

TRANSACTION FORM B-1
FORM OF LENDERS' DIRECT AGREEMENT (CITY)

LENDERS' DIRECT AGREEMENT (CITY)

for the

NEW LONG BEACH CITY HALL, NEW MAIN LIBRARY, NEW PORT OF LONG BEACH
HEADQUARTERS BUILDING AND REVITALIZED LINCOLN PARK

between

CITY OF LONG BEACH

and

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

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

and

[COLLATERAL AGENT]

Dated [•], 2016

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Table of Contents

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION	1
Section 1.1 <u>DEFINITIONS</u>	1
Section 1.2 <u>INTERPRETATION</u>	6
ARTICLE 2 CONSENT TO SECURITY	8
Section 2.1 <u>CONSENT</u>	8
Section 2.2 <u>NO NOTICE OF OTHER SECURITY</u>	9
Section 2.3 <u>CITY OBLIGATIONS</u>	9
Section 2.4 <u>CITY’S RIGHTS NOT PREJUDICED</u>	9
ARTICLE 3 NOTICES.....	10
Section 3.1 <u>CITY’S EVENT NOTICES</u>	10
Section 3.2 <u>CITY’S TERMINATION NOTICE</u>	10
Section 3.3 <u>AGENT’S NOTICE OF NOTE PURCHASE AGREEMENT EVENT OF DEFAULT</u>	10
Section 3.4 <u>AGENT’S INDICATIVE NOTICE</u>	10
Section 3.5 <u>AGENT’S WITHDRAWAL NOTICE</u>	11
Section 3.6 <u>NOTICE OF ANTECEDENT LIABILITIES</u>	11
Section 3.7 <u>SUBSEQUENT CITY NOTICE OF LIABILITIES</u>	11
Section 3.8 <u>NO RIGHT TO TERMINATE OR TAKE RESTRICTED ACTION</u>	11
Section 3.9 <u>AGENT’S RIGHT TO CURE A PROJECT COMPANY BREACH OR DEFAULT WITHOUT STEP-IN OR TRANSFER</u>	12
Section 3.10 <u>OTHER PROJECT COMPANY EVENTS OF DEFAULT</u>	12
ARTICLE 4 STEP-IN.....	12
Section 4.1 <u>AGENT’S STEP-IN NOTICE</u>	12
Section 4.2 <u>CONTENTS OF STEP-IN NOTICE</u>	12
Section 4.3 <u>ONE STEP-IN PERIOD</u>	13
Section 4.4 <u>APPOINTED REPRESENTATIVE RIGHTS</u>	13
Section 4.5 <u>CITY RIGHT TO TERMINATE</u>	13
ARTICLE 5 STEP-OUT.....	14
Section 5.1 <u>AGENT’S STEP-OUT NOTICE</u>	14
Section 5.2 <u>EXPIRATION OF STEP-IN PERIOD</u>	14
Section 5.3 <u>PROJECT COMPANY REMAINS BOUND</u>	14
ARTICLE 6 PURCHASER REPLACEMENT OF THE PROJECT COMPANY	15
Section 6.1 <u>PROJECT COMPANY TRANSFER NOTICE</u>	15
Section 6.2 <u>CITY CONSENT</u>	15
Section 6.3 <u>WITHHOLDING OF CONSENT</u>	15
Section 6.4 <u>TERMS OF TRANSFER</u>	15
ARTICLE 7 IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS.....	16

ARTICLE 8 COVENANTS	17
Section 8.1 <u>CITY COVENANTS</u>	17
Section 8.2 <u>AGENT COVENANTS</u>	18
Section 8.3 <u>PROJECT COMPANY COVENANT</u>	19
ARTICLE 9 ASSIGNMENT	19
Section 9.1 <u>RESTRICTION ON ASSIGNMENT</u>	19
Section 9.2 <u>ASSIGNMENT BY AGENT</u>	19
Section 9.3 <u>ASSIGNMENT BY PURCHASER</u>	19
Section 9.4 <u>ASSIGNMENT BY CITY</u>	19
Section 9.5 <u>NEW AGREEMENT</u>	19
ARTICLE 10 GENERAL	19
Section 10.1 <u>TERM</u>	19
Section 10.2 <u>NO CITY OR STATE RESPONSIBILITY FOR SENIOR DEBT</u>	20
Section 10.3 <u>CONFLICT OR INCONSISTENCY</u>	21
Section 10.4 <u>ENTIRE AGREEMENT</u>	21
Section 10.5 <u>VENUE</u>	21
Section 10.6 <u>WAIVER</u>	21
Section 10.7 <u>COUNTERPARTS</u>	22
Section 10.8 <u>CONFIDENTIALITY</u>	22
Section 10.9 <u>NOTICES</u>	22

LENDERS' DIRECT AGREEMENT (CITY)

This LENDERS' DIRECT AGREEMENT (CITY) (this "Agreement") is made and entered into as of [•], 2016, by and among the City of Long Beach (the "City"), the City of Long Beach, acting by and through the Board of Harbor Commissioners (in such capacity, the "Port"), and Plenary Edgemoor Civic Partners, LLC, a limited liability company, organized and existing under the laws of the State of Delaware and authorized to do business in the State of California (the "Project Company") and [name of Purchasers' agent], acting as agent to the Purchasers (as defined below) pursuant to the Note Purchase Financing Documents (as defined below) (the "Agent").

RECITALS

The City, the Port and the Project Company have entered into the Project Agreement (as such term is defined below);

Pursuant to the Note Purchase Agreement (defined below), the Purchasers (defined below) have agreed, subject to the terms and conditions contained therein, to purchase from the Project Company certain notes in connection with the financing of the construction of the City Facilities (as defined in the Project Agreement) and the Shared Rooms (as defined in the Project Agreement, collectively the "City Projects") and the financing of the payment described in Section 6.1(D) of the Project Agreement; and

It is a condition precedent to the obligations of the Purchasers under the Note Purchase Agreement that this Agreement be executed and delivered by the parties.

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 INTERPRETATION

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:

"Agent" has the meaning set forth in the introductory paragraph to this Agreement.

"Agent's Cure Notice" has the meaning set forth in Section 3.9.

"Agent's Cure Period" has the meaning set forth in Section 3.9.

"Agent's Indicative Notice" means either an Agent's Indicative Step-In Notice or an Agent's Indicative Transfer Notice given in accordance with Section 3.4.

"Agent's Indicative Step-In Notice" has the meaning given to it in Section 3.4.

“Agent’s Indicative Transfer Notice” has the meaning given to it in Section 3.4.

“Agent’s Step-In Notice” means a notice given by the Agent to the City pursuant to Section 4.1.

“Agent’s Step-Out Notice” has the meaning given it in Section 5.1.

“Agent’s Withdrawal Notice” has the meaning set forth in Section 3.5.

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

“Antecedent Liabilities” means, as at any time:

(1) all amounts due and payable by the Project Company to the City under the Project Agreement at such time; and

(2) all obligations which should have, but have not, been performed and outstanding liabilities of the Project Company under the Project Agreement with respect to the City Projects at such time.

“Appointed Representative” means the Purchasers’ Representative identified in an Agent’s Step-In Notice.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. “Bankruptcy Law” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Bankruptcy Officer” means any trustee, receiver, liquidator, sequestrator, administrator or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

“Bankruptcy Proceedings” means any:

(1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;

(2) appointment of an Bankruptcy Officer in connection with;

(3) order or resolution passed in connection with; or

(4) formal agreement reached regarding,

(a) a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or (b) any distress, attachment, sequestration or execution or other similar

process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company's assets in any other jurisdiction.

"City Projects" has the meaning set forth in the Recitals.

"City Project - Project Company Event of Default" means a Project Company Event of Default with respect to the City Projects, which for the avoidance of doubt shall include all Project Company Events of Default that could give rise to a right of the City to terminate or partially terminate the Project Agreement.

"City's Event Notice" means a notice given by the City to the Agent under Section 3.1.

"City's Termination Notice" means a notice given by the City to the Agent under Section 3.2.

"Design-Build Agreement" means that certain Design-Build Agreement, dated as of January [•], 2016, by and among the Project Company and the Design-Builder.

"Design-Builder" means Clark Construction Group – California, LP, a limited partnership organized and existing under the laws of the State of California.

"Discharged Obligations" has the meaning set forth in Section 6.4 hereof.

"Discharged Rights" has the meaning set forth in Section 6.4 hereof.

"Finance Parties" means the Purchasers, lenders, agents and other finance parties under the Note Purchase Financing Documents.

"FM Contractor" means Johnson Controls, Inc., a corporation organized and existing under the laws of the State of Wisconsin.

"Indicative Notice Period" means the period commencing on the date of delivery of an Agent's Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of an Agent's Withdrawal Notice; or
- (3) 180 days following the date of delivery of the Agent's Indicative Notice.

"Installment Date" has the meaning given in Section 10.2(2)(d) hereof.

"Liability Report" has the meaning given in Section 3.6 hereof.

"Material Antecedent Liabilities" means Antecedent Liabilities incurred in connection with the City Projects that are:

- (1) financial liabilities; or

(2) non-financial liabilities, the breach of which shall trigger any remedy of the City under Article 22 (Project Company Events of Default) of the Project Agreement or Section 27.1 (Project Company's Obligation to Indemnify) of the Project Agreement.

"Note Purchase Agreement" means the Note Purchase Agreement, dated [●], 2016, between the Project Company and the Purchasers in respect of the Senior Debt.

"Note Purchase Agreement Event of Default" means an "Event of Default" as defined in the Note Purchase Agreement.

"Note Purchase Financing Documents" means the Note Purchase Agreement and the other financing documents executed in connection therewith, as set forth in Schedule 1 hereto.

"Notice Period" means:

- (1) any Agent's Cure Period;
- (2) any Termination Notice Period; and
- (3) any Indicative Notice Period.

"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 Building and Revitalized Lincoln Park, dated as of January [●], 2016 among the City, the Port, and the Project Company.

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

"Purchasers" has the meaning given to it in the Note Purchase Agreement.

"Purchasers' Representative" means:

- (1) the Agent or Purchaser;
- (2) a receiver of the Project Company appointed under or in connection with the Security Documents; or
- (3) any other person approved by the City (such approval not to be unreasonably withheld or delayed).

"Reported Antecedent Liabilities" means the Antecedent Liabilities identified in the Liability Report.

"Restricted Action" means the exercise of any right to:

(1) cancel, terminate (including any partial termination), step in, novate, expropriate, condemn, or take any other action that may result in the City having a right to take any such action, with respect to the Project Agreement or the City Projects, as applicable;

(2) cancel, step-in, novate or otherwise assume (whether directly or through a substitute entity) the benefit or burden of the Project Company's rights against, or obligations to, the Design-Builder, the FM Contractor or any other operator, as the case may be; or any payment or performance bonds or guaranties delivered in connection therewith;

(3) make any claim or take any action or enforce any rights under or in connection with any collateral agreement or security agreement entered into by the City, the Design-Builder, or the Project Company, but does not include the exercise of any of the City's rights under Section 21.2 (City's and Port's Temporary Step-in Rights) of the Project Agreement and the related exercise of its rights under Section 21.3 (City's and Port's Rectification Rights) of the Project Agreement; or

(4) issue any notice to the Project Company regarding any of the actions in (1) to (3) above.

“Revocation of Termination Notice” means a written notice from the City to the Agent revoking a City's Termination Notice.

“Security Documents” means one of the security documents executed and delivered pursuant to the Note Purchase Agreement.

“Senior Debt” means all amounts due and owing to the Purchasers under the Note Purchase Financing Documents.

“Senior Debt Discharge Date” means the date on which the Senior Debt has been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Purchasers are under no further obligation to purchase under the relevant Note Purchase Financing Document.

“Step-In Date” means five Business Days after delivery of an Agent's Step-In Notice.

“Step-In Period” means, subject to Section 4.3 hereof, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the date of any transfer under Article 4 hereof;
- (3) the date of any termination under Section 4.5 hereof;
- (4) the Expiration Date; and

(5) if the Termination Notice was given before the Final City Occupancy Date, the date that is 6 months after the City Longstop Date.

“**Step-Out Date**” means the date that is 20 Business Days after the date of an Agent’s Step-Out Notice.

“**Suitable Substitute Project Company**” means, solely for the purposes of the rights and obligations of the Project Company with respect to the City Projects under the Project Agreement, a person that is not a Restricted Person and that is approved by the City (such approval not to be unreasonably withheld or delayed) as:

(1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under the Project Agreement; and

(2) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Project Company under the Project Agreement.

“**Termination Notice Period**” means the period beginning on the date of giving of a City’s Termination Notice and ending on the earlier of:

(1) the Step-In Date;

(2) the date of service of a revocation of a City’s Termination Notice; and

(3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.2(1)) set forth in the City’s Termination Notice.

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.

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

(2) 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.

(3) 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.

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

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Purchasers, the Agent, the Appointed Representative or any other Purchasers’ 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.

(12) Entire Agreement. This Agreement contains the entire agreement between 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.

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

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

(15) 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.

(16) 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.

(17) 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.

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

ARTICLE 2

CONSENT TO SECURITY

SECTION 2.1 CONSENT. The City acknowledges notice of, and (notwithstanding anything to the contrary in the Project Agreement) consents to, the first priority lien and security interest granted by the Project Company in favor of the Finance Parties under the Note Purchase Financing Documents over:

- (1) the Project Company's rights under the Project Agreement and all other Project Documents;
- (2) the Project Company's rights under the Material Contracts;
- (3) the Project Company's interest in any warranties, guarantees, letters of credit or other performance or payment security granted under any Project Contracts or Subcontracts;
- (4) the Project Company's assets, including any cash, securities, investments or balances in any Project Company bank accounts;
- (5) the Project Company's rights to Insurance Proceeds and Insurance Receivables;
- (6) any membership interests in the Project Company, and

(7) any other Project Company Collateral (as defined in the Note Purchase Financing Documents).

SECTION 2.2 NO NOTICE OF OTHER SECURITY. The City confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over the Project Company's rights described in Section 2.1(1) other than pursuant to the Note Purchase Financing Documents and the Port Facilities Construction Financing Documents.

SECTION 2.3 CITY OBLIGATIONS. Except as specifically provided for in this Agreement, the City has no obligations (whether express, implied, collateral or otherwise) to the Agent or the Purchasers in connection with this Agreement, the Project Agreement, the Note Purchase Financing Documents or the City Projects. All of the obligations and liabilities given, undertaken or arising on the part of the City under this Agreement are given solely to the Agent on behalf of the Purchasers and do not confer any rights on or in favor of the Project Company or any Affiliate of the Project Company or any other person.

SECTION 2.4 CITY'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in the Note Purchase Financing Documents, this Agreement or any other agreement between any of them (including any giving by the Agent of a notice hereunder) will, except as between the Purchasers, the Agent and the City as expressly set forth in this Agreement, affect the rights of the City under the Project Agreement (but an exercise by the City of those rights will not preclude a proper exercise by the Agent of its rights under this Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Agreement will limit, and the City will be entitled at all times in accordance with the provisions thereof to exercise, the City's rights under Section 21.2 (City's and Port's Step-in Rights) of the Project Agreement and the related exercise of its rights under Section 21.3 (City's and Port's Rectification Rights) of the Project Agreement. With respect to its permanent step in right under Section 22.6 of the Project Agreement, the City acknowledges that such right does not exist in the absence of a City right of termination for a Project Company Event of Default, and that such right of termination is subject to the rights of the Purchasers in this Agreement.

SECTION 2.5 SEPARATE AGREEMENTS. During the Design-Build Period, the Project Agreement shall, for the purposes of the City Facilities Financing and the Port Facilities Construction Financing, constitute and be treated as two separate and divisible contracts whereby all provisions relating to the Port Facilities and the Shared Facilities shall constitute one contract (the "Port Project Agreement"), all provisions relating to the City Facilities and the Shared Rooms shall constitute another contract (the "City Project Agreement"), and where any provision of the Project Agreement is silent as to whether it applies to the Port Facilities or the Shared Facilities, on the one hand, or the City Facilities or the Shared Rooms, on the other hand, such provision shall apply to each of the Port Project Agreement and the City Facilities Project Agreement. In furtherance of the foregoing, the City, the Port and the Project Company further agree that during the Design-Build Period, the Project Company can be substituted by a "substitute" for the City Project Agreement without any change to the Project Company with respect to the Port Project Agreement and as set forth more fully herein. For the avoidance of doubt, the exercise by the City of its rights under the City Direct Agreement (Design-Builder) shall only be with respect to City Facilities and the Shared Rooms and, with respect to any substitution, step-in rights or similar rights, shall not in any way impair or have any effect

whatsoever on the Design-Builder's rights and obligations under the Design-Build Agreement with respect to the Port Facilities and the Shared Facilities.

ARTICLE 3

NOTICES

SECTION 3.1 CITY'S EVENT NOTICES.

The City shall provide the Agent written notice (a "City's Event Notice") concurrently with issuing to the Project Company any notice regarding:

- (1) during the Design-Build Period, the occurrence of a City Project - Project Company Event of Default;
- (2) during the Operating Period, the occurrence of a Project Company Event of Default;
- (3) any event giving rise to a no-fault termination or no-fault partial termination of the Project Agreement as contemplated by the Project Agreement; or
- (4) any failure to appropriate funds for the City Projects, as set forth in Section 25.1(D)(Notice) of the Project Agreement.

A City's Event Notice shall contain a summary of the facts relating to the relevant event. No failure of the City to give a City's Event Notice shall create any City liability, or impair any right of the City under this Agreement, the Project Agreement or any related agreement.

SECTION 3.2 CITY'S TERMINATION NOTICE. The City shall not terminate or deliver any notice terminating (all or a portion of) the Project Agreement, or take any Restricted Action, in respect of a City Project - Project Company Event of Default without giving to the Agent written notice (a "City's Termination Notice") stating:

- (1) that a City Project - Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than 180 days after the City's Termination Notice; and
- (2) the grounds for termination in reasonable detail; and
- (3) the City's determination of whether it will assume any of the Senior Debt in connection with such termination.

SECTION 3.3 AGENT'S NOTICE OF NOTE PURCHASE AGREEMENT EVENT OF DEFAULT. Concurrently with delivery by it to the Project Company of any notice of a Note Purchase Agreement Event of Default, the Agent shall provide a copy of such notice to the City.

SECTION 3.4 AGENT'S INDICATIVE NOTICE. Without prejudice to the Agent's rights under the Security Documents, at any time upon the occurrence of a City Project - Project

Company Event of Default or the receipt of a City's Termination Notice, and where relevant to a City Project – Project Company Event of Default or the continuance of such City Project – Project Company Event of Default, the Agent may give notice to the City of its intention to nominate a Purchasers' Representative to step-in in accordance with Section 4.1 hereof (an "Agent's Indicative Step-In Notice") or to effect a transfer in accordance with Section 6.1 hereof (an "Agent's Indicative Transfer Notice").

SECTION 3.5 AGENT'S WITHDRAWAL NOTICE. If at any time after the giving of an Agent's Indicative Notice or a City's Termination Notice, the Agent has determined that it is not, or is no longer, considering appointing a Purchasers' Representative or effecting a transfer of the Project Company's rights and liabilities under the Project Agreement to a Suitable Substitute Project Company in accordance with this Agreement, the Agent shall give notice (an "Agent's Withdrawal Notice") to the City, and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Agent's Indicative Notice or City's Termination Notice and the City shall be at liberty to take any and all action available to it under the Project Agreement and other Project Documents.

SECTION 3.6 NOTICE OF ANTECEDENT LIABILITIES.

Unless an Agent's Withdrawal Notice has been given, not later than 30 days after the date of delivery by the City of a City's Termination Notice or the date of delivery by the Agent of an Agent's Indicative Notice, as the case may be, the City shall give the Agent a notice (the "Liability Report") containing details of:

(1) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the City's Termination Notice or Agent's Indicative Notice, as the case may be; and

(2) any financial liabilities of which the City is aware (after reasonable inquiry) that will fall due under the Project Agreement on or after the date of delivery of the City's Termination Notice or Agent's Indicative Notice, as the case may be, and on or prior to:

(a) in the case of a City's Termination Notice, the proposed Termination Date set forth in that notice; and

(b) in the case of an Agents Indicative Notice, 180 days after the date of delivery of the Agent's Indicative Notice.

SECTION 3.7 SUBSEQUENT CITY NOTICE OF LIABILITIES. After the delivery of the Liability Report, unless an Agent's Withdrawal Notice has been given, the City shall, promptly upon becoming aware of them, notify the Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the City's Termination Notice or Agent's Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

SECTION 3.8 NO RIGHT TO TERMINATE OR TAKE RESTRICTED ACTION. The City shall not terminate or partially terminate or deliver any notice terminating or partially terminating the Project Agreement or take any other Restricted Action during any Notice Period prior to the expiration of the 180 day period referred to in Section 3.2 hereof; provided, however,

that until the expiration of such period the City shall be entitled to require the Project Company to remedy any City Project - Project Company Event of Default and shall be entitled to exercise all rights under the Project Agreement other than termination of such agreement or take any other Restricted Action. If the Project Company or the Agent has failed to cure the City Project - Project Company Event of Default giving rise to the City's Termination Notice during the applicable period, subject to Article 4 and Article 7, the City may exercise all rights and remedies available to it under the Project Agreement, including, without limitation, the right to terminate the Project Agreement, and all rights and remedies available to it under the City Direct Agreement (Design-Builder) and the City Direct Agreement (FM Contractor).

SECTION 3.9 AGENT'S RIGHT TO CURE A PROJECT COMPANY BREACH OR DEFAULT WITHOUT STEP-IN OR TRANSFER. The Agent shall have the right to take such actions as may be necessary, in the Agent's sole discretion, to cure or remedy a City Project - Project Company Event of Default prior to any Step-In Period and without the necessity of issuing an Agent's Indicative Step-In Notice or Agent's Indicative Transfer Notice. Prior to exercising any such right, the Agent shall deliver a written notice thereof to the City (an "Agent's Cure Notice"). The City shall have no duty to deal with the Agent in any such circumstances, but the City will accept performance by the Agent, or their designee, as performance by the Project Company. Any acts by the Agent or any designee in the exercise of such right shall be deemed to be acts of the Project Company for the purposes of the Project Agreement, including the indemnity provisions thereof. The Agent may exercise such rights for a period (the "Agent's Cure Period") commencing on the date of delivery of an Agent's Cure Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of an Agent's Withdrawal Notice; or
- (3) 120 days following the delivery of a City's Event Notice.

SECTION 3.10 OTHER PROJECT COMPANY EVENTS OF DEFAULT. The City shall promptly notify the Agent of any Project Company Event of Default that is not a City Project -Project Company Event of Default.

ARTICLE 4

STEP-IN

SECTION 4.1 AGENT'S STEP-IN NOTICE. Subject to Section 4.3, and without prejudice to the Agent's rights under the Security Documents, the Agent may give the City a notice (an "Agent's Step-In Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2 CONTENTS OF STEP-IN NOTICE. In the Agent's Step-In Notice, the Agent shall:

- (1) state that it intends to exercise its step-in rights under this Agreement; and
- (2) identify the Appointed Representative.

SECTION 4.3 ONE STEP-IN PERIOD. There will be not more than one Step-In Period following any one Agent's Indicative Notice or City's Termination Notice.

SECTION 4.4 APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the Project Agreement with respect to:

- (1) during the Design-Build Period, the City Facilities and Shared Rooms, including any rights to cure a City Project – Project Company Event of Default, subject to the performance by or on behalf of the Project Company's obligations under the Project Agreement with respect to the City Facilities and Shared Rooms. During the Step-In Period, the City shall deal with the Appointed Representative and not the Project Company with respect to the City Facilities and Shared Rooms; and

- (2) during the Operating Period, the FM Facilities, including any rights to cure a Project Company Event of Default, subject to the performance by or on behalf of the Project Company's obligations under the Project Agreement with respect to the FM Facilities. During the Step-In Period, the City shall deal with the Appointed Representative and not the Project Company with respect to the City Facilities and Shared Rooms

SECTION 4.5 CITY RIGHT TO TERMINATE. The City shall not terminate the Project Agreement, in whole or in part, or take any other Restricted Action during the Step-In Period except as set forth in this Section. The City shall be entitled to terminate (or partially terminate) the Project Agreement during the Step-In Period by written notice to the Project Company, the Agent and the Appointed Representative:

- (1) if the Reported Antecedent Liabilities that are financial liabilities owed to the City have not been paid to the City or guaranteed to the City's reasonable satisfaction on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid or guaranteed to the City's reasonable satisfaction by the due date;

- (2) if amounts owed to the City, of which the City was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged or sufficiently guaranteed to the City's reasonable satisfaction by:

- (a) if notice of the liability is given to the Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date;

- (b) if notice of the liability is given to the Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the City, acting reasonably, when it gives such notice or by the Agent, acting reasonably, by notice to the City within five Business Days of receipt of the notice from the City), 20 Business Days after the Step-In Date; or

(c) otherwise, 20 Business Days after delivery of the notice;

(3) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that for the purposes of termination under the Project Agreement, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;

(4) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Reported Antecedent Liabilities which are non-financial liabilities (including, if necessary to effect any such remedy, diligent efforts to obtain possession or control of the City Facilities and the Shared Rooms);

(5) on grounds arising prior to the Final City Occupancy Date if the Final City Occupancy Date does not occur on or before the date that is 6 months after the City Longstop Date; or

(6) pursuant to Section 24.1(A)(2) of the Project Agreement, Section 24.1(A)(3) of the Project Agreement, Section 24.1(B)(1) of the Project Agreement, Section 24.1(B)(5) of the Project Agreement, or Section 24.1(B)(6) of the Project Agreement.

ARTICLE 5

STEP-OUT

SECTION 5.1 AGENT'S STEP-OUT NOTICE. The Agent or the Appointed Representative may at any time during the Step-In Period deliver to the City a notice (an "Agent's Step-Out Notice") which specifies the Step-Out Date.

SECTION 5.2 EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

(1) the rights of the City against the Appointed Representative and the rights of the Appointed Representative against the City shall be cancelled; and

(2) the City shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the Project Agreement.

SECTION 5.3 PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4 hereof, the Project Company shall continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of an Agent's Cure Notice, an Agent's Indicative Notice, an Agent's Step-In Notice, a Step-In Period, an Agent's Step-Out Notice, a Step-Out Date, any action by the Agent, Appointed Representative or the Purchasers or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the Project Agreement prior to the expiration of the Step-in Period from actions or inactions of the Agent, the Appointed Representative or Purchasers. The Project Company shall remain liable for any unpaid amounts due and payable to the City by the Project Company under the Project Agreement.

ARTICLE 6

PURCHASER REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1 PROJECT COMPANY TRANSFER NOTICE. Subject to Section 6.2, at any time:

- (1) during the Design-Build Period, upon the occurrence of a City Project - Project Company Event of Default, and where relevant to such event during the continuance of such event;
- (2) during the Operating Period, upon the occurrence of a Project Company Event of Default; or
- (3) during the Step-In Period,

the Agent may, on 30 Business Days' notice to the City and any Appointed Representative, take any action available to it to cause the transfer of the Project Company's rights and liabilities under the Project Agreement and any Material Contract with respect to the City Projects to a Suitable Substitute Project Company in accordance with the provisions of Section 6.4.

SECTION 6.2 CITY CONSENT. The City shall notify the Agent as to whether any person to whom the Agent proposes to transfer the Project Company's rights and liabilities under the Project Agreement with respect to the City Projects is a Suitable Substitute Project Company, not later than 20 Business Days after the date of receipt from the Agent of all information reasonably required by the City to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3 WITHHOLDING OF CONSENT. The City shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company and it shall, without limitation, be reasonable for the City to withhold its consent:

- (1) if there are unremedied breaches under the Project Agreement and there is no remedial program reasonably acceptable to the City in respect of the breaches; or
- (2) based on any of the factors set forth in Section 26.1 (Limitation on Assignment by Project Company) of the Project Agreement with respect to any transfer, including any assignment.

