

PROJECT AGREEMENT

By and Among

CITY OF GARDEN GROVE;

and

EDGEMOOR GARDEN GROVE CIVIC PARTNERS LLC, a Maryland limited liability
company

Dated as of March ___, 2024

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Attachment 2.6	Schedule of Values
Attachment 2.7	Form of Requisition
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PROJECT AGREEMENT

THIS PROJECT AGREEMENT (this “Agreement” or “Project Agreement”) is dated for reference purposes as of March __, 2024 (the “Effective Date”), and is entered into by and among the **City of Garden Grove** (the “City”), and **Edgemoor Garden Grove Civic Partners LLC**, a Maryland limited liability company (the “Edgemoor”).

RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. The City owns certain real property located in the City of Garden Grove at Acacia Parkway and Euclid Street and is legally described in Attachment A-1 and shown on the attached Attachment A-1 (the “Site”). California Public Contracts Code § 22160 et seq. and Section 2.52.020 of the Garden Grove Municipal Code authorize the City to use design-build procurement for the design and construction of certain public works projects.

B. The City issued a Request for Qualifications (the “RFQ”) seeking an experienced entity to design and develop the Site to include space for (i) a new public safety facility and (ii) a new parking structure ((i) and (ii) the “PSF”) and (x) the demolition of the existing police headquarters building following the completion of the new PSF, and (y) a new reconfigured 2.7-acre park ((x) and (y), the “Civic Center Park”) described in more detail in Attachment 5.5(a) (collectively, the “Project”).

C. After an extensive best value evaluation process the City determined that Edgemoor’s responses to the RFQ demonstrated best value to the City and therefore warranted entering into exclusive negotiations with Edgemoor.

D. The City and Edgemoor entered into that certain Exclusive Negotiation Agreement, dated as of October 2, 2023 (collectively, with any letter agreements between the Parties the “ENA”), as the same may from time to time be amended, pursuant to which Edgemoor and the City have agreed to negotiate documents for the design and construction of the Project.

E. The City, subject to the terms of this Agreement, through both a lease-revenue bond financing by GGPFA on the financial close date (the “Financial Close Date”) of one hundred and forty million dollars (\$140,000,000) and separate appropriations of twelve million dollars (\$12,000,000) commits collectively an amount not to exceed one hundred and fifty two million (\$152,000,000) (“Total Available Funds”) to fund the Guaranteed Maximum Price to be paid to Edgemoor to design and construct the Project.

F. The Parties now desire to enter into this Agreement to set forth the actual terms and conditions upon which the Project will be designed and constructed subject to certain conditions precedent set forth in this Agreement, including (i) Edgemoor will, subject to the terms of this Agreement, design, develop, and construct the Improvements in accordance with the Project Requirements, and obtain certain specified Project approvals in connection therewith (“Edgemoor’s Work” or “Work”), (ii) the City will pay for Edgemoor’s Work with Total Available Funds, and (iii) Edgemoor will enter into the Design/Build Agreement (“Design/Build Agreement” or “DBA”) with the Design Builder with respect to the design and construction of

the Project as described in Section 2.3(a)(iii).

G. It is the intent of the Parties that Edgemoor will execute the design, development, and construction of the Project's entire scope of work within the Total Available Funds, at or below the negotiated Guaranteed Maximum Price.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 GENERAL: PARTIES, TERM, DEFINITIONS, AND PAYMENTS.

1.1 The City

The City is a municipal corporation in the State of California.

1.2 Edgemoor

Edgemoor is a Maryland limited liability company.

1.3 Site

The Site is located in the City of Garden Grove, California, and is described in Attachment A-1 and shown on the site map attached hereto as Attachment A-2 (the "Site Map"), which Site Map may be subject to change from time to time during the Term upon Substantial Completion of the various Improvements to reflect the location and dimensions of the completed Improvements.

1.4 City Commitment to Fund the Payment of the Guaranteed Maximum Price.

(a) The City hereby commits an amount not to exceed the Total Available Funds to payment of the Guaranteed Maximum Price (defined below), which Guaranteed Maximum Price includes any Work carried out prior to the execution of the GMP Change Order (defined below).

(b) Prior to the GMP Change Order's execution, Edgemoor will be paid for all Work performed in accordance with this Agreement and any Notice to Proceed issued by the City in an amount to be agreed between the Parties as set forth in Section 2.4, and all such Work performed is part of the Guaranteed Maximum Price and will be paid in accordance with Section 2.7.

1.5 Term of this Agreement

Unless terminated sooner in accordance with this Agreement, the term of this Agreement (the "Term") shall be from the Effective Date until two (2) years after Final Completion of the last Improvement to achieve Final Completion under this Agreement, except any payment obligations which are due and payable prior to such expiration and other performance or indemnity obligations

and rights which accrued during the term but by their nature must survive termination and/or expiration of this Agreement (e.g. pre-existing Change Event or indemnity claims not otherwise settled).

1.6 Definitions; Recitals

Initially capitalized terms used in this Agreement are defined in Article 12 or have the meanings given them when first defined. The Recitals are incorporated into this Agreement by reference.

1.7 Termination; Survival; Hierarchy

Upon expiration of the Term, this Agreement will terminate in its entirety, except solely the following provisions: Sections 4.4, 5.1, 5.23, 6.6, 7.2, 9.3(d), 9.6, 9.7, 9.8, 10.1, 10.7, 10.11, 10.13, 10.15, 10.18, 11.1, 11.2, and statutory warranties and/or construction defect statutes of limitation. Each of the provisions of this Agreement, including the Attachments are an essential part of the agreement between the Parties and are intended to be complementary and to be read together with this Agreement as a complete agreement. Except as otherwise expressly provided in this Section 1.7 above, if there is any conflict, ambiguity or inconsistency between the provisions within this Agreement, the order of precedence from highest to lowest will be as follows:

- (i) any amendment to this Agreement, any Notice to Proceed, or a Change Order;
- (ii) the Effective Date Design, and respectively upon approval, the Approved Design Documents and thereafter the Final Construction Documents;
- (iii) the provisions of the main body of this Agreement; and
- (iv) the provisions of the Attachments.

If either Party becomes aware of any conflict, ambiguity or inconsistency between the provisions of this Agreement or between or among this Agreement, a Change Order, the Final Construction Documents, and/or the Attachments, it must promptly notify the other Party in writing of the conflict, ambiguity or inconsistency and its assessment of which provision should prevail in light of the application of the rules set forth in this Section 1.7.

ARTICLE 2 GMP PROCESS AND PAYMENT

2.1 Execution of the Project Agreement and Design/Build Agreement

Concurrently with, or prior to, the Notice to Proceed the City and Edgemoor will have executed this Project Agreement, and Edgemoor and Design Builder will have executed the Design/Build Agreement.

2.2 Site Access

The City hereby grants Edgemoor (subject to the limitations in this Agreement) access to the Site for the purpose and on the conditions set forth in this Agreement upon issuance of a Notice to Proceed.

2.3 GMP Change Order Process

(a) The Parties acknowledge and agree that:

(i) as of the Effective Date, the Project's design is not complete and is at the level of the Effective Date Design;

(ii) prior to Financial Close, the Parties will work collaboratively and iteratively to advance the Effective Date Design and Edgemoor will deliver 100% Design Development Documents, a Schedule of Values and Master Project Schedule and the Parties will mutually agree on an estimated guaranteed maximum price (the "**Guaranteed Maximum Price**" or "**GMP**") in an amount not to exceed the Total Available Funds, in accordance with this Section 2.3;

(iii) following Financial Close and subject to Section 2.3(b), a binding Guaranteed Maximum Price, Schedule of Values and Master Project Schedule will be finalized and established in a Change Order to be executed by the Parties promptly following Edgemoor's completion of Final Construction Documents (the "**GMP Change Order**"). As part of establishing the estimated Guaranteed Maximum Price described in Section 2.3(a)(ii) above and the binding Guaranteed Maximum Price in the GMP Change Order at, or below, the Total Available Funds, the Parties agree that it may be necessary to adjust the Effective Date Design, the Design Development Documents, Approved Design Documents, the Final Construction Documents (and any modifications thereto), the Master Project Schedule and/or the Project scope through an iterative, collaborative and cooperative design, cost estimating (which may be impacted by price escalations) and time impact analysis process. The Parties acknowledge and agree that the contingency to be established in the GMP Change Order shall be solely for the benefit of Edgemoor's design and construction component of the Work and such design and construction contingency is estimated not to exceed five percent (5%) of the Guaranteed Maximum Price, and the Parties acknowledge that they will work collaboratively to minimize and reduce contingency in the GMP Change Order, but acknowledge contingency amounts may be adjusted (with both Parties' agreement, acting reasonably) in either direction. The Guaranteed Maximum Price development and calculations will be subject to open book review by the City in accordance with Section 2.10; and

(iv) if the Parties cannot agree on scope, schedule, price or design changes to achieve the City's objectives for the Project at or below the Total Available Funds, then the City (in its sole and absolute discretion) may obtain additional funding beyond the Total Available Funds to fund the Project or, failing that, either Party may terminate this Agreement in accordance with Section 2.3(b).

(b) If following Edgemoor's delivery of the Final Construction Documents the City and Edgemoor have not mutually agreed to a GMP Change Order within thirty (30) days (unless extended by the Parties) of good faith negotiations between the Parties, this Agreement

may be terminated for no fault, by either Party in writing. In such event, the City shall pay Edgemoor within 14 days for all amounts due and payable in accordance with Section 3.6.

(c) In connection with termination or expiration of this Agreement for any reason, including under Section 2.3(b), then following payment in full of all amounts due and payable by the City for all Work performed by Edgemoor in conformance with this Agreement, the City shall, subject to providing the indemnity in Section 9.8, be entitled to receive and use all Construction Documents (including Design Development Documents) existing at the time, free of any liens, claims, or encumbrances by Edgemoor or any Edgemoor subcontractor.

2.4 Notice to Proceed Work & City Rights in the Site

(a) Notice to Proceed. Prior to finalizing a Guaranteed Maximum Price under Section 2.3, Edgemoor may perform certain Work under a price or payment method agreed between the Parties under one or more Notices to Proceed (a “**Notice to Proceed**”). Within ten (10) days following the first Notice to Proceed from the City, Edgemoor will proceed with the performance of such authorized Work and the City will pay for such Work in accordance with Sections 2.6 and 2.7 for any such Work performed by Edgemoor. Prior to commencing any such Work, Edgemoor will deliver proof of insurance which is required to perform the applicable Work as agreed between the Parties and will deliver, or cause to be delivered on its behalf, a performance bond and payment bond as required under applicable Law in an amount equal to the value of the design and construction portion of such Work to be performed under the Notice to Proceed, naming Edgemoor the obligee and the City an additional obligee under a multiple obligee rider.

(b) Reservation of Rights by the City. The City shall retain rights in the Site consistent with the activities described herein, including the right to continue certain uses on the Site during Edgemoor’s Work as described in Section 5.20.

2.5 Taxes and Assessments

(a) It is agreed that the City will be responsible for all real-property taxes and assessments arising from or relating to the Project or Site and Edgemoor shall have no obligation to pay any such taxes or assessments arising from or relating to the Project or Site. If any obligation to pay such tax or assessment is imposed by any authority having jurisdiction arising from or in relation to the Project or the Site, the City shall be responsible for either authorizing payment of such tax from the change contingency or challenging the imposition of such tax or assessment.

2.6 Milestone Payments and Payment of the GMP

(a) The Parties will agree on a schedule of values that sets out the break-down of amounts to be paid by the City to Edgemoor under this Agreement, to be attached initially as Attachment 2.6, and updated from time to time, in accordance with this Agreement, including in connection with Financial Close and execution of a Change Order, or as otherwise agreed between the Parties (the “**Schedule of Values**”).

