commissioning, the Project Company shall submit to the Owner and the Independent Building Expert for review relevant Project records including, but not limited to:
 - (i) acoustical performance test reports with normal occupant loads and Project system operation, including emergency generator under load;
 - (ii) air balancing reports for the operating Facility; and
 - (iii) final Commissioning acceptance reports relating to the Commissioning Tests conducted during Commissioning.