SECTION 6.4 TERMS OF TRANSFER. Upon the transfer referred to in Section 6.1 becoming effective:

- (1) the Project Company and the City shall be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the "Discharged Obligations");

(2) the Suitable Substitute Project Company and the City shall assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Company instead of the Project Company;

(3) the rights of the Project Company against the City under the Project Agreement and vice versa will be cancelled (the “Discharged Rights”);

(4) the Suitable Substitute Project Company and the City shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Company instead of the Project Company; provided, however, that the Suitable Substitute Project Company shall not assume any material new obligations and the City shall not assume any material new rights without the prior written consent of the Agent, acting reasonably;

(5) any subsisting ground for termination of the Project Agreement by the City shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;

(6) the City and the Suitable Substitute Project Company will execute and deliver to the Agent a new Project Agreement containing all of the same terms as those of the Project Agreement that are with respect to the City Projects, except for any obligations that have been fulfilled by the Project Company, any party acting on behalf of or stepping-in for the Project Company or the Agent prior to the execution of such new Project Agreement.

(7) the City shall enter into a lenders’ direct agreement with the Suitable Substitute Project Company and a representative of Purchasers lending to the Suitable Substitute Project Company on substantially the same terms as this Agreement; and

(8) any Deduction that arose prior to that time will not be taken into account after the transfer for the purposes of Section 22.1(A)(7) (Project Company Events of Default Defined) of the Project Agreement (for the avoidance of doubt, nothing in this Section 6.4(8) shall impact the ability of the City to impose Deductions in accordance with the Project Agreement).

ARTICLE 7

IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS

SECTION 7.1 REJECTION OF THE PROJECT AGREEMENT. If the Project Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Project Company and, within 150 days after such rejection or termination, the Agent shall so request and shall certify in writing to the City that the Agent’s permitted designee or assignee, including a Suitable Substitute Project Company, intends to perform the obligations of the Project Company as and to the extent required under the Project Agreement with respect to the City Projects, the City will execute and deliver to the Agent (or any Suitable Substitute Project Company satisfying the requirements of this Agreement if directed to do so by the Agent) a new Project Agreement. The new Project Agreement shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the Project Agreement with respect to the City Projects, except for any

obligations that have been fulfilled by the Project Company, any party acting on behalf of or stepping-in for the Project Company or the Agent prior to such rejection or termination. References in this Agreement to the “Project Agreement” shall be deemed also to refer to any such new Project Agreement. The effectiveness of any new Project Agreement referred to in this Section 7.1 above will be conditional upon the Agent first reimbursing the City in respect of all of its costs and expenses, including legal fees and expenses, incurred in connection with the execution and delivery of such new Project Agreement.

SECTION 7.2 EXTENSION OF CURE PERIOD AND STEP-IN PERIOD. To the extent that the Agent is prohibited by any court order, bankruptcy or insolvency proceedings from remedying a Project Company Event of Default that is the subject of a City’s Event Notice; or from commencing or prosecuting foreclosure proceedings, the Agent’s Cure Period or the Step-In Period, as the case may be, shall be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

ARTICLE 8

COVENANTS

SECTION 8.1 CITY COVENANTS. The City agrees with the Agent that the City shall:

(1) as soon as is reasonably practicable, at the Project Company’s expense, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Project Company taking a transfer in accordance with Article 6 hereof may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative or Suitable Substitute Project Company reasonably requires;

(2) not, prior to the Senior Debt Discharge Date, unless the Agent has (acting reasonably) consented in writing:

(a) appoint a Bankruptcy Officer;

(b) commence any Bankruptcy Proceedings;

(c) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the Agent, vote against any Bankruptcy Proceedings;

(d) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by the Project Company into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by the Project Company for or on account of the Project Company’s liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or

(e) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in items (a), (b), (c) or (d) above;

(3) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the City and a third party, the effect of which would be reasonably likely to render the City unable to satisfy its obligations under the Project Agreement or to cause the occurrence of a City Event of Default; and

(4) the City shall not issue any notice under Section 3.2 or 4.1 of the City Direct Agreement (Design-Builder) or under Section 3.2 or 4.1 of the City Direct Agreement (FM Contractor) at any time that the Purchasers are validly exercising under any Note Purchase Financing Agreement any step-in rights with respect to the City Direct Agreement (Design-Builder) or the City Direct Agreement (FM Contractor).

SECTION 8.2 AGENT COVENANTS. The Agent shall:

(1) promptly notify the City when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event shall so notify no later than 20 Business Days after its occurrence;

(2) promptly notify the City of any Note Purchase Agreement Event of Default;

(3) not, prior to the Senior Debt Discharge Date, without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the City;

(a) appoint a Bankruptcy Officer;

(b) commence a Bankruptcy Proceedings;

(c) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or

(d) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (a), (b) or (c) above;

(4) promptly upon request by the City, and provided the Senior Debt Discharge Date has occurred, cause all security on any real or personal property constituting part of the Project to be promptly discharged and released on the date requested by the City (which will be on or after the Senior Debt Discharge Date);

(5) not return or discharge any Deferred Equity Letter of Credit unless:

(a) all Deferred Equity Amounts have been contributed to the Project Company; or

(b) the City has consented (such consent not to be unreasonably withheld, conditioned or delayed) to such return or discharge in writing;

(6) not release or return any amounts from the Construction Retainage Account without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the City; and

(7) not consent to any amendment or modification to the guarantee of the Design-Builder's obligations under the Design-Build Agreement provided by Clark Construction Group, LLC to the Project Company without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the City.

SECTION 8.3 PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 9

ASSIGNMENT

SECTION 9.1 RESTRICTION ON ASSIGNMENT. No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Article.

SECTION 9.2 ASSIGNMENT BY AGENT. The Agent may assign or transfer its rights and obligations under this Agreement to a successor Agent in accordance with the Note Purchase Financing Documents without the consent of the City, provided that the Agent delivers to the City not less than 10 Business Days prior to such assignment a notice setting out such contact information regarding the assignee as the City may reasonably require and provided the assignee or transferee is not a Restricted Person.

SECTION 9.3 ASSIGNMENT BY PURCHASER. Any Purchaser may assign or transfer its rights and obligations under the Note Purchase Financing Documents in accordance with the terms of the Note Purchase Financing Documents without the consent of the City provided the assignee or transferee is not a Restricted Person.

SECTION 9.4 ASSIGNMENT BY CITY. The City shall assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project Agreement concurrently with the assignment of the Project Agreement to such assignee, and the Agent and the Purchasers shall co-operate with the City in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the City.

SECTION 9.5 NEW AGREEMENT. If Section 9.2 applies in relation to the Agent, the City and the Project Company shall, upon request by the new Agent, enter into a new lenders' direct agreement with the new Agent on substantially the same terms as this Agreement.

ARTICLE 10

GENERAL

SECTION 10.1 TERM. This Agreement shall remain in effect until the earlier of:

- (1) the Senior Debt Discharge Date;

(2) the date upon which a new lenders' direct agreement is entered into pursuant to Section 9.5 following an assignment or transfer by the Agent of its rights and obligations under this Agreement to a successor Agent;

(3) subject to compliance with Section 6.4(6) above, the date of transfer of the Project Company's rights and liabilities under the Project Agreement to a Suitable Substitute Project Company pursuant to Section 6.1; or

(4) if the City has assumed all or a portion of the Senior Debt pursuant to Section 10.2(2), the date on which the City makes the final payment in respect of such assumed portion of the Senior Debt.

SECTION 10.2 NO CITY OR STATE RESPONSIBILITY FOR SENIOR DEBT.

(1) Subject to Section 10.2(2), none of the State, the City, or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, shall have any liability whatsoever for payment of the principal sum of any Senior Debt, any other obligations issued or incurred by the Project Company in connection with the Project Agreement, or any interest accrued thereon or any other sum secured by or accruing under the Note Purchase Financing Documents. Except for a violation by the City of its express obligations to Purchasers set forth in this Agreement, no Purchaser shall be entitled to seek any damages or other amounts from the City, whether for Senior Debt or any other obligation amount. The City's review of the Note Purchase Financing Documents or other Project financing documents is not a guarantee or endorsement of the Senior Debt, any other obligations issued or incurred by the Project Company in connection with this Project Agreement or the Project, and is not a representation, warranty or other assurance as to the ability of the Project Company to perform its obligations with respect to the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, or as to the adequacy of the Service Fee to provide for payment of the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, except that the foregoing does not affect any of City's liability to the Project Company under Article 24 of the Project Agreement and any Termination Payment that is measured in whole or in part by outstanding Senior Debt.

(2) Notwithstanding Section 10.2(1), the City may elect to pay the portion of a Partial Termination Payment or Termination Payment (other than for a Partial Termination Payment or Termination Payment due in connection with (i) a termination of the Project Agreement for a City Non-Appropriation Event pursuant to Section 25.1(F)(2) of the Project Agreement, or (ii) a City Event of Default pursuant to Section 23.2 of the Project Agreement), as applicable, corresponding to the outstanding Senior Debt directly to the Purchasers by assuming an amount of outstanding Senior Debt equal to such portion of the Partial Termination Payment or Termination Payment, up to the amount of the Senior Debt, subject to the following conditions:

(a) the assumption of such Senior Debt by the City complies with all laws, regulations and policies applicable to the Purchasers and shall be entered into no later than the Partial Termination Date or Termination Date, as applicable;

(b) the terms and conditions pursuant to which the City assumes such Senior Debt shall be mutually acceptable to the City and the Purchasers, each acting reasonably, and shall, at a minimum, require the City to enter into an assumption agreement pursuant to which the City will assume all obligations of the Project Company in respect of the City Facilities Financing and to provide customary opinions (including as to due authorization, authority and enforceability), instruments, documents, and certificates required to close the transactions contemplated in the assumption agreement;

(c) the Purchasers shall retain the benefit of all security interests granted to them under the Note Purchase Financing Documents;

(d) such assumed Senior Debt, and any interest accrued thereon, shall be paid by the City on the dates set forth for payment of such amounts in the Note Purchase Agreement (each, an “Installment Date”), beginning with the first payment date set forth in the Note Purchase Agreement following the Termination Date or Partial Termination Date, as the case may be, and ending on the date on which the final payment in respect of Senior Debt is scheduled to be made in accordance with the Note Purchase Financing Documents;

(e) interest shall be due and payable in arrears on the next succeeding Installment Date; and

(f) such assumed Senior Debt and any accrued and unpaid interest thereon, shall be accelerated and become immediately due and owing upon the re-award of the Project by the City or the Port, as the case may be.

SECTION 10.3 CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.

SECTION 10.4 ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 10.5 VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California, Los Angeles County, and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 10.6 WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 10.7 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 10.8 CONFIDENTIALITY. The Agent shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

SECTION 10.9 NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to the City:

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

with a copy to:

Charles Parkin
Office of the City Attorney
City of Long Beach
333 W. Ocean Blvd., 13th Floor
Long Beach, California 90802
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 Agent:

[•]
[•]
[•]
[•]
[•]
Attention: [•]
Telephone No.: [•]
Fax No.: [•]

if to the Project Company:

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

or to such other address as any party may, from time to time, designate in the manner set forth above.

[SIGNATURE PAGE FOLLOWS]

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

APPROVED AS TO FORM
City Attorney

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

By: _____
Name:
Title:

By: _____
Name:
Title:

CITY OF LONG BEACH

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS,
LLC

By: _____
Name:
Title:

[COLLATERAL AGENT]

By: _____
Name:
Title:

SCHEDULE 1

NOTE PURCHASE FINANCING DOCUMENTS¹

- [Note Purchase Agreement]
- [Collateral Agency Agreement]
- [Security Agreement]
- [Pledge Agreement]
- [•]
- [•]

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

TRANSACTION FORM B-2
FORM OF LENDERS' DIRECT AGREEMENT (PORT)

LENDERS' DIRECT AGREEMENT (PORT)

for the

NEW LONG BEACH CITY HALL, NEW MAIN LIBRARY, NEW PORT OF LONG BEACH
HEADQUARTERS BUILDING AND REVITALIZED LINCOLN PARK

between

CITY OF LONG BEACH

and

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

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

and

[COLLATERAL AGENT]

Dated [●], 2016

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Table of Contents

	Page
ARTICLE 1 DEFINITIONS AND INTERPRETATION	1
Section 1.1 <u>DEFINITIONS</u>	1
Section 1.2 <u>INTERPRETATION</u>	6
ARTICLE 2 CONSENT TO SECURITY	8
Section 2.1 <u>CONSENT</u>	8
Section 2.2 <u>NO NOTICE OF OTHER SECURITY</u>	9
Section 2.3 <u>PORT OBLIGATIONS</u>	9
Section 2.4 <u>PORT'S RIGHTS NOT PREJUDICED</u>	9
ARTICLE 3 NOTICES	10
Section 3.1 <u>PORT'S EVENT NOTICES</u>	10
Section 3.2 <u>PORT'S TERMINATION NOTICE</u>	10
Section 3.3 <u>AGENT'S NOTICE OF CREDIT AGREEMENT EVENT OF DEFAULT</u>	10
Section 3.4 <u>AGENT'S INDICATIVE NOTICE</u>	10
Section 3.5 <u>AGENT'S WITHDRAWAL NOTICE</u>	11
Section 3.6 <u>NOTICE OF ANTECEDENT LIABILITIES</u>	11
Section 3.7 <u>SUBSEQUENT PORT NOTICE OF LIABILITIES</u>	11
Section 3.8 <u>NO RIGHT TO TERMINATE OR TAKE RESTRICTED ACTION</u>	11
Section 3.9 <u>AGENT'S RIGHT TO CURE A PROJECT COMPANY BREACH OR</u> <u>DEFAULT WITHOUT STEP-IN OR TRANSFER</u>	12
Section 3.10 <u>OTHER PROJECT COMPANY EVENTS OF DEFAULT</u>	12
ARTICLE 4 STEP-IN.....	12
Section 4.1 <u>AGENT'S STEP-IN NOTICE</u>	12
Section 4.2 <u>CONTENTS OF STEP-IN NOTICE</u>	12
Section 4.3 <u>ONE STEP-IN PERIOD</u>	12
Section 4.4 <u>APPOINTED REPRESENTATIVE RIGHTS</u>	13
Section 4.5 <u>PORT RIGHT TO TERMINATE</u>	13
ARTICLE 5 STEP-OUT	14
Section 5.1 <u>AGENT'S STEP-OUT NOTICE</u>	14
Section 5.2 <u>EXPIRATION OF STEP-IN PERIOD</u>	14
Section 5.3 <u>PROJECT COMPANY REMAINS BOUND</u>	14
ARTICLE 6 SENIOR LENDER REPLACEMENT OF THE PROJECT COMPANY.....	14
Section 6.1 <u>PROJECT COMPANY TRANSFER NOTICE</u>	14
Section 6.2 <u>PORT CONSENT</u>	15
Section 6.3 <u>WITHHOLDING OF CONSENT</u>	15
Section 6.4 <u>TERMS OF TRANSFER</u>	15
ARTICLE 7 IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS.....	16
ARTICLE 8 COVENANTS	16

Section 8.1 <u>PORT COVENANTS</u>	16
Section 8.2 <u>AGENT COVENANTS</u>	17
Section 8.3 <u>PROJECT COMPANY COVENANT</u>	18
ARTICLE 9 ASSIGNMENT	18
Section 9.1 <u>RESTRICTION ON ASSIGNMENT</u>	18
Section 9.2 <u>ASSIGNMENT BY AGENT</u>	18
Section 9.3 <u>ASSIGNMENT BY SENIOR LENDER</u>	18
Section 9.4 <u>ASSIGNMENT BY PORT</u>	18
Section 9.5 <u>NEW AGREEMENT</u>	19
ARTICLE 10 GENERAL	19
Section 10.1 <u>TERM</u>	19
Section 10.2 <u>NO PORT OR STATE RESPONSIBILITY FOR SENIOR DEBT</u>	19
Section 10.3 <u>CONFLICT OR INCONSISTENCY</u>	20
Section 10.4 <u>ENTIRE AGREEMENT</u>	20
Section 10.5 <u>VENUE</u>	21
Section 10.6 <u>WAIVER</u>	21
Section 10.7 <u>COUNTERPARTS</u>	21
Section 10.8 <u>CONFIDENTIALITY</u>	21
Section 10.9 <u>NOTICES</u>	21

LENDERS' DIRECT AGREEMENT (PORT)

This LENDERS' DIRECT AGREEMENT (PORT) (this "Agreement") is made and entered into as of [●], 2016, by and among the City of Long Beach, acting by and through the Board of Harbor Commissioners (in such capacity, the "Port"), the City of Long Beach (the "City") and Plenary Edgemoor Civic Partners, 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") and [●], acting as agent to the Senior Lenders pursuant to the Senior Financing Agreements (as defined below) (the "Agent").

RECITALS

The City, the Port and the Project Company have entered into the Project Agreement (as such term is defined below);

Pursuant to the Credit Agreement (defined below), the Senior Lenders (defined below) have agreed, subject to the terms and conditions contained therein, to make available to the Project Company the loan facility specified therein to finance certain costs to be incurred and expenditures to be made by the Project Company in connection with the Project Agreement in connection with the Port Facilities (as defined in the Project Agreement) and the Shared Facilities (as defined in the Project Agreement, collectively the "Port Projects"); and

It is a condition precedent to the obligations of the Senior Lenders under the Credit Agreement that this Agreement be executed and delivered by the parties.

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 INTERPRETATION

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:

"**Agent**" has the meaning set forth in the introductory paragraph of this Agreement.

"**Agent's Cure Notice**" has the meaning set forth in Section 3.9.

"**Agent's Cure Period**" has the meaning set forth in Section 3.9.

"**Agent's Indicative Notice**" means either an Agent's Indicative Step-In Notice or an Agent's Indicative Transfer Notice given in accordance with Section 3.4.

"**Agent's Indicative Step-In Notice**" has the meaning given to it in Section 3.4.

“Agent’s Indicative Transfer Notice” has the meaning given to it in Section 3.4.

“Agent’s Step-In Notice” means a notice given by the Agent to the Port pursuant to Section 4.1.

“Agent’s Step-Out Notice” means a notice from the Agent or Appointed Representative to the Port pursuant to Section 5.1 hereof.

“Agent’s Withdrawal Notice” has the meaning set forth in Section 3.5.

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

“Antecedent Liabilities” means, as at any time:

(1) all amounts due and payable by the Project Company to the Port under the Project Agreement at such time; and

(2) all obligations which should have, but have not, been performed and outstanding liabilities of the Project Company under the Project Agreement with respect to the Port Projects at such time.

“Appointed Representative” means the Senior Lenders’ Representative identified in an Agent’s Step-In Notice.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. “Bankruptcy Law” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Bankruptcy Officer” means any trustee, receiver, liquidator, sequestrator, administrator or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

“Bankruptcy Proceedings” means any:

(1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;

(2) appointment of an Bankruptcy Officer in connection with;

(3) order or resolution passed in connection with; or

(4) formal agreement reached regarding,

(a) a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under

any Bankruptcy Law; or (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company's assets in any other jurisdiction.

“Credit Agreement” means the Credit Agreement dated [●], 2016, by and among the Project Company, the Senior Lenders and the Agent in respect of the Senior Debt.

“Credit Agreement Event of Default” means an “Event of Default” as defined in the Credit Agreement.

“Design-Build Agreement” means that certain Design-Build Agreement, dated as of January [●], 2016, by and among the Project Company and the Design-Builder.

“Design-Builder” means Clark Construction Group – California, LP, a limited partnership organized and existing under the laws of the State of California.

“Discharged Obligations” has the meaning set forth in Section 6.4 hereof.

“Discharged Rights” has the meaning set forth in Section 6.4 hereof.

“Finance Parties” means the Senior Lenders, agents and other finance parties under the Senior Financing Agreements.

“FM Contractor” means Johnson Controls, Inc., a corporation organized and existing under the laws of the State of Wisconsin.

“Indicative Notice Period” means the period commencing on the date of delivery of an Agent's Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of an Agent's Withdrawal Notice; or
- (3) 180 days following the date of delivery of the Agent's Indicative Notice.

“Installment Date” has the meaning given in Section 10.2(2)(d) hereof.

“Liability Report” has the meaning given in Section 3.6 hereof.

“Material Antecedent Liabilities” means Antecedent Liabilities incurred in connection with the Port Projects that are:

- (1) financial liabilities; or
- (2) non-financial liabilities, the breach of which shall trigger any remedy of the Port under Article 22 (Project Company Events of Default) of the Project Agreement or Section 27.1 (Project Company's Obligation to Indemnify) of the Project Agreement.

“Notice Period” means:

- (1) any Agent’s Cure Period;
- (2) any Termination Notice Period; and
- (3) any Indicative Notice Period.

“**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 Building and Revitalized Lincoln Park, dated as of January [●], 2016 among the City, the Port, and the Project Company.

“**Port Project - Project Company Event of Default**” means a Project Company Event of Default with respect to the Port Projects.

“**Port Projects**” has the meaning set forth in the Recitals.

“**Port’s Event Notice**” means a notice given by the Port to the Agent under Section 3.1.

“**Port’s Termination Notice**” means a notice given by the Port to the Agent under Section 3.2.

“**Project Documents**” means, collectively, the Project Agreement and any other agreement (other than this Agreement) entered into from time to time by 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.

“**Reported Antecedent Liabilities**” means the Antecedent Liabilities identified in the Liability Report.

“**Restricted Action**” means the exercise of any right to:

(1) cancel, terminate (including any partial termination), step-in, novate, expropriate, condemn, or take any other action that may result in the Port having a right to take any such action, with respect to the Project Agreement or the Port Projects, as applicable;

(2) cancel, step-in, novate or otherwise assume (whether directly or through a substitute entity) the benefit or burden of the Project Company’s rights against, or obligations to, the Design-Builder or any payment or performance bonds or guaranties delivered in connection therewith;

(3) make any claim or take any action or enforce any rights under or in connection with any collateral agreement or security agreement entered into by the Port, the Design-Builder, or the Project Company, but does not include the exercise of any of the Port’s rights under Section 21.2 (City’s and Port’s Temporary Step-in Rights) of the Project Agreement and the related exercise of its rights under Section 21.3 (City’s and Port’s Rectification Rights) of the Project Agreement; or

(4) issue any notice to the Project Company regarding any of the actions in (1) to (3) above.

“Revocation of Termination Notice” means a written notice from the Port to the Agent revoking a Port’s Termination Notice.

“Security Documents” means those documents set forth in Section 1.1 of the Credit Agreement, including the Insurance Trust Agreement.

“Senior Debt” means all amounts due and owing to the Senior Lenders under the Senior Financing Agreements.

“Senior Debt Discharge Date” means the date on which the Senior Debt has been fully and irrevocably paid or discharged (whether or not as a result of enforcement) and the Senior Lenders are under no further obligation to advance under the relevant Senior Financing Agreement.

“Senior Financing Agreements” means the Credit Agreement and any security agreements and other agreements entered into with respect to or in connection with the Credit Agreement, as set forth in Schedule 1 hereto.

“Senior Lenders” mean the lenders under the Credit Agreement.

“Senior Lenders’ Representative” means:

- (1) the Agent or Senior Lender;
- (2) a receiver of the Project Company appointed under or in connection with the Security Documents; or
- (3) any other person approved by the Port (such approval not to be unreasonably withheld or delayed).

“Step-In Date” means five Business Days after delivery of an Agent’s Step-In Notice.

“Step-In Period” means, subject to Section 4.3 hereof, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the date of any transfer under Article 4 hereof;
- (3) the date of any termination under Section 4.5 hereof;
- (4) the Expiration Date; and
- (5) if the Termination Notice was given before the Port Occupancy Date, the date that is 6 months after the Port Longstop Date.

“**Step-Out Date**” means the date that is 20 Business Days after the date of an Agent’s Step-Out Notice.

“**Suitable Substitute Project Company**” means, solely for the purposes of the rights and obligations of the Project Company with respect to the Port Projects under the Project Agreement, a person that is not a Restricted Person and that is approved by the Port (such approval not to be unreasonably withheld or delayed) as:

(1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under the Project Agreement; and

(2) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Project Company under the Project Agreement.

“**Termination Notice Period**” means the period beginning on the date of giving of a Port’s Termination Notice and ending on the earlier of:

(1) the Step-In Date;

(2) the date of service of a revocation of a Port’s Termination Notice; and

(3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.2(1)) set forth in the Port’s Termination Notice.

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.

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

(2) 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.

(3) 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.

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

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of the Senior Lenders, the Agent, the Collateral Agent, the Appointed Representative or any other Senior Lenders’ 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.

(12) Entire Agreement. This Agreement contains the entire agreement between 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.

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

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

(15) 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.

(16) 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.

(17) 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.

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

ARTICLE 2

CONSENT TO SECURITY

SECTION 2.1 CONSENT. The Port acknowledges notice of, and (notwithstanding anything to the contrary in the Project Agreement) consents to, the first priority lien and security interest granted by the Project Company in favor of the Finance Parties under the Senior Financing Agreements over:

(1) the Project Company's rights under the Project Agreement and all other Project Documents;

(2) the Project Company's rights under the Material Contracts;

(3) the Project Company's interest in any warranties, guarantees, letters of credit or other performance or payment security granted under any Project Contracts or Subcontracts;

(4) the Project Company's assets, including any cash, securities, investments or balances in any Project Company bank accounts;

(5) the Project Company's rights to Insurance Proceeds and Insurance Receivables with respect to Port Projects;

(6) any membership interests in the Project Company, and

(7) any other Project Company Collateral (as defined in the Senior Financing Agreements).

SECTION 2.2 NO NOTICE OF OTHER SECURITY. The Port confirms that as of the date of this Agreement it has not received written notice of any other security interest granted over the Project Company's rights described in Section 2.1(1) other than pursuant to the Senior Financing Agreements and the City Facilities Financing Documents.

SECTION 2.3 PORT OBLIGATIONS. Except as specifically provided for in this Agreement, the Port has no obligations (whether express, implied, collateral or otherwise) to the Agent or the Senior Lenders in connection with this Agreement, the Project Agreement, or the Port Projects. All of the obligations and liabilities given, undertaken or arising on the part of the Port under this Agreement are given solely to the Agent on behalf of the Senior Lenders and do not confer any rights on or in favor of the Project Company or any Affiliate of the Project Company or any other person.

SECTION 2.4 PORT'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in the Senior Financing Agreements, this Agreement or any other agreement between any of them (including any giving by the Agent of a notice hereunder) will, except as between the Senior Lenders, the Agent and the Port as expressly set forth in this Agreement, affect the rights of the Port under the Project Agreement (but an exercise by the Port of those rights will not preclude a proper exercise by the Agent of its rights under this Agreement). For greater certainty and without limiting the generality of the foregoing, nothing in this Agreement will limit, and the Port will be entitled at all times in accordance with the provisions thereof to exercise, the Port's rights under Section 21.2 (City's and Port's Step-in Rights) of the Project Agreement and the related exercise of its rights under Section 21.3 (City's and Port's Rectification Rights) of the Project Agreement. With respect to its permanent step in right under Section 22.7 of the Project Agreement, the Port acknowledges that such right does not exist in the absence of a Port right of termination for a Project Company Event of Default, and that such right of termination is subject to the rights of the Senior Lenders in this Agreement.

SECTION 2.5 SEPARATE AGREEMENTS. During the Design-Build Period, the Project Agreement shall, for the purposes of the Port Facilities Construction Financing and the City Facilities Financing only, constitute and be treated as two separate and divisible contracts whereby all provisions relating to the Port Facilities and the Shared Facilities shall constitute one contract (the "Port Project Agreement"), all provisions relating to the City Facilities and the Shared Rooms shall constitute another contract (the "City Project Agreement"), and where any provision of the Project Agreement is silent as to whether it applies to the Port Facilities or the Shared Facilities, on the one hand, or the City Facilities or the Shared Rooms, on the other hand, such provision shall apply to each of the Port Project Agreement and the City Facilities Project Agreement. In furtherance of the foregoing, the City, the Port and the Project Company further agree that during the Design-Build Period, the Project Company can be substituted by a "substitute" for the Port Project Agreement without any change to the Project Company with respect to the City Project Agreement and as set forth more fully herein. For the avoidance of doubt, the exercise by the Port of its rights under the Port Direct Agreement (Design-Builder) shall only be with respect to Port Facilities and the Shared Facilities and, with respect to any substitution, step-in rights or similar rights, shall not in any way impair or have any effect

whatsoever on the Design-Builder's rights and obligations under the Design-Build Agreement with respect to the City Facilities and the Shared Rooms.