(b) Following execution of the GMP Change Order, the City shall pay the Guaranteed Maximum Price in accordance with the Schedule of Values, Section 2.7 with the understanding that any fixed-price components will be paid based on a percentage of Work

described in the Schedule of Values attached to the GMP Change Order.

2.7 Payment Procedures

(a) **Disbursements** – The process for payments to Edgemoor under and in connection with this Agreement (“**Disbursement(s)**”) shall be in accordance with the following process:

(i) Edgemoor will submit a requisition (a “**Requisition**”) for Work performed substantially in the form of Attachment 2.7 to this Agreement; and

(ii) within ten (10) calendar days following submittal of the Requisition, the City shall either approve the Requisition or identify which portion, if any, is disputed. The undisputed portion of the Disbursement shall be paid to Edgemoor by the City within five (5) calendar days after approval as to an undisputed portion of the Requisition. As to any disputed portion of the Requisition, the Parties shall continue to discuss the disputed portion until the matter is resolved or either Party invokes expedited dispute resolution procedures in Section 10.13(d). The City’s obligation to pay amounts due under this Agreement is an absolute and unconditional obligation to pay agreed upon amounts and will not be contingent, or conditional on receiving funds from GGPFPA, any trustee or other third-party.

(b) **Retainage** –

(i) **Retainage Amount** - All amounts for PSF Construction disbursed pursuant to this Section 2.7 shall be subject to a five percent (5%) retention to be held by the City in accordance with applicable Law, which shall not exceed three million five hundred thousand dollars (\$3,500,000) in the aggregate, until released by the City in accordance with Section 2.7(c). Upon commencement of the Civic Center Park Construction, all amounts for Civic Center Park Construction disbursed pursuant to this Section 2.7 shall be subject to a five percent (5%) retention to be held by the City in a separate account and in accordance with applicable Law, and will be released by the City in accordance with Section 2.7(c). Retainage shall not be held against design costs, general conditions, and any amounts for “Development Management” identified in the Schedule of Values. In accordance with Cal. Pub. Cont. Code § 22185.7 Work performed to establish the guaranteed maximum price shall not be subject to retention. All amounts retained by the City shall be held in an interest bearing account, in a financial institution selected by Edgemoor in accordance with the California Public Contracts Code. The Parties will enter into a retainage agreement agreed between the Parties which will govern the procedures for this interest bearing account or any securities in lieu of retainage, including distribution of interest earned to Edgemoor, in each case, to the extent permitted by applicable Law, including § 22300 of California Public Contracts Code.

(ii) **Draw** - Retainage may be drawn and held by the City under this Agreement or under any applicable escrow account solely to the extent of an Edgemoor Event of Default for non-payment of undisputed amounts where the City otherwise is unable to setoff such amounts due and payable by Edgemoor.

(c) **Release of Retainage** –

(i) Upon Substantial Completion of the PSF, the City will release all retainage held by the City or retainage held pursuant to an escrow agreement will be released, subject to holding back 200% of the value of the PSF “Punch List Items”.

(ii) Upon Substantial Completion of the Civic Center Park, the City will release all held retainage held by the City or retainage held pursuant to an escrow agreement will be released, subject to holding back 200% of the value of the Civic Center Park “Punch List Items”.

(iii) All Punch List retainage for the PSF and the Civic Center Park, as applicable, will be released in accordance with the Requisition procedures in Section 2.7(a) as and when the applicable Punch List Items are completed.

(iv) In connection with the release of each retainage amount under subsections (i) through (iii) above, Edgemoor shall submit an unconditional waiver and release upon receipt of such payment pursuant to California Civil Code Section 8134 for itself, and for each subcontractor and supplier participating in the Construction Work completed during the period for which retainage is being released.

2.8 Unincorporated Materials.

To the extent required to deliver the Work, the City shall be obligated to pay Edgemoor for all “Unincorporated Materials” paid for by Edgemoor, which will be included in the Guaranteed Maximum Price and will include any of the following: (i) advance deposits required to be paid to vendors and suppliers necessary to acquire materials or equipment, (ii) materials and other personal property purchased or manufactured for incorporation into the Improvements in accordance with this Agreement (including the Final Construction Documents) but, at the time a Disbursement is made hereunder to pay the costs thereof, not yet incorporated into the Improvements, (iii) personal property to be installed in or used in connection with the Project, but not intended to be incorporated into the Improvements, and in the case of (ii)-(iii) (A) have been secured and segregated, or (B) are in the custody or control of Edgemoor.

2.9 Suspension of Work / Interest

(a) **Suspension** - Where Edgemoor has complied with its obligations regarding Disbursements under this Agreement (including in connection with a Change Order) and the relevant undisputed Disbursement is not made by the City by the time required in Section 2.7, or the City fails to otherwise respond to a properly and timely submitted Requisition, Edgemoor may, after fifteen (15) days’ written notice to the City, (and without prejudice to any other right under this Agreement or applicable Law) suspend Work on the Project for nonpayment of undisputed amounts.

(b) **Interest** - If a Disbursement or any other payment under this Agreement is not paid in full on, or prior to, the applicable due date, then the unpaid amount shall accrue interest from the date which is 15 days after notice from Edgemoor to the City, until such amount is paid, at an annual rate equal to the higher of the Prime Rate plus two percent (2%) per annum or the highest rate allowed under applicable Laws.

2.10 GMP Open Book.

All amounts (other than lump sum amounts agreed between the Parties or fixed amounts for insurance, bonding, Edgemoor personnel/staffing costs) paid under this Agreement will be subject to open book review by the City (and its consultants) to confirm amounts (including subcontractor bids, contingency and administrative development costs) requested have actually been incurred by Edgemoor; provided, however the Parties acknowledge that insurance costs, surety costs, and personnel costs are lump sum amounts that have been mutually agreed by the Parties and are recognized as reasonable costs and neither Party will utilize the open book process after the GMP Change Order to further review or renegotiate amounts previously agreed between the Parties.

2.11 GMP Savings

In connection with the final payment at Final Completion of the Civic Center Park and in accordance with Cal. Pub. Cont. Code § 22185.5(b)(2), to the extent that the City has paid Edgemoor less than the Guaranteed Maximum Price (including any contingencies therein), the Parties will share in such savings 50/50, which amount will be disbursed with the final payment on or around such Final Completion.

ARTICLE 3 FINANCIAL CLOSE.

3.1 Project Funding

(a) Funding.

(i) City Funding. The City will be solely responsible for securing the financing and funding for the Project, which is expected not to exceed the Total Available Funds and is unconditionally (whether through financing or appropriated funds or otherwise) responsible for paying Edgemoor for all Edgemoor's Work performed in accordance with this Agreement not to exceed the Guaranteed Maximum Price. The Parties acknowledge that the City's failure to cause Financial Close is a failure of a condition precedent to Edgemoor performing any further Work under this Agreement entitling Edgemoor to terminate this Agreement, but is not a City Event of Default.

3.2 Cooperation of Parties.

Edgemoor will provide reasonable and customary assistance to the City in providing the necessary information from Edgemoor regarding Edgemoor, its subcontractors and the Project in order to achieve the Financial Close.

3.3 Financial Close Target Date; Rights of Termination

The "**Financial Close Target Date**" shall mean the expected date for achieving the Financial Close, which is ninety (90) days following the Effective Date. Subject to Extension, or mutual written agreement executed by the Parties in their sole and absolute discretion, extending the

Outside Financial Closing, if the Financial Close, notwithstanding any other provision of this Agreement, has not occurred by the date that is one hundred and fifty (150) days from the Effective Date (the “**Outside Financial Closing Date**”), then the City or Edgemoor shall have the right to terminate this Agreement (without fault), and upon such termination none of the Parties shall have any further obligations under this Agreement except as otherwise expressly provided in this Agreement, including the City’s payment under Section 3.6. In the event of such termination, each of the Parties shall execute and deliver such documents and take such acts as may be reasonably required to unwind this Agreement.

3.4 Conditions Precedent to Financial Close

(a) Conditions Precedent. The following are conditions precedent to proceed with the Financial Close:

(i) The Effective Date shall have occurred and Edgemoor has provided an estimated Guaranteed Maximum Price as described in Section 2.3(a)(ii), and from and after the later of such dates, both Parties have continued to perform in all material respects all material obligations under this Agreement required to be performed before the Financial Close, and all of the representations and warranties made in Article 11 of this Agreement, respectively, shall have been true and correct in all material respects when made and shall be true and correct in all material respects as of Financial Close;

(ii) Any additional documents to be executed by Edgemoor and City on or before the Financial Close, which were not executed on or before the Effective Date, shall have been executed and delivered to the other Party;

(iii) From and after the Effective Date, there shall not have occurred any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, by a third party which seeks to challenge this Agreement, the Financial Close, the DBA, or the development of any portion of the Project;

(iv) the Parties have agreed on all Change Events as of the Financial Close and the estimated Guaranteed Maximum Price does not exceed the expected Total Available Funds; and

(v) 100% Design Development Documents have been submitted by Edgemoor.

(b) Satisfaction of Conditions Precedent. The conditions precedent set forth in Section 3.4(a) above are intended for the benefit of the both Parties. If any such condition precedent is not satisfied on or before the Financial Close Target Date either Party shall have the right to (i) waive in writing the condition precedent in question and the City may proceed with the Financial Close; (ii) in the case of the City, postpone the Financial Close for the time period reasonably necessary for such condition to be satisfied, provided that, except as expressly provided herein, in no event shall the Financial Close occur after the Outside Financial Closing or (iii) terminate this Agreement and Edgemoor will be paid in accordance with Section 3.6.

3.5 Financial Close

Provided that the conditions precedent set forth in Section 3.4 have all been satisfied or expressly waived by the applicable Party on or before the Outside Financial Closing, the City will achieve Financial Close within ten (10) days thereafter or where the City chooses not to achieve Financial Close within such time period then Edgemoor may terminate this Agreement and the City shall compensate Edgemoor in accordance with Section 3.6.

3.6 Termination Prior to GMP Change Order

Without limiting either Party's rights due to a termination for either, a City Event of Default or Edgemoor Event of Default under Article 9, if this Agreement is terminated prior to the GMP Change Order being executed by both Parties, the City shall pay Edgemoor an amount equal to: (i) the cost incurred (but not yet paid) for all Work performed by Edgemoor and any Edgemoor Responsible Party in accordance with this Agreement and any Notice to Proceed, (ii) Edgemoor's and any Edgemoor Responsible Party's costs incurred as a result of such termination and (iii) an amount equal to \$75,000.

ARTICLE 4 SITE CONDITION; INDEMNIFICATION; COMPLIANCE WITH LAWS.

4.1 Site Condition

(a) Site Delivery. Subject to the City Permitted Site Uses, on and from the Effective Date, the City shall deliver and provide to Edgemoor full access to the Site for the purposes of performing Edgemoor's Work. The Site will be delivered by the City in a condition acceptable to Edgemoor.

(b) Site Ready Obligations. Without limiting the foregoing, subject to the City's continued use of the Site and adjacent property as described in Edgemoor's Site coordination plan prepared by Edgemoor and agreed with the City, each when necessary, Edgemoor shall be permitted space at the Site for parking, locating office trailers, and storage/staging areas for the purposes of performing Edgemoor's Work.

(c) Damage or Destruction.

(i) If any damage or destruction of the Site occurs after the Effective Date, which is not caused by an act or failure to act of any Edgemoor Responsible Party in breach of this Agreement, and which the Parties reasonably determine would add \$50,000 or more (in the aggregate) to the cost of developing the Project (a "**Material Damage Event**"), the City shall issue a Change Order. Following issuance of the Change Order, Edgemoor shall remedy the damage or destruction and the City will pay Edgemoor for its costs and expenses incurred in connection with performing any such restoration work pursuant to the Change Order.