ARTICLE 3

NOTICES

SECTION 3.1 PORT'S EVENT NOTICES.

The Port shall provide the Agent written notice (a "Port's Event Notice") promptly upon issuing to the Project Company any notice regarding:

- (1) the occurrence of a Port Project - Project Company Event of Default;
- (2) any event giving rise to a no-fault termination or a no-fault partial termination of the Project Agreement as contemplated by the Project Agreement; or
- (3) any failure to appropriate funds for the Port Projects, as set forth in Section 25.2(C)(Notice) of the Project Agreement.

A Port's Event Notice shall contain a summary of the facts relating to the relevant event. No failure of the Port to give a Port's Event Notice shall create any Port liability, or impair any right of the Port under this Agreement, the Project Agreement or any related agreement.

SECTION 3.2 PORT'S TERMINATION NOTICE. The Port shall not terminate or deliver any notice terminating (all or a portion of) the Project Agreement, or take any Restricted Action, in respect of a Port Project - Project Company Event of Default without giving to the Agent written notice (a "Port's Termination Notice") stating:

- (1) that a Port Project - Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than 180 days after the Port's Termination Notice; and
- (2) the grounds for termination in reasonable detail.

SECTION 3.3 AGENT'S NOTICE OF CREDIT AGREEMENT EVENT OF DEFAULT. Concurrently with delivery by it to the Project Company of any notice of a Credit Agreement Event of Default, the Agent shall provide a copy of such notice to the Port.

SECTION 3.4 AGENT'S INDICATIVE NOTICE. Without prejudice to the Collateral Agent's rights under the Security Documents, at any time upon the occurrence of a Port Project – Project Company Event of Default or the receipt of a Port's Termination Notice, and where relevant to a Port Project – Project Company Event of Default or the continuance of such Port Project – Project Company Event of Default, the Agent or the Collateral Agent may give notice to the Port of its intention to nominate a Senior Lenders' Representative to step-in in accordance with Section 4.1 hereof (an "Agent's Indicative Step-In Notice") or to effect a transfer in accordance with Section 6.1 hereof (an "Agent's Indicative Transfer Notice").

SECTION 3.5 AGENT'S WITHDRAWAL NOTICE. If at any time after the giving of an Agent's Indicative Notice or a Port's Termination Notice, the Agent has determined that it is not, or is no longer, considering appointing a Senior Lenders' Representative or effecting a transfer of the Project Company's rights and liabilities under the Project Agreement to a Suitable Substitute Project Company in accordance with this Agreement, the Agent or the Collateral Agent shall give notice (an "Agent's Withdrawal Notice") to the Port, and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Agent's Indicative Notice or Port's Termination Notice and the Port shall be at liberty to take any and all action available to it under the Project Agreement and other Project Documents.

SECTION 3.6 NOTICE OF ANTECEDENT LIABILITIES.

Unless an Agent's Withdrawal Notice has been given, not later than 30 days after the date of delivery by the Port of a Port's Termination Notice or the date of delivery by the Agent or the Collateral Agent of an Agent's Indicative Notice, as the case may be, the Port shall give the Agent a notice (the "Liability Report") containing details of:

(1) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Port's Termination Notice or Agent's Indicative Notice, as the case may be; and

(2) any financial liabilities of which the Port is aware (after reasonable inquiry) that will fall due under the Project Agreement on or after the date of delivery of the Port's Termination Notice or Agent's Indicative Notice, as the case may be, and on or prior to:

(a) in the case of a Port's Termination Notice, the proposed Termination Date set forth in that notice; and

(b) in the case of an Agents Indicative Notice, 180 days after the date of delivery of the Agent's Indicative Notice.

SECTION 3.7 SUBSEQUENT PORT NOTICE OF LIABILITIES. After the delivery of the Liability Report, unless an Agent's Withdrawal Notice has been given, the Port shall, promptly upon becoming aware of them, notify the Agent in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Port's Termination Notice or Agent's Indicative Notice, as the case may be, and prior to the end of the Termination Notice Period or the Indicative Notice Period, as the case may be.

SECTION 3.8 NO RIGHT TO TERMINATE OR TAKE RESTRICTED ACTION. The Port shall not terminate or partially terminate or deliver any notice terminating or partially terminating the Project Agreement or take any other Restricted Action during any Notice Period prior to the expiration of the 180 day period referred to in Section 3.2 hereof; provided, however, that until the expiration of such period the Port shall be entitled to require the Project Company to remedy any Port Project - Project Company Event of Default and shall be entitled to exercise all rights under the Project Agreement other than termination of such agreement or take any other Restricted Action. If the Project Company or the Agent has failed to cure the Port Project - Project Company Event of Default giving rise to the Port's Termination Notice during the applicable period, subject to Article 4 and Article 7, the Port may exercise all rights and remedies available to it under the Project Agreement, including, without limitation, the right to terminate

the Project Agreement, and all rights and remedies available to it under the Port Direct Agreement (Design-Builder).

SECTION 3.9 AGENT’S RIGHT TO CURE A PROJECT COMPANY BREACH OR DEFAULT WITHOUT STEP-IN OR TRANSFER. The Agent shall have the right to take such actions as may be necessary, in the Agent’s sole discretion, to cure or remedy a Port Project - Project Company Event of Default prior to any Step-In Period and without the necessity of issuing an Agent’s Indicative Step-In Notice or Agent’s Indicative Transfer Notice. Prior to exercising any such right, the Agent shall deliver a written notice thereof to the Port (an “Agent’s Cure Notice”). The Port shall have no duty to deal with the Agent in any such circumstances, but the Port will accept performance by the Agent, or its designee, as performance by the Project Company. Any acts by the Agent or any designee in the exercise of such right shall be deemed to be acts of the Project Company for the purposes of the Project Agreement, including the indemnity provisions thereof. The Agent may exercise such rights for a period (the “Agent’s Cure Period”) commencing on the date of delivery of an Agent’s Cure Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of an Agent’s Withdrawal Notice; or
- (3) 120 days following the delivery of a Port’s Event Notice.

SECTION 3.10 OTHER PROJECT COMPANY EVENTS OF DEFAULT. The City shall promptly notify the Agent of any Project Company Event of Default that is not a Port Project –Project Company Event of Default.

ARTICLE 4

STEP-IN

SECTION 4.1 AGENT’S STEP-IN NOTICE. Subject to Section 4.3, and without prejudice to the Agent’s rights under the Security Documents, the Agent may give the Port a notice of its intent to exercise its step-in rights under this Agreement (an “Agent’s Step-In Notice”) at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2 CONTENTS OF STEP-IN NOTICE. In the Agent’s Step-In Notice, the Agent shall:

- (1) state that it intends to exercise its step-in rights under this Agreement; and
- (2) identify the Appointed Representative.

SECTION 4.3 ONE STEP-IN PERIOD. There will be not more than one Step-In Period following any one Agent’s Indicative Notice or Port’s Termination Notice.

SECTION 4.4 APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the Project Agreement with respect to the Port Facilities and Shared Facilities, including any rights to cure a Port Project – Project Company Event of Default, subject to the performance by or on behalf of the Project Company’s obligations under the Project Agreement with respect to the Port Facilities and Shared Facilities. During the Step-In Period, the Port shall deal with the Appointed Representative and not the Project Company with respect to the Port Facilities and Shared Facilities.

SECTION 4.5 PORT RIGHT TO TERMINATE. The Port shall not terminate the Project Agreement, in whole or in part, or take any other Restricted Action during the Step-In Period except as set forth in this Section. The Port shall be entitled to terminate (or partially terminate) the Project Agreement during the Step-In Period by written notice to the Project Company, the Agent and the Appointed Representative:

(1) if the Reported Antecedent Liabilities that are financial liabilities owed to the Port have not been paid to the Port or guaranteed to the Port’s reasonable satisfaction on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid or guaranteed to the Port’s reasonable satisfaction by the due date;

(2) if amounts owed to the Port, of which the Port was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged or sufficiently guaranteed to the Port’s reasonable satisfaction by:

(a) if notice of the liability is given to the Agent at least 20 Business Days prior to the Step-In Date, the Step-In Date;

(b) if notice of the liability is given to the Agent within 20 Business Days before the Step-In Date and such liability is material (as stated by the Port, acting reasonably, when it gives such notice or by the Agent, acting reasonably, by notice to the Port within five Business Days of receipt of the notice from the Port), 20 Business Days after the Step-In Date; or

(c) otherwise, 20 Business Days after delivery of the notice;

(3) on grounds arising after the Step-In Date in accordance with the terms of the Project Agreement, provided that for the purposes of termination under the Project Agreement, any Deductions that arose prior to the Step-In Date will not be taken into account during the Step-In Period;

(4) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Project Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Reported Antecedent Liabilities which are non-financial liabilities (including, if necessary to effect any such remedy, diligent efforts to obtain possession or control of the Port Facilities and Shared Facilities);

(5) on grounds arising prior to the Port Occupancy Date if the Port Occupancy Date does not occur on or before the date that is 6 months after the Port Longstop Date; or

(6) pursuant to Section 24.1(A)(2) of the Project Agreement, Section 24.1(A)(3) of the Project Agreement, Section 24.1(C)(1) of the Project Agreement, Section 24.1(C)(4) of the Project Agreement, or Section 24.1(C)(5) of the Project Agreement.

ARTICLE 5

STEP-OUT

SECTION 5.1 AGENT'S STEP-OUT NOTICE. The Agent or the Appointed Representative may at any time during the Step-In Period deliver to the Port a notice (an "Agent's Step-Out Notice") which specifies the Step-Out Date.

SECTION 5.2 EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

- (1) the rights of the Port against the Appointed Representative and the rights of the Appointed Representative against the Port shall be cancelled; and
- (2) the Port shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the Project Agreement.

SECTION 5.3 PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4 hereof, the Project Company shall continue to be bound by the terms of the Project Agreement notwithstanding the occurrence of an Agent's Cure Notice, an Agent's Indicative Notice, an Agent's Step-In Notice, a Step-In Period, an Agent's Step-Out Notice, a Step-Out Date, any action by the Agent, Appointed Representative or the Senior Lenders or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the Project Agreement prior to the expiration of the Step-in Period from actions or inactions of the Agent, the Appointed Representative or Senior Lenders. The Project Company shall remain liable for any unpaid amounts due and payable to the Port by the Project Company under the Project Agreement.

ARTICLE 6

SENIOR LENDER REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1 PROJECT COMPANY TRANSFER NOTICE. Subject to Section 6.2, at any time:

- (1) upon the occurrence of a Port Project - Project Company Event of Default, and where relevant to such event during the continuance of such event; or
- (2) during the Step-In Period,

the Agent may, on 30 Business Days' notice to the Port and any Appointed Representative, take any action available to it to cause the transfer of the Project Company's rights and liabilities under the Project Agreement and any Material Contract with respect to the Port Projects to a Suitable Substitute Project Company in accordance with the provisions of Section 6.4.

SECTION 6.2 PORT CONSENT. The Port shall provide written notice to the Agent as to whether any person to whom the Agent proposes to transfer the Project Company's rights and liabilities under the Project Agreement with respect to the Port Projects is a Suitable Substitute Project Company, not later than 20 Business Days after the date of receipt from the Agent of all information reasonably required by the Port to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3 WITHHOLDING OF CONSENT. The Port shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company and it shall, without limitation, be reasonable for the Port to withhold its consent:

(1) if there are unremedied breaches under the Project Agreement and there is no remedial program reasonably acceptable to the Port in respect of the breaches; or

(2) based on any of the factors set forth in Section 26.1 (Limitation on Assignment by Project Company) of the Project Agreement with respect to any transfer, including any assignment, to such person.

SECTION 6.4 TERMS OF TRANSFER. Upon the transfer referred to in Section 6.1 becoming effective:

(1) the Project Company and the Port shall be released from their obligations under the Project Agreement to each other, including with respect to indemnification under the Project Agreement whether arising prior to or after such transfer (the "Discharged Obligations");

(2) the Suitable Substitute Project Company and the Port shall assume obligations which are substantially similar to the Discharged Obligations, but owed to or assumed by the Suitable Substitute Project Company instead of the Project Company;

(3) the rights of the Project Company against the Port under the Project Agreement and vice versa will be cancelled (the "Discharged Rights");

(4) the Suitable Substitute Project Company and the Port shall acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the Suitable Substitute Project Company instead of the Project Company; provided, however, that the Suitable Substitute Project Company shall not assume any material new obligations and the Port shall not assume any material new rights without the prior written consent of the Agent, acting reasonably;

(5) any subsisting ground for termination of the Project Agreement by the Port shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked;

(6) the Port and the Suitable Substitute Project Company will execute and deliver to the Agent a new Project Agreement containing all of the same terms as those of the Project Agreement that are with respect to the Port Projects, except for any obligations that have been fulfilled by the Project Company, any party acting on behalf of or stepping-in for the Project Company or the Agent prior to the execution of such new Project Agreement.

(7) the Port shall enter into a lenders' direct agreement with the Suitable Substitute Project Company and a representative of Senior Lenders lending to the Suitable Substitute Project Company on substantially the same terms as this Agreement; and

(8) any Deduction that arose prior to that time will not be taken into account after the transfer for the purposes of Section 22.1(A)(7) (Project Company Events of Default Defined) of the Project Agreement (for the avoidance of doubt, nothing in this Section 6.4(8) shall impact the ability of the City to impose Deductions in accordance with the Project Agreement).

ARTICLE 7

IMPACT OF BANKRUPTCY OR INSOLVENCY PROCEEDINGS

SECTION 7.1 REJECTION OF THE PROJECT AGREEMENT. If the Project Agreement is rejected by a trustee or debtor-in-possession in, or terminated as a result of, any bankruptcy or insolvency proceeding involving the Project Company and, within 150 days after such rejection or termination, the Agent shall so request and shall certify in writing to the Port that the Agent's permitted designee or assignee, including a Suitable Substitute Project Company, intends to perform the obligations of the Project Company as and to the extent required under the Project Agreement with respect to the Port Projects, the Port will execute and deliver to the Agent (or any Suitable Substitute Project Company satisfying the requirements of this Agreement if directed to do so by the Agent) a new Project Agreement. The new Project Agreement shall contain conditions, agreements, terms, provisions and limitations which are the same as those of the Project Agreement with respect to the Port Projects, except for any obligations that have been fulfilled by the Project Company, any party acting on behalf of or stepping-in for the Project Company or the Agent prior to such rejection or termination. References in this Agreement to the "Project Agreement" shall be deemed also to refer to any such new Project Agreement. The effectiveness of any new Project Agreement referred to in this Section 7.1 above will be conditional upon the Agent first reimbursing the Port in respect of all of its costs and expenses, including legal fees and expenses, incurred in connection with the execution and delivery of such new Project Agreement.

SECTION 7.2 EXTENSION OF CURE PERIOD AND STEP-IN PERIOD. To the extent that the Agent is prohibited by any court order, bankruptcy or insolvency proceedings from remedying a Project Company Event of Default that is the subject of a Port's Event Notice; or from commencing or prosecuting foreclosure proceedings, the Agent's Cure Period or the Step-In Period, as the case may be, shall be extended by a period of time equal to the shorter of the period of such prohibition or 150 Days.

ARTICLE 8

COVENANTS

SECTION 8.1 PORT COVENANTS. The Port agrees with the Agent that the Port shall:

(1) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the Agent, an Appointed Representative or a Suitable Substitute Project

Company taking a transfer in accordance with Article 6 hereof may reasonably require for perfecting any transfer or release under this Agreement, including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent or Appointed Representative or Suitable Substitute Project Company reasonably requires;

(2) not, prior to the Senior Debt Discharge Date, unless the Agent has (acting reasonably) consented in writing:

(a) appoint a Bankruptcy Officer;

(b) commence any Bankruptcy Proceedings;

(c) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the Agent, vote against any Bankruptcy Proceedings;

(d) without prejudice to its rights of set-off under the Project Agreement, including rights to take amounts owing by the Project Company into account in calculating termination compensation payable, claim or prove as creditor or otherwise in competition with any Finance Party in respect of any monies owing to it by the Project Company for or on account of the Project Company's liabilities under the Project Documents in the event of any Bankruptcy Proceedings; or

(e) take any action authorizing, or which might result in or is in furtherance of, any of the prohibited matters referred to in items (a), (b), (c) or (d) above;

(3) not take or fail to take any action (including amendments, waivers and enforcement action) with respect to any material agreement between the Port and a third party, the effect of which would be reasonably likely to render the Port unable to satisfy its obligations under the Project Agreement or to cause the occurrence of a Port Event of Default; and

(4) the Port shall not issue any notice under Section 3.2 or 4.1 of the Port Direct Agreement (Design-Builder) at any time that the Senior Lenders are validly exercising under any Senior Lender Financing Agreement any step-in rights with respect to the Port Direct Agreement (Design-Builder).

SECTION 8.2 AGENT COVENANTS. The Agent shall:

(1) promptly, notify the Port when it believes the Senior Debt Discharge Date will occur or has occurred, and in any event shall so notify no later than 20 Business Days after its occurrence;

(2) promptly, notify the Port of any Credit Agreement Event of Default;

(3) not, prior to the Senior Debt Discharge Date, without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Port:

(a) appoint a Bankruptcy Officer;

- (b) commence a Bankruptcy Proceedings;
- (c) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
- (d) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (a), (b) or (c) above;

(4) promptly, upon request by the Port, and provided the Senior Debt Discharge Date has occurred, cause all security on any real or personal property constituting part of the Project to be promptly discharged and released on the date requested by the Port (which will be on or after the Senior Debt Discharge Date);

(5) not release or return any amounts from the Construction Retainage Account without the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Port; and

(6) not consent to any amendment or modification to the guarantee of the Design-Builder's obligations under the Design-Build Agreement provided by Clark Construction Group, LLC to the Project Company without the written consent (such consent not to be unreasonably withheld, conditioned or delayed) of the Port.

SECTION 8.3 PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 9

ASSIGNMENT

SECTION 9.1 RESTRICTION ON ASSIGNMENT. No party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except as provided in this Article.

SECTION 9.2 ASSIGNMENT BY AGENT. The Agent may assign or transfer its rights and obligations under this Agreement to a successor Agent in accordance with the Senior Financing Agreements without the consent of the Port, provided that the Agent delivers to the Port not less than 10 Business Days prior to such assignment a notice setting out such contact information regarding the assignee as the Port may reasonably require and provided the assignee or transferee is not a Restricted Person.

SECTION 9.3 ASSIGNMENT BY SENIOR LENDER. Any Senior Lender may assign or transfer its rights and obligations under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements without the consent of the Port provided the assignee or transferee is not a Restricted Person.

SECTION 9.4 ASSIGNMENT BY PORT. The Port shall assign or transfer its rights and obligations under this Agreement to any permitted assignee of its interest in the Project

Agreement concurrently with the assignment of the Project Agreement to such assignee, and the Agent and the Senior Lenders shall co-operate with the Port in completing the formalities of any transfer or assignment including by executing any additional documents as may be reasonably required by the Port.

SECTION 9.5 NEW AGREEMENT. If Section 9.2 applies in relation to the Agent, the Port and the Project Company shall, upon request by the new Agent, enter into a new lenders' direct agreement with the new Agent on substantially the same terms as this Agreement.

ARTICLE 10

GENERAL

SECTION 10.1 TERM. This Agreement shall remain in effect until the earlier of:

- (1) the Senior Debt Discharge Date;
- (2) the date upon which a new lenders' direct agreement is entered into pursuant to Section 9.5 following an assignment or transfer by the Agent of its rights and obligations under this Agreement to a successor Agent;
- (3) subject to compliance with Section 6.4(6) above, the date of transfer of the Project Company's rights and liabilities under the Project Agreement to a Suitable Substitute Project Company pursuant to Section 6.1; or
- (4) if the Port has assumed all or a portion of the Senior Debt pursuant to Section 10.2(2), the date on which the Port makes the final payment in respect of such assumed portion of the Senior Debt.

SECTION 10.2 NO PORT OR STATE RESPONSIBILITY FOR SENIOR DEBT.

(1) None of the State, the Port, the City, the Harbor Department or any other agency, instrumentality or political subdivision of the State, and no board member, director, officer, employee, agent or representative of any of them, shall have any liability whatsoever for payment of the principal sum of any Senior Debt, any other obligations issued or incurred by the Project Company in connection with the Project Agreement, or any interest accrued thereon or any other sum secured by or accruing under the Senior Financing Agreements. Except for a violation by the Port of its express obligations to Senior Lenders set forth in this Agreement, no Senior Lender shall be entitled to seek any damages or other amounts from the Port, whether for Senior Debt or any other obligation amount. The Port's review of the Senior Financing Agreements or other Project financing documents is not a guarantee or endorsement of the Senior Debt, any other obligations issued or incurred by the Project Company in connection with this Project Agreement or the Project, and is not a representation, warranty or other assurance as to the ability of the Project Company to perform its obligations with respect to the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, or as to the adequacy of the Port Completion Payment to provide for payment of the Senior Debt or any other obligations issued or incurred by the Project Company in connection with the Project Agreement or the Project, except that the foregoing does not affect

any of Port's liability to the Project Company under Article 24 of the Project Agreement and any Termination Payment that is measured in whole or in part by outstanding Senior Debt.

(2) Notwithstanding Section 10.2(1), the Port may elect to pay the portion of a Partial Termination Payment or Termination Payment (other than for a Partial Termination Payment or Termination Payment due in connection with (i) a termination of the Project Agreement for a Port Non-Appropriation Event pursuant to Section 25.2(E)(2) of the Project Agreement, or (ii) a Port Event of Default pursuant to Section 23.4 of the Project Agreement), as applicable, corresponding to the outstanding Senior Debt directly to the Senior Lenders by assuming an amount of outstanding Senior Debt equal to such portion of the Partial Termination Payment or Termination Payment, up to the amount of the Senior Debt, subject to the following conditions:

(a) the assumption of such Senior Debt by the Port complies with all laws, regulations and policies applicable to the Senior Lenders and shall be entered into no later than the Partial Termination Date or Termination Date, as applicable;

(b) the terms and conditions pursuant to which the Port assumes such Senior Debt shall be mutually acceptable to the Port and the Senior Lenders, each acting reasonably, and shall, at a minimum, require the Port to enter into an assumption agreement pursuant to which the Port will assume all obligations of the Project Company in respect of the Port Facilities Construction Financing and to provide customary opinions (including as to due authorization, authority and enforceability), instruments, documents and certificates required to close the transactions contemplated in the assumption agreement;

(c) the Senior Lenders shall retain the benefit of all security interests granted to them under the Senior Financing Agreements;

(d) such assumed Senior Debt, and any interest accrued thereon, shall be paid by the Port on the dates set forth for payment of such amounts in the Credit Agreement (each, an "Installment Date"), beginning with the first payment date set forth in the Credit Agreement following the Termination Date or Partial Termination Date, as the case may be, and ending on the date on which the final payment in respect of Senior Debt is scheduled to be made in accordance with the Senior Financing Documents;

(e) interest shall be due and payable in arrears on the next succeeding Installment Date; and

(f) such assumed Senior Debt and any accrued and unpaid interest thereon, shall be accelerated and become immediately due and owing upon the re-award of the Project by the City or the Port, as the case may be.

SECTION 10.3 CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the Project Agreement, the provisions of this Agreement shall prevail.

SECTION 10.4 ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and

understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 10.5 VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of California, Los Angeles County, and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 10.6 WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 10.7 COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 10.8 CONFIDENTIALITY. The Agent shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the Project Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

SECTION 10.9 NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to the City:

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

with a copy to:

Charles Parkin
Office of the City Attorney
City of Long Beach
333 W. Ocean Blvd., 13th Floor
Long Beach, California 90802
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 Agent:

[•]
[•]
[•]
[•]
[•]
Attention: [•]
Telephone No.: [•]
Fax No.: [•]

if to the Project Company:

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

or to such other address as any party may, from time to time, designate in the manner set forth above.

[SIGNATURE PAGE FOLLOWS]

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

APPROVED AS TO FORM
City Attorney

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

By: _____
Name:
Title:

By: _____
Name:
Title:

CITY OF LONG BEACH

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS,
LLC

By: _____
Name:
Title:

[COLLATERAL AGENT]

By: _____
Name:
Title:

SCHEDULE 1

SENIOR FINANCING AGREEMENTS¹

[Credit Agreement]

[Collateral Agency Agreement]

[Security Agreement]

[Pledge Agreement]

[•]

[•]

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

TRANSACTION FORM C-1

FORM OF CITY DIRECT AGREEMENT (DESIGN-BUILDER)

CITY DIRECT AGREEMENT (DESIGN-BUILDER)

by and among

CITY OF LONG BEACH

and

CLARK CONSTRUCTION GROUP – CALIFORNIA, LP

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

Dated January [•], 2016

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATION	1
SECTION 1.1. DEFINITIONS.....	1
SECTION 1.2. INTERPRETATION.....	5
ARTICLE 2 GENERAL	8
SECTION 2.1. DESIGN-BUILDER’S OBLIGATIONS	8
SECTION 2.2. DESIGN-BUILDER’S RIGHTS NOT PREJUDICED	8
SECTION 2.3. DESIGN-BUILDER’S RIGHT TO SUSPEND WORK	8
ARTICLE 3 NOTICES	8
SECTION 3.1. TERMINATION NOTICE	8
SECTION 3.2. INDICATIVE NOTICE.....	8
SECTION 3.3. CITY’S WITHDRAWAL NOTICE	9
SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES.....	9
SECTION 3.5. SUBSEQUENT DESIGN-BUILDER NOTICE OF LIABILITIES.....	9
SECTION 3.6. NO RIGHT TO TERMINATE	9
SECTION 3.7. CITY’S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT	10
ARTICLE 4 STEP-IN	
SECTION 4.1. STEP-IN NOTICE	10
SECTION 4.2. CONTENTS OF STEP-IN NOTICE.....	10
SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS.....	10
SECTION 4.4. DESIGN-BUILDER RIGHT TO TERMINATE.....	10
ARTICLE 5 STEP-OUT.....	11
SECTION 5.1. STEP-OUT NOTICE.....	11

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD	11
SECTION 5.3. PROJECT COMPANY REMAINS BOUND.....	11
ARTICLE 6 CITY REPLACEMENT OF THE PROJECT COMPANY	12
SECTION 6.1. PROJECT COMPANY ASSIGNMENT	12
SECTION 6.2. DESIGN-BUILDER CONSENT.....	12
SECTION 6.3. WITHHOLDING OF CONSENT	12
SECTION 6.4. TERMS OF ASSIGNMENT	12
ARTICLE 7 ACCESS; MEETINGS; NOTICES	13
SECTION 7.1. ACCESS.....	13
SECTION 7.2. MEETINGS	13
SECTION 7.3. NOTICES.....	13
ARTICLE 8 CITY FACILITIES SENIOR LENDERS' RIGHTS.....	14
SECTION 8.1. CITY FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT	14
ARTICLE 9 INSURANCE.....	14
SECTION 9.1. RELEASE OF INSURANCE PROCEEDS.....	14
ARTICLE 10 COVENANTS	14
SECTION 10.1. DESIGN-BUILDER COVENANTS	14
SECTION 10.2. CITY COVENANTS	15
SECTION 10.3. PROJECT COMPANY COVENANT.....	15
ARTICLE 11 ASSIGNMENT	16
SECTION 11.1. RESTRICTION ON ASSIGNMENT	16
ARTICLE 12 GENERAL.....	16
SECTION 12.1. TERM.....	16
SECTION 12.2. CONFLICT OR INCONSISTENCY.....	16
SECTION 12.3. ENTIRE AGREEMENT	16

SECTION 12.4. VENUE	16
SECTION 12.5. WAIVER.....	16
SECTION 12.6. COUNTERPARTS	16
SECTION 12.7. CONFIDENTIALITY	16
SECTION 12.8. NOTICES.....	17
SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY	18

CITY DIRECT AGREEMENT (DESIGN-BUILDER)

This DESIGN-BUILD DIRECT AGREEMENT (this “Agreement”) is entered into on January [•], 2016, by and among the CITY OF LONG BEACH (the “City”), CLARK CONSTRUCTION GROUP – CALIFORNIA, LP, a California limited partnership (the “Design-Builder”) and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a Delaware limited liability company (the “Project Company”).

RECITALS

WHEREAS, the City and the Project Company have entered into that certain Project Agreement for the Design, Construction, Financing, Operation, And Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters Building and Revitalized Lincoln Park, dated January [•], 2016 (the “Project Agreement”), whereby the Project Company has agreed to design, construct, finance, operate, maintain and manage a new civic center in Long Beach, California (the “Project”), all as more particularly described in the Project Agreement;

WHEREAS, the Project Company and the Design-Builder have entered into that certain Design-Build Agreement, dated as of January [•], 2016 (the “Design-Build Agreement”) whereby the Design-Builder has agreed, among other things, to carry out and complete certain portions of the Project Company’s obligations with respect to the City Facilities and the Shared Rooms under the Project Agreement (the “Work”), all as more particularly described in the Design-Build Agreement;

WHEREAS, the parties acknowledge and agree that any delay in the construction of the City Facilities and the Shared Rooms as contemplated under both the Project Agreement and the Design-Build Agreement would be prejudicial to all parties, and that it would be in the best interests of all parties to provide a mechanism for the continued construction of the City Facilities and the Shared Rooms by the Design-Builder under the terms of the Design-Build Agreement in the event of a default by the Project Company under the Project Agreement or the Design-Build Agreement;

WHEREAS, it is a condition precedent to the obligations of the parties that this Agreement be executed and delivered by the Project Company, the City and the Design-Builder.

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 INTERPRETATION

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 Design-Build Agreement, and:

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

“Antecedent Liabilities” means, as at any time:

- (1) all amounts due and payable by the Project Company to the Design-Builder under the Design-Build Agreement at such time; and
- (2) all obligations which should have, but have not, been performed by, and outstanding liabilities of, the Project Company under the Design-Build Agreement at such time.

“Appointed Representative” means the City’s Representative identified in a Step-In Notice.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto, and any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers, or the liquidation of companies and estates that are unable to pay their debts when due.

“Bankruptcy Officer” means any trustee, receiver, liquidator, sequestrator, administrator, or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

“Bankruptcy Proceedings” means any:

- (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
- (2) appointment of a Bankruptcy Officer in connection with;
- (3) order or resolution passed in connection with; or
- (4) formal agreement reached regarding;

(a) a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company’s assets in any other jurisdiction.

“City Facilities” has the meaning given to such term in the Design-Build Agreement.

“City’s Cure Notice” has the meaning given to such term in Section 3.7 hereof.

“City’s Cure Period” has the meaning given to such term in Section 3.7 hereof.

“City Insurance Trust Account” has the meaning given to such term in the Design-Build Agreement.

“City’s Representative” means has the meaning given to such term in the Project Agreement.

“City’s Withdrawal Notice” has the meaning given to such term in Section 3.3 hereof.

“Design-Build Period” has the meaning given to such term in the Design-Build Agreement.

“Discharged Obligations” has the meaning given to such term in Section 6.4 hereof.

“Discharged Rights” has the meaning given to such term in Section 6.4 hereof.

“Final Completion” shall be defined in the Design-Build Agreement.

“FM Contractor” means Johnson Controls, Inc., a Wisconsin corporation.

“Governmental Body” has the meaning given to such term in the Design-Build Agreement.

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Assignment Notice given in accordance with Section 3.2 hereof.

“Indicative Notice Period” means the period commencing on the date of delivery of an Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of a City’s Withdrawal Notice; or
- (3) sixty (60) days following the date of delivery of the Indicative Notice.

“Indicative Step-In Notice” has the meaning given to such term in Section 3.2 hereof.

“Indicative Assignment Notice” has the meaning given to such term in Section 3.2 hereof.

“Insurance Trust Agreement” has the meaning given to such term in the Design-Build Agreement.

“Interface Agreement” means that certain Interface Agreement, dated as of the date hereof, by and among the Project Company, the Design-Builder and the FM Contractor.

“Liability Report” has the meaning given to such term in Section 3.4 hereof.

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (1) financial liabilities; or

- (2) non-financial liabilities, the breach of which shall trigger any remedy of the Design-Builder under Article 23 of the Design-Build Agreement.

“Notice Period” means with respect to a Project Company Event of Default, the Termination Notice Period, and with respect to a Project Agreement Event of Default, the Indicative Notice Period.

“Occupancy Readiness Conditions (Design-Builder)” has the meaning given to such term in the Design-Build Agreement.

“Outstanding Obligations” has the meaning given to such term in Section 4.3 hereof.

“Project Agreement” has the meaning given to such term in the Recitals above.

“Project Agreement Event of Default” means a City Partial Termination Project Company Event of Default (as defined in the Project Agreement) or a Termination Project Company Event of Default (as defined in the Project Agreement) under the Project Agreement.

“Project Company Event of Default” has the meaning given to such term in the Design-Build Agreement.

“Project Documents” means, collectively, the Design-Build Agreement, the Interface Agreement, and any other agreement (other than this Agreement) entered into from time to time by the Project Company and the Design-Builder (with or without other parties) in connection with the City Facilities and the Shared Rooms.

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report.

“Restricted Person” has the meaning given to such term in the Design-Build Agreement.

“Revocation of Termination Notice” means a written notice from the Design-Builder to the City revoking a Termination Notice.

“Shared Rooms” has the meaning given to such term in the Design-Build Agreement.

“Step-In Date” means five (5) Business Days after delivery of a Step-In Notice.

“Step-In Notice” means a notice given by the City to the Design-Builder pursuant to Section 4.1 hereof, which shall include a certification that the City shall have access to funds sufficient to meet its obligations.

“Step-In Period” means, subject to Section 8.1 hereof, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the effective date of any assignment under Article 6 hereof;

- (3) the date of any termination under Section 4.4 hereof;
- (4) the Expiration Date under the Design-Build Agreement; and
- (5) if the Termination Notice was given before the satisfaction by the Design-Builder of Occupancy Readiness Conditions (Design-Builder) in respect of the City Facilities and the Shared Rooms, the date that is six (6) months after the City Date Certain (as defined in the Design-Build Agreement).

“Step-Out Date” means the date that is twenty (20) Business Days after the date of a Step-Out Notice.

“Step-Out Notice” means a notice from the City or the Appointed Representative to the Design-Builder pursuant to Section 5.1 hereof.

“Suitable Substitute Project Company” means a person that is not a Restricted Person:

- (1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company in respect of the City Facilities and the Shared Rooms under the Design-Build Agreement; and
- (2) having or employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of the Project Company in respect of the City Facilities and the Shared Rooms under the Design-Build Agreement.

“Termination Notice” means a notice given by the Design-Builder to the City under Section 3.1 hereof.

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of service of a Revocation of Termination Notice; and
- (3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a) hereof) set forth in the Termination Notice.

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 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, or otherwise modified or 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 any obligation hereunder, 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 and the Project Documents contain the entire agreement between some or all of the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement and the Project Documents 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 of California (without regard to principles of conflicts of laws).
- (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 GENERAL

SECTION 2.1. DESIGN-BUILDER'S OBLIGATIONS. Except as specifically provided for in this Agreement, the Design-Builder has no obligations (whether express, implied, collateral or otherwise) to the City in connection with this Agreement, the Design-Build Agreement, the Interface Agreement, or with respect to the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Design-Builder under this Agreement are given solely to the City and do not confer any rights on or in favor of the Project Company or any other person.

SECTION 2.2. DESIGN-BUILDER'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in this Agreement or any other agreement between any of them (including any giving by the City of a notice hereunder) will, except as expressly set forth in this Agreement, affect the rights of the Design-Builder in respect of the City Facilities and the Shared Rooms under the Design-Build Agreement (but an exercise by the Design-Builder of those rights will not preclude a proper exercise by the City of its rights under this Agreement). Notwithstanding the foregoing, each party does not make any acknowledgement with respect to any agreements referenced above to which it is not a party.

SECTION 2.3. DESIGN-BUILDER'S RIGHT TO SUSPEND WORK. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall preclude or delay the Design-Builder's right to suspend Work in respect of the City Facilities and the Shared Rooms as provided in Section 18.16 of the Design-Build Agreement.

ARTICLE 3 NOTICES

SECTION 3.1. TERMINATION NOTICE. The Design-Builder shall not terminate or deliver any notice terminating the Design-Build Agreement in respect of a Project Company Event of Default under the Design-Build Agreement without giving to the City and the City Facilities Senior Lenders written notice (a "Termination Notice") stating:

- (a) that a Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than sixty (60) days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

SECTION 3.2. INDICATIVE NOTICE. Subject to Section 8.1 hereof, at any time upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default the continuance of such Project Agreement Event of Default, the City may give notice to the Design-Builder and the Project Company of its intention to nominate an Appointed Representative to step-in in accordance with Section 4.1 hereof (an "Indicative Step-In Notice") or to effect an assignment in accordance with Section 6.1 hereof (an "Indicative

Assignment Notice”). The Design-Builder shall be entitled and obligated to rely on such notices as conclusive evidence of a Project Agreement Event of Default for purposes of this Agreement, and shall not be required to make any inquiry into the entitlement of the City to give such notice.

SECTION 3.3. CITY’S WITHDRAWAL NOTICE. If at any time after the giving of an Indicative Notice, the City has determined that it is not, or is no longer, considering appointing a City’s Representative or effecting an assignment of the Project Company’s rights and liabilities under the Design-Build Agreement to a Suitable Substitute Project Company in accordance with this Agreement, the City shall give notice (a “*City’s Withdrawal Notice*”) to the Design-Builder and the Project Company and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Indicative Notice and the Design-Builder shall be at liberty to take any and all action available to it under the Design-Build Agreement and other Project Documents.

SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES. Unless a City’s Withdrawal Notice has been given, not later than thirty (30) days after the date of delivery by the Design-Builder of a Termination Notice or the date of delivery by the City of an Indicative Notice, as the case may be, the Design-Builder shall give the City a notice (the “*Liability Report*”) containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of the Project Company to the Design-Builder which the Design-Builder is aware (after reasonable inquiry) that will become due under the Design-Build Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
 - (1) in the case of a Termination Notice, the proposed Termination Date set forth in that notice; and
 - (2) in the case of an Indicative Notice, sixty (60) days after the date of delivery of the Indicative Notice.

SECTION 3.5. SUBSEQUENT DESIGN-BUILDER NOTICE OF LIABILITIES. After the delivery of the Liability Report, unless a City’s Withdrawal Notice has been given, the Design-Builder shall, promptly upon becoming aware of them, notify the City in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be.

SECTION 3.6. NO RIGHT TO TERMINATE. The Design-Builder shall not terminate the Design-Build Agreement or deliver any notice terminating the Design-Build Agreement during any Notice Period that would have the effect of terminating the Design-Build Agreement prior to the expiration of the sixty (60) day period referred to in Section 3.1 hereof; provided, however, that until the expiration of that period the Design-Builder shall be entitled to require the Project Company (or any other entity that has exercised step-in rights, as applicable) to remedy any Project Company Event of Default and shall be entitled to exercise all rights under the Design-Build Agreement other than termination of such agreement.

SECTION 3.7. CITY'S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT. The City shall have the right to take such actions as may be necessary, in the City's sole discretion, to cure or remedy a Project Agreement Event of Default prior to any Step In Period without the necessity of issuing an Indicative Step-In Notice or Indicative Assignment Notice. Prior to exercising any such right, the City shall deliver a written notice thereof to the Design-Builder (a "*City's Cure Notice*"). The Design-Builder shall have no duty to deal with the City in any such circumstances, but the Design-Builder will accept performance by the City as performance by the Project Company. Any acts by the City in the exercise of such right shall be deemed to be acts of the Project Company for the purposes of the Design-Build Agreement, including the indemnity provisions thereof. The City may exercise such rights for a period (the "*City's Cure Period*") commencing on the date of delivery of a City's Cure Notice and ending on the earlier of:

- (a) the Step-In Date; or
- (b) the date of delivery of a City's Withdrawal Notice.

ARTICLE 4 STEP-IN

SECTION 4.1. STEP-IN NOTICE. Subject to Section 8.1 hereof, the City may give the Project Company and the Design-Builder a notice (a "*Step-In Notice*") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2. CONTENTS OF STEP-IN NOTICE. In the Step-In Notice, the City shall (1) state that it intends to exercise its step-in rights under this Agreement, and (2) identify the Appointed Representative.

SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the Design-Build Agreement, and the Appointed Representative, as agent for the City, shall assume all of the Project Company's obligations (without exception) under the Design-Build Agreement, whether incurred prior to, on, or after the Step-In Date, including, without limitation, all payment obligations of the Project Company under the Design-Build Agreement (collectively, the "*Outstanding Obligations*"). During the Step-In Period, the Design-Builder shall deal with the Appointed Representative and not the Project Company.

SECTION 4.4. DESIGN-BUILDER RIGHT TO TERMINATE. The Design-Builder shall not terminate the Design-Build Agreement during the Step-In Period, except as set forth in this Section. The Design-Builder shall be entitled to terminate the Design-Build Agreement during the Step-In Period by written notice to the Project Company, the City, and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Design-Builder on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;

- (b) if Antecedent Liabilities that are financial liabilities, of which the Design-Builder was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the City at least twenty (20) Business Days prior to the Step-In Date, the Step-In Date;
 - (2) if notice of the liability is given to the City within twenty (20) Business Days before the Step-In Date and such liability is material (as stated by the Design-Builder, acting reasonably, when it gives such notice or by the City, acting reasonably, by notice to the Design-Builder within five (5) Business Days of receipt of the notice from the Design-Builder), twenty (20) Business Days after the Step-In Date; or
 - (3) otherwise, twenty (20) Business Days after delivery of the notice;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Design-Build Agreement; or
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Design-Build Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities within the time periods set forth in the Design-Build Agreement.

ARTICLE 5 STEP-OUT

SECTION 5.1. STEP-OUT NOTICE. The City or the Appointed Representative may at any time during the Step-In Period deliver to the Design-Builder a notice (a “Step-Out Notice”) which specifies the Step-Out Date.

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

- (a) the rights of the Design-Builder against the Appointed Representative and the rights of the Appointed Representative against the Design-Builder shall be cancelled; and
- (b) the Design-Builder shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the Design-Build Agreement.

SECTION 5.3. PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4 hereof, the Project Company shall continue to be bound by the terms of the Design-Build Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the City or the Appointed Representative, or any provision of this Agreement, and for greater certainty the Project

Company shall be liable for any and all obligations and liabilities arising under the Design-Build Agreement prior to the expiration of the Step-in Period from actions or inactions of the City or the Appointed Representative. The Project Company shall remain liable for any unpaid amounts due and payable to the Design-Builder by the Project Company under the Design-Build Agreement.

ARTICLE 6
CITY REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1. PROJECT COMPANY ASSIGNMENT. Subject to Section 6.2 hereof and Section 6.4 hereof, at any time:

- (a) upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default during the continuance of a Project Agreement Event of Default; or
- (b) during the Step-In Period,

the City may, on thirty (30) days' notice to the Design-Builder and any Appointed Representative, take any action available to it to cause the assignment and assumption of the Project Company's rights and liabilities under the Design-Build Agreement and the Interface Agreement to a Suitable Substitute Project Company in accordance with the provisions of Section 6.2 hereof.

SECTION 6.2. DESIGN-BUILDER CONSENT. The Design-Builder shall notify the City as to whether any person to whom the City proposed to assign the Project Company's rights and liabilities under the Project Agreement is a Suitable Substitute Project Company, not later than 5 Business Days after the date of receipt from the City of all information reasonably required by the Design-Builder to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3. WITHHOLDING OF CONSENT. The Design-Builder shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company. The City shall not cause the assignment and assumption of the Project Company's rights and liabilities under the Design-Build Agreement and the Interface Agreement without the prior written consent of the Design-Builder.

SECTION 6.4. TERMS OF ASSIGNMENT. Upon the assignment referred to in Section 6.1 hereof becoming effective:

- (a) the Project Company shall be released from its obligations under the Design-Build Agreement, the Interface Agreement, and any other Project Document, whether arising prior to or after such assignment (the "Discharged Obligations");
- (b) the Suitable Substitute Project Company shall pay all Outstanding Obligations incurred prior to the effective date of assignment and assume the Outstanding Obligations of the Project Company under the Design-Build Agreement that will accrue after the effective date of assignment;

- (c) the rights of the Project Company against the Design-Builder under the Design-Build Agreement, the Interface Agreement, and any other Project Document (the “*Discharged Rights*”) will be cancelled;
- (d) any subsisting ground for termination of the Design-Build Agreement by the Design-Builder shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked (so long as the basis for these grounds has been cured as of the effective date of assignment, including payment of all Outstanding Obligations incurred prior to the effective date of such assignment); and
- (e) the Design-Builder shall enter into a new Design-Build Direct Agreement with the Suitable Substitute Project Company and a representative of the City on substantially the same terms as this Agreement.

ARTICLE 7
ACCESS; MEETINGS; NOTICES

SECTION 7.1. ACCESS. During the Design-Build Period, the Design-Builder and the Project Company shall at all times afford the City or the Appointed Representative, as the case may be, every reasonable opportunity for observing all of the Work. The Design-Builder and the Project Company shall use all reasonable efforts to provide the City’s or the Appointed Representative’s, as the case may be, employees with safe access to the Work and such employees shall execute the Design-Builder’s customary forms regarding visits to the Sites. During any such observation, all representatives of the City and the Appointed Representative shall comply with the Design-Builder’s site-specific health and safety plan for the Work applicable to areas visited and all reasonable instructions or directions made by the Design-Builder in this respect, and shall not interfere with the Design-Builder’s performance of any Work.

SECTION 7.2. MEETINGS. During the Design-Build Period, the Design-Builder and the Project Company shall afford the City or the Appointed Representative, as the case may be, the reasonable opportunity to attend periodic meetings between the Design-Builder and the Project Company held in accordance with Section 7.13(G) of the Design-Build Agreement.

SECTION 7.3. NOTICES.

- (a) The Project Company hereby agrees to provide a copy of any notice given by the Project Company in accordance with Section 7.13(F) of the Design-Build Agreement to the City.
- (b) The Design-Builder hereby agrees to provide a copy of any certificate, notice, or report given by the Design-Builder in accordance with 7.13(D) of the Design-Build Agreement to the City.

ARTICLE 8
CITY FACILITIES SENIOR LENDERS' RIGHTS

SECTION 8.1. CITY FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT. The City acknowledges and agrees that the rights of the City hereunder shall be subject to the provisions of the Lenders' Direct Agreement (City), dated January [●], 2016, by and among the City, the Port, Project Company, and [●]. For the avoidance of doubt, the exercise by the City of its rights hereunder shall only be with respect to City Facilities and the Shared Rooms and, with respect to any substitution, step-in rights or similar rights, shall not in any way impair or have any effect whatsoever on the Design-Builder's rights and obligations under the Design-Build Agreement with respect to the Port Facilities and the Shared Facilities.

ARTICLE 9
INSURANCE

SECTION 9.1. RELEASE OF INSURANCE PROCEEDS. Notwithstanding the other provisions of this Agreement, amounts shall only be released from the City Insurance Trust Account in accordance with the Insurance Trust Agreement.

ARTICLE 10
COVENANTS

SECTION 10.1. DESIGN-BUILDER COVENANTS. The Design-Builder agrees with the City that the Design-Builder shall:

- (a) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the City, an Appointed Representative or a Suitable Substitute Project Company taking assignment in accordance with Article 6 hereof may reasonably require for perfecting any assignment or release under this Agreement, including the execution of an assignment conforming to the requirements of this Agreement, and the giving of any notice, order or direction and the making of any registration which, in each case, the City or Appointed Representative or Suitable Substitute Project Company reasonably requires, so long as such action does not increase the risk of the Design-Builder under the Design-Build Agreement and does not increase the cost or time of performance of the Work; and
- (b) not, prior to Final Completion of the City Facilities and the Shared Rooms unless the City has (acting reasonably) consented in writing:
 - (1) appoint a Bankruptcy Officer;
 - (2) commence any Bankruptcy Proceedings
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the City, vote against any Bankruptcy Proceedings; or

- (4) take any action authorizing, or which might result in or is in furtherance of any of the prohibited matters referred to in items (1), (2) or (3) above.

SECTION 10.2. CITY COVENANTS. The City shall promptly:

- (a) notify the Design-Builder when it believes Final Completion of the City Facilities and the Shared Rooms will occur or has occurred, and in any event shall so notify no later than ten (10) Days after its occurrence;
- (b) notify the Design-Builder of any decision by the City to take action under the Project Agreement in respect of the City Facilities or the Shared Rooms;
- (c) unless notice is already provided under the above provisions, notify the Design-Builder and the Project Company of any decision by the City to:
 - (1) appoint a Bankruptcy Officer;
 - (2) commence a Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (1), (2) or (3) above;
- (d) notify the Project Company and the Design-Builder of its intent to make a claim under any performance bond provided as City Facilities Construction Security (as defined in the Project Agreement) with respect to which the City is an obligee or under any guarantee from an Affiliate of the Design-Builder provided as City Facilities Construction Security with respect to which the City is a guaranteed party or a beneficiary; and
- (e) if (a) the City is an obligee under a performance bond provided as City Facilities Construction Security or is a guaranteed party or beneficiary under any guarantee from an Affiliate of the Design-Builder provided as City Facilities Construction Security, and (b) the Project Company, within 30 days after the City delivers notice to the Project Company of the City's intent to make a claim under such bond or guarantee, the Project Company commences the good faith, diligent exercise of its remedies under such bond or guarantee, then the City shall forbear from exercising remedies as an obligee or guaranteed party or beneficiary, as applicable, against any such bond or guarantee for so long as the Project Company continues such good faith, diligent exercise of its remedies, without interruption, until the circumstances giving rise to the claim have been cured or remedied.

SECTION 10.3. PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 11
ASSIGNMENT

SECTION 11.1. RESTRICTION ON ASSIGNMENT. Subject to Article 6 hereof, no party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except with the prior written consent of the other parties in their sole discretion.

ARTICLE 12
GENERAL

SECTION 12.1. TERM. This Agreement shall remain in effect until the earlier of (a) the Final Completion of the City Facilities and the Shared Rooms, (b) the execution of a new Design-Build Direct Agreement pursuant to the provisions of Section 6.4(e), or (c) subject to compliance with Section 6.2 above, the date of assignment of the Project Company's rights and liabilities under the Design-Build Agreement to a Suitable Substitute Project Company pursuant to Section 6.1 hereof.

SECTION 12.2. CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the Design-Build Agreement as between the City and the Design-Builder the provisions of this Agreement shall prevail.

SECTION 12.3. ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 12.4. VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the non-exclusive jurisdiction of any state or federal court located in the County of Los Angeles, California and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 12.5. WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 12.6. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 12.7. CONFIDENTIALITY. The City shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the Design-Build Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

SECTION 12.8. NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to the Project Company:

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

if to the City:

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

with a copy to:

Charles Parkin
Office of the City Attorney
City of Long Beach
333 W. Ocean Blvd., 13th Floor
Long Beach, California 90802
Telephone No.: (562) 570-2200
Fax No.: (562) 436-1579

if to the Design-Builder:

Clark Construction Group – California, LP
18201 Von Karman Avenue, Suite 800
Irvine, California 92612
Attention: Jim McLamb
Email: jim.mclamb@clarkconstruction.com
Telephone No.: (714) 429-9779

with a copy to:

Clark Construction Group LLC
7500 Old Georgetown Road
Bethesda, Maryland 20814
Attention: Frank Baltz, General Counsel

Facsimile: (301) 272-1916
Email: frank.baltz@clarkconstruction.com

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY. In the event of the commencement of any Bankruptcy Proceeding by or against any Party to this Agreement, it is the intention of the parties that this Agreement be construed as the equivalent of a subordination or inter-creditor agreement, and therefore be enforceable in any such Bankruptcy Proceeding.

[The remainder of this page intentionally left blank; signature page immediately follows.]

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

CITY OF LONG BEACH

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

CLARK CONSTRUCTION GROUP –
CALIFORNIA, LP, a California limited partnership

By: _____
Name:
Title:

TRANSACTION FORM C-2

FORM OF PORT DIRECT AGREEMENT (DESIGN-BUILDER)

PORT DIRECT AGREEMENT (DESIGN-BUILDER)

by and among

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

and

CLARK CONSTRUCTION GROUP – CALIFORNIA, LP

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

Dated January [•], 2016

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATION	1
SECTION 1.1. DEFINITIONS.....	1
SECTION 1.2. INTERPRETATION.....	5
ARTICLE 2 GENERAL.....	8
SECTION 2.1. DESIGN-BUILDER’S OBLIGATIONS.....	8
SECTION 2.2. DESIGN-BUILDER’S RIGHTS NOT PREJUDICED	8
SECTION 2.3. DESIGN-BUILDER’S RIGHT TO SUSPEND WORK.....	8
ARTICLE 3 NOTICES.....	8
SECTION 3.1. TERMINATION NOTICE	8
SECTION 3.2. INDICATIVE NOTICE.....	8
SECTION 3.3. PORT’S WITHDRAWAL NOTICE	9
SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES.....	9
SECTION 3.5. SUBSEQUENT DESIGN-BUILDER NOTICE OF LIABILITIES.....	9
SECTION 3.6. NO RIGHT TO TERMINATE	9
SECTION 3.7. PORT’S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT	9
ARTICLE 4 STEP-IN10	
SECTION 4.1. STEP-IN NOTICE	10
SECTION 4.2. CONTENTS OF STEP-IN NOTICE.....	10
SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS.....	10
SECTION 4.4. DESIGN-BUILDER RIGHT TO TERMINATE.....	10
ARTICLE 5 STEP-OUT.....	11
SECTION 5.1. STEP-OUT NOTICE.....	11

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD	11
SECTION 5.3. PROJECT COMPANY REMAINS BOUND.....	11
ARTICLE 6 PORT REPLACEMENT OF THE PROJECT COMPANY.....	12
SECTION 6.1. PROJECT COMPANY ASSIGNMENT.....	12
SECTION 6.2. DESIGN-BUILDER CONSENT.....	12
SECTION 6.3. WITHHOLDING OF CONSENT	12
SECTION 6.4. TERMS OF ASSIGNMENT	12
ARTICLE 7 ACCESS; MEETINGS; NOTICES	13
SECTION 7.1. ACCESS.....	13
SECTION 7.2. MEETINGS	13
SECTION 7.3. NOTICES.....	13
ARTICLE 8 PORT FACILITIES SENIOR LENDERS' RIGHTS.....	14
SECTION 8.1. PORT FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT	14
ARTICLE 9 INSURANCE.....	14
SECTION 9.1. RELEASE OF INSURANCE PROCEEDS.....	14
ARTICLE 10 COVENANTS	14
SECTION 10.1. DESIGN-BUILDER COVENANTS	14
SECTION 10.2. PORT COVENANTS	15
SECTION 10.3. PROJECT COMPANY COVENANT.....	15
ARTICLE 11 ASSIGNMENT.....	16
SECTION 11.1. RESTRICTION ON ASSIGNMENT	16
ARTICLE 12 GENERAL.....	16
SECTION 12.1. TERM.....	16
SECTION 12.2. CONFLICT OR INCONSISTENCY.....	16
SECTION 12.3. ENTIRE AGREEMENT.....	16

SECTION 12.4. VENUE	16
SECTION 12.5. WAIVER.....	16
SECTION 12.6. COUNTERPARTS	16
SECTION 12.7. CONFIDENTIALITY	16
SECTION 12.8. NOTICES.....	17
SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY	18

PORT DIRECT AGREEMENT (DESIGN-BUILDER)

This DESIGN-BUILD DIRECT AGREEMENT (this “*Agreement*”) is entered into on January [●], 2016, by and among the CITY OF LONG BEACH, ACTING BY AND THROUGH THE BOARD OF HARBOR COMMISSIONERS (the “*Port*”), CLARK CONSTRUCTION GROUP – CALIFORNIA, LP, a California limited partnership (the “*Design-Builder*”) and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a Delaware limited liability company (the “*Project Company*”).