4.2 Environmental Matters and Differing Site Conditions

(a) Environmental Matters. Edgemoor shall comply with all Hazardous Materials Laws applicable to the Site in performing Edgemoor's Work. If any Hazardous

Materials are discovered on the Site, Edgemoor shall (i) if required by applicable Law, immediately contain, remediate or remedy such Hazardous Materials or (ii) if immediate action is not required, promptly notify the City after which the Parties will expeditiously determine the most cost effective and appropriate course of action. Thereafter, Edgemoor will perform all agreed upon required and necessary remediation and other work needed to remove such Hazardous Materials from the Site and to properly dispose the same off-Site, all in accordance with applicable Laws, including Hazardous Materials Laws. So long as the discovered Hazardous Materials are not part of Edgemoor Assumed Hazardous Materials Obligations (defined below), such discovery shall be deemed a Change Event. Without any double counting in connection with the aforementioned Change Event process, and excluding Edgemoor Assumed Hazardous Materials Obligation (as defined below), the City shall be solely responsible for, and shall Indemnify Edgemoor, from any and all costs to comply with Hazardous Materials Laws, including, without limitation, (i) all direct third party documented costs and expenses for investigating, remediating and/or removing any such Hazardous Materials to the extent such investigation, remediation and/or removal is required, and (ii) all Hazardous Materials Laws applicable to the use of the Site and the Improvements. The Parties acknowledge that to the extent that California Code, Public Contract Code - PCC § 7104 applies to the Work, to the extent required by Law, it is incorporated herein by this reference as if fully set forth herein.

(b) The City shall not be relieved from any liability that the City may have under applicable Laws that relate to pre-existing Hazardous Materials on the Site or by reason of the existence of any Hazardous Materials on the Site for which it is a responsible party, and in no event shall Edgemoor Indemnify the City with respect to such environmental conditions which existed on the property prior to the Effective Date or which are not Edgemoor Assumed Hazardous Materials Obligations (defined below).

(c) Notwithstanding the foregoing, Edgemoor shall be solely responsible for, and shall Indemnify the City from, any and all costs to bring the Site into compliance with Hazardous Materials Laws to the extent caused by Hazardous Materials brought by Edgemoor or its contractors or subcontractors onto the Site in connection with Edgemoor's Work for which Edgemoor or its contractors or subcontractors are liable under Hazardous Materials Laws, including where such Hazardous Materials materially adversely impact subsurface conditions (collectively, the "**Edgemoor Assumed Hazardous Materials Obligations**"). Edgemoor shall not be responsible for environmental conditions which existed on the Site prior to Edgemoor taking control of the Site or which are not otherwise Edgemoor Assumed Hazardous Materials Obligations.

(d) Differing Site Conditions. Without limiting the foregoing, if any Differing Site Conditions are discovered on the Site, then Edgemoor shall promptly perform all required and necessary work required pursuant to applicable Law given the current use of the Site (e.g., not residential) needed to mitigate, address or correct such Differing Site Conditions to the extent such Differing Site Conditions either (i) directly impact the performance of Edgemoor's Work or (ii) are required to be addressed under applicable Law, and in each case, such discovery and necessary work shall be deemed a Change Event.

(e) Existing Site Reports. The City agrees that, with respect to the surface and subsurface conditions of the Site, Edgemoor has relied upon and will rely upon, all representations

and warranties of the City provided to Edgemoor and as otherwise expressly set forth in the Project Agreement, and that as of the date of the Effective Date it has delivered to Edgemoor all reports, studies, assessments, audits or other similar documents in connection with the condition of the Site, utilities, Hazardous Materials, geotechnical conditions, soil conditions, or any other Site condition that the City has in its possession or is aware of and that all such reports are listed in Attachment 12-2, (collectively, the “**Existing Site Reports**”). Notwithstanding the foregoing, the Parties acknowledge and agree that, upon execution of the GMP Change Order, Attachment 12-2 will be updated with Existing Site Reports that the City has in its possession or is aware of between the Effective Date and execution of the GMP Change Order, which will be considered as part of the GMP Change Order process. The City will attempt to obtain written acknowledgements in form and substance reasonably satisfactory to Edgemoor from the consultants engaged by or on behalf of the City who prepared the Existing Site Reports specifically stating that Edgemoor is entitled to rely upon the information contained in such Existing Site Reports.

4.3 Compliance with Laws

(a) Except as to Edgemoor Assumed Hazardous Materials Obligations, no term or provision of this Agreement shall be construed to deem or require Edgemoor to be the generator, shipper, arranger, and/or transporter of any Hazardous Materials disposed of from the Project or the Site or otherwise as part of Edgemoor’s Work, or parts thereof encountered during Edgemoor’s Work; neither will Edgemoor be required to take any action that would cause it to be listed or identified as the generator, shipper, arranger, or owner for the purposes of applying any statute, rule, guideline, or regulation. The City will be identified as the generator and arranger of all Hazardous Materials on any transport manifests for the Project, except for the Edgemoor Assumed Hazardous Materials Obligations.

(b) Compliance with Laws. Edgemoor shall comply at all times throughout the Term, with respect to the Project and the Site, with: (i) all Laws; (ii) all requirements of all policies of insurance that may be applicable to the Site, the Improvements, and Edgemoor’s personal property; and (iii) all other applicable Project Requirements. Subject to the City’s obligations in Section 4.2 and Section 5.21 regarding Change Events, the cost to comply with this Section 4.3(b) shall be allocated to Edgemoor. Notwithstanding anything herein to the contrary, the Parties acknowledge that the provisions of this Section 4.3(b) are not intended to modify the allocation of responsibilities contained herein, and in no event shall this Section 4.3(b) be interpreted such that neither Party will be obligated to perform obligations that are expressly allocated to the other Party. Edgemoor shall, promptly upon request from time to time, provide the City with evidence of compliance with Edgemoor’s obligations under this Section 4.3(b).

(c) Regulatory Approvals and Permits. Edgemoor and the City each understand that the construction of the Improvements on the Site and development of the Project may require certain Regulatory Approvals. Accordingly, Attachment 4.3(c) sets forth which of Edgemoor or City shall be responsible for each such Regulatory Approval. The Regulatory Approvals required to be obtained by Edgemoor are referred to hereunder as the “**Edgemoor Assumed Regulatory Approvals**.” The Regulatory Approvals required to be obtained by the City are referred to hereunder as the “**City Assumed Regulatory Approvals**.” Throughout the process for obtaining any Regulatory Approval, Edgemoor and the City shall consult and coordinate with each other to obtain any required Regulatory Approvals and shall reasonably cooperate with each

other. However, Edgemoor shall not agree to the imposition of obligations, conditions or restrictions in connection with its efforts to obtain a Permit from any regulatory agency if the City is required to be a co-permittee under such Permit or the conditions or restrictions could create any obligations on the part of the City whether on or off of the Site, unless in each instance the City has previously approved such conditions in writing. The City shall provide Edgemoor with its approval or disapproval thereof in writing within five (5) Business Days after receipt of Edgemoor's written request. Subject to the conditions of this Section 4.3(c), the City shall join any application by Edgemoor for a required Regulatory Approval and in executing any such Permit issued in connection therewith where required. Edgemoor shall bear all costs associated with applying for and obtaining any necessary Edgemoor Assumed Regulatory Approvals described on Attachment 4.3(c). The cost of obtaining and complying with Regulatory Approvals shall be allocated between Edgemoor and City as set forth in this Agreement. Each of the City and Edgemoor shall have the right to appeal or contest any condition or Permit in any manner permitted by Law imposed upon any such Regulatory Approval required to be obtained by the City or Edgemoor, as applicable. The City or Edgemoor, as applicable, shall provide the other Party with prior notice of any such appeal or contest and keep the non-contesting Party informed of such proceedings. The Party responsible for obtaining a certain Regulatory Approval shall pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of such Party to comply with the terms and conditions of any Regulatory Approval except to the extent such failure results from the acts or omissions of the other Party. Without limiting any other provisions of this Agreement, it shall be a Change Event if the City fails to (i) timely obtain any City Assumed Regulatory Approval by the time or times established in the Master Project Schedule, (ii) timely maintain any City Assumed Regulatory Approval, or (iii) comply with the terms and conditions of any City Assumed Regulatory Approval. The City and Edgemoor each agree to use diligent efforts to obtain any Regulatory Approval required to be obtained by such Party.

4.4 Indemnity

(a) Edgemoor's Indemnity. To the greatest extent permitted by applicable Law, Edgemoor hereby Indemnifies the City, and its Indemnified Parties from and against any third-party claims or third-party Losses due to bodily injury or property damage (each, a "City Claim") to the extent caused by the acts or omissions of any Edgemoor Responsible Party in breach of this Agreement, negligence, fraud or willful misconduct; provided, however, that Edgemoor shall have no obligation to Indemnify any Indemnified Party to the extent a City Claim arose from that Indemnified Party's (i) failure to comply with its obligation under this Agreement, (ii) gross negligence or fraud, or (iii) willful act or omission of such Indemnified Party.

(b) City's Indemnity. To the greatest extent permitted by applicable Law, the City hereby Indemnifies Edgemoor, and its Indemnified Parties from and against any third-party Claims or third-party Losses (each, an "Edgemoor Claim") to the extent caused by the the acts or omissions of any City Responsible Party in breach of this Agreement, negligence, fraud or willful misconduct; provided, however, that the City shall have no obligation to Indemnify any Indemnified Party to the extent an Edgemoor Claim arose from that Indemnified Party's (i) failure to comply with its obligation under this Agreement, (ii) gross negligence or fraud, or (iii) willful act or omission of such Indemnified Party.

(c) General Provisions Regarding Responsibility for Certain Losses.

(i) Costs. The foregoing allocation of responsibility for certain Losses shall include, without limitation, reasonable fees and costs of attorneys, consultants and experts, laboratory costs, and related costs, as well as the Indemnified Party's costs of investigating any Loss.

(ii) Immediate Obligation to Defend. A Party that is responsible to another Party pursuant to this Section 4.4 (each, a "**Responsible Party**") shall also pay for the Indemnified Party's defense even if such claims may be alleged to be groundless, fraudulent or false. The Indemnified Party against whom any claim is made which may be within the scope of the indemnity provisions of this Agreement shall provide notice to the Responsible Party of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with the Responsible Party in the defense of such claim; provided that any failure to provide such notice shall not affect Responsible Party's obligations under any such indemnity provisions except to the extent Responsible Party is prejudiced by such failure.

(iii) Not Limited by Insurance. Insurance may be used to satisfy a Party's obligation under this Section 4.4, but the insurance requirements and other provisions of this Agreement shall not limit a Responsible Party's obligations under this Agreement.

(iv) Survival. Notwithstanding any other provision in this Agreement to the contrary, the obligations of any Party set forth in this Section 4.4 shall survive the expiration of the Term and any early termination of this Agreement.

(v) Additional Obligations. The rights and obligations under this Section 4.4 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which the Responsible Party shall have to the other Parties under this Agreement or applicable Laws.

(vi) Defense. The Responsible Party shall, at its option but subject to the reasonable consent and approval of the Indemnified Party, be entitled to control the defense, compromise, or settlement of any matter indemnified by it through counsel of the Responsible Party's own choice; provided, however, in all cases the Indemnified Party shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Responsible Party shall fail, however, within a reasonable time following notice from the Indemnified Party describing in reasonable detail the nature of the Responsible Party's failure to take reasonable and appropriate action to defend such suit or claim, the Indemnified Party shall have the right promptly to hire outside counsel to carry out such defense, the expense of which shall be due and payable to the Indemnified Party within thirty (30) days after receipt by the Responsible Party of each invoice therefor.

ARTICLE 5 CONSTRUCTION OF THE PROJECT.

5.1 Ownership of Improvements

Without regard to which Person constructs or causes the construction of any Improvement(s), the City shall own all Improvements as they are contracted for (in the case of materials only) and otherwise, as constructed, installed, erected, or placed on the Site.