RECITALS

WHEREAS, the Port and the Project Company have entered into that certain Project Agreement for the Design, Construction, Financing, Operation, And Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters Building and Revitalized Lincoln Park, dated January [●], 2016 (the “*Project Agreement*”), whereby the Project Company has agreed to design, construct, finance, operate, maintain and manage a new civic center in Long Beach, California (the “*Project*”), all as more particularly described in the Project Agreement;

WHEREAS, the Project Company and the Design-Builder have entered into that certain Design-Build Agreement, dated as of January [●], 2016 (the “*Design-Build Agreement*”) whereby the Design-Builder has agreed, among other things, to carry out and complete certain portions of the Project Company’s obligations with respect to the Port Facilities and the Shared Facilities under the Project Agreement (the “*Work*”), all as more particularly described in the Design-Build Agreement;

WHEREAS, the parties acknowledge and agree that any delay in the construction of the Port Facilities and the Shared Facilities as contemplated under both the Project Agreement and the Design-Build Agreement would be prejudicial to all parties, and that it would be in the best interests of all parties to provide a mechanism for the continued construction of the Port Facilities and the Shared Facilities by the Design-Builder under the terms of the Design-Build Agreement in the event of a default by the Project Company under the Project Agreement or the Design-Build Agreement;

WHEREAS, it is a condition precedent to the obligations of the parties that this Agreement be executed and delivered by the Project Company, the Port and the Design-Builder.

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 INTERPRETATION

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 Design-Build Agreement, and:

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

“Antecedent Liabilities” means, as at any time:

- (1) all amounts due and payable by the Project Company to the Design-Builder under the Design-Build Agreement at such time; and
- (2) all obligations which should have, but have not, been performed by, and outstanding liabilities of, the Project Company under the Design-Build Agreement at such time.

“Appointed Representative” means the Port’s Representative identified in a Step-In Notice.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto, and any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers, or the liquidation of companies and estates that are unable to pay their debts when due.

“Bankruptcy Officer” means any trustee, receiver, liquidator, sequestrator, administrator, or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

“Bankruptcy Proceedings” means any:

- (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
- (2) appointment of a Bankruptcy Officer in connection with;
- (3) order or resolution passed in connection with; or
- (4) formal agreement reached regarding;

(a) a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company’s assets in any other jurisdiction.

“Design-Build Period” has the meaning given to such term in the Design-Build Agreement.

“Discharged Obligations” has the meaning given to such term in Section 6.4 hereof.

“Discharged Rights” has the meaning given to such term in Section 6.4 hereof.

“Final Completion” shall be defined in the Design-Build Agreement.

“FM Contractor” means Johnson Controls, Inc., a Wisconsin corporation.

“Governmental Body” has the meaning given to such term in the Design-Build Agreement.

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Assignment Notice given in accordance with Section 3.2 hereof.

“Indicative Notice Period” means the period commencing on the date of delivery of an Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of a Port’s Withdrawal Notice; or
- (3) sixty (60) days following the date of delivery of the Indicative Notice.

“Indicative Step-In Notice” has the meaning given to such term in Section 3.2 hereof.

“Indicative Assignment Notice” has the meaning given to such term in Section 3.2 hereof.

“Port Insurance Trust Account” has the meaning given to such term in the Design-Build Agreement.

“Insurance Trust Agreement” has the meaning given to such term in the Design-Build Agreement.

“Interface Agreement” means that certain Interface Agreement, dated as of the date hereof, by and among the Project Company, the Design-Builder and the FM Contractor.

“Liability Report” has the meaning given to such term in Section 3.4 hereof.

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (1) financial liabilities; or
- (2) non-financial liabilities, the breach of which shall trigger any remedy of the Design-Builder under Article 23 of the Design-Build Agreement.

“Notice Period” means with respect to a Project Company Event of Default, the Termination Notice Period, and with respect to a Project Agreement Event of Default, the Indicative Notice Period.

“Occupancy Readiness Conditions (Design-Builder)” has the meaning given to such term in the Design-Build Agreement.

“Outstanding Obligations” has the meaning given to such term in Section 4.3 hereof.

“Port Facilities” has the meaning given to such term in the Design-Build Agreement.

“Port’s Cure Notice” has the meaning given to such term in Section 3.7 hereof.

“Port’s Cure Period” has the meaning given to such term in Section 3.7 hereof.

“Port’s Representative” means has the meaning given to such term in the Project Agreement.

“Port’s Withdrawal Notice” has the meaning given to such term in Section 3.3 hereof.

“Project Agreement” has the meaning given to such term in the Recitals above.

“Project Agreement Event of Default” means a Port Partial Termination Project Company Event of Default (as defined in the Project Agreement) or a Termination Project Company Event of Default (as defined in the Project Agreement) under the Project Agreement.

“Project Company Event of Default” has the meaning given to such term in the Design-Build Agreement.

“Project Documents” means, collectively, the Design-Build Agreement, the Interface Agreement, and any other agreement (other than this Agreement) entered into from time to time by the Project Company and the Design-Builder (with or without other parties) in connection with the Port Facilities and the Shared Facilities.

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report.

“Restricted Person” has the meaning given to such term in the Design-Build Agreement.

“Revocation of Termination Notice” means a written notice from the Design-Builder to the Port revoking a Termination Notice.

“Shared Facilities” has the meaning given to such term in the Design-Build Agreement.

“Step-In Date” means five (5) Business Days after delivery of a Step-In Notice.

“Step-In Notice” means a notice given by the Port to the Design-Builder pursuant to Section 4.1 hereof, which shall include a certification that the Port shall have access to funds sufficient to meet its obligations.

“Step-In Period” means, subject to Section 8.1 hereof, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the effective date of any assignment under Article 6 hereof;
- (3) the date of any termination under Section 4.4 hereof;

- (4) the Expiration Date under the Design-Build Agreement; and
- (5) if the Termination Notice was given before the satisfaction by the Design-Builder of Occupancy Readiness Conditions (Design-Builder) in respect of the Port Facilities and the Shared Facilities, the date that is six (6) months after the Port Date Certain (as defined in the Design-Build Agreement).

“Step-Out Date” means the date that is twenty (20) Business Days after the date of a Step-Out Notice.

“Step-Out Notice” means a notice from the Port or the Appointed Representative to the Design-Builder pursuant to Section 5.1 hereof.

“Suitable Substitute Project Company” means a person that is not a Restricted Person:

- (1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company in respect of the Port Facilities and the Shared Facilities under the Design-Build Agreement; and
- (2) having or employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of the Project Company in respect of the Port Facilities and the Shared Facilities under the Design-Build Agreement.

“Termination Notice” means a notice given by the Design-Builder to the Port under Section 3.1 hereof.

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of service of a Revocation of Termination Notice; and
- (3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a) hereof) set forth in the Termination Notice.

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 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, or otherwise modified or 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 any obligation hereunder, 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 and the Project Documents contain the entire agreement between some or all of the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement and the Project Documents 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 of California (without regard to principles of conflicts of laws).
- (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
GENERAL

SECTION 2.1. DESIGN-BUILDER'S OBLIGATIONS. Except as specifically provided for in this Agreement, the Design-Builder has no obligations (whether express, implied, collateral or otherwise) to the Port in connection with this Agreement, the Design-Build Agreement, the Interface Agreement, or with respect to the Project. All of the obligations and liabilities given, undertaken or arising on the part of the Design-Builder under this Agreement are given solely to the Port and do not confer any rights on or in favor of the Project Company or any other person.

SECTION 2.2. DESIGN-BUILDER'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in this Agreement or any other agreement between any of them (including any giving by the Port of a notice hereunder) will, except as expressly set forth in this Agreement, affect the rights of the Design-Builder in respect of the Port Facilities and the Shared Facilities under the Design-Build Agreement (but an exercise by the Design-Builder of those rights will not preclude a proper exercise by the Port of its rights under this Agreement). Notwithstanding the foregoing, each party does not make any acknowledgement with respect to any agreements referenced above to which it is not a party.

SECTION 2.3. DESIGN-BUILDER'S RIGHT TO SUSPEND WORK. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall preclude or delay the Design-Builder's right to suspend Work in respect of the Port Facilities and the Shared Facilities as provided in Section 18.16 of the Design-Build Agreement.

ARTICLE 3
NOTICES

SECTION 3.1. TERMINATION NOTICE. The Design-Builder shall not terminate or deliver any notice terminating the Design-Build Agreement in respect of a Project Company Event of Default under the Design-Build Agreement without giving to the Port and the Port Facilities Senior Lenders written notice (a "Termination Notice") stating:

- (a) that a Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than sixty (60) days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

SECTION 3.2. INDICATIVE NOTICE. Subject to Section 8.1 hereof, at any time upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default the continuance of such Project Agreement Event of Default, the Port may give notice to the Design-Builder and the Project Company of its intention to nominate an Appointed Representative to step-in in accordance with Section 4.1 hereof (an "Indicative Step-In Notice") or to effect an assignment in accordance with Section 6.1 hereof (an "Indicative Assignment Notice"). The Design-Builder shall be entitled and obligated to rely on such notices as conclusive evidence of a Project Agreement Event of Default for purposes of this Agreement, and shall not be required to make any inquiry into the entitlement of the Port to give such notice.

SECTION 3.3. PORT'S WITHDRAWAL NOTICE. If at any time after the giving of an Indicative Notice, the Port has determined that it is not, or is no longer, considering appointing a Port's Representative or effecting an assignment of the Project Company's rights and liabilities under the Design-Build Agreement to a Suitable Substitute Project Company in accordance with this Agreement, the Port shall give notice (a "Port's Withdrawal Notice") to the Design-Builder and the Project Company and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Indicative Notice and the Design-Builder shall be at liberty to take any and all action available to it under the Design-Build Agreement and other Project Documents.

SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES. Unless a Port's Withdrawal Notice has been given, not later than thirty (30) days after the date of delivery by the Design-Builder of a Termination Notice or the date of delivery by the Port of an Indicative Notice, as the case may be, the Design-Builder shall give the Port a notice (the "Liability Report") containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of the Project Company to the Design-Builder which the Design-Builder is aware (after reasonable inquiry) that will become due under the Design-Build Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
 - (1) in the case of a Termination Notice, the proposed Termination Date set forth in that notice; and
 - (2) in the case of an Indicative Notice, sixty (60) days after the date of delivery of the Indicative Notice.

SECTION 3.5. SUBSEQUENT DESIGN-BUILDER NOTICE OF LIABILITIES. After the delivery of the Liability Report, unless a Port's Withdrawal Notice has been given, the Design-Builder shall, promptly upon becoming aware of them, notify the Port in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be.

SECTION 3.6. NO RIGHT TO TERMINATE. The Design-Builder shall not terminate the Design-Build Agreement or deliver any notice terminating the Design-Build Agreement during any Notice Period that would have the effect of terminating the Design-Build Agreement prior to the expiration of the sixty (60) day period referred to in Section 3.1 hereof; provided, however, that until the expiration of that period the Design-Builder shall be entitled to require the Project Company (or any other entity that has exercised step-in rights, as applicable) to remedy any Project Company Event of Default and shall be entitled to exercise all rights under the Design-Build Agreement other than termination of such agreement.

SECTION 3.7. PORT'S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT. The Port shall have the right to take such actions as may be necessary, in the Port's sole discretion, to cure or remedy a Project Agreement

Event of Default prior to any Step In Period without the necessity of issuing an Indicative Step-In Notice or Indicative Assignment Notice. Prior to exercising any such right, the Port shall deliver a written notice thereof to the Design-Builder (a "Port's Cure Notice"). The Design-Builder shall have no duty to deal with the Port in any such circumstances, but the Design-Builder will accept performance by the Port as performance by the Project Company. Any acts by the Port in the exercise of such right shall be deemed to be acts of the Project Company for the purposes of the Design-Build Agreement, including the indemnity provisions thereof. The Port may exercise such rights for a period (the "Port's Cure Period") commencing on the date of delivery of a Port's Cure Notice and ending on the earlier of:

- (a) the Step-In Date; or
- (b) the date of delivery of a Port's Withdrawal Notice.

ARTICLE 4 STEP-IN

SECTION 4.1. STEP-IN NOTICE. Subject to Section 8.1 hereof, the Port may give the Project Company and the Design-Builder a notice (a "Step-In Notice") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2. CONTENTS OF STEP-IN NOTICE. In the Step-In Notice, the Port shall (1) state that it intends to exercise its step-in rights under this Agreement, and (2) identify the Appointed Representative.

SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the Design-Build Agreement, and the Appointed Representative, as agent for the Port, shall assume all of the Project Company's obligations (without exception) under the Design-Build Agreement, whether incurred prior to, on, or after the Step-In Date, including, without limitation, all payment obligations of the Project Company under the Design-Build Agreement (collectively, the "Outstanding Obligations"). During the Step-In Period, the Design-Builder shall deal with the Appointed Representative and not the Project Company.

SECTION 4.4. DESIGN-BUILDER RIGHT TO TERMINATE. The Design-Builder shall not terminate the Design-Build Agreement during the Step-In Period, except as set forth in this Section. The Design-Builder shall be entitled to terminate the Design-Build Agreement during the Step-In Period by written notice to the Project Company, the Port, and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the Design-Builder on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if Antecedent Liabilities that are financial liabilities, of which the Design-Builder was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:

- (1) if notice of the liability is given to the Port at least twenty (20) Business Days prior to the Step-In Date, the Step-In Date;
 - (2) if notice of the liability is given to the Port within twenty (20) Business Days before the Step-In Date and such liability is material (as stated by the Design-Builder, acting reasonably, when it gives such notice or by the Port, acting reasonably, by notice to the Design-Builder within five (5) Business Days of receipt of the notice from the Design-Builder), twenty (20) Business Days after the Step-In Date; or
 - (3) otherwise, twenty (20) Business Days after delivery of the notice;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the Design-Build Agreement; or
 - (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the Design-Build Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities within the time periods set forth in the Design-Build Agreement.

ARTICLE 5 STEP-OUT

SECTION 5.1. STEP-OUT NOTICE. The Port or the Appointed Representative may at any time during the Step-In Period deliver to the Design-Builder a notice (a "Step-Out Notice") which specifies the Step-Out Date.

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

- (a) the rights of the Design-Builder against the Appointed Representative and the rights of the Appointed Representative against the Design-Builder shall be cancelled; and
- (b) the Design-Builder shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the Design-Build Agreement.

SECTION 5.3. PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4 hereof, the Project Company shall continue to be bound by the terms of the Design-Build Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the Port or the Appointed Representative, or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the Design-Build Agreement prior to the expiration of the Step-in Period from actions or inactions of the Port or the Appointed Representative. The Project Company shall remain liable for any unpaid amounts

due and payable to the Design-Builder by the Project Company under the Design-Build Agreement.

ARTICLE 6
PORT REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1. PROJECT COMPANY ASSIGNMENT. Subject to Section 6.2 hereof and Section 6.4 hereof, at any time:

- (a) upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default during the continuance of a Project Agreement Event of Default; or
- (b) during the Step-In Period,

the Port may, on thirty (30) days' notice to the Design-Builder and any Appointed Representative, take any action available to it to cause the assignment and assumption of the Project Company's rights and liabilities under the Design-Build Agreement and the Interface Agreement to a Suitable Substitute Project Company in accordance with the provisions of Section 6.2 hereof.

SECTION 6.2. DESIGN-BUILDER CONSENT. The Design-Builder shall notify the Port as to whether any person to whom the Port proposed to assign the Project Company's rights and liabilities under the Project Agreement is a Suitable Substitute Project Company, not later than 5 Business Days after the date of receipt from the Port of all information reasonably required by the Design-Builder to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3. WITHHOLDING OF CONSENT. The Design-Builder shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company. The Port shall not cause the assignment and assumption of the Project Company's rights and liabilities under the Design-Build Agreement and the Interface Agreement without the prior written consent of the Design-Builder.

SECTION 6.4. TERMS OF ASSIGNMENT. Upon the assignment referred to in Section 6.1 hereof becoming effective:

- (a) the Project Company shall be released from its obligations under the Design-Build Agreement, the Interface Agreement, and any other Project Document, whether arising prior to or after such assignment (the "Discharged Obligations");
- (b) the Suitable Substitute Project Company shall pay all Outstanding Obligations incurred prior to the effective date of assignment and assume the Outstanding Obligations of the Project Company under the Design-Build Agreement that will accrue after the effective date of assignment;

- (c) the rights of the Project Company against the Design-Builder under the Design-Build Agreement, the Interface Agreement, and any other Project Document (the “*Discharged Rights*”) will be cancelled;
- (d) any subsisting ground for termination of the Design-Build Agreement by the Design-Builder shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked (so long as the basis for these grounds has been cured as of the effective date of assignment, including payment of all Outstanding Obligations incurred prior to the effective date of such assignment); and
- (e) the Design-Builder shall enter into a new Design-Build Direct Agreement with the Suitable Substitute Project Company and a representative of the Port on substantially the same terms as this Agreement.

ARTICLE 7
ACCESS; MEETINGS; NOTICES

SECTION 7.1. ACCESS. During the Design-Build Period, the Design-Builder and the Project Company shall at all times afford the Port or the Appointed Representative, as the case may be, every reasonable opportunity for observing all of the Work. The Design-Builder and the Project Company shall use all reasonable efforts to provide the Port’s or the Appointed Representative’s, as the case may be, employees with safe access to the Work and such employees shall execute the Design-Builder’s customary forms regarding visits to the Sites. During any such observation, all representatives of the Port and the Appointed Representative shall comply with the Design-Builder’s site-specific health and safety plan for the Work applicable to areas visited and all reasonable instructions or directions made by the Design-Builder in this respect, and shall not interfere with the Design-Builder’s performance of any Work.

SECTION 7.2. MEETINGS. During the Design-Build Period, the Design-Builder and the Project Company shall afford the Port or the Appointed Representative, as the case may be, the reasonable opportunity to attend periodic meetings between the Design-Builder and the Project Company held in accordance with Section 7.13(G) of the Design-Build Agreement.

SECTION 7.3. NOTICES.

- (a) The Project Company hereby agrees to provide a copy of any notice given by the Project Company in accordance with Section 7.13(F) of the Design-Build Agreement to the Port.
- (b) The Design-Builder hereby agrees to provide a copy of any certificate, notice, or report given by the Design-Builder in accordance with 7.13(D) of the Design-Build Agreement to the Port.

ARTICLE 8
PORT FACILITIES SENIOR LENDERS' RIGHTS

SECTION 8.1. PORT FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT.

The Port acknowledges and agrees that the rights of the Port hereunder shall be subject to the provisions of the Lenders' Direct Agreement (Port), dated January [●], 2016, by and among the City, the Port, Project Company, and [●]. For the avoidance of doubt, the exercise by the Port of its rights hereunder shall only be with respect to Port Facilities and the Shared Facilities and, with respect to any substitution, step-in rights or similar rights, shall not in any way impair or have any effect whatsoever on the Design-Builder's rights and obligations under the Design-Build Agreement with respect to the City Facilities and the Shared Rooms.

ARTICLE 9
INSURANCE

SECTION 9.1. RELEASE OF INSURANCE PROCEEDS. Notwithstanding the other provisions of this Agreement, amounts shall only be released from the Port Insurance Trust Account in accordance with the Insurance Trust Agreement.

ARTICLE 10
COVENANTS

SECTION 10.1. DESIGN-BUILDER COVENANTS. The Design-Builder agrees with the Port that the Design-Builder shall:

- (a) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the Port, an Appointed Representative or a Suitable Substitute Project Company taking assignment in accordance with Article 6 hereof may reasonably require for perfecting any assignment or release under this Agreement, including the execution of an assignment conforming to the requirements of this Agreement, and the giving of any notice, order or direction and the making of any registration which, in each case, the Port or Appointed Representative or Suitable Substitute Project Company reasonably requires, so long as such action does not increase the risk of the Design-Builder under the Design-Build Agreement and does not increase the cost or time of performance of the Work; and
- (b) not, prior to Final Completion of the Port Facilities and the Shared Facilities unless the Port has (acting reasonably) consented in writing:
 - (1) appoint a Bankruptcy Officer;
 - (2) commence any Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the Port, vote against any Bankruptcy Proceedings; or

- (4) take any action authorizing, or which might result in or is in furtherance of any of the prohibited matters referred to in items (1), (2) or (3) above.

SECTION 10.2. PORT COVENANTS. The Port shall promptly:

- (a) notify the Design-Builder when it believes Final Completion of the Port Facilities and the Shared Facilities will occur or has occurred, and in any event shall so notify no later than ten (10) Days after its occurrence;
- (b) notify the Design-Builder of any decision by the Port to take action under the Project Agreement in respect of the Port Facilities or the Shared Facilities;
- (c) unless notice is already provided under the above provisions, notify the Design-Builder and the Project Company of any decision by the Port to:
 - (1) appoint a Bankruptcy Officer;
 - (2) commence a Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (1), (2) or (3) above;
- (d) notify the Project Company and the Design-Builder of its intent to make a claim under any performance bond provided as Port Facilities Construction Security (as defined in the Project Agreement) with respect to which the Port is an obligee or under any guarantee from an Affiliate of the Design-Builder provided as Port Facilities Construction Security with respect to which the Port is a guaranteed party or a beneficiary; and
- (e) if (a) the Port is an obligee under a performance bond provided as Port Facilities Construction Security or is a guaranteed party or beneficiary under any guarantee from an Affiliate of the Design-Builder provided as Port Facilities Construction Security, and (b) the Project Company, within 30 days after the Port delivers notice to the Project Company of the Port's intent to make a claim under such bond or guarantee, the Project Company commences the good faith, diligent exercise of its remedies under such bond or guarantee, then the Port shall forbear from exercising remedies as an obligee or guaranteed party or beneficiary, as applicable, against any such bond or guarantee for so long as the Project Company continues such good faith, diligent exercise of its remedies, without interruption, until the circumstances giving rise to the claim have been cured or remedied.

SECTION 10.3. PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 11
ASSIGNMENT

SECTION 11.1. RESTRICTION ON ASSIGNMENT. Subject to Article 6 hereof, no party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except with the prior written consent of the other parties in their sole discretion.

ARTICLE 12
GENERAL

SECTION 12.1. TERM. This Agreement shall remain in effect until the earlier of (a) the Final Completion of the Port Facilities and the Shared Facilities, (b) the execution of a new Design-Build Direct Agreement pursuant to the provisions of Section 6.4(e), or (c) subject to compliance with Section 6.2 above, the date of assignment of the Project Company's rights and liabilities under the Design-Build Agreement to a Suitable Substitute Project Company pursuant to Section 6.1 hereof.

SECTION 12.2. CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the Design-Build Agreement as between the Port and the Design-Builder the provisions of this Agreement shall prevail.

SECTION 12.3. ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 12.4. VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the non-exclusive jurisdiction of any state or federal court located in the County of Los Angeles, California and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 12.5. WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 12.6. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 12.7. CONFIDENTIALITY. The Port shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the Design-Build Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

SECTION 12.8. NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to the Project Company:

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

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 Design-Builder:

Clark Construction Group – California, LP
18201 Von Karman Avenue, Suite 800
Irvine, California 92612
Attention: Jim McLamb
Email: jim.mclamb@clarkconstruction.com
Telephone No.: (714) 429-9779

with a copy to:

Clark Construction Group LLC
7500 Old Georgetown Road
Bethesda, Maryland 20814
Attention: Frank Baltz, General Counsel
Facsimile: (301) 272-1916
Email: frank.baltz@clarkconstruction.com

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY. In the event of the commencement of any Bankruptcy Proceeding by or against any Party to this Agreement, it is the intention of the parties that this Agreement be construed as the equivalent of a subordination or inter-creditor agreement, and therefore be enforceable in any such Bankruptcy Proceeding.

[The remainder of this page intentionally left blank; signature page immediately follows.]

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

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

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

By: _____
Name:
Title:

CLARK CONSTRUCTION GROUP –
CALIFORNIA, LP, a California limited partnership

By: _____
Name:
Title:

TRANSACTION FORM C-3

FORM OF CITY DIRECT AGREEMENT (FM CONTRACTOR)

CITY DIRECT AGREEMENT (FM CONTRACTOR)

by and among

CITY OF LONG BEACH

and

JOHNSON CONTROLS, INC.

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

Dated January [•], 2016

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATION	1
SECTION 1.1. DEFINITIONS.....	1
SECTION 1.2. INTERPRETATION.....	5
ARTICLE 2 GENERAL	7
SECTION 2.1. FM CONTRACTOR’S OBLIGATIONS	7
SECTION 2.2. FM CONTRACTOR’S RIGHTS NOT PREJUDICED	7
SECTION 2.3. FM CONTRACTOR’S RIGHT TO SUSPEND WORK.....	8
ARTICLE 3 NOTICES	8
SECTION 3.1. TERMINATION NOTICE	8
SECTION 3.2. INDICATIVE NOTICE.....	8
SECTION 3.3. CITY’S WITHDRAWAL NOTICE	8
SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES.....	8
SECTION 3.5. SUBSEQUENT FM CONTRACTOR NOTICE OF LIABILITIES.....	9
SECTION 3.6. NO RIGHT TO TERMINATE	9
SECTION 3.7. CITY’S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT	9
ARTICLE 4 STEP-IN10	
SECTION 4.1. STEP-IN NOTICE	10
SECTION 4.2. CONTENTS OF STEP-IN NOTICE.....	10
SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS.....	10
SECTION 4.4. FM CONTRACTOR RIGHT TO TERMINATE	10
ARTICLE 5 STEP-OUT.....	11
SECTION 5.1. STEP-OUT NOTICE.....	11

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD	11
SECTION 5.3. PROJECT COMPANY REMAINS BOUND.....	11
ARTICLE 6 CITY REPLACEMENT OF THE PROJECT COMPANY	11
SECTION 6.1. PROJECT COMPANY ASSIGNMENT	11
SECTION 6.2. FM CONTRACTOR CONSENT	12
SECTION 6.3. WITHHOLDING OF CONSENT	12
SECTION 6.4. TERMS OF ASSIGNMENT	12
ARTICLE 7 ACCESS; MEETINGS; NOTICES	13
SECTION 7.1. ACCESS.....	13
SECTION 7.2. MEETINGS	13
ARTICLE 8 CITY FACILITIES SENIOR LENDERS' RIGHTS.....	13
SECTION 8.1. CITY FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT	13
ARTICLE 9 INSURANCE.....	13
SECTION 9.1. RELEASE OF INSURANCE PROCEEDS.....	13
ARTICLE 10 COVENANTS	13
SECTION 10.1. FM CONTRACTOR COVENANTS	13
SECTION 10.2. CITY COVENANTS	14
SECTION 10.3. PROJECT COMPANY COVENANT.....	14
ARTICLE 11 ASSIGNMENT	15
SECTION 11.1. RESTRICTION ON ASSIGNMENT	15
SECTION 11.2. ASSIGNMENT BY FM CONTRACTOR	15
ARTICLE 12 GENERAL.....	15
SECTION 12.1. TERM.....	15
SECTION 12.2. CONFLICT OR INCONSISTENCY.....	15
SECTION 12.3. ENTIRE AGREEMENT	15

SECTION 12.4. VENUE15

SECTION 12.5. WAIVER.....15

SECTION 12.6. COUNTERPARTS16

SECTION 12.7. CONFIDENTIALITY16

SECTION 12.8. NOTICES.....16

SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE
EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY
PARTY17

CITY DIRECT AGREEMENT (FM CONTRACTOR)

This FM SERVICES DIRECT AGREEMENT (this “Agreement”) is entered into on January [●], 2016, by and among the CITY OF LONG BEACH (the “City”), JOHNSON CONTROLS, INC., a Wisconsin corporation (the “FM Contractor”) and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a Delaware limited liability company (the “Project Company”).

RECITALS

WHEREAS, the City and the Project Company have entered into that certain Project Agreement for the Design, Construction, Financing, Operation, And Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters Building and Revitalized Lincoln Park, dated January [●], 2016 (the “Project Agreement”), whereby the Project Company has agreed to design, construct, finance, operate, maintain and manage a new civic center in Long Beach, California (the “Project”), all as more particularly described in the Project Agreement;

WHEREAS, the Project Company and the FM Contractor have entered into that certain FM Services Agreement, dated as of January [●], 2016 (the “FM Services Agreement”) whereby the FM Contractor has agreed, among other things, to carry out and complete certain portions of the Project Company’s obligations with respect to the FM Facilities under the Project Agreement (the “Work”), all as more particularly described in the FM Services Agreement;

WHEREAS, the parties acknowledge and agree that any failure to operate and maintain the FM Facilities as contemplated under both the Project Agreement and the FM Services Agreement would be prejudicial to all parties, and that it would be in the best interests of all parties to provide a mechanism for the continued operation and maintenance of the FM Facilities by the FM Contractor under the terms of the FM Services Agreement in the event of a default by the Project Company under the Project Agreement or the FM Services Agreement;

WHEREAS, it is a condition precedent to the obligations of the parties under the Project Agreement or the FM Services Agreement (as applicable) that this Agreement be executed and delivered by the Project Company, the City and the FM Contractor.

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 INTERPRETATION

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 FM Services Agreement, and:

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

“Antecedent Liabilities” means, as at any time:

- (1) all amounts due and payable by the Project Company to the FM Contractor under the FM Services Agreement at such time; and
- (2) all obligations which should have, but have not, been performed by, and outstanding liabilities of, the Project Company under the FM Services Agreement at such time.

“Appointed Representative” means the City’s Representative identified in a Step-In Notice.

“Bankruptcy Law” means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto, and any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers, or the liquidation of companies and estates that are unable to pay their debts when due.

“Bankruptcy Officer” means any trustee, receiver, liquidator, sequestrator, administrator, or other custodian in connection with the bankruptcy of the Project Company or any of its assets.

“Bankruptcy Proceedings” means any:

- (1) formal step (including petition, proposal, application, convening of a meeting or other proceeding) taken with a view to or for the purpose of considering;
 - (2) appointment of a Bankruptcy Officer in connection with;
 - (3) order or resolution passed in connection with; or
 - (4) formal agreement reached regarding;
- (a) a dissolution, bankruptcy, receivership, winding-up, liquidation, administration or other similar proceedings or any other proceeding seeking a stay of proceedings, reorganization, debt arrangement, compromise of the claims of creditors or any distribution of assets in respect of the Project Company (whether voluntary or involuntary) made or commenced by any party under any Bankruptcy Law; or (b) any distress, attachment, sequestration or execution or other similar process affecting any of the assets of the Project Company or any other similar process or event occurring in relation to the Project Company’s assets in any other jurisdiction.

“City’s Cure Notice” has the meaning given to such term in Section 3.7 hereof.

“City’s Cure Period” has the meaning given to such term in Section 3.7 hereof.

“City Insurance Trust Account” has the meaning given to such term in the FM Services Agreement.

“City’s Representative” has the meaning given to such term in the Project Agreement.

“City’s Withdrawal Notice” has the meaning given to such term in Section 3.3 hereof.

“Discharged Obligations” has the meaning given to such term in Section 6.4 hereof.

“Discharged Rights” has the meaning given to such term in Section 6.4 hereof.

“Expiration Date” has the meaning given to such term in the Project Agreement.

“FM Contractor” means Johnson Controls, Inc., a Wisconsin corporation.

“FM Facilities” has the meaning given to such term in the FM Services Agreement.

“FM Services Agreement” has the meaning given to such term in the Recitals above.

“Governmental Body” has the meaning given to such term in the FM Services Agreement.

“Indicative Notice” means either an Indicative Step-In Notice or an Indicative Assignment Notice given in accordance with Section 3.2 hereof.

“Indicative Notice Period” means the period commencing on the date of delivery of an Indicative Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of delivery of a City’s Withdrawal Notice; or
- (3) thirty (30) days following the date of delivery of the Indicative Notice.

“Indicative Step-In Notice” has the meaning given to such term in Section 3.2 hereof.

“Indicative Assignment Notice” has the meaning given to such term in Section 3.2 hereof.

“Insurance Trust Agreement” has the meaning given to such term in the FM Services Agreement.

“Interface Agreement” means that certain Interface Agreement, dated as of the date hereof, by and among the Project Company, the FM Contractor and the Design-Builder.

“Liability Report” has the meaning given to such term in Section 3.4 hereof.

“Material Antecedent Liabilities” means Antecedent Liabilities that are:

- (1) financial liabilities; or
- (2) non-financial liabilities, the breach of which shall trigger any remedy of the FM Contractor under Article 23 of the FM Services Agreement.

“Notice Period” means with respect to a Project Company Event of Default, the Termination Notice Period, and with respect to a Project Agreement Event of Default, the Indicative Notice Period.

“Outstanding Obligations” has the meaning given to such term in Section 4.3 hereof.

“Project Agreement” has the meaning given to such term in the Recitals above.

“Project Agreement Event of Default” means a City Partial Termination Project Company Event of Default (as defined in the Project Agreement) or a Termination Project Company Event of Default (as defined in the Project Agreement) under the Project Agreement.

“Project Company Event of Default” has the meaning given to such term in the FM Services Agreement.

“Project Documents” means, collectively, the FM Services Agreement, the Interface Agreement, and any other agreement (other than this Agreement) entered into from time to time by the Project Company and the FM Contractor (with or without other parties) in connection with the FM Facilities.

“Reported Antecedent Liabilities” means the Antecedent Liabilities identified in the Liability Report.

“Restricted Person” has the meaning given to such term in the FM Services Agreement.

“Revocation of Termination Notice” means a written notice from the FM Contractor to the City revoking a Termination Notice.

“Step-In Date” means five (5) Business Days after delivery of a Step-In Notice.

“Step-In Notice” means a notice given by the City to the FM Contractor pursuant to Section 4.1 hereof, which shall include a certification that the City shall have access to funds sufficient to meet its obligations.

“Step-In Period” means, subject to Section 8.1 hereof, the period from the Step-In Date up to and including the earliest of:

- (1) the Step-Out Date;
- (2) the effective date of any assignment under Article 4 hereof;
- (3) the date of any termination under Section 4.4 hereof; and
- (4) the Expiration Date under the FM Services Agreement.

“Step-Out Date” means the date that is twenty (20) Business Days after the date of a Step-Out Notice.

“Step-Out Notice” means a notice from the City or the Appointed Representative to the FM Contractor pursuant to Section 5.1 hereof.

“Suitable Substitute Project Company” means a person that is not a Restricted Person:

- (1) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under the FM Services Agreement; and
- (2) having or employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and subcontracts) which are sufficient to enable it to perform the obligations of the Project Company under the FM Services Agreement.

“Termination Notice” means a notice given by the FM Contractor to the City under Section 3.1 hereof.

“Termination Notice Period” means the period beginning on the date of giving of a Termination Notice and ending on the earlier of:

- (1) the Step-In Date;
- (2) the date of service of a Revocation of Termination Notice; and
- (3) the proposed Termination Date (subject to the minimum notice requirements under Section 3.1(a) hereof) set forth in the Termination Notice.

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 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, or otherwise modified or 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 any obligation hereunder, 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 and the Project Documents contain the entire agreement between some or all of the parties hereto with respect to the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, this Agreement and the Project Documents 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 of California (without regard to principles of conflicts of laws).
- (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 GENERAL

SECTION 2.1. FM CONTRACTOR'S OBLIGATIONS. Except as specifically provided for in this Agreement, the FM Contractor has no obligations (whether express, implied, collateral or otherwise) to the City in connection with this Agreement, the FM Services Agreement, the Interface Agreement, or with respect to the Project. All of the obligations and liabilities given, undertaken or arising on the part of the FM Contractor under this Agreement are given solely to the City and do not confer any rights on or in favor of the Project Company or any other person.

SECTION 2.2. FM CONTRACTOR'S RIGHTS NOT PREJUDICED. The parties acknowledge that nothing in this Agreement or any other agreement between any of them (including any giving by the City of a notice hereunder) will, except as expressly set forth in this Agreement, affect the rights of the FM Contractor under the FM Services Agreement (but an

exercise by the FM Contractor of those rights will not preclude a proper exercise by the City of its rights under this Agreement). Notwithstanding the foregoing, each party does not make any acknowledgement with respect to any agreements referenced above to which it is not a party.

SECTION 2.3. FM CONTRACTOR'S RIGHT TO SUSPEND WORK. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall preclude or delay the FM Contractor's right to suspend Work in respect of the FM Facilities as provided in Section 18.7(C) of the FM Services Agreement.

ARTICLE 3 NOTICES

SECTION 3.1. TERMINATION NOTICE. The FM Contractor shall not terminate or deliver any notice terminating the FM Services Agreement in respect of a Project Company Event of Default under the FM Services Agreement without giving to the City and the City Facilities Senior Lenders written notice (a "Termination Notice") stating:

- (a) that a Project Company Event of Default has occurred and the proposed Termination Date, which will be not sooner than thirty (30) days after the Termination Notice; and
- (b) the grounds for termination in reasonable detail.

SECTION 3.2. INDICATIVE NOTICE. Subject to Section 8.1 hereof, at any time upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default the continuance of such Project Agreement Event of Default, the City may give notice to the FM Contractor and the Project Company of its intention to nominate an Appointed Representative to step-in in accordance with Section 4.1 hereof (an "Indicative Step-In Notice") or to effect an assignment in accordance with Section 6.1 hereof (an "Indicative Assignment Notice"). The FM Contractor shall be entitled and obligated to rely on such notices as conclusive evidence of a Project Agreement Event of Default for purposes of this Agreement, and shall not be required to make any inquiry into the entitlement of the City to give such notice.

SECTION 3.3. CITY'S WITHDRAWAL NOTICE. If at any time after the giving of an Indicative Notice or a Termination Notice, the City has determined that it is not, or is no longer, considering appointing a City's Representative in accordance with Section 4.1 hereof or effecting an assignment of the Project Company's rights and liabilities under the FM Services Agreement to a Suitable Substitute Project Company in accordance with Section 6.1 hereof, the City shall give notice (a "City's Withdrawal Notice") to the FM Contractor and the Project Company and thereafter the provisions of this Agreement shall not be applicable with respect to the event that led to such Indicative Notice or Termination Notice and the FM Contractor shall be at liberty to take any and all action available to it under the FM Services Agreement and other Project Documents.

SECTION 3.4. NOTICE OF ANTECEDENT LIABILITIES. Unless a City's Withdrawal Notice has been given, not later than thirty (30) days after the date of delivery by the FM Contractor of a Termination Notice or the date of delivery by the City of an Indicative

Notice, as the case may be, the FM Contractor shall give the City a notice (the “Liability Report”) containing details of:

- (a) any Material Antecedent Liabilities accrued and outstanding as of the date of delivery of the Termination Notice or Indicative Notice, as the case may be; and
- (b) any financial liabilities of the Project Company to the FM Contractor which the FM Contractor is aware (after reasonable inquiry) that will become due under the FM Services Agreement on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be, and on or prior to:
 - (1) in the case of a Termination Notice, the proposed Termination Date set forth in that notice; and
 - (2) in the case of an Indicative Notice, thirty (30) days after the date of delivery of the Indicative Notice.

SECTION 3.5. SUBSEQUENT FM CONTRACTOR NOTICE OF LIABILITIES.

After the delivery of the Liability Report, unless a City’s Withdrawal Notice has been given, the FM Contractor shall, promptly upon becoming aware of them, notify the City in writing of any additional Material Antecedent Liabilities arising on or after the date of delivery of the Termination Notice or Indicative Notice, as the case may be.

SECTION 3.6. NO RIGHT TO TERMINATE. The FM Contractor shall not terminate the FM Services Agreement or deliver any notice terminating the FM Services Agreement during any Notice Period that would have the effect of terminating the FM Services Agreement prior to the expiration of the thirty (30) day period referred to in Section 3.1 hereof; provided, however, that until the expiration of that period the FM Contractor shall be entitled to require the Project Company (or any other entity that has exercised step-in rights, as applicable) to remedy any Project Company Event of Default and shall be entitled to exercise all rights under the FM Services Agreement other than termination of such agreement.

SECTION 3.7. CITY’S RIGHT TO CURE A PROJECT COMPANY EVENT OF DEFAULT WITHOUT STEP-IN OR ASSIGNMENT. The City shall have the right to take such actions as may be necessary, in the City’s sole discretion, to cure or remedy a Project Agreement Event of Default prior to any Step-In Period without the necessity of issuing an Indicative Step-In Notice or Indicative Assignment Notice. Prior to exercising any such right, the City shall deliver a written notice thereof to the FM Contractor (a “City’s Cure Notice”). The FM Contractor shall have no duty to deal with the City in any such circumstances, but the FM Contractor will accept performance by the City as performance by the Project Company. Any acts or failures to act by the City in the exercise of such right shall be deemed to be acts or failures to act of the Project Company for the purposes of the FM Services Agreement, including the indemnity provisions thereof. The City may exercise such rights for a period (the “City’s Cure Period”) commencing on the date of delivery of a City’s Cure Notice and ending on the earlier of:

- (a) the Step-In Date;

- (b) the date of delivery of a City's Withdrawal Notice; or
- (c) the Termination Date.

ARTICLE 4
STEP-IN

SECTION 4.1. STEP-IN NOTICE. Subject to Section 8.1 hereof, the City may give the Project Company and the FM Contractor a notice (a "*Step-In Notice*") at any time during an Indicative Notice Period or a Termination Notice Period, as the case may be.

SECTION 4.2. CONTENTS OF STEP-IN NOTICE. In the Step-In Notice, the City shall (a) state that it intends to exercise its step-in rights under this Agreement, and (b) identify the Appointed Representative.

SECTION 4.3. APPOINTED REPRESENTATIVE RIGHTS. On the Step-In Date, the Appointed Representative shall be entitled to exercise and enjoy the rights of the Project Company under the FM Services Agreement, and the Appointed Representative, as agent for the City, shall assume all of the Project Company's obligations (without exception) under the FM Services Agreement, whether incurred prior to, on, or after the Step-In Date, including, without limitation, all payment obligations of the Project Company under the FM Services Agreement (collectively, the "*Outstanding Obligations*"). During the Step-In Period, the FM Contractor shall deal with the Appointed Representative and not the Project Company.

SECTION 4.4. FM CONTRACTOR RIGHT TO TERMINATE. The FM Contractor shall not terminate the FM Services Agreement during the Step-In Period, except as set forth in this Section. The FM Contractor shall be entitled to terminate the FM Services Agreement during the Step-In Period by written notice to the Project Company, the City, and the Appointed Representative:

- (a) if the Reported Antecedent Liabilities that are financial liabilities have not been paid to the FM Contractor on or before the Step-In Date or, if the due date for payment thereof is after the Step-In Date, have not been paid by the due date;
- (b) if Antecedent Liabilities that are financial liabilities, of which the FM Contractor was not aware (having made reasonable inquiry) at the time of the Liability Report, subsequently become payable and are not discharged by:
 - (1) if notice of the liability is given to the City at least twenty (20) Business Days prior to the Step-In Date, the Step-In Date;
 - (2) if notice of the liability is given to the City within twenty (20) Business Days before the Step-In Date and such liability is material (as stated by the FM Contractor, acting reasonably, when it gives such notice or by the City, acting reasonably, by notice to the FM Contractor within five (5) Business Days of receipt of the notice of liability from the FM Contractor), twenty (20) Business Days after the Step-In Date; or

- (3) otherwise, twenty (20) Business Days after delivery of the notice;
- (c) on grounds arising after the Step-In Date in accordance with the terms of the FM Services Agreement; or
- (d) on grounds arising prior to the Step-In Date (whether or not continuing at the Step-In Date) in accordance with the terms of the FM Services Agreement but only if the Appointed Representative is not using all reasonable efforts to remedy the relevant Antecedent Liabilities which are non-financial liabilities within the time periods set forth in the FM Services Agreement.

ARTICLE 5 STEP-OUT

SECTION 5.1. STEP-OUT NOTICE. The City or the Appointed Representative may at any time during the Step-In Period deliver to the FM Contractor a notice (a "Step-Out Notice") which specifies the Step-Out Date.

SECTION 5.2. EXPIRATION OF STEP-IN PERIOD. Upon the expiration of the Step-In Period:

- (a) the rights of the FM Contractor against the Appointed Representative and the rights of the Appointed Representative against the FM Contractor shall be cancelled; and
- (b) the FM Contractor shall no longer deal with the Appointed Representative and shall deal with the Project Company in connection with the FM Services Agreement.

SECTION 5.3. PROJECT COMPANY REMAINS BOUND. Subject to Section 6.4 hereof, the Project Company shall continue to be bound by the terms of the FM Services Agreement notwithstanding the occurrence of an Indicative Notice, a Step-In Notice, a Step-In Period, a Step-Out Notice, a Step-Out Date, any action by the City or the Appointed Representative, or any provision of this Agreement, and for greater certainty the Project Company shall be liable for any and all obligations and liabilities arising under the FM Services Agreement prior to the expiration of the Step-in Period from actions or inactions of the City or the Appointed Representative. The Project Company shall remain liable for any unpaid amounts due and payable to the FM Contractor by the Project Company under the FM Services Agreement.

ARTICLE 6 CITY REPLACEMENT OF THE PROJECT COMPANY

SECTION 6.1. PROJECT COMPANY ASSIGNMENT. Subject to Section 6.2 hereof and Section 6.4 hereof, at any time:

- (a) upon the occurrence of a Project Agreement Event of Default, and where relevant to such Project Agreement Event of Default during the continuance of a Project Agreement Event of Default; or
- (b) during the Step-In Period,

the City may, on thirty (30) days' notice to the FM Contractor and any Appointed Representative, take any action available to it to cause the assignment and assumption of the Project Company's rights and liabilities under the FM Services Agreement and the Interface Agreement to a Suitable Substitute Project Company in accordance with the provisions of Section 6.2 hereof.

SECTION 6.2. FM CONTRACTOR CONSENT. The FM Contractor shall notify the City as to whether any person to whom the City proposed to assign the Project Company's rights and liabilities under the Project Agreement is a Suitable Substitute Project Company, not later than 5 Business Days after the date of receipt from the City of all information reasonably required by the FM Contractor to decide whether the proposed transferee is a Suitable Substitute Project Company.

SECTION 6.3. WITHHOLDING OF CONSENT. The FM Contractor shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Project Company. If the FM Contractor does not object to or request further information on the Suitable Substitute Project Company proposed by the City within five (5) Business Days of receipt from the City of such notice, the Suitable Substitute Project Company shall be deemed to be approved by the FM Contractor.

SECTION 6.4. TERMS OF ASSIGNMENT. Upon the assignment referred to in Section 6.1 hereof becoming effective:

- (a) the Project Company shall be released from its obligations under the FM Services Agreement, the Interface Agreement, and any other Project Document, whether arising prior to or after such assignment (the "Discharged Obligations");
- (b) the Suitable Substitute Project Company shall pay all Outstanding Obligations incurred prior to the effective date of assignment and assume the Outstanding Obligations of the Project Company under the FM Services Agreement that will accrue after the effective date of assignment;
- (c) the rights of the Project Company against the FM Contractor under the FM Services Agreement, the Interface Agreement, and any other Project Document (the "Discharged Rights") shall be cancelled;
- (d) any subsisting ground for termination of the FM Services Agreement by the FM Contractor shall be deemed to have no effect and any subsisting Termination Notice will be automatically revoked (so long as the basis for these grounds has been cured as of the effective date of assignment, including payment of all Outstanding Obligations incurred prior to the effective date of such assignment); and

- (e) the FM Contractor shall enter into a new FM Services Direct Agreement with the Suitable Substitute Project Company and a representative of the City on substantially the same terms as this Agreement.

ARTICLE 7
ACCESS; MEETINGS; NOTICES

SECTION 7.1. ACCESS. During the Operating Period, the FM Contractor and the Project Company shall at all times afford the City or the Appointed Representative, as the case may be, every reasonable opportunity for observing all of the Work. The FM Contractor and the Project Company shall use all reasonable efforts to provide the City's or the Appointed Representative's, as the case may be, employees with safe access to the Work and such employees shall execute the FM Contractor's customary forms regarding visits to the Sites. During any such observation, all representatives of the City and the Appointed Representative shall comply with the FM Contractor's site-specific health and safety plan for the Work applicable to areas visited and all reasonable instructions or directions made by the FM Contractor in this respect, and shall not interfere with the FM Contractor's performance of any Work.

SECTION 7.2. MEETINGS. During the Operating Period, the FM Contractor and the Project Company shall afford the City or the Appointed Representative, as the case may be, reasonable opportunity to attend periodic meetings between the FM Contractor and the Project Company held in accordance with Section 1.4(B) of the FM Services Agreement.

ARTICLE 8
CITY FACILITIES SENIOR LENDERS' RIGHTS

SECTION 8.1. CITY FACILITIES SENIOR LENDERS' RIGHTS PARAMOUNT. The City acknowledges and agrees that the rights of the City hereunder shall be subject to the provisions of the Lenders' Direct Agreement (City), dated January [●], 2016, by and among the City, the Port, Project Company, and [●].

ARTICLE 9
INSURANCE

SECTION 9.1. RELEASE OF INSURANCE PROCEEDS. Notwithstanding the other provisions of this Agreement, amounts shall only be released from the City Insurance Trust Account in accordance with the Insurance Trust Agreement.

ARTICLE 10
COVENANTS

SECTION 10.1. FM CONTRACTOR COVENANTS. The FM Contractor agrees with the City that the FM Contractor shall:

- (a) as soon as is reasonably practicable, at the Project Company's expense, take whatever action the City, an Appointed Representative or a Suitable Substitute Project Company taking assignment in accordance with Article 6 hereof may

reasonably require for perfecting any assignment or release under this Agreement, including the execution of an assignment conforming to the requirements of this Agreement, and the giving of any notice, order or direction and the making of any registration which, in each case, the City or Appointed Representative or Suitable Substitute Project Company reasonably requires, so long as such action does not increase the risk of the FM Contractor under the FM Services Agreement and does not increase the cost or time of performance of the Work; and

- (b) not, prior to Final Completion of the FM Facilities unless the City has (acting reasonably) consented in writing:
 - (1) appoint a Bankruptcy Officer;
 - (2) commence any Bankruptcy Proceedings
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings and shall, if requested to do so by the City, vote against any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of any of the prohibited matters referred to in items (1), (2) or (3) above.

SECTION 10.2. CITY COVENANTS. The City shall promptly:

- (a) notify the FM Contractor when it believes Final Completion of the FM Facilities will occur or has occurred, and in any event shall so notify no later than ten (10) Days after its occurrence;
- (b) notify the FM Contractor of any decision by the City to take action under the Project Agreement in respect of the FM Facilities; and
- (c) unless notice is already provided under the above provisions, notify the FM Contractor and the Project Company of any decision by the City to:
 - (1) appoint a Bankruptcy Officer;
 - (2) commence a Bankruptcy Proceedings;
 - (3) sanction, by voting or failing to vote, any Bankruptcy Proceedings; or
 - (4) take any action authorizing, or which might result in or is in furtherance of, any of the matters referred to in items (1), (2) or (3) above.

SECTION 10.3. PROJECT COMPANY COVENANT. The Project Company acknowledges and consents to the arrangements set forth in this Agreement and agrees not to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.

ARTICLE 11
ASSIGNMENT

SECTION 11.1. RESTRICTION ON ASSIGNMENT. Except as set forth in Section 11.2 hereof and subject to Article 6 hereof, no party to this Agreement may assign or transfer all or any part of its rights or obligations under this Agreement except with the prior written consent of the other parties in their sole discretion.

SECTION 11.2. ASSIGNMENT BY FM CONTRACTOR. The FM Contractor may assign its rights and obligations under this Agreement to any permitted assignee of its interest in the FM Services Agreement concurrently with the assignment of the FM Services Agreement to such Assignee. The City and the Project Company shall cooperate with the FM Contractor in completing such transfer or assignment, including by executing any additional documents as may be reasonably required by the FM Contractor.

ARTICLE 12
GENERAL

SECTION 12.1. TERM. This Agreement shall remain in effect until the earlier of (a) the Expiration Date, (b) the execution of a new FM Services Direct Agreement pursuant to the provisions of Section 6.2, (c) subject to compliance with Section 6.4(e) above, the date of assignment of the Project Company's rights and liabilities under the FM Services Agreement to a Suitable Substitute Project Company pursuant to Section 6.1 hereof, or (d) the Termination Date.

SECTION 12.2. CONFLICT OR INCONSISTENCY. If there is any conflict or inconsistency between the provisions of this Agreement and the FM Services Agreement as between the City and the FM Contractor the provisions of this Agreement shall prevail.

SECTION 12.3. ENTIRE AGREEMENT. Unless otherwise stated in this Agreement, this Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Agreement. No party has relied on any representation except as expressly set forth in this Agreement.

SECTION 12.4. VENUE. For the purposes of any legal actions or proceedings brought by any party hereto against the other party, the parties hereby irrevocably submit to the non-exclusive jurisdiction of any state or federal court located in the County of Los Angeles, California and acknowledge their competence and the convenience and propriety of the venue and agree to be bound by any judgment thereof and not to seek, and hereby waive, review of its merits by the courts of any other jurisdiction.

SECTION 12.5. WAIVER. The failure of any party to exercise any contractual right or remedy will not constitute a waiver thereof and no waiver will be effective, unless it is communicated in writing to the other party. A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other breach of this Agreement.

SECTION 12.6. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which when taken together will constitute one and the same instrument.

SECTION 12.7. CONFIDENTIALITY. The City shall be bound to comply with the confidentiality obligations on the part of the Project Company contained in the FM Services Agreement in relation to all information matters obtained from any other party under or in connection with the Project.

SECTION 12.8. NOTICES. Any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been sufficiently given if delivered by hand or by registered mail to the address of each party set forth below:

if to the Project Company:

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

if to the City:

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

with a copy to:

Charles Parkin
Office of the City Attorney
City of Long Beach
333 W. Ocean Blvd., 13th Floor
Long Beach, California 90802
Telephone No.: (562) 570-2200
Fax No.: (562) 436-1579

if to the FM Contractor:

Johnson Controls, Inc.
7400 Birchmount Road
Markham, Ontario L3R 5V4
Canada
Attention: John J. Fleming

Email: john.j.fleming@jci.com
Telephone No.: (905) 474-5433

or to such other address as any party may, from time to time, designate in the manner set forth above.

SECTION 12.9. CONSTRUCTION OF THIS AGREEMENT IN THE EVENT OF A BANKRUPTCY FILING BY OR AGAINST ANY PARTY. In the event of the commencement of any Bankruptcy Proceeding by or against any Party to this Agreement, it is the intention of the parties that this Agreement be construed as the equivalent of a subordination or inter-creditor agreement, and therefore be enforceable in any such Bankruptcy Proceeding.

[The remainder of this page intentionally left blank; signature page immediately follows.]