5.2 Edgemoor's Construction Obligations

(a) Scope of Edgemoor's Work; Master Project Schedule. In addition to any Work performed under a Notice to Proceed, if Financial Close occurs and the GMP Change Order is executed by both Parties, Edgemoor shall construct or cause to be constructed the Work described in the GMP Change Order, subject to the terms and conditions of this Agreement, in the manner set forth in this Article 5 prior to the applicable Target Completion Dates (as the same may be extended as provided in this Agreement) and in accordance with the Project Requirements. In the event the City's consent is required for an extension of the applicable Target Completion Date, and the applicable Target Completion Date is so extended, then the City shall not be deemed to be waiving any other rights under this Agreement or implying the extension of any other dates.

(b) Costs of the Project. Edgemoor shall, subject to the City's payment obligations under this Agreement, bear all of the cost of developing the Site and Construction of all Improvements, including, any and all cost overruns, in accordance with the Project Requirements. Without limiting the foregoing, but subject to the terms of this Agreement, if the GMP Change Order is executed, Edgemoor shall be responsible for performing all off and on-site Site preparation work necessary for Construction of the Improvements.

(c) Design and Construction in Accordance with Project Requirements. Edgemoor shall perform the Work in accordance with (i) Title 24 and those applicable to Essential Service Facilities (*Building Codes and Regulations*) of the Garden Grove Municipal Code, (ii) the General Conditions attached hereto as Attachment 5.2(c), it being understood that Edgemoor is designing to a category 4 and any deviations from such performance criteria must be approved in writing by the City; (iii) any applicable Standard of Care and in compliance with all Laws, including, Hazardous Materials Laws and Disabled Access Laws, (iv) as further provided in Section 4.3, all Regulatory Approvals; and (v) the Approved Design Documents, and upon approval, the Final Construction Documents. All such requirements, together with the approved Final Construction Documents are referred to collectively as the "Project Requirements."

(d) Construction Coordination Meeting. Edgemoor shall work with the City to schedule and hold a design and construction coordination meetings each week, either as part of an existing meeting or as a standalone meeting to coordinate Edgemoor's performance of the Work with the City's operations at or around the Site.

5.3 City's Right to Approve

The City Manager or her designee may review and approve all design and construction documents at the intervals established herein and in the Schedule of Submittals (to be submitted to the City by Edgemoor with the GMP Change Order) and further retains the right to inspect the Construction Work. The City will respond to all submittals requiring their approval within the time period set out herein and in the Schedule of Submittals.

5.4 Utilities

The detailed division of responsibility between the Parties for the provision and construction of all off-Site utilities and improvements required for the installation of on-Site utilities is provided in Attachment 5.4, which is in initial draft form and is to be finalized as part of the GMP Change Order process, with the understanding that Edgemoor shall be responsible for coordinating all utility work required on-Site and off-Site for the Project, except that off-Site utility work will be performed at the City's cost (to the extent such costs are not otherwise covered by a utility). The City agrees that Edgemoor shall be permitted to use, existing City electricity, water and other utilities at the Site in connection with its performance under this Agreement. If and to the extent there is a cost associated with such use, such cost will be included in the Guaranteed Maximum Price. Subject to the provisions in this Section 5.4, the City retains responsibility and cost for unknown utilities which constitute a Differing Site Condition and for failures by utilities to coordinate with Edgemoor or timely perform any utility obligation contemplated by the Master Project Schedule or Edgemoor's utility coordination plan (in each case, after Edgemoor exhausting commercially reasonable efforts to coordinate with such utilities), as may be updated from time to time, for the Project. Edgemoor shall cooperate with the City and provide all reasonable assistance to the City with respect to the coordination with utilities.

5.5 The Construction Documents for the Project

(a) Subject to the provisions of this paragraph, those certain Design Development Documents in Attachment 5.5(a) have been accepted by Edgemoor and the City as of the Effective Date (the "**Effective Date Design**") and the City shall approve the required and remaining Design Development Documents following the Effective Date as part of the GMP Change Order process ("**Approved Design Documents**"). Edgemoor and the City acknowledge and agree that the Approved Design Documents supersede, with respect to the applicable Improvements related thereto, all prior and/or different design documents related thereto (including the Effective Date Design), the RFQ, and any formal and/or informal responses thereto, and all other documents related to the applicable Improvements related to such Approved Design Documents.

(b) The City will review, comment and where applicable, approve Construction Documents in accordance with this Agreement and the Schedule of Submittals. Upon the City's approval of each iteration of the Design Development Documents (including any Approved Design Documents) and any other iterative submissions of the Construction Documents, such interim approvals shall supersede and replace in their entirety, all other prior interim design approvals, in each case, until the Final Construction Documents are approved in accordance with Section 5.9 below. Once the Final Construction Documents are approved, in the event of a conflict between the Final Construction Documents and any such other documents, the Final Construction Documents shall control. Any modification by the City to a prior approved Design Development Document or Construction Document (other than those expressly required to comply with applicable Law requirements), will entitle Edgemoor to claim a Change Event if such modification causes a Material Adverse Effect on Edgemoor's Work or the Master Project Schedule.

5.6 Compliance with the Final Construction Documents

Edgemoor shall construct all Improvements in compliance with the Project Requirements and the Final Construction Documents. The City's review of Final Construction Documents shall include a determination of consistency with the Design Development Documents (including any Approved Design Documents).

5.7 Preparation of Final Construction Documents/Approval of Licensed Professional

(a) Preparation by Licensed Professional. The Final Construction Documents shall be prepared by, signed and sealed by the appropriate licensed professional, who shall be duly licensed to practice architecture or engineering in and by the State of California. The appropriate licensed professional for each of the PSF and Civic Center Park shall coordinate to the extent required by applicable Law, the work of any other associated design professionals, including engineers and landscape architects.

(b) Certifications by Licensed Engineers. State licensed engineers shall review, certify and seal all final plans as required by Law.

5.8 Submission of Construction Documents

Edgemoor shall prepare and submit the various Construction Documents to the City and the OCFA for review and approval at the time or times established in the Master Project Schedule.

5.9 Scope of the City's Review of the Final Construction Documents

(a) Scope of Review. Following the City's iterative review of the Design Development Documents and Construction Documents in accordance with the Master Project Schedule, the City's final review and approval of the Final Construction Documents under this Agreement shall be in writing and shall be deemed its agreement and approval that such Final Construction Documents reflect the full, complete, and final understanding and agreement of the Parties with respect to the Project and the scope of Edgemoor's Work, and shall supersede, modify and replace in their entirety all Design Development Documents (including any Approved Design Documents) and other Construction Documents, the RFQ, and any formal and/or informal responses thereto, and all other documents related to the Improvements.

(b) Effect of Review. The City's review and approval or disapproval of the Final Construction Documents will be final and conclusive. If the City subsequently disapproves or requires changes in, or in a manner that is inconsistent with, the Approved Design Documents, such modification shall be a Change Event and a Change Order shall be granted to Edgemoor to the extent it causes a Material Adverse Effect on Edgemoor's Work as determined under Section 5.21.

(c) Limitation. Notwithstanding the foregoing, the Parties agree that the City's approval of any Construction Documents, including the Final Construction Documents, shall not be deemed a representation or warranty by the City that such Construction Documents are free of any defects, errors or omissions with respect to the design of the Improvements. Nor shall the City's approval of any Construction Documents, including the Final Construction Documents, relieve Edgemoor of its obligations hereunder for designing and constructing the Project in accordance with all applicable Laws (including the the California Building Standards Code (Cal.

Code Regs., Title 24) and/or the applicable professional Standard of Care.

5.10 Scope of Edgemoor Submission of the Final Construction Documents

The Final Construction Documents shall include all drawings, specifications and documents necessary for the Improvements to be constructed and completed in accordance with this Agreement.

5.11 Changes in Final Construction Documents

(a) Approval of Changes in Required Elements. Changes may not be made in any Final Construction Documents as to substantial or material structural, mechanical, electrical, plumbing, security or building control elements, in each case which are necessary to the functioning of the Improvements (each a “**Required Element**”) without the City’s express written approval, in its reasonable discretion; provided, however, that if certain materials approved by the City are not timely available for construction, or are only available at a cost materially in excess of the amounts budgeted therefor, Edgemoor may substitute materials which are the architectural equivalent and of similar quality, all as determined by the City in the exercise of its reasonable discretion, provided that such changes are in compliance with all other Project Requirements.

(b) Response. All requests to change any Required Element shall be made in writing by Edgemoor to the City. The City shall approve or disapprove Edgemoor’s request as promptly as reasonably possible, but in no event later than five (5) Business Days after receipt of Edgemoor’s request. Disapproval of such request shall be accompanied by specific reasons for such disapproval.

5.12 Conflict Between the City’s Approval and Other Governmental Requirements

(a) Approval by the City. The City shall not withhold its approval, where otherwise required under this Agreement, of elements of the Final Construction Documents required by any other governmental body with jurisdiction if the City receives written notice of the required change, which is mandated by Law, and the City is afforded (where applicable) ten (10) days to discuss such element or change with the applicable governmental body having jurisdiction and with the appropriate licensed professional (if applicable).

(b) Commercially Reasonable Efforts to Attempt to Resolve Disputes. Edgemoor and the City recognize that conflict may arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of Permits. Accordingly, time is of the essence when such a conflict arises. Both the City and Edgemoor agree to use commercially reasonable efforts to expeditiously reach a mutually satisfactory solution.

5.13 Construction Document Review Procedures

(a) Role of The City’s Staff. The City shall appoint one or more individuals in writing to whom any items requiring the City’s consent hereunder shall be submitted for approval (the “**Authorized Individuals**”). Only a signed authorization from any one of such Authorized Individuals shall be binding on the City. The City may, from time to time, replace and/or

supplement any such appointed Authorized Individuals by written notice to Edgemoor. The Authorized Individuals initially appointed to provide consent on behalf of the City under this Agreement will be notified in writing by the City to Edgemoor.

(b) Method of the City's Action/Prior Approvals. The City shall approve, disapprove or conditionally approve the submitted Final Construction Documents, in writing, within the time period set out in the Schedule of Submittals so long as such Final Construction Documents constitute, in the reasonable judgment of the City, a complete submittal of the applicable documents.

(c) Timing of the City's Disapproval/Conditional Approval and Edgemoor Resubmission. If the City disapproves any Construction Documents, in whole or in part, the City in its written disapproval shall state the reason or reasons for such disapproval and may recommend changes and other recommendations. If the City conditionally approves any Final Construction Documents in whole or in part, the conditions shall be stated in writing and a time shall be stated for satisfying the conditions. Edgemoor shall make any resubmittals as expeditiously as possible. Edgemoor may continue making resubmissions until the approval of the submissions, provided that either the City or Edgemoor may at any time submit any disagreements regarding the approval of any Construction Documents to expedited dispute resolution procedures contained in Section 10.13(d) below.

(d) Delayed Response. The City's failure to respond to Edgemoor's request for consents, reviews or approvals upon the expiration of the time periods set forth in this Agreement, the Master Project Schedule or Schedule of Submittals (as applicable) shall be deemed an approval by the City; provided Edgemoor has first delivered to the City written notice of such expiration date (the "**Approval Failure Notice**"), and the City has failed to respond within three (3) Business Days (the "**Approval Cure Period**") after the later to occur of (i) the City's receipt of such Approval Failure Notice, or (ii) the expiration of such applicable time period. Edgemoor shall be entitled to send an Approval Failure Notice prior to the expiration of the initial applicable review period, however if it does so, then the City shall not be deemed to have failed in its obligation to timely respond pursuant to this paragraph unless its response is sent after the later of (A) the expiration of the initial applicable review period, and (B) the expiration of the Approval Cure Period.

5.14 Progress Meetings/Consultations

During the preparation of the Construction Documents, the City staff and Edgemoor agree to hold periodic progress meetings, as appropriate considering Edgemoor's progress, to coordinate the preparation of, submission to, and review of the Final Construction Documents by the City. Edgemoor will also provide for over-the-shoulder design review process with the City. The City staff and Edgemoor (and its applicable consultants) agree to communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Final Construction Documents to the City can receive prompt and speedy consideration.

5.15 Master Project Schedule

By signing this Agreement, Edgemoor represents to the City that the respective completion dates set forth in the Master Project Schedule, including without limitation the applicable Target Completion Dates, are reasonable for Edgemoor to perform all of the applicable obligations set forth therein, and that Edgemoor is able to complete such obligations within the durations identified in the Master Project Schedule, including without limitation the Substantial Completion of the PSF and the Civic Center Park by the applicable Target Completion Dates.

(a) Start of Construction; Completion Dates. If the Financial Close occurs and a GMP Change Order is executed, Edgemoor shall commence Construction of the Project within (30) days of the later of Financial Close and executing a GMP Change Order.

(b) Updates and Changes to Master Project Schedule. The original Master Project Schedule agreed by the Parties prior to the Effective Date and attached as Attachment 5.15 shall be finalized by Edgemoor upon completion of one hundred percent (100%) Design Development Documents (which shall be no later than Financial Close) and otherwise as and when required pursuant to the terms and conditions contained in this Agreement, and such updates shall be provided to the City for its review and approval. If the Parties are unable to agree upon finalization of the Master Project Schedule, Edgemoor and the City shall meet promptly and try to resolve the dispute, and if they are unable to agree, then either such Party may submit the dispute to expedited dispute resolution procedures contained in Section 10.13(d) below.

(c) Edgemoor's Performance. Edgemoor shall proceed expeditiously with adequate forces and shall perform all of its obligations hereunder by the applicable Maximum Completion Dates, in each case subject to any extension provided under this Agreement for a Change Event or under a Change Order. Edgemoor shall advise City whenever, in their judgment, Edgemoor believes that Substantial Completion will not occur on or before the Maximum Completion Date. If at any time the City determines in its reasonable discretion that Edgemoor's progress is such that Edgemoor is substantially certain not to achieve Substantial Completion of the PSF and/or the Civic Center Park by the applicable Maximum Completion Date, the City shall notify Edgemoor thereof, and Edgemoor shall, within ten (10) business days of the City's request, provide the City with a schedule demonstrating either (i) that Edgemoor shall achieve Substantial Completion on or before the applicable Maximum Completion Date without the need to accelerate or modify the Construction or (ii) measures Edgemoor intends to take so that such applicable Substantial Completion is achieved by the applicable Maximum Completion Date (the "**Proposed Recovery Schedule**"). The City shall have fifteen (15) days to approve or disapprove in writing such Proposed Recovery Schedule, and shall specify the reason for any objections and may present an alternative approach to any proposed actions. Edgemoor shall have three (3) Business Days after receiving the City's response to propose a revised Proposed Recovery Schedule addressing the City's objections, which may incorporate the City's proposed alternatives, if any. The City shall have three (3) Business Days after receiving the revised Proposed Recovery Schedule to approve or reject the same in writing. If the City rejects the revised Proposed Recovery Schedule, any outstanding issues shall be subject to Section 10.13 below. Once a Proposed Recovery Schedule is finalized pursuant to the terms of this paragraph, then Edgemoor shall promptly implement such schedule (the "**Recovery Schedule**") at Edgemoor's sole cost and expense, except to the extent that such delay is due to (i) the wrongful acts or omissions of City or GGPPFA, or their respective Agents, (ii) a Change Event, or (iii) a delay entitling Edgemoor to an Extension, in which case it shall be a Change Event, and Edgemoor shall be entitled to seek a City Change Order

under the terms of Section 5.21, for the additional costs and expenses incurred by Edgemoor in order to implement the Recovery Schedule. The City's failure to provide such notice in accordance with this Section 5.15 shall not be considered a waiver of Edgemoor's obligation to timely complete the Project, or any part thereof.

5.16 Submittals after Completion/As-Built Documents

Edgemoor shall furnish to the City copies of as-built plans and specifications with respect to any particular Improvements within one hundred twenty (120) days after Substantial Completion of the PSF and the Civic Center Park (as applicable). As used in this Section 5.16, "as-built plans and specifications" means as-built field plans prepared during the course of Construction.

5.17 Insurance Requirements Before the Notice to Proceed. In connection with the issuance of the Notice to Proceed, and prior to Edgemoor being granted access to the Site, Edgemoor shall procure and maintain, or caused to be procured and maintained, insurance coverage as required by Attachment 5.17 (Part 1).

(a) After the Financial Close. From and after the Financial Close and execution of a GMP Change Order and during the Term of this Agreement, the requirement to maintain, or caused to be procured and maintained, insurance under this Agreement will be as set forth in Attachment 5.17 (Part 2).

5.18 Permit Approval Process

As further provided in Section 4.3(c), the City or Edgemoor (as applicable) have the responsibility for obtaining all necessary Permits for the Improvements as set forth on Attachment 4.3(c), and the City or Edgemoor (as applicable) shall make application for such relevant Permits directly to the applicable regulatory agency. Upon any such submission, the City or Edgemoor (as applicable) shall prosecute the application diligently to issuance.

5.19 Reports

During periods of Construction, Edgemoor shall submit monthly written progress reports to the City, in form and detail as may be reasonably agreed between the Parties.

5.20 Rights of Access and Use

(a) Subject to this Section 5.20, the City and its respective Agents will have a right of access to the Site, including any Work Area therein for City Permitted Site Uses and for the inspection of Edgemoor's Work, upon reasonable prior notice to Edgemoor during regular business hours; provided, however, the City shall not interfere with Edgemoor's Construction activities during such site visits and shall coordinate with Edgemoor when accessing the Site or when the City may be adversely impacting the Work or access to the Site (whether on or off the Site). Edgemoor shall have the right to accompany the City on any such Site visit and to require all visitors to comply with all safety requirements. The City will provide Edgemoor promptly upon Edgemoor's written request with a copy of any final and complete written reports prepared by the City or its respective Agents with respect to the Site under any such inspection, subject to withholding documents otherwise privileged or confidential, and without any representation or

warranty by City as to the truth or accuracy of the contents of such reports.

(b) When accessing Edgemoor's Work Area, the City and its contractors, agents or suppliers must timely coordinate with Edgemoor to reasonably and appropriately enable Edgemoor to timely perform its obligations under this Agreement and must not interrupt, damage or interfere with Edgemoor's Work.

(c) Notwithstanding anything herein to the contrary, the Parties acknowledge that during Construction and prior to Substantial Completion of the Project, the City shall continue outside of the Work Areas to operate and Edgemoor shall work with the City to minimize disruption to the operation of the existing police headquarters building, City Hall, the fire station, parking lots and portions of the park outside the Site. Until Substantial Completion of the PSF, Edgemoor shall be responsible for the security and fencing of its Work Areas, including without limitation, damage or destruction caused by theft, vandalism, and acts of nature. Outside of the Work Area, Edgemoor must timely coordinate with the City to minimize disruptions to the City's operations of the foregoing facilities and will comply with the coordination protocols agreed between the Parties when seeking to access areas outside the Site which might interfere or interact with City operations.

(d) Each Party will timely address any and all concerns raised by the other Party regarding access to the Site or adjacent areas necessary for Edgemoor to perform the Work or the City to operate the facilities described in (c) above, in each case subject to any coordination or site access plans agreed between the Parties.

5.21 Change Events and Change Orders

(a) Change Events and City Change Orders.

(i) If there is a Material Adverse Effect on the scope of Edgemoor's Work, the cost of performing Edgemoor's Work, or the Master Project Schedule as a result of a Change Event (defined below), then Edgemoor will be entitled to a modification to the Master Project Schedule, the Guaranteed Maximum Price, and/or performance relief (as applicable) in accordance with this Section 5.21 through the issuance of a change order for Edgemoor's Work (each a "**City Change Order**"). Any City Change Order will only be issued for a Change Event to the extent any such Change Event was not directly caused by Edgemoor's breach, negligence, willful misconduct or fraud and Edgemoor otherwise satisfies the requirements under this Section 5.21 for a City Change Order. Notwithstanding the foregoing, where damage or destruction to the Project is caused by the breach, or negligence of Edgemoor or its subcontractor, and such damage or destruction is an insurable event, then Edgemoor will be entitled to solely time relief necessary to restore the Project to its prior condition, but in no event would Edgemoor be entitled to any increase to the Guaranteed Maximum Price.

(ii) In seeking any relief under this Section 5.21, Edgemoor has an obligation to exercise reasonable efforts to mitigate the adverse effects of a Change Event and

reduce any delay or damages to the City or the Project, in each case, in accordance with standard industry practice.

(iii) A “**Change Event**” includes any of the following which occur or are discovered after the Effective Date: (1) a Extra Work Request issued by an authorized representative of the City; (2) the City’s, or their respective agent’s, contractors, employees’ or invitees’ acts or omissions or failure to comply with this Agreement; (3) changes in Laws (including increases in taxes applicable to materials); (4) discovery of a Hazardous Material other than Edgemoor Assumed Hazardous Materials Obligations; (5) discovery of a Differing Site Condition; (6) an interruption in Edgemoor’s ability to use electricity, water and other utilities at the Site pursuant to Section 5.4; (7) any adverse impact on the Project caused by a third party not controlled by Edgemoor, including utilities or governmental agencies not cooperating or timely performing; (8) the issuance of any preliminary or permanent injunction or temporary restraining order or other order, legal restraint, action or proceeding, including any administrative action, appeal, or prohibition, in each case, by a court, tribunal or other judicial or adjudicative body or by any governmental entity; (9) a Force Majeure Event occurs, (10) if the Construction Documents require additional CEQA compliance efforts not otherwise anticipated in the Effective Date Design or Approved Design Documents; (11) a Material Damage Event; or (12) insurance premiums increase materially in a given year; provided, that such increase described in this subsection (iii) is not a result of the wrongful acts or failure to act by Edgemoor or any of its contractors, subcontractors, or agents whether with respect to the Project or otherwise;

(iv) Except with respect to Extra Work Requests, within fifteen (15) Business Days of Edgemoor becoming aware of any such Change Event, Edgemoor shall provide notice of such Change Event to the City, and shall thereafter, submit to the City a Change Event proposal including, as applicable (1) describing any performance relief Edgemoor was seeking, (2) a cost proposal (including all resulting direct and indirect costs of Edgemoor and the Design Builder (including Design Builder mark-up of 5% and general conditions costs, as applicable) and an Edgemoor management and administrative markup of 5% which includes personnel and overhead costs of Edgemoor, (“**Edgemoor’s Change Fees**”)), (3) an estimate of any impact such Change Event may have on the Master Project Schedule (including the applicable Target Completion Dates) and (4) when available, all related plans, drawings, specifications and a narrative, each subject to the requirements in Section 5.21(a)(i) (“**Change Request Supporting Materials**”).

(v) Within five (5) Business Days after receiving the Change Request Supporting Materials required in Section 5.21(a)(iv), the City shall, by written notice to Edgemoor, confirm whether a Change Event has occurred which entitles Edgemoor to a City Change Order and whether adequate Change Request Supporting Materials have been provided to approve such City Change Order request. In the event the City does not confirm all or a portion of a Change Event has occurred or that additional Change Request Supporting Materials are needed, the City shall state its specific reasons and the steps that can be taken to render such elements confirmed. Within ten (10) Business Days after receiving such written notice from the City, Edgemoor shall address the City’s comments and such process shall continue until a City Change Order is ultimately approved by the City, Edgemoor withdraws its request for a City Change Order or such request is otherwise resolved by the expedited dispute resolution procedures pursuant to Section 10.13(d). In the event the request for a City Change Order is ultimately confirmed by City,

Edgemoor shall prepare a written City Change Order for execution by the City and Edgemoor, and the Master Project Schedule, the applicable Target Completion Dates and the Guaranteed Maximum Price shall be updated as agreed upon, and, if applicable, Edgemoor will be relieved of any performance stated in the Change Order and the Parties shall promptly proceed with performance in accordance with a City Change Order. At any time during the review of Change Request Supporting Materials the Parties may meet to discuss the Change Event.