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

CITY OF LONG BEACH

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

JOHNSON CONTROLS, INC., a Wisconsin
corporation

By: _____
Name:
Title:

TRANSACTION FORM D

FORM OF INDEPENDENT BUILDING EXPERT AGREEMENT

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

[IBE FIRM NAME]

and

PLENARY EDGEMOOR CIVIC PARTNERS, LLC ("PROJECT COMPANY")

Dated [●], 2016

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TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS AND INTERPRETATIONS	1
SECTION 1.1. <u>DEFINITIONS</u>	1
SECTION 1.2. <u>INTERPRETATION</u>	2
ARTICLE 2 ROLE OF THE INDEPENDENT BUILDING EXPERT	4
SECTION 2.1. <u>ENGAGEMENT</u>	4
SECTION 2.2. <u>ACKNOWLEDGEMENT BY INDEPENDENT BUILDING EXPERT</u>	5
SECTION 2.3. <u>STANDARD OF CARE</u>	5
SECTION 2.4. <u>DUTY OF INDEPENDENT JUDGMENT</u>	5
SECTION 2.5. <u>DETERMINATIONS AND CONCLUSIONS</u>	5
SECTION 2.6. <u>AUTHORITY TO ACT</u>	6
SECTION 2.7. <u>KNOWLEDGE OF CITY/PORT'S AND PROJECT COMPANY'S REQUIREMENTS</u>	6
SECTION 2.8. <u>COORDINATION BY INDEPENDENT BUILDING EXPERT</u>	7
SECTION 2.9. <u>CONFLICT OF INTEREST</u>	7
SECTION 2.10. <u>INDEPENDENT BUILDING EXPERT PERSONNEL</u>	8
SECTION 2.11. <u>OBLIGATIONS OF OTHERS</u>	8
ARTICLE 3 ROLE OF THE CITY/PORT AND THE PROJECT COMPANY	8
SECTION 3.1. <u>ASSISTANCE</u>	8
SECTION 3.2. <u>INSTRUCTIONS IN WRITING</u>	8
SECTION 3.3. <u>OBLIGATIONS AND EXERCISE OF RIGHTS</u>	8
SECTION 3.4. <u>INFORMATION AND SERVICES</u>	9
SECTION 3.5. <u>ADDITIONAL INFORMATION</u>	9
SECTION 3.6. <u>RIGHT TO ENTER AND INSPECT</u>	9
SECTION 3.7. <u>PERFORMANCE OF OBLIGATIONS UNDER THE PROJECT AGREEMENT NOT RELIEVED</u>	10
SECTION 3.8. <u>LIABILITY FOR ACTIONS OF INDEPENDENT BUILDING EXPERT</u>	10
ARTICLE 4 DUTIES OF INDEPENDENT BUILDING EXPERT	10
SECTION 4.1. <u>REVIEWS AND INSPECTION OF THE PROJECT</u>	10
SECTION 4.2. <u>PROJECT DEFICIENCIES AND RE-INSPECTION</u>	11
SECTION 4.3. <u>PROCEDURE FOR CERTIFICATION OF OCCUPANCY READINESS</u>	11
SECTION 4.4. <u>OCCUPANCY READINESS CONDITIONS RELATING TO THE DESIGN-BUILDER</u>	13
ARTICLE 5 SUSPENSION OF SERVICES	13
SECTION 5.1. <u>NOTICE</u>	13
SECTION 5.2. <u>COSTS OF SUSPENSION</u>	14
SECTION 5.3. <u>RECOMMENCEMENT</u>	14

ARTICLE 6 INSURANCE AND LIABILITY 14

SECTION 6.1. INDEPENDENT BUILDING EXPERT’S PROFESSIONAL INDEMNITY INSURANCE. 14

ARTICLE 7 PAYMENT FOR SERVICES 16

SECTION 7.1. FEE. 16

SECTION 7.2. PAYMENT OF FEE...... 16

ARTICLE 8 ADDITIONAL SERVICES 16

SECTION 8.1. NOTICE OF ADDITIONAL SERVICES. 16

SECTION 8.2. ADDITIONAL SERVICES PROCEDURE. 17

SECTION 8.3. COST OF ADDITIONAL SERVICES. 17

SECTION 8.4. ALLOWANCES FOR NON-BINDING MEDIATION...... 18

ARTICLE 9 TERM AND TERMINATION 18

SECTION 9.1. TERM. 18

SECTION 9.2. NOTICE OF BREACH. 19

SECTION 9.3. TERMINATION FOR BREACH...... 19

SECTION 9.4. TERMINATION FOR FINANCIAL DIFFICULTY. 19

SECTION 9.5. TERMINATION FOR CONVENIENCE...... 19

SECTION 9.6. PROCEDURE UPON TERMINATION. 20

SECTION 9.7. EFFECT OF TERMINATION. 20

SECTION 9.8. SURVIVAL. 20

ARTICLE 10 INDEMNITY 20

SECTION 10.1. INDEPENDENT BUILDING EXPERT’S OBLIGATION TO INDEMNIFY. 20

SECTION 10.2. INDEMNIFICATION PROCEDURES...... 21

SECTION 10.3. GENERAL OBLIGATION TO PURSUE THIRD PERSON RECOVERY...... 23

ARTICLE 11 MISCELLANEOUS PROVISIONS 23

SECTION 11.1. RELATIONSHIP OF THE PARTIES...... 23

SECTION 11.2. INDEPENDENT BUILDING EXPERT PERSONS. 24

SECTION 11.3. GENERAL INDEPENDENT BUILDING EXPERT ASSUMPTION OF RISK. 24

SECTION 11.4. WAIVER. 24

SECTION 11.5. NOTICES. 24

SECTION 11.6. TRANSFER AND ASSIGNMENT...... 26

SECTION 11.7. CONFIDENTIALITY. 27

SECTION 11.8. PROJECT MATERIAL. 27

SECTION 11.9. TIME OF THE ESSENCE. 27

SECTION 11.10. AMENDMENT. 27

SECTION 11.11. BINDING EFFECT. 28

SECTION 11.12. REPRESENTATIONS AND WARRANTIES OF THE INDEPENDENT BUILDING EXPERT..... 28

APPENDICES

1 SERVICES

2 FEE AND HOURLY RATE SCHEDULE FOR MEDIATION SERVICES

3 INDEPENDENT BUILDING EXPERT PERSONNEL

4 OCCUPANCY READINESS NOTICE

5 OCCUPANCY READINESS CERTIFICATE

6 PROPOSAL MATERIALS

INDEPENDENT BUILDING EXPERT AGREEMENT

THIS INDEPENDENT BUILDING EXPERT AGREEMENT is made and entered into [●], 2016, among CITY OF LONG BEACH ("**City**"), CITY OF LONG BEACH, a municipal corporation acting by and through its Board of Harbor Commissioners ("**Port**") (collectively the "**City/Port**"), [IBE FIRM NAME], a corporation organized and existing under the laws of the State of California (the "Independent Building Expert"), and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "Project Company").

RECITALS

The City, Port and the Project Company have entered into the Project Agreement (defined below);

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 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)(6).

"Additional Services" means any additions or changes to the Services.

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

"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.

"Project Agreement" means the Project Agreement for the Design, Construction, Financing, Operation, Maintenance and Management of the New Long Beach City Hall, New Main

Library, New Port of Long Beach Headquarters and Revitalized Lincoln Park, dated [●], 2016 among the City, Port and the Project Company.

“Project Company Indemnitee” means:

- (1) the Project Company;
- (2) any contractor, subcontractor, (of any tier), 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 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, 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,

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; and
- (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.

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, Port, the Independent Building Expert, the Project Company, or any other Project Company’s representatives, 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, Port and the Project Company hereby appoint the Independent Building Expert, and the Independent Building Expert hereby accepts such appointment, to carry out the Services in accordance with this Agreement. The Independent Building Expert will perform the Services 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, Port and the Project Company that it has received a copy of the Project Agreement. The Independent Building Expert acknowledges that the City, 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 an expert 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, 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, 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, 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, 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, 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 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, 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, 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, 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, Port or the Project Company from any of its obligations under the Project Agreement unless jointly agreed in writing by the City, Port and the Project Company;

(6) shall act in accordance with the joint direction of the City, 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 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, 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, Port and the Project Company; and

(4) provide copies to the City, 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 warrants that:

(1) in addition to the 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 California Code or under City of Long Beach Code 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, 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, 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, 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, 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, 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, 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. Neither the City nor 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, 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, Port and the Project Company, it shall be exercised by them jointly; and

(2) Any obligation of the City, 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, 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 or the City or Port, as the case may be, then:

(1) the Independent Building Expert will give notice in writing to the City, 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, Port or the Project Company as the lead for providing the information, documents, or particulars;

(2) the City or 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 nor 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 or 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 or Port or the Project Company against or any obligation or liability of the City or 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. 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 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 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 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 IBE 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 and the commissioning of the Project.

During the construction phase, the Independent Building Expert shall prepare and transmit to Project Company, City, and 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, City, and 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 the Project (including any re-inspections thereof) to determine whether the Occupancy Readiness Conditions 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 and the City and Port each not less than 30 days' written notice of the date on which it anticipates the Project, or any reasonable portion thereof, 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 the Project with a view toward issuing the Occupancy Readiness Certificates for any given Facility.

SECTION 4.2. PROJECT DEFICIENCIES AND RE-INSPECTION.

If any deficiencies in the Project with respect to Occupancy Readiness or any part thereof are identified by the Independent Building Expert during the course of the inspection referred to in Section 4.1(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 4.3. 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 subsection 4.2(B) shall be construed as 5 Business Days and a new Punch List, as required to be delivered pursuant to Section 4.3(H), shall be prepared and delivered prior to any re-inspection by the Independent Building Expert; (ii) the provisions of Section 4.3 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 4.3. 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 subsection 4.1(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 and 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 any reasonable portion of the work (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 that portion of the work. 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 subsection 4.1(E). Upon the issuance of an Occupancy Readiness Certification for that portion of the work, the work shall be considered complete.

(D) Independent Building Expert Determination. In determining whether there is an entitlement for the issuance of a Occupancy Readiness Certificate, 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 have been satisfied; and

(2) in connection therewith, consult and consider the views of the Project Company and the City and 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 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, 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, 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 and the City and 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 and Port and the Project Company, shall prepare a Punch List.

SECTION 4.4. 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, which shall be made and shall have the effect provided under this Independent Building Expert Agreement and the Project Agreement.

ARTICLE 5

SUSPENSION OF SERVICES

SECTION 5.1. NOTICE.

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

(1) if the Independent Building Expert fails to comply with its obligations under this Agreement, immediately by the City, Port and the Project Company giving joint notice in writing to the Independent Building Expert; or

(2) in any other case, by the City, 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, 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 Section 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 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; 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 CITY/PORT 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, City and Port shall pay the Independent Building Expert the Fee, including all costs and fees associated with re-inspection and re-testing.

(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, City and Port shall pay the Fee to the Independent Building Expert in accordance with the payment schedule specified in Appendix 2 to this Agreement.

(B) Certification by Independent Building Expert. The City, Port and the Project Company acknowledge and agree that if any amount due and payable by the Project Company, City or Port 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.

(C) Allowance for Mediation Services. Included within the Fee is an allowance for mediation services, which is specifically identified in Appendix 2 to this Agreement. To the extent such allowance is not expended, the Fee shall be reduced by the unspent portion of such allowance. Such allowance cannot be applied by the Independent Building Expert without the prior consent of the City, Port and the Project Company.

ARTICLE 8

ADDITIONAL SERVICES

SECTION 8.1. NOTICE OF ADDITIONAL SERVICES.

(A) Notice and Claim Submittals. If the Independent Building Expert believes, other than a "Additional Services Order" under Section 8.2, 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, 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, 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, Port and the Project Company may jointly issue a document titled “Additional Services Price Request” to the Independent Building Expert which shall set out details of proposed Additional Services which the City, 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, 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 document titled “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, 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, Port and Project Company, and only to the extent the travel budget conforms with the travel expense policies of the City and 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. ALLOWANCES FOR NON-BINDING MEDIATION.

(A) Allowances for 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, contains certain allowances for such Services. The Independent Building Expert shall provide such Services and shall separately account for the costs associated with such Services as Mediator. With respect to Non-Binding Mediation, the Independent Building Expert shall provide monthly statements that (i) identify the value of the initial allowance for a particular project phase and work component, (ii) the value of the allowance utilized during that month and (iii) the balance of the allowance remaining at the end of that month. The Independent Building Expert shall notify the City, Port and the Project Company when 75% of the total allowance value for any phase or work component is exhausted.

(B) Utilization of Allowances for Non-Binding Mediation. In the event the allowances identified in Appendix 2 are not fully utilized prior to Final Completion, a change order reducing the Fee by the amount of the remaining balances of the allowances shall be executed by the Independent Building Expert, the City, Port and the Project Company. In the event any allowance value is forecasted by the Independent Building Expert to be expended prior to Final Completion, the Independent Building Expert shall do the following:

- (1) provide the City, Port and the Project Company with thirty (30) days advance notice of the anticipated exhaustion of the specific allowance item; and
- (2) prepare an estimate of the costs to complete the known mediation services and provide the estimate to the City, Port and the Project Company for review and approval.

(C) Adjustment of Fee. Following an agreement among the City, Port and the Project Company with respect to the scope for the Additional Services relating to Non-Binding Arbitration, 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 8, this Agreement shall commence 60 days after the Contract Date and continue in full force until: _____

- (1) 60 days after the completion of the _____; or
- (2) such later date as may be mutually agreed in writing among the City, 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, 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, Port and the Project Company may, without prejudice to any other rights of the City, Port and the Project Company, or either of them, immediately terminate this Agreement.

SECTION 9.4. TERMINATION FOR FINANCIAL DIFFICULTY.

The City, Port and the Project Company may, without prejudice to any other rights which the City, 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, 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, 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 by _____ 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, Port and the Project Company;

(2) hand to the City, 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, Port and the Project Company, meet with the City, 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, 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, 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, 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 (as defined in the Project Agreement) 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 by reason of, resulting from, in connection with, or 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;
- (4) non-compliance by the Independent Building Expert with any of the provisions of this Agreement, the Project Agreement or any document, instrument or agreement delivered to the City, Port or the Project Company as required under this Agreement or the Project Agreement;
- (5) breach by the Independent Building Expert of, or non-compliance by the Independent Building Expert with, any Governmental Approval or 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, 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, 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, Port or the Project Company as a result of this Agreement or the performance thereof.

SECTION 11.2. INDEPENDENT BUILDING EXPERT PERSONS.

The Independent Building Expert shall, as among itself and the City, 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, 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, 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:

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

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

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:

[IBE FIRM NAME]

Attention:
Phone:
Fax:
E-Mail:

if to the Project Company:

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

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, Port and the Project Company, which the City, 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, 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, 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, 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, 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, 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, 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, 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, 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, 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 City or Port or any City Person or Port Related Party or to Project Company or 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: _____
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: _____

[IBE FIRM NAME]

By: _____
Name: _____
Title: _____

PLENARY EDGEMOOR CIVIC PARTNERS, LLC

By: _____
Name: _____
Title: _____

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 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, Port or the Project Company in connection with the Project Agreement;

(ii) receive and review Commissioning Test report to confirm that the Project Company has completed Commissioning the Project in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied;

(iii) prior to any reporting on the project, consider the views and comments of the City, 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;

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

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

(vi) 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 IBE may rely on the City's code enforcement inspectors to confirm compliance with code related items;

(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 IBE may rely on the City's code enforcement inspectors to confirm compliance with code related items; and

(viii) prepare, in consultation with the City, 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, subject to the Allowances identified in Appendix 2, 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, Port and the Project Company pursuant to Non-Binding Mediation;

(ii) provide advice on other matters that may arise that the City, 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, 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, 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, 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, Port and the Project Company may jointly request from time to time).

2.2

2.3 The Independent Building Expert shall provide, subject to the Allowances provided in Appendix 2, 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 Date), which determinations may, except as expressly provided in the Project Agreement, be subject to resolution pursuant to Non-Binding Mediation.

2.4 Subsequent to the Occupancy Date, 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, Port and the Project Company may jointly require to the extent such matters relate to aspects of the Project to be completed after the Occupancy Date;

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

(iii) participate in and give the City, 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, Port and the Project Company that relate to the Services identified in this Part 2 of this Appendix.

APPENDIX 2

FEE

APPENDIX 2

[IBE FIRM NAME]
Hourly Rate of IBE Mediation Staff

[]
[]
[]

APPENDIX 3

INDEPENDENT BUILDING EXPERT PERSONNEL

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

APPENDIX 4

OCCUPANCY READINESS NOTICE

To: [IBE FIRM NAME], _____, California, with copies to the City and Port

From: PLENARY EDGEMOOR CIVIC PARTNERS, LLC, , Long Beach, California 90802, with a copy to the Architect

Re: Project Agreement entered into _____, 2015, among CITY OF LONG BEACH, CITY OF LONG BEACH, by and through its Board of Harbor Commissioners (the “City/Port”) and PLENARY EDGEMOOR CIVIC PARTNERS, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”).

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 Project. In support of that application, I hereby certify that:

- (a) Substantial Completion has occurred;
- (b) the Project in its entirety, or a reasonable portion thereof (a 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 the Project 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 Project other than Permitted Encumbrances;
- (e) the Project Company has completed Commissioning the Project 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 the Project 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 on the Sites 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);

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

(B) copies of all operating instructions, maintenance manuals, spare parts and materials relating to the Project and operation thereof as well record drawings relating to security systems at the Project (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 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 EDGEMOOR CIVIC PARTNERS, LLC

By: _____
(Name and Signature of Authorized Signatory)

APPENDIX 5

OCCUPANCY READINESS CERTIFICATE

This certificate is delivered pursuant to Section 4.3(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 EDGEMOOR CIVIC PARTNERS, 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, and accordingly that the Occupancy Date has occurred.

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

[IBE FIRM NAME]

By: _____

Name: _____

Title: _____

APPENDIX 6

PROPOSAL MATERIALS

- Statement of Qualifications for Independent Building Expert Services, dated _____, 2015, in response to PLENARY EDGEMOOR CIVIC PARTNERS, LLC City and Port, Request for Qualifications, Independent Building Expert Services, NEW LONG BEACH CIVIC CENTER AND PORT ADMINISTRATION BUILDING
- PLENARY EDGEMOOR CIVIC PARTNERS, LLC and City and Port, Independent Building Expert Services for NEW LONG BEACH CIVIC CENTER AND PORT ADMINISTRATION BUILDING Presentation, dated _____, 2015, by [IBE FIRM NAME]

TRANSACTION FORM E
FORM OF INSURANCE TRUST AGREEMENT

INSURANCE TRUST AGREEMENT

This INSURANCE TRUST AGREEMENT (this “Insurance Trust Agreement”) is made and entered into on January [●], 2016, by and among the City of Long Beach (the “City”), the City of Long Beach, acting by and through the Board of Harbor Commissioners (in such capacity, the “Port”), Plenary Edgemoor Civic Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”), [●], in its capacity as collateral agent on behalf of the Senior Lenders (in such capacity, together with any successors and permitted assigns, the “Collateral Agent”) and [●], in its capacity as insurance trustee hereunder (in such capacity, together with any successors and permitted assigns, the “Insurance Trustee”).

WHEREAS, pursuant to that certain Project Agreement for the Design, Construction, Financing, Operation, and Maintenance of the New Long Beach City Hall, New Main Library, New Port of Long Beach Headquarters Building and Revitalized Lincoln Park, dated the date hereof (the “Project Agreement”), by and among the City, the Port and the Project Company, the Project Company will design, construct, finance, commission, operate, and maintain a new civic center in Long Beach, California, all as more particularly described in the Project Agreement;

WHEREAS, pursuant to that certain Note Purchase Agreement, dated the date hereof (the “Note Purchase Agreement”), by and among the Project Company and the note purchasers from time to time party thereto (the “City Facilities Senior Lenders”), the City Facilities Senior Lenders have agreed to make certain loans to the Project Company on the terms and subject to the conditions set forth in the Note Purchase Agreement;

WHEREAS, pursuant to that certain Credit Agreement, dated the date hereof (the “Credit Agreement”), by and among the Project Company, the administrative agent thereunder, and the several banks and other financial institutions from time to time party thereto as lenders (the “Port Facilities Senior Lenders”, and collectively with the City Facilities Senior Lenders, the “Senior Lenders”), the Port Facilities Senior Lenders have agreed to make certain loans to the Project Company on the terms and subject to the conditions set forth in the Credit Agreement;

WHEREAS, the City, the Project Company and the Collateral Agent have entered into that certain Lenders’ Direct Agreement (City), dated the date hereof (the “Lenders’ Direct Agreement (City)”), setting forth certain rights and remedies of the City Facilities Senior Lenders;

WHEREAS, the Port, the Project Company and the Collateral Agent have entered into that certain Lenders’ Direct Agreement (Port), dated the date hereof (the “Lenders’ Direct Agreement (Port)”), setting forth certain rights and remedies of the Port Facilities Senior Lenders;

WHEREAS, this Insurance Trust Agreement is entered into pursuant to and in accordance with Section 16.1(D) of the Project Agreement; and

WHEREAS, the Project Company, the City and the Port desire to appoint [●] as the Insurance Trustee under this Insurance Trust Agreement and [●] desires to accept such

appointment, in each case on the terms as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby covenant and agree as follows:

Section 1. Definitions.

1.1 Certain Defined Terms. All capitalized terms used herein and not otherwise defined shall have the respective meanings given to such terms in the Project Agreement. In addition, the following terms shall have the following meanings:

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

“Cash and Cash Equivalents” means cash and (a) marketable, direct obligations of the United States of America, the State, or of any political agency or subdivision thereof maturing within 365 days of the date of purchase; (b) commercial paper maturing within 180 days from the date of purchase thereof, and rated in United States: (i) “A-1+” by Standard & Poor’s; (ii) “P-1” by Moody’s; or (iii) “R-1 (High)” by Fitch; (c) certificates of deposit, term deposits, overnight bank deposits or acceptances in each case maturing within 365 days of the date of purchase, deposit or acceptance which are issued, accepted or guaranteed by a bank whose long term and short term debt is rated “A2” or higher by Moody’s, “A” or higher by Standard & Poor’s and “A” or higher by Fitch (the lower of the three applying if there is a split rating); (d) money market mutual funds rated “AAA” by Standard & Poor’s and “Aaa” by Moody’s; and (e) other investments as authorized by the Collateral Agent and acceptable to the Insurance Trustee.

“City Deposited Sums” has the meaning given to such term in Section 2.4(a) hereof.

“City Facilities Financing Documents” has the meaning given to such term in the Project Agreement.

“City Facilities Senior Debt” has the meaning given to such term in the Project Agreement.

“City Insurance Trust Account” means the account established and created pursuant to Section 2.2 hereof.

“Collateral Agency Agreement” means that certain Collateral Agency and Account Agreement, dated as of the date hereof, by and among the Project Company, the Collateral Agent, the [Administrative Agent], and the [Deposit Account Bank].

“Deposited Sums” shall mean the City Deposited Sums and the Port Deposited Sums.

“Financing Documents” has the meaning given to such term in the Project Agreement.

“Fitch” means Fitch Ratings Ltd., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating

agency, “Fitch” shall be deemed to refer to any other nationally-recognized securities rating agency designated by the City and the Port in accordance with the Project Agreement.

“Improvements” shall mean all structures, improvements, fixtures, equipment and other appurtenances now located or hereafter situated on or under the surface of the Project Site, including alterations and replacements thereof and additions thereto.

“Income Tax” has the meaning given to such term in Section 5.16 hereof.

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

“Insurance Trust Accounts” shall mean the City Insurance Trust Account and the Port Insurance Trust Account.

“Insurance Trustee” means the Person named as the “insurance trustee” in the first paragraph of this Insurance Trust Agreement until a successor Insurance Trustee shall have become such, in accordance with Section 5.17 hereof, and thereafter “Insurance Trustee” shall mean the Person who is then the Insurance Trustee hereunder.

“Losses” has the meaning given to such term in Section 6 hereof.

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

“Person” means any individual, legal personal representative, firm, corporation, association, joint venture, general partnership, limited partnership, limited liability partnership, limited liability company, trust, business trust, company, governmental body, and other legal entity.

“Port Deposited Sums” has the meaning given to such term in Section 2.4(c) hereof.

“Port Facilities Construction Financing Documents” has the meaning given to such term in the Project Agreement.

“Port Facilities Senior Debt” has the meaning given to such term in the Project Agreement.

“Port Insurance Trust Account” means the account established and created pursuant to Section 2.3 hereof.

“Qualifying Institution” means:

(a) a United States trust company, insurance company, investment company, pension fund or institution which has at least \$500 million in assets, including entities wholly owned by any of the foregoing;

(b) a United States bank, saving and loan institution, insurance company, investment company, employee benefit plan or other institution that manages at least \$500 million in securities and would be a “qualified institutional buyer” under United States securities laws or regulations, including entities wholly owned by any of the foregoing;

(c) an institution which is recognized or permitted under the law of any member state of the European Economic Area (“EEA”) or the Organization for Economic Cooperation and Development (“OECD”) to carry on the business of a credit institution within OECD member states or, in the case of the EEA, to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state; or

(d) any other institution the City and the Port designate in writing as a “Qualifying Institution.”

“Secured Party” has the meaning given to such term in the [Financing Documents].

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

“State” means the State of California.

“U.S. Dollars” or “\$” means United States dollars or other lawful currency of the United States of America.

“Work” has the meaning given to such term in Section 3.1 hereof.

1.2 Rules of Interpretation.

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

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

(c) 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.

(d) 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.

(e) 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.

(f) References to Documents. Each reference to an agreement, document or other instrument includes a reference to that agreement, document or instrument as amended, supplemented, modified, substituted, novated or assigned.

Section 2. Appointment; Establishment of the Insurance Trust Account; Deposited Sums.

2.1 Appointment of the Insurance Trustee. The City, the Port and the Project Company hereby appoint [•] as Insurance Trustee in accordance with the terms and conditions set forth herein, and [•] hereby accepts such appointment.

2.2 Establishment of the City Insurance Trust Account. The Insurance Trustee has established and shall maintain the City Insurance Trust Account in the name of the Project Company in accordance with the terms of this Insurance Trust Agreement.

2.3 Establishment of the Port Insurance Trust Account. The Insurance Trustee has established and shall maintain the Port Insurance Trust Account in the name of the Project Company in accordance with the terms of this Insurance Trust Agreement.

2.4 Deposited Sums.

(a) In accordance with Sections 14.1(F), 16.1(E), 16.2(E), 16.2(H), 16.2(I), and 16.6(C)(2)(b)(2), and Section 5.2 of Appendix 20 to the Project Agreement, any and all of the following amounts (collectively, the “City Deposited Sums”) shall be deposited in the City Insurance Trust Account:

- (i) property Insurance Proceeds received in respect of the City Facilities and Shared Rooms;
- (ii) disaster relief funds received in respect of the City Facilities and the Shared Rooms;
- (iii) earthquake insurance proceeds, if any, in respect of the City Facilities and Shared Rooms;
- (iv) amounts required to be deposited into the City Insurance Trust Account pursuant to Section 5.2 of Appendix 20 to the Project Agreement; and
- (v) other amounts required under the Project Agreement to be deposited in the City Insurance Trust Account.

(b) The City Deposited Sums shall be deposited in the City Insurance Trust Account, in U.S. Dollars, by wire transfer as follows:

[•]
[•]
ABA: [•]
Account Number: [•]
Account Name: [•]
Ref: [•]
Attn.: [•]

The Insurance Trustee shall hold the City Deposited Sums in the City Insurance Trust Account. The Insurance Trustee shall not be required, or have any duty, to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder or to exercise any right or privilege which may be afforded to the holder of any such security. The Insurance Trustee shall have no duty to solicit delivery of the City Deposited Sums.

(c) In accordance with Sections 14.1(F), 16.1(E), 16.1(F)(1), 16.2(E), and 16.2(H), and Section 5.2 of Appendix 20 to the Project Agreement, any and all of the following amounts (collectively, the “Port Deposited Sums”) shall be deposited in the Port Insurance Trust Account:

- (i) property Insurance Proceeds received prior to the Occupancy Date in respect of each of the Port Facilities and the Shared Facilities;
- (ii) disaster relief funds received in respect of the Port Facilities, the Port’s interest in the Shared Rooms, and the Shared Facilities;
- (iii) amounts required to be deposited into the Port Insurance Trust Account pursuant to Section 16.1(F)(1) of the Project Agreement;
- (iv) earthquake insurance proceeds, if any, received prior to the Port Occupancy Date in respect of the Port Facilities and Shared Facilities;
- (v) earthquake insurance proceeds, if any, received after the Port Occupancy Date in respect of the Shared Facilities;
- (vi) amounts required to be deposited into the Port Insurance Trust Account pursuant to Section 5.2 of Appendix 20 to the Project Agreement; and
- (vii) other amounts required under the Project Agreement to be deposited in the Port Insurance Trust Account.