(vi) The City at anytime may issue Edgemoor a written directive prepared and signed by the City's Authorized Individual, directing Edgemoor to perform extra work beyond the scope of Edgemoor's Work as defined by this Agreement ("**Extra Work Request**"). Edgemoor is under no obligation to perform any extra work pursuant to any Extra Work Request or City Change Order unless and until either (i) the Parties have agreed in writing on the terms of a City Change Order memorializing the Extra Work Request or (ii) if in negotiating such terms of a City Change Order, the Parties have not yet agreed on a final cost, but are within 10% of each other's proposed costs, in which case the City will pay Edgemoor for its actual costs incurred as Edgemoor performs the Extra Work, until the Parties reach agreement on the final cost, in each case, subject to proof of applicable funding or appropriations. If the Parties do not reach an agreement on the final costs, including through the expedited dispute resolution procedures in Section 10.13(d), then Edgemoor will be under no obligation to continue with the Extra Work.

(vii) Within ten (10) Business Days after the issuance of an Extra Work Request, Edgemoor shall provide the City with a proposal to prepare a schematic design and an early cost estimate before proceeding further with the evaluation of City's Extra Work Request.

(A) If the City decides to proceed further with the Extra Work Request, Edgemoor shall promptly provide the City with a complete proposal with Change Request Supporting Materials to implement the Extra Work Request, and the process in Section 5.21(a)(v) shall be followed.

(B) If the City elects not to proceed after Edgemoor prepares a schematic design and early cost estimate under Section 5.21(a)(vii) or with a City Change Order after the complete proposal has been prepared and submitted under Section 5.21(a)(vii)(A), the City shall issue a City Change Order to compensate Edgemoor for all reasonable design costs, estimating costs, engineering costs, and administrative costs and expenses necessarily paid to third-parties by Edgemoor as the result of the City's Extra Work Request.

(viii) In the event that the City has unconditionally approved a City Change Order, but the City is delinquent in approving any undisputed payment under said City Change Order, Section 2.9 shall apply.

(ix) In the event the Parties are unable to resolve any issues relating to a Change Event or an outstanding City Change Order, then the matter shall be subject to expedited dispute resolution procedures (Section 10.13(d)).

(x) Edgemoor will, on a back-to-back basis, share with the Design Builder, who will, in turn, share with the other subcontractors, certain benefits to Edgemoor

derived from the rights, entitlements, and relief afforded to Edgemoor under, and subject to the obligations and limitations under, this Agreement, including rights of Edgemoor under this Section 5.21 (such rights, entitlements and relief, as qualified by such obligations and limitations, are collectively “**Edgemoor Project Relief**”). The City acknowledges and agrees that any circumstance or event impacting the Design Builder or any other subcontractor, which if such same event or circumstance impacted Edgemoor, may serve as the basis for Edgemoor Project Relief, and in each case, Edgemoor may claim relief, damages, costs or expenses on behalf of the Design Builder or any other subcontractor at any tier under and subject to the terms of this Agreement and such third-parties; however, third parties will have no right or entitlement to bring any claim under this Agreement, and the City shall have no liability directly to such third-parties.

(b) Edgemoor Change Request. Edgemoor may request in writing to the City (i) changes in the Work consisting of additions, deletions, or other revisions, (ii) changes and revisions to the Master Project Schedule or (iii) changes in the cost to perform the Work, where applicable (each a “**Edgemoor Change Order**”). Along with its request, Edgemoor shall provide to City all Change Request Supporting Materials relevant to Edgemoor Change Order (each a “**Edgemoor Change Request**”).

(c) The City will, by written notice to Edgemoor, confirm whether a Edgemoor Change Request is unconditionally approved or disapproved (i) for Edgemoor Change Requests which are less than ten percent (10%) (cumulative) of the Guaranteed Maximum Price, within fifteen (15) business days after receiving such Edgemoor Change Request or (ii) for Edgemoor Change Requests which are greater than ten percent (10%) (cumulative) of the Guaranteed Maximum Price, upon approval or disapproval by the City Council. The City agrees to not unreasonably withhold approval provided that the need for the Edgemoor Change is not the result, in whole or in part, of Edgemoor’s acts or omissions or where there is no impact to the Master Project Schedule, the Guaranteed Maximum Price or the quality of the Project.

(i) In the event the City disapproves any such items, the City shall state the specific reasons for such disapproval and the steps, if any, that can be taken to render such items acceptable. Within ten (10) Business Days after receiving written notice of such disapproval, Edgemoor shall revise such items and submit them to the City for review. Such process shall continue until such Edgemoor Change Request is ultimately approved by the City or withdrawn by Edgemoor. In the event Edgemoor Change Request is ultimately accepted by City, Edgemoor shall prepare a Edgemoor Change Order for execution by the City and Edgemoor, the Master Project Schedule shall be updated as agreed upon, and Edgemoor shall promptly revise the Construction Documents and proceed with performance of a Edgemoor Change Order.

5.22 Warranties

(a) Edgemoor hereby warrants to the City that all materials and equipment furnished by Edgemoor as part of the Improvements shall be (i) new, (ii) of good and workmanlike quality, and (iii) in accordance with the Final Construction Documents and all other Project Requirements. Edgemoor has an obligation to correct defective Edgemoor’s Work for one year following (A) Substantial Completion of the PSF and (B) Substantial Completion of the Civic Center Park and (C) solely with respect to the Punch List Items, Final Completion of the PSF and the Civic Center Park, as applicable (the “**Defect’s Warranty Period**”). The Defect’s Warranty

Period will be extended for a single additional one (1) year defect rectification period solely for Edgemoor's Work that has been rectified or replaced during the initial Defect's Warranty Period. The City must provide Edgemoor with at least thirty (30) days (or such longer period reasonably required to correct a particular defect) to correct a defect covered by the Required Warranties before the City remedies such defect with third-parties. Where Edgemoor has not fulfilled its Defect's Warranty Period obligations by the time required in this Agreement, following 30 days' written notice from the City of such failure, and if Edgemoor is not working in good faith to reasonably and promptly remedy the issue, the City may enforce the Defect's Warranty Period obligations directly against the Design Builder (which is permitted under the terms of the Design/Build Agreement).

(b) Additionally, with respect to the Improvements, Edgemoor will obtain the manufacturer warranties described on Attachment 5.23 (collectively the "**Manufacturer Warranties**") naming and for the benefit of Edgemoor and the City. If there is a defect that is covered by the Manufacturer Warranties before Substantial Completion of either the PSF or the Civic Center Park, as applicable, the City shall first provide written notice of such defect to Edgemoor and Edgemoor must correct such defective work as a condition precedent to Substantial Completion of the relevant Improvement. On or after Substantial Completion of the PSF or the Civic Center Park (as applicable), Edgemoor shall ensure that all Manufacturer Warranties available to Edgemoor have been assigned to the City or its designee, and the City or its designee shall enforce all such Manufacturer Warranties solely and directly with the manufacturers or through any of the City's service provider designees, and the City will not seek to enforce such Manufacturer Warranties directly with Edgemoor unless Edgemoor and/or the Design Builder is a necessary party to any such action.

5.23 Prevailing Wage

Edgemoor will cause the Design Builder to enter into a Project Labor Agreement ("**PLA**"), including a no-strike clause for the Project and a requirement that reasonable efforts are used to hire workers who reside in the City substantially in the form attached hereto as Attachment 5.23. Prevailing wages in accordance with the PLA and California Law, must be paid for all Construction Work associated with the Project.

5.24 Non-Discrimination

In connection with the performance of its obligations under this Project Agreement, Edgemoor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age. Such agreement shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Edgemoor further agrees to insert this provision in its contract with any contractor or subcontractor relating to this Project.

5.25 Change in Project Standards

Edgemoor will be required to notify the City of any change in project standards it becomes aware of. If the City instructs Edgemoor to comply with the change, Edgemoor will be entitled to a

Change Event, if such change in project standards causes Edgemoor to suffer more than a de minimis delay and/or additional costs.

5.26 Subcontractor List

The subcontractors and suppliers identified in Attachment 5.26 were listed in Edgemoor's proposal submitted to the City under the ENA process as a condition precedent to the City awarding and entering into this Agreement and one or more of which are expected to be included in those utilized to design and/or construct the Project.

5.27 Furniture, Fixtures and Equipment

(a) **FF&E Generally.** Edgemoor shall furnish and install all "**Furniture, Fixtures and Equipment**" required for the Project, excluding City Furnished Equipment (defined below). Furniture, Fixtures and Equipment comprises the items set forth in Attachment 5.27, as amended by the GMP Change Order (if applicable), excluding the City Furnished Equipment.

(b) **Selection of Furniture, Fixtures and Equipment.** The City shall identify and select, in its discretion and in consultation with Edgemoor, all Furniture, Fixtures and Equipment the City requires for the Project. Edgemoor shall procure the Furniture, Fixtures and Equipment identified and selected by the City, and the City shall determine the locations at which the Furniture, Fixtures and Equipment is to be installed. The Parties shall agree on a schedule for the selection, procurement, delivery, and installation of the Furniture, Fixtures and Equipment that is consistent with and will not cause a material delay in the Master Project Schedule.

(c) **Payment for Furniture, Fixtures and Equipment.** Edgemoor shall arrange for the acquisition, delivery and installation of the Furniture, Fixtures and Equipment in a timely and proper manner, up to a maximum aggregate amount to be established in the GMP Change Order (the "**FF&E Allowance**"). Edgemoor shall insure the Furniture, Fixtures and Equipment at all times prior to Substantial Completion of the PSF. The City shall pay Edgemoor directly an amount equal to all such costs and sales taxes plus a markup of 5% to Edgemoor (covering Edgemoor's overhead and profit) for the Furniture, Fixtures and Equipment, up to the FF&E Allowance. If a consultant is engaged to assist in the identification and selection of Furniture, Fixtures and Equipment, that cost is payable under the FF&E Allowance. In the event the City directs Edgemoor to acquire, furnish and install Furniture, Fixtures and Equipment exceeding the FF&E Allowance in aggregate cost, Edgemoor shall not be obligated to furnish and install that Furniture, Fixtures and Equipment except following agreement with the City as to the terms of funding and payment for such Furniture, Fixtures and Equipment.

(d) **City Furnished Equipment.** The City shall furnish, pay for and insure all "**City Furnished Equipment**" as set forth in Attachment 5.27, as amended by the GMP Change Order (if applicable). The City shall advise Edgemoor, in connection with the establishment and periodic revision of the Project Schedule, as to the nature and quantity of the City Furnished Equipment the City plans to supply and the expected dates of delivery and installation. The City shall be responsible for the delivery and installation of any City Furnished Equipment and shall not unreasonably interfere with the Work in connection therewith. Edgemoor shall provide

reasonable assistance to the City in all coordination, scheduling, delivery and installation activities related to City Furnished Equipment. The City shall be responsible, at all times, for the warranty, maintenance, repair and replacement of City Furnished Equipment.

(e) **Specialties.** Edgemoor shall furnish all “EGGCP Furnished Specialties” required for the project as initially set forth and defined in Attachment 5.27 and revised by the GMP Change Order (“**Specialties**”). The Specialties outlined in Attachment 5.27 are part of the Work as defined by the Agreement but will not be included in the FF&E Allowance.

ARTICLE 6 DETERMINATION OF SUBSTANTIAL & FINAL COMPLETION.

6.1 Notice

Edgemoor shall give the City at least thirty (30) days’ prior written notice of the date upon which it expects to achieve Substantial Completion or Final Completion (as applicable) of the PSF or the Civic Center Park (as applicable).

6.2 Definition of Substantially Completed

For purposes of this Agreement, the terms “**Substantially Completed**” or “**Substantial Completion**” means the City’s confirmation that Substantial Completion has occurred for either the PSF or the Civic Center Park by issuing a certificate of substantial completion in the form of Attachment 6.2 (the “**Certificate of Substantial Completion**”) which shall occur immediately once the following have occurred: (i) receipt by City of an AIA Notice of Substantial Completion from Edgemoor’s appropriately licensed professional for such applicable Improvements (the “**Licensed Professional’s Certificate**”) certifying substantial completion of the applicable Improvements in accordance with the Project Requirements, (ii) agreement on the Punch List Items under Section 6.3, and (iii) issuance of a Certificate of Occupancy or a temporary Certificate of Occupancy from the agency having jurisdiction for either the PSF or Civic Center Park, as applicable (together, a “**Certificate of Occupancy**”). The date of Substantial Completion will be the date Edgemoor has satisfied the conditions set forth in this Section 6.2(i) through (iii).

6.3 Punch List Items

(a) At such time that the PSF or the Civic Center Park (as applicable) are determined to be Substantially Completed, the City, Edgemoor, and the Design Builder will conduct a walk-through of the Improvements to review consistency with the Project Requirements and the Final Construction Documents and prepare a list of all Punch List Items (the “**Punch List Items**”) at that time and an estimated cost and time for rectifying such Punch List Items. The Punch List Items shall include delivery of as-builts, equipment maintenance manuals for all installed equipment, completion of training for City maintenance staff, a statement of repairs, corrections and adjustments to the Improvements, and incomplete, if any, aspects of the Improvements, which do not have a significant impact to the ability to issue the Certificate of Occupancy or temporary Certificate of Occupancy and utilize the PSF or Civic Center Park.

(b) The Punch List Items and their estimated value shall be agreed upon by both

Parties acting reasonably. If there is no such agreement by the Parties within ten (10) days of creating the Punch List Items, either Party may refer this matter to expedited dispute resolution pursuant to Section 10.13(d).

(c) Once Substantial Completion has occurred any held retainage shall be released and held in accordance with Section 2.7(b) to secure that all applicable Punch List Items will be diligently pursued to completion within one hundred and twenty (120) days of Substantial Completion of the PSF or the Civic Center Park, as applicable.

(d) Completion of all Punch List for the PSF or the Civic Center Park will constitute “Final Completion” for such components of the Project. If the Certificate of Occupancy issued pursuant to Section 6.2 above is only a temporary Certificate of Occupancy, the term Punch List Items shall also include any work needed for the issuance of a final Certificate of Occupancy. Punch List Items shall be determined separately and independently for each of the PSF and the Civic Center Park.

6.4 Specific Approvals Controlling

With respect to the determination of whether or not the PSF or the Civic Center Park are Substantially Completed or have achieved Final Completion (as applicable) for purposes of this Agreement, the applicable Final Construction Documents for such Improvements will govern.

6.5 Termination of Agreement

With respect to the PSF or the Civic Center Park, issuance of the Certificate of Final Completion in the form attached as Attachment 6.5 for such Improvements shall constitute conclusive evidence of the termination of this Agreement with respect to such Improvements (except that Edgemoor must satisfy any obligations that expressly survive termination of this Agreement, including the items listed in Section 1.7). At the request of Edgemoor, following the issuance of such items, the City shall each execute such other documents, in form reasonably satisfactory to the Parties, as may be required to confirm the termination of this Agreement with respect to such Improvements, and following the issuance of all such items with respect to all Improvements comprising a portion of the Project, to execute such other documents, in form reasonably satisfactory to the Parties, as may be required by any Party to confirm the termination of this Agreement in its entirety.

6.6 Delay Credits

The imposition of to Delay Credits pursuant to Section 9.3, below, shall cease to accrue on the date of Substantial Completion for each of the PSF or the Civic Center Park, as applicable.

ARTICLE 7 ENCUMBRANCES AND LIENS.

7.1 No Mortgage

(a) No Mortgage of Fee. Edgemoor may not engage in any financing or other transaction creating any mortgage, lien or other encumbrance on any City or GGPFA asset, or on the Improvements. No interest of the City or GGPFA in the Site shall be subordinated under any

circumstance whatsoever to any mortgage lien or other encumbrance not approved by the City.

(b) Contests. The City shall be permitted to contest the validity or amount of any tax, assessment, encumbrance or lien and to pursue any remedies associated with such contest; and Edgemoor shall reasonably cooperate, at no cost to Edgemoor unless caused by Edgemoor, with any such contest brought by the City. Notwithstanding the foregoing, in no event shall Edgemoor be obligated to pay any real property or possessory interest tax or assessment regardless of whether the same is caused by any act or omission of Edgemoor.

7.2 Mechanics' Liens

(a) Compliance with California Lien Laws. Notwithstanding anything to the contrary contained herein, the Parties understand and agree that any and all Improvements made to the Site must comply with applicable Law and Edgemoor and its subcontractors shall not have the right to post or file any mechanic's lien against the Project or the Site.

(b) Notice. Not less than five (5) Business Days before Edgemoor commences Work under a Notice to Proceed or following execution of the GMP Change Order, it shall (i) notify the City in writing of (1) the expected date of commencement thereof, and (2) the name and contractor's license number of the prime contractor performing the work. City shall have the right at any time and from time to time to post and maintain on the Site, and/or record, such notices as the City reasonably deems necessary to protect the Site and City from liens arising out of any work performed, materials furnished or obligations incurred by Edgemoor or its Agents.

7.3 Performance and Payment Bonds

Prior to performing any Work under a Notice to Proceed or the GMP Change Order, Edgemoor, or the Design Builder on behalf of Edgemoor, must provide a performance and payment bond sized to 100% of the cost of the design and Construction Work under the Design/Build Agreement. The Parties acknowledge and agree that upon Substantial Completion of the PSF and satisfaction of the waiver and release in requirements in Section 2.7(c)(iv), Edgemoor may cause the performance bond and payment bond to step-down in penal sum to cover 100% of the value of the design and Construction Work of the Civic Center Park.

ARTICLE 8 ASSIGNMENT AND TRANSFER.

8.1 Restriction Against Transfer

Edgemoor may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement to any Person, including an affiliate of Edgemoor or otherwise do any of the above or make any contract or agreement to do any of the same ("**Transfer**"). Such consent to a Transfer may be given, withheld, or conditioned in the City's sole and absolute discretion. Consent to any one Transfer will not be a waiver of the requirement for such consent for each and every Transfer. The provisions of this Section 8.1 shall not prohibit Edgemoor from subcontracting with the Design Builder, third parties or any Edgemoor Affiliate.

8.2 Effect of Violation

(a) Event of Default. If Edgemoor makes a Transfer in violation of Section 8.1, then the City may, in its sole discretion, either void the Transfer, or declare an Event of Default from and after the time of the Transfer.

(b) No Release of Obligations. Except by the specific written approval of the City which may give or withhold in its sole discretion, no Transfer will relieve Edgemoor from any obligations under this Agreement.

8.3 Assignment of the Design/Build Agreement

It being the intent of the Parties that the City can assume a contractual relationship with the Design Builder under the Design/Build Agreement in accordance with this Section 8.3, the Design/Build Agreement is hereby assigned by Edgemoor to the City, provided that the assignment is effective only after the undisputed effective date of any termination of this Agreement by the City for an Edgemoor Event of Default, pursuant to Section 9.2, or if this Agreement is terminated upon agreement by the Parties in accordance with this Agreement, and only if the City accepts the assignment by written notification to Edgemoor and the Design Builder the assignment. Such assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design/Build Agreement. When the City accepts the assignment of the Design/Build Agreement, the City assumes Edgemoor's rights and obligations under the Design/Build Agreement and Edgemoor will be fully released from any future obligations under the Design/Build Agreement which had not accrued prior to the City assuming such agreement. Until the City assumes such Design/Build Agreement in writing, the City will have no liability under the Design/Build Agreement, and the Design Builder will have no claims or entitlement directly against the City. Edgemoor agrees to make the City a third-party beneficiary of this assignment right under the Design/Build Agreement and will ensure the Design/Build Agreement includes appropriate assignment language acknowledging and accepting the City's rights under this Section 8.3.

ARTICLE 9 DEFAULTS, REMEDIES AND TERMINATION.

9.1 Before Applicable Closing Date

If the Financial Close does not occur by the Financial Close Target Date (as each may be properly extended), the Parties shall comply with Sections 3.4(b) and 3.6, as applicable and each Party will have thirty (30) days after such notice to perform any acts required of it to permit the Financial Close, as applicable.

9.2 Edgemoor Events of Default

The following constitute "**Edgemoor Events of Default**" or a "**Edgemoor Event of Default**", in each case, subject to any relief afforded to Edgemoor for a Change Event, including an Extension:

(a) Edgemoor fails to commence Construction within thirty (30) days of the Effective Date or the date both Parties execute the GMP Change Order, as applicable;

(b) Edgemoor abandons or suspends Construction for a period of forty-five (45) days absent an entitlement to do so under this Agreement;

(c) Edgemoor fails to achieve Substantial Completion of the PSF or Civic Center Park by the applicable Maximum Completion Date;

(d) Edgemoor fails to pay any undisputed amount required to be paid to the City under this Agreement when due, and such failure continues for fifteen (15) Business Days following written notice from the City;

(e) Edgemoor does not submit Construction Documents as are required to be submitted within the times provided in this Agreement, and Edgemoor does not cure such default within thirty (30) days after the date of written demand specifying the items missing or due by the City to Edgemoor, or, if such cure cannot reasonably be completed within such thirty (30) day period, such additional time as needed to cure such violation, but not to exceed ninety (90) days;

(f) Edgemoor fails to pay subcontractors in accordance with the California Prompt Payment Act, Government Code, Section 927, et seq;

(g) Edgemoor fails to maintain, or cause to be maintained, the insurance required pursuant to Section 5.17, or fails to deliver certificates, endorsements, and/or policies as required pursuant to that Section 5.17; and such failure continues for thirty (30) days following written notice from the City to Edgemoor; and

(h) Without limiting any other provisions of this Section 9.2, the representations and warranties of Edgemoor contained in this Agreement are materially false at the time made, or Edgemoor violates any material covenant, or fails to perform any other material obligation to be performed by Edgemoor under this Agreement at the time such performance is due, and such violation or failures continues without cure for more than thirty (30) days after written notice from the City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, such additional time as needed to cure such violation, but not to exceed ninety (90) days.

9.3 Remedies of the City

Upon the occurrence of any uncured Edgemoor Event of Default, the City shall have the remedies set forth below:

(a) Termination. Subject to Sections 9.3(d) and 9.6(c) below, the City may terminate this Agreement upon thirty (30) days' written notice to Edgemoor specifying Edgemoor Event of Default, but subject to the following (1) Edgemoor Event of Default continues for ninety (90) days or more, (2) if the cure for the Edgemoor Event of Default cannot reasonably be completed within the applicable cure period, such additional time as needed to cure such violation is given to Edgemoor, so long as Edgemoor is working in good faith and reasonably and promptly remedy any Edgemoor Event of Default in accordance with a Proposed Recovery Schedule provided to the City and agreed between the Parties in accordance with Section 5.15(c) and (3) either such Edgemoor Event of Default (i) would make it impossible to achieve the Substantial Completion of the PSF or Civic Center Park by the applicable Maximum Completion Date for

such Improvement(s) in accordance with the Master Project Schedule, as from time to time revised in accordance with this Agreement, or (ii) would deprive the City of the material benefits of this Agreement.