(d) The Port Deposited Sums shall be deposited in the Port Insurance Trust Account, in U.S. Dollars, by wire transfer as follows:

[•]
[•]
ABA: [•]
Account Number: [•]
Account Name: [•]
Ref: [•]
Attn.: [•]

The Insurance Trustee shall hold the Port Deposited Sums in the Port Insurance Trust Account. The Insurance Trustee shall not be required, or have any duty, to notify anyone of any payment or maturity under the terms of any instrument deposited hereunder, nor to take any legal action to enforce payment of any check, note or security deposited hereunder or to exercise any right or privilege which may be afforded to the holder of any such security. The Insurance Trustee shall have no duty to solicit delivery of the Port Deposited Sums.

(e) For the avoidance of doubt, neither the Collateral Agent, nor any other Secured Party has (i) any security interest or other Lien (as defined in the Project Agreement) in the Insurance Trust Accounts, or (ii) except in connection with Section 3.1 hereof and in connection with the exercise by the Collateral Agent of its step-in rights in accordance with Article 4 of the Lenders' Direct Agreements, any right to withdraw funds from, or take or direct the taking of any other action in connection with the Deposited Sums. Without prejudice to any of the foregoing, the Insurance Trustee agrees that during any Step-In Period (as defined in the Lenders' Direct Agreements) it shall not act upon the instructions of the Project Company, but it shall act on the instructions of the Collateral Agent acting in accordance with Article 4 of the Lenders' Direct Agreements.

(f) For the avoidance of doubt, with respect to the calculation of the Termination Payment (as defined in the Project Agreement) or Partial Termination Payment (as defined in the Project Agreement), if any, in accordance with Section 1.1 of Appendix 20 to the Project Agreement, Section 5.1 of Appendix 20 to the Project Agreement, Section 9.1 of Appendix 20 to the Project Agreement, and Section 10.1 of Appendix 20 to the Project Agreement, the Project Company, the City and the Port acknowledge and agree that the Insurance Trust Accounts shall not be deemed or determined or considered to be a "bank account held by or on behalf of the Project Company" within the meaning of the definition of Account Balances.

Section 3. Disbursements.

3.1 Disbursement to Project Company. Except as otherwise provided in Section 3.2 hereof, Section 3.3 hereof and Section 3.4 hereof, from time to time during the progress of any restoration, repair, replacement or rebuilding of damage or destruction to a Facility resulting from any fire or other casualty event or any partial taking (collectively, the "Work"), disbursement of any Deposited Sums shall be made to the Project Company or to any other Person specified by the Project Company (subject to the provisions of this Section 3) no sooner

than fifteen (15) days following receipt by the Insurance Trustee and the City or the Port, as the case may be, with a copy to the Collateral Agent, of a certificate (a) signed by the Project Company and an architect or engineer selected by the Project Company, and (b) approved by the City and the Port (such approval not to be unreasonably withheld, conditioned or delayed), dated not more than thirty (30) days prior to the application for such disbursement, substantially in the form attached hereto as Exhibit A together with: (x) an official search or a certificate of a recognized title company doing business in the area, showing that there has not been filed with respect to the City's or the Port's interest in the applicable Facility or any part thereof, any vendor's, mechanic's, laborer's or materialman's statutory or similar lien that has not been discharged of record, except with respect to such liens that will be discharged or released in connection with the payment of the requested amount; and (y) waivers of all mechanic's and materialman's liens executed by each contractor, construction manager, architect, engineer, materialman and first tier subcontractor involved in carrying out the Work. Following receipt by the Insurance Trustee of a certificate signed by the City or the Port, as the case may be, the Project Company, and an architect or engineer selected by the Project Company certifying that the Work is complete, any funds remaining in the City Insurance Trust Account or the Port Insurance Trust Account, as applicable, in excess of the amounts required to meet all restoration obligations under the Project Agreement shall be applied to the prepayment of the City Facilities Senior Debt (with respect to funds remaining in the City Insurance Trust Account) or the Port Facilities Senior Debt (with respect to funds remaining in the Port Insurance Trust Account) in accordance with the terms of the Financing Documents.

3.2 Payment of City Deposited Sums to the City Upon Termination of this Insurance Trust Agreement. In accordance with Section 16.1(E)(2) of the Project Agreement, upon the termination of this Insurance Trust Agreement and following receipt by the Insurance Trustee of a certificate from the Project Company and the City stating the amount, if any, of any outstanding Termination Payment or Partial Termination Payment, as the case may be, all City Deposited Sums held by the Insurance Trustee shall be paid first to the Project Company in an amount equal to any outstanding Termination Payment or Partial Termination Payment, as the case may be, and second to the City.

3.3 Payment of Port Deposited Sums to the Port Upon Termination of this Insurance Trust Agreement. In accordance with Section 16.1(E)(3) of the Project Agreement, upon the termination of this Insurance Trust Agreement and following receipt by the Insurance Trustee of a certificate from the Project Company and the Port stating the amount, if any, of any outstanding Termination Payment or Partial Termination Payment, as the case may be, all Port Deposited Sums held by the Insurance Trustee shall be paid first to the Project Company in an amount equal to any outstanding Termination Payment or Partial Termination Payment, as the case may be, and second to the Port.

3.4 Payment of City Deposited Sums and Port Deposited Sums to the Project Company Upon Termination of the Project Agreement. In accordance with Section 16.1(E)(4) of the Project Agreement, upon the termination of the Project Agreement and following receipt by the Insurance Trustee of a certificate from the Project Company, the City and the Port stating the amount, if any, of any outstanding Termination Payment or Partial Termination Payment, as the case may be, all Deposited Sums held by the Insurance Trustee shall be paid to the Project Company.

Section 4. Investments.

4.1 Deposited Sums may be invested and reinvested only in Permitted Investments, in all cases at the risk and expense of the Project Company, in accordance with written instructions given to the Insurance Trustee by the Project Company. The Insurance Trustee shall not be required to take any action with respect to investing the Deposited Sums in the absence of written instructions by the Project Company. The Insurance Trustee shall not be liable for any loss resulting from any Permitted Investments or the sale, liquidation or redemption thereof. If and when cash is required for disbursement in accordance with Section 3 hereof, the Insurance Trustee is authorized, upon written direction from the Project Company, to the extent necessary to make payments required pursuant to Section 3 hereof to cause Permitted Investments to be sold or otherwise liquidated into cash (without regard to maturity) pursuant to such written direction. Uninvested Deposited Sums held in the Insurance Trust Accounts will not earn or accrue interest. Absent receipt of investment direction by the Insurance Trustee, deposits will be invested and reinvested in the Goldman Sachs Financial Square Prime Obligation Fund (Preferred Shares) or other investments as agreed with the Collateral Agent.

4.2 The Insurance Trustee shall have no obligation to invest or reinvest the funds if all or a portion of the funds is deposited with the Insurance Trustee after 11:00 a.m. on the day of deposit. Instructions to invest or reinvest that are received after 11:00 a.m. will be treated as if received on the following Business Day.

Section 5. Insurance Trustee Rights and Duties. Acceptance by the Insurance Trustee of its duties under this Insurance Trust Agreement is subject to the following terms and conditions, which all parties to this Insurance Trust Agreement hereby agree shall govern and control the rights, duties and immunities of the Insurance Trustee.

5.1 The duties and obligations of the Insurance Trustee shall be determined solely by the express provisions of this Insurance Trust Agreement, and no duties, responsibilities, or obligations shall be inferred or implied. The Insurance Trustee shall not be liable except for the performance of such duties and obligations as are expressly and specifically set out in this Insurance Trust Agreement. The Insurance Trustee shall not be liable for the accuracy of any calculations or the sufficiency of any funds for any purpose.

5.2 The Insurance Trustee shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder.

5.3 The Insurance Trustee shall not be required to inquire as to the performance or observation of any obligation, term or condition under any other agreements or arrangements among the City, the Port, the Project Company and the Collateral Agent.

5.4 The Insurance Trustee shall not have any responsibility to determine the authenticity or validity of any notice, direction, instruction, instrument, document or other items delivered to it by any party, or for the identity, authority or rights of Persons executing or delivering any such notice, direction, instruction, instrument, document, or other items delivered to it by such party or parties. The Insurance Trustee is authorized to comply with and rely upon

any notice, direction, instruction or other communication, regardless of form, believed by it to have been sent or given by the Project Company or the City, in respect of the City Insurance Trust Account, or by the Project Company and the Port, in respect of the Port Insurance Trust Account, and shall be fully protected in acting in accordance with such written direction or instructions given to it under, or pursuant to, this Insurance Trust Agreement.

5.5 The Insurance Trustee is not a party to, and is not bound by, or required to comply with any agreement or other document out of which this Insurance Trust Agreement may arise. The Insurance Trustee shall be under no liability to any party hereto by reason of any failure on the part of the Project Company or other signatory of any document or any other third party to perform such party's obligations under any such document. Except for amendments to this Insurance Trust Agreement referred to herein, and except for notifications or instructions to the Insurance Trustee under this Insurance Trust Agreement, the Insurance Trustee shall not be obliged to recognize or be chargeable with knowledge of any of the terms or conditions of any agreement among the City, the Port, the Project Company and the Collateral Agent, notwithstanding that references thereto may be made herein and whether or not it has knowledge thereof.

5.6 The Insurance Trustee shall not be bound by any waiver, modification, termination or rescission of this Insurance Trust Agreement or any of the terms hereof, unless evidenced in writing and delivered to the Insurance Trustee signed by the proper party's authorized representative and, if the duties or rights of the Insurance Trustee are affected, unless it shall give its prior written consent thereto. No Person will be recognized by the Insurance Trustee as a successor or assignee of the City, the Port, the Project Company or the Collateral Agent until there shall be presented to the Insurance Trustee evidence satisfactory to it of such succession or assignment. This Insurance Trust Agreement shall not be deemed to create a fiduciary relationship among the parties hereto under State or federal law.

5.7 If at any time the Insurance Trustee is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process which in any way affects the Deposited Sums (including but not limited to orders of attachment or any other forms of levies or injunctions or stays relating to the transfer of the Deposited Sums), the Insurance Trustee is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate; and if the Insurance Trustee complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Insurance Trustee shall not be liable to any of the parties hereto or to any other Person even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

5.8 The Insurance Trustee shall not be liable for any action taken or omitted or for any loss or damage resulting from its actions or its performance of its duties hereunder in the absence of bad faith, gross negligence or willful misconduct on its part. In no event shall the Insurance Trustee be liable (i) for acting in accordance with or relying upon any instruction, notice, demand, certificate or document from the City, the Port, the Project Company or the Collateral Agent in accordance with the provisions of this Insurance Trust Agreement, (ii) for any consequential, punitive or special damages or (iii) for an amount in excess of the value of the Deposited Sums, valued as of the date of loss.

5.9 In the event of any ambiguity or uncertainty hereunder or in any notice or other communication received by the Insurance Trustee hereunder, the Insurance Trustee is hereby authorized by the City, the Port, the Project Company and the Collateral Agent to refrain from taking any action other than to retain possession of the Deposited Sums, unless the Insurance Trustee receives written instructions, signed by an authorized representative of each of the City, the Port, the Project Company and the Collateral Agent which eliminates such ambiguity or uncertainty.

5.10 The Insurance Trustee may consult with legal counsel of its own choosing, at the expense of the Project Company, as to any matter relating to this Insurance Trust Agreement, and the Insurance Trustee shall incur no liability and shall be fully protected in respect of any action taken, omitted or suffered by it in good faith in accordance with the advice or opinion of such counsel.

5.11 In the event of any dispute or conflicting claim with respect to the payment, ownership or right of possession of the Insurance Trust Accounts or the Deposited Sums, the Insurance Trustee shall be entitled, in its sole discretion, to refuse to comply with any and all claims, demands or instructions. The Insurance Trustee is authorized and directed to retain in its possession, without liability to anyone, except for its own bad faith, gross negligence or willful misconduct, all or any part of the Deposited Sums until (i) such dispute shall have been settled either by mutual agreement of the parties concerned or by final order, decree or judgment of a court or other tribunal of competent jurisdiction in the United States of America (as notified to the Insurance Trustee in writing by the parties to the dispute or their authorized representatives and setting forth the resolution of the dispute) or (ii) the Insurance Trustee shall have received security or an indemnity satisfactory to it sufficient to hold it harmless from and against any and all Losses (as defined below) which it may incur by reason of so acting. The Insurance Trustee shall be under no duty whatsoever to institute, defend or partake in such proceedings. The rights of the Insurance Trustee under this paragraph are in addition to all other rights which it may have by law or otherwise including, without limitation, the right to file an action in interpleader.

5.12 The Insurance Trustee shall incur no liability for not performing any act or not fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Insurance Trustee (including any act or provision of any present or future law or regulation or governmental authority, any act of God or war, terrorism or the unavailability of the Federal Reserve Bank or other wire or communication facility).

5.13 When the Insurance Trustee acts on any communication (including communication with respect to the wire transfer of funds) sent by electronic transmission, the Insurance Trustee, absent bad faith, gross negligence or willful misconduct, shall not be responsible or liable in the event such communication is not an authorized or authentic communication of the party involved or is not in the form the party involved sent or intended to send (whether due to fraud, distortion or otherwise). The Insurance Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Insurance Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City, the Port, the Project Company and the Collateral Agent, as the case may be, agree to assume all risks arising out of the use of such electronic transmission to submit instructions and directions to the Insurance

Trustee, including the risk of the Insurance Trustee's acting on unauthorized instructions, and the risk or interception and misuse by third parties.

5.14 The Insurance Trustee will provide to the City, the Project Company and the Collateral Agent monthly statements identifying transactions, transfers or holdings of City Deposited Sums, and will provide to the Port, the Project Company and the Collateral Agent monthly statements identifying transactions, transfers or holdings of the Port Deposited Sums, and each such statement will be deemed to be correct and final upon receipt thereof by the City or the Port, as the case may be, the Project Company and the Collateral Agent unless the City or the Port, as the case may be, the Project Company or the Collateral Agent notifies the Insurance Trustee in writing to the contrary within thirty (30) Business Days of the date of such statement.

5.15 The Insurance Trustee will not be under any duty to give the Deposited Sums held by it hereunder any greater degree of care than it gives its own similar property and will not be required to invest any funds held hereunder except as directed in this Insurance Trust Agreement.

5.16 The Insurance Trustee does not have any interest in the Deposited Sums hereunder but is serving as escrow holder only and having only possession thereof. The Project Company shall pay or reimburse the Insurance Trustee upon request for any transfer taxes or other taxes relating to the Deposited Sums incurred in connection herewith and shall indemnify and hold harmless the Insurance Trustee from any amounts that it is obligated to pay in the way of such taxes. Upon execution of this Insurance Trust Agreement, the Project Company shall provide the Insurance Trustee with a fully executed W-9 IRS form. The parties hereto agree that (i) for tax reporting purposes, and for any tax year, all interest or other income earned under the Insurance Trust Agreement shall be allocable to the Project Company and (ii) to the extent permitted by applicable law, the Project Company will include all amounts earned under the Insurance Trust Agreement in its gross income for federal, state and local income tax (collectively, "Income Tax") purposes and pay any income tax resulting therefrom, and the Insurance Trustee shall allocate all such earnings for tax reporting purposes to the Project Company. Any payments of income from the account established hereunder may be subject to withholding regulations then in force with respect to United States taxes, and if required, the parties hereto will promptly provide the Insurance Trustee with completed and executed W-9, W-8BEN or other appropriate forms. It is understood that the Insurance Trustee shall be responsible for income reporting only with respect to any income which may be earned on investment of funds which are a part of the Deposited Sums and is not responsible for any other reporting.

5.17 The Insurance Trustee may resign and be discharged from its duties hereunder at any time by giving written notice thirty (30) calendar days prior to such resignation to the City, the Port, the Project Company and the Collateral Agent as provided in this Section 5.17. The Project Company, with the consent of the City, the Port and the Collateral Agent, may remove the Insurance Trustee at any time by giving written notice signed by the authorized representative of each of the Project Company, the City, the Port and the Collateral Agent at least thirty (30) calendar days prior to such removal to Insurance Trustee. Following such resignation or removal, a Qualifying Institution shall be appointed as the successor Insurance Trustee by the Project Company, with the consent of the City, the Port and the Collateral Agent, which, in each case, may not be unreasonably withheld, delayed or conditioned), and written notice thereof shall

be provided to the resigning or removed Insurance Trustee. Such successor Insurance Trustee shall become Insurance Trustee hereunder, and all Deposited Sums shall be transferred to it upon the resignation or removal date specified in such notice; provided, that such successor Insurance Trustee has executed and delivered an assignment and assumption agreement, or a similar instrument or agreement, in form and substance satisfactory to the Project Company, the City, the Port and the Collateral Agent and which provides an undertaking of such successor Insurance Trustee to become a party to and be bound by the terms and conditions of this Insurance Trust Agreement. If the Project Company fails to appoint a successor Insurance Trustee within thirty (30) calendar days after such notice, the Insurance Trustee may, in its sole discretion, deliver the Deposited Sums to the Project Company at the address provided herein or may petition any court of competent jurisdiction for the appointment of a successor Insurance Trustee or for other appropriate relief. The reasonable costs and expenses (including its reasonable attorney fees and expenses) incurred by the Insurance Trustee in connection with such proceeding shall be paid by the Project Company. On the resignation/removal date and after receipt of the identity of the successor Insurance Trustee and the execution and delivery of the aforementioned assignment and assumption agreement, the Insurance Trustee shall either deliver or disburse the Deposited Sums then held hereunder to the successor Insurance Trustee, less the Insurance Trustee's reasonable fees, costs and expenses or other obligations owed to the Insurance Trustee. Upon its resignation or removal and delivery or disbursement of the Deposited Sums in its entirety as set forth in this Section 5.17, the Insurance Trustee shall be discharged of and from any and all further obligations arising in connection with the Deposited Sums or this Insurance Trust Agreement.

Section 6. Indemnity. The Project Company shall indemnify, hold harmless and defend the Insurance Trustee and its directors, officers, agents and employees, from and against any and all claims, actions, obligations, liabilities, damages, costs and expenses (collectively, "Losses"), including reasonable attorneys' fees and expenses directly or indirectly arising out of, relating to or in connection with its acceptance of its appointment hereunder or its performance as Insurance Trustee, provided that such Losses do not arise from the Insurance Trustee's willful misconduct or gross negligence.

Section 7. Fees, Costs and Expenses. The Insurance Trustee shall be entitled to receive payment from the Project Company for reasonable fees, costs and expenses for all services rendered by it hereunder, as separately agreed between the Project Company and the Insurance Trustee. The Project Company shall reimburse the Insurance Trustee on demand for all reasonable costs and expenses paid or incurred by it in the administration of its duties hereunder, including all reasonable counsel, advisor and agent fees and disbursements.

Section 8. Waiver of Set-Off. The Deposited Sums will not be subject to deduction, set-off, banker's lien, or any other right in favor of the Insurance Trustee or any other Person, except in accordance with judicial or arbitral order.

Section 9. Miscellaneous Provisions.

9.1 Notices. Any notices, requests, instructions or other communications provided for in this Insurance Trust Agreement shall be sufficiently given if in writing, signed by a party's authorized representative and delivered in person or mailed by (a) personal delivery, overnight

delivery by a recognized courier or delivery service, (b) mailed by registered or certified mail, return receipt requested, postage prepaid, or (c) electronic transmission, which includes facsimile, email with an attachment in portable download format (pdf) or other similar electronic transmission, with confirmation of receipt of such transmission; and shall become effective when delivered to the addresses noted below or such other address as may be substituted therefor by written notification by the party's authorized representative. Notices to the Insurance Trustee shall be deemed to be effective when actually received by the Insurance Trustee.

If to the City:

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

with a copy to:

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

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 Project Company:

Plenary Edgemoor Civic Partners, LLC
10100 Santa Monica Blvd., Suite 410
Los Angeles, California 90067
Attention: Stuart Marks
Email: stuart.marks@plenarygroup.com
Telephone No.: (424) 278-2175
Email: e.devastey@meridiam.com

If to the Insurance Trustee:

[•]
[•]
[•]
[•]
[•]
Attention: [•]
Telephone No.: [•]
Fax No.: [•]

If to the Collateral Agent:

[•]
[•]
[•]
[•]
[•]
Attention: [•]
Telephone No.: [•]
Fax No.: [•]

9.2 No Adverse Interpretation of Other Agreements. This Insurance Trust Agreement may not be used to interpret another pledge, security, debt or other agreement of the Project Company. No such pledge, security, debt or other agreement (other than the Project Agreement and the Lenders' Direct Agreements) may be used to interpret this Insurance Trust Agreement.

9.3 Severability. The provisions of this Insurance Trust Agreement are severable, and if any clause or provision shall be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect in that jurisdiction only such

clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision of this Insurance Trust Agreement in any jurisdiction.

9.4 Headings. The headings in this Insurance Trust Agreement have been inserted for convenience of reference only, are not to be considered a part hereof and shall in no way modify or restrict any of the terms or provisions hereof.

9.5 Counterparts. This Insurance Trust Agreement may be signed in two or more counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

9.6 Benefits of Insurance Trust Agreement. Nothing in this Insurance Trust Agreement, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Insurance Trust Agreement.

9.7 Amendments, Waivers and Consents. Any amendment or waiver of any provision of this Insurance Trust Agreement and any consent to any departure from any provision of this Insurance Trust Agreement shall be effective only if made pursuant to a written instrument signed by each of the City, the Port, the Project Company, the Insurance Trustee and the Collateral Agent, and none of the City, the Port, the Project Company, the Insurance Trustee, or the Collateral Agent shall be deemed, by any act, delay, indulgence, omission or otherwise to have waived any right or remedy hereunder or to have acquiesced in any breach of any of the terms and conditions hereof.

9.8 Termination. This Insurance Trust Agreement shall terminate on the expiration or earlier termination of the Project Agreement and the release of all Deposited Sums in accordance with the terms of this Insurance Trust Agreement.

9.9 Assignment. No party may assign any of its rights or obligations under this Insurance Trust Agreement, except as otherwise permitted by the Note Purchase Agreement, the Credit Agreement or the Project Agreement, without the written consent of the other parties, and any such assignment without such consent shall not be effective.

9.10 Survival Provisions. The obligations of the Project Company under Section 6 and Section 7 hereof shall survive the termination of this Insurance Trust Agreement and the resignation or removal of the Insurance Trustee.

9.11 USA PATRIOT Act. The Insurance Trustee hereby notifies the Project Company that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), it is required to obtain, verify and record information that identifies the Project Company, which information includes the name and address of the Project Company and other information that will allow the Insurance Trustee to identify the Project Company in accordance with such law.

9.12 Final Expression. This Insurance Trust Agreement, together with the terms of the Project Agreement expressly referred to herein, is intended by the parties as a final expression of this Insurance Trust Agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

9.13 Merger; Consolidation of Insurance Trustee. Any corporation into which the Insurance Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Insurance Trustee will be a party, or any corporation succeeding to all or substantially all the business of the Insurance Trustee will be the successor of the Insurance Trustee hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

9.14 Governing Law. This Insurance Trust Agreement shall be governed by and construed in accordance with the applicable laws of the State.

9.15 Submission to Jurisdiction. It is the express intention of the parties that all Legal Proceedings related to this Insurance Trust Agreement or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in the County of Los Angeles, California.

Section 10. Security Procedures. In the event funds transfer instructions are given, whether in writing, by telecopier or otherwise, the Insurance Trustee is authorized to seek confirmation of such instructions by telephone call-back to the Person designated on Schedule 1 attached hereto, and the Insurance Trustee may rely upon the confirmation of anyone purporting to be the Person so designated. The Insurance Trustee and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Project Company to identify (i) the beneficiary, (ii) the beneficiary's bank or (iii) an intermediary bank. The Insurance Trustee may apply any of the Deposited Sums for any payment order it executes using any such identifying number, even when its use may result in a Person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The parties to this Insurance Trust Agreement acknowledge that such security procedure is commercially reasonable.

[The remainder of this page intentionally left blank; signature page immediately follows.]

IN WITNESS WHEREOF, the City, the Port, the Project Company, the Insurance Trustee and the Collateral Agent have each caused this Insurance Trust Agreement to be duly executed and delivered as of the date first written above.

APPROVED AS TO FORM
City Attorney

CITY OF LONG BEACH

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVED AS TO FORM
City Attorney

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

By: _____
Name:
Title:

By: _____
Name:
Title:

PLENARY EDGEMOOR CIVIC PARTNERS,
LLC

By: _____
Name:
Title:

[INSURANCE TRUSTEE]

By: _____
Name:
Title:

[COLLATERAL AGENT]

By: _____
Name:
Title:

EXHIBIT A

FORM OF DISBURSEMENT CERTIFICATE

[•]
[•]
[•]
[•]
[•]

Attention: [•]

This certificate is delivered pursuant to that certain Insurance Trust Agreement, dated January [•], 2016 (the “Insurance Trust Agreement”), by and among the City of Long Beach (the “City”), the City of Long Beach, acting by and through the Board of Harbor Commissioners (in such capacity, the “Port”), Plenary Edgemoor Civic Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware (the “Project Company”), [•], in its capacity as collateral agent on behalf of the Senior Lenders (in such capacity, together with any successors and permitted assigns, the “Collateral Agent”) and [•], in its capacity as insurance trustee hereunder (in such capacity, together with any successors and permitted assigns, the “Insurance Trustee”). All capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Insurance Trust Agreement.

In accordance with Section 3.1 of the Insurance Trust Agreement, the Project Company hereby directs and instructs the Insurance Trustee to make the following transfers or payments on [_____], 20[___] in the aggregate amount of [\$_____] (the “Disbursement Amount”) from the [City Insurance Trust Account][Port Insurance Trust Account]:

[Name, address and amount to be provided with respect to each Person to be paid for the Work.]

The Project Company certifies:

- (i) that the Disbursement Amount either has been paid by the Project Company or is justly due to Persons that have rendered and furnished certain labor and materials for the Work;
- (ii) that the Disbursement Amount, plus all sums previously disbursed, does not exceed the cost of the Work accomplished up to the date of this certificate and that the balance of the Deposited Sums will be sufficient to pay in full the cost of completing the Work;
- (iii) that except for the Disbursement Amount relating to services or materials, and amounts, if any, referred to in clause (iv) below, either (a) there is no outstanding indebtedness known to the Person signing the certificate, after due inquiry, that is then due and payable for work, labor, services and materials in connection with the Work, less reasonable retainages, or (b) with respect to any indebtedness of the type referred to in (a) that may be outstanding, the Project Company is

engaged in a bona fide dispute as to the amount due and payable in respect thereof and the Insurance Trustee holds sufficient funds to cover both the disputed amount and the cost of completing the Work; and

- (iv) that there has not been served or filed with respect to the Facility to which the Work applies or any part thereof or interest therein any stop notice, preliminary 20-day notice, vendor's, mechanic's, laborer's or materialman's statutory or similar lien that has not been discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed, unless a bond has been provided in the full amount of such lien.

The Project Company further certifies that, as of the date hereof, no default under the Project Agreement by the Project Company has occurred and not been remedied.

Dated: _____, 20__.

PLENARY EDGEMOOR CIVIC PARTNERS,
LLC

By: _____
Name:
Title:

SCHEDULE 1

TELEPHONE NUMBER(S) FOR CALL-BACKS AND
PERSON(S) DESIGNATED TO CONFIRM FUNDS TRANSFER INSTRUCTIONS

If to Project Company:

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>Stuart Marks</u>	<u>424-278-2175</u>
2.	<u>Mike Schutt</u>	<u>424-278-2185</u>

If to Insurance Trustee:

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>[•]</u>	<u>[•]</u>
2.	<u>[•]</u>	<u>[•]</u>
3.	<u>[•]</u>	<u>[•]</u>
4.	<u>[•]</u>	<u>[•]</u>