(b) Specific Performance. The City may institute an action for specific performance;

(c) Other Remedies. Subject to Sections 9.3(d) and 9.6(c) below, the City shall be entitled to all other remedies permitted by Law or at equity or under this Agreement, including, without limitation, damages; provided that the City's damages shall be limited to actual, direct damages, and with respect to a Edgemoor Event of Default under Section 9.2(c) Edgemoor's damages shall be limited to the remedy set forth in Section 9.3(d). In no event shall the City (except with respect to Edgemoor's indemnification obligations for City's third-party related Losses under Section 4.4(a)) be entitled to consequential, incidental, special or punitive damages (including but not limited to lost profits or revenues); and

(d) Remedy for Late Completion.

(i) If Edgemoor fails to achieve Substantial Completion of the PSF or the Civic Center Park by the date for Substantial Completion as set out in the Master Project Schedule, after taking into account the effect any Extension as permitted therein, (i) the Parties agree that the City is likely to sustain delay damages that are difficult to ascertain, and thus as compensation for such delay damages, the City shall be entitled to, as the sole and exclusive financial remedy for delay, ten thousand (\$10,000) dollars per day for the PSF with a maximum amount of three million (\$3,000,000) and following Substantial Completion of the PSF, one thousand dollars (\$1,000) dollars per day for the Civic Center Park with a maximum amount of (\$300,000) (such sums each, a "**Delay Credit**"), commencing in each case on the applicable date for Substantial Completion as set out in the Master Project Schedule and continuing on a daily basis until Substantial Completion for such Improvement is achieved. The Parties agree to use reasonable efforts to mitigate the relevant delay in advance of any delay occurring.

(ii) The Parties hereby agree that the Delay Credits are a fair and reasonable estimate of the damages the City is likely to sustain as a result of any such delay, are not manifestly unreasonable under the circumstances existing at the time this Agreement is made and are not a penalty. Notwithstanding the use of the phrase "Delay Credit" City shall not be required to prove or assess actual loss where a delay occurs entitling the City to Delay Credits. Edgemoor shall pay any Delay Credits hereunder to the City, in cash or other immediately available funds, via wire transfer or otherwise as directed by the City within thirty (30) Business Days after either Substantial Completion is achieved or this Agreement is terminated, such obligation to survive the expiration of the Term and the termination of this Agreement.

(iii) The Parties hereby agree that the Delay Credits are the City's exclusive monetary remedy for the City's losses with respect to Edgemoor's delay in achieving Substantial Completion, but will not excuse Edgemoor from liability for any other breach of its obligations under this Agreement and will not preclude City from exercising any other rights it has under this Agreement.

9.4 City Events of Default

The following constitute “City Events of Default” or a “City Event of Default”:

(a) The representations and warranties of the City contained in this Agreement are materially false, or the City violates any material covenant or fails to perform any material obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor in this Agreement, or if no such time is specified, than the thirty (30) days after written demand by Edgemoor to the City to perform such obligation and duty, or, if such cure cannot reasonably be completed within such thirty (30) day period, such additional time as needed to cure such violation, but not to exceed ninety (90) days; or

(b) Any failure to pay any amount required to be paid to Edgemoor under this Agreement and such failure continues for sixty (60) days following written notice from Edgemoor to the City, unless such payment is the subject of a bona fide dispute pursuant to this Agreement.

9.5 Remedies of Edgemoor

Upon the occurrence of a City Event of Default, Edgemoor shall have the remedies set forth below:

(a) Termination. Subject to Section 9.6(c) below, Edgemoor may terminate this Agreement immediately following written notice from Edgemoor of the expiration of the cure period for the applicable City Event of Default.

(b) Cessation. In the event Edgemoor has not been timely paid any undisputed amounts under this Agreement, Edgemoor may stop any and all Edgemoor’s Work within fourteen (14) days of such non-payment and will be entitled to a Change Event for its losses incurred due to such stop-work, including, but not limited to its losses incurred due to its demobilization and remobilization of its forces and subcontractors;

(c) Specific Performance. Edgemoor may institute an action for specific performance; and

(d) Other Remedies. Subject to Section 9.6(c) below, Edgemoor shall be entitled to all other remedies permitted by Law or equity or under this Agreement, including, without limitation, damages; provided that Edgemoor’s damages shall be limited to actual, direct damages (which shall include, without limitation, actual documents and reasonable demobilization costs, amounts payable by Edgemoor under the Design/Build Agreement and other reasonable costs related to such termination). In no event shall Edgemoor be entitled to consequential, incidental, special, or punitive damages (including but not limited to lost profits) (except with respect to City’s obligations for Edgemoor’s third-party related Losses under Section 4.4(b) and any amounts due and payable for Edgemoor’s profits otherwise already due and payable under this Agreement or expressly stated under this Agreement).

(e) Payment Default Procedure. In the event a Disbursement owing to Edgemoor in accordance with this Agreement (and not otherwise disputed) is not paid as and when

required hereunder, then the Parties agree that City shall have the obligation to cure such non-payment and all amounts due and payable under this Agreement, if not otherwise paid will be paid by the City.

9.6 General

(a) Institution of Legal Actions. Subject to the rights and obligations of the Parties under Section 10.13 below and the other limitations contained in this Agreement, any Party may institute legal action to cure, correct, or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions may be instituted in the Superior Court of Orange County, California.

(b) Rights and Remedies Are Cumulative. Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by Law, in equity or by this Agreement, are cumulative, and not in derogation of other rights and remedies found in this Agreement. The exercise by any Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by another Party. No waiver made by any Party with respect to the performance, or manner or time of performance, or any obligation of the other Parties or any condition to their own obligations under this Agreement will be considered a waiver with respect to the particular obligations of the other Parties or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Parties.

(c) Non-liability of Parties' Officers and Employees, Etc. Excluding any criminal behavior, civil fraud, or liability created by the statutes or regulations of the State of California, no elected official, member, officer, partner, agent, shareholder, director, attorney, or employee of the City or Edgemoor will be personally liable to any other Party hereunder, or any successor in interest, as a result of an Event of Default by the City or Edgemoor, as the case may be, or for any amount which may become due to Edgemoor, the City or any of their successors, as applicable, under, on account of, or with respect to such Party's obligations under this Agreement.

9.7 Return of Site

Upon Substantial Completion of the PSF or the Civic Center Park or early termination, Edgemoor shall return the Site to the City in a safe and secure condition, and unless otherwise requested by the City, shall remove all loose building materials and debris present at the Site resulting from Edgemoor's Construction activities. The City shall grant Edgemoor sufficient access to the Site for the purpose of performing Edgemoor's Final Completion or warranty obligations under this Agreement.

9.8 Plans and Data

If this Agreement is terminated before Final Completion of either the PSF or Civic Center Park, but after the GMP Change Order is executed by the Parties, then provided that Edgemoor has been paid all amounts then due to Edgemoor under this Agreement, Edgemoor shall assign and deliver

to the City any and all copies of reports in its possession regarding the Site, all properly sealed and certified Final Construction Documents in the possession of, or prepared for Edgemoor, to which Edgemoor has possession or control, or is reasonably able to gain possession, and all Design Development Documents within sixty (60) days after such termination. Edgemoor shall include in all contracts and authorizations for services pertaining to the planning and design of the Improvements, an express agreement by the Person performing such services that the City may use such reports and/or sealed and certified Construction Documents and/or all Design Development Documents in accordance with this Section 9.8 without compensation or payment from the City in the event such reports and/or sealed and certified Final Construction Documents and/or all Design Development Documents are delivered to the City under the provisions of this Section 9.8. The City may use any such sealed and certified Construction Documents and reports and/or all Design Development Documents which have been issued in final form by the preparer for any purpose whatsoever relating to the Site, without cost or liability therefore to Edgemoor, however the City herein fully Indemnifies and releases Edgemoor and Edgemoor Responsible Parties for any claims, losses or damages relating to or arising from any information or documents provided the City pursuant to this Section 9.8.

9.9 Force Majeure Suspension / Termination Right

(a) If a Force Majeure Event that is not caused by the claiming Party continues for sixty (60) consecutive days or more Edgemoor or the City will be entitled cease performance of its obligations Materially Adversely Effected by such Force Majeure Event herender until the Force Majeure Event ceases.

(b) If a Force Majeure Event continues for one hundred eighty (180) consecutive days or more and Materially Adversely Effects Edgemoor's or the City's performance, then each of the City and Edgemoor will have the right to terminate this Agreement upon written notice to the other Party and upon such termination, none of the Parties shall have any further obligations under this Agreement except as otherwise expressly provided in this Agreement with respect to payment obligations that accrued prior to such termination.

ARTICLE 10 GENERAL PROVISIONS.

10.1 Notices

(a) Manner of Delivery. Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between or among the Parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective (i) upon the date of receipt if given by personal delivery (including nationally recognized express courier) on a Business Day (or the next Business Day if delivered personally on a day that is not a Business Day); (ii) upon the date of receipt of email correspondence (followed by personal delivery or mail for legal notices), or if after 5pm or on the weekend, on the next Business Day; or (iii) if mailed three (3) Business Days after deposit with the U.S. Postal Service for delive"y by"United States registered or certified mail, first class postage prepaid, To the Parties at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by email delivery of documents in .PDF format.

(b) Request for Approval. In order for a request for any approval required under the terms of this Agreement to be effective, it shall be clearly marked “Request for Approval” and state (or be accompanied by a cover letter stating) substantially the following:

(i) the section of this Agreement under which the request is made and the action or response required;

(ii) if applicable, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

(iii) if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient’s approval of or consent to the request for approval which is the subject matter of the notice.

In the event that a request for approval states a period of time for approval which is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period. In no event shall a recipient’s approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section. Moreover, Section 10.1(b)(iii) shall not apply to any request that would (i) amend this Agreement, or (ii) was not delivered to the correct Party representative.

(c) Addresses for Notices. All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given in the manner provided in this Section 10.1:

To the City: City of Garden Grove
11222 Acacia Parkway
Garden Grove, California 92842

Attention: Lisa Kim, City Manager
Email: lisak@ggcity.org

With a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr., Special Counsel
Email: tclark@stradlinglaw.com

Omar Sandoval, Director & Shareholder Woodruff & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attention: Omar Sandoval, City Attorney
Email: osandoval@woodruff.law

To Edgemoor: Edgemoor Garden Grove Civic Partners LLC
7900 Westpark Drive
McLean, VA 22102
Attn: Brian Dugan, Managing Director
Email: brian.dugan@edgemoor.com

With a copy to: Frank Baltz, Senior Managing Director
Edgemoor Garden Grove Civic Partners LLC
7900 Westpark Drive
McLean, VA 22102
frank.baltz@edgemoor.com

10.2 Time of Performance

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., California time, on the performance or cure date.

(b) Weekends and Holidays. A performance date which falls on a Saturday, Sunday or federal, City or California state holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not Business Days, unless otherwise expressly provided in this Agreement.

10.3 Time of the Essence. Time is of the essence with respect to each Target Completion Date, subject to Extension.

10.4 Interpretation of Agreement

(a) Exhibits / Attachments. Whenever an “Attachment” is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated in this Agreement by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term “including,” “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

(e) Costs and Expenses. The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

(f) Agreement References. Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section or paragraph of this Agreement or any specific subdivision of this Agreement.

(g) Approvals. Unless otherwise specifically stated in this Agreement, wherever a Party hereto has a right of approval or consent, such approval or consent shall not be unreasonably withheld, conditioned or delayed. Unless otherwise specifically stated in this Agreement, wherever a Party has a right of approval or consent, and such approval or consent is not given within the time frames provided, such matter subject to approval or consent shall not be deemed approved.

10.5 Successors and Assigns

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the Parties, subject to the limitations on assignment set forth in Article 8. Where the term "Edgemoor," or "City" is used in this Agreement, it means and includes their respective successors and permitted assigns.

10.6 No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and permitted assigns, and, without limitation, this Agreement is not intended to create a public dedication of all or any portion of the Site or any surrounding property. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

10.7 Real Estate Commissions

Each of the Parties represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made shall be solely responsible for any Losses arising out of such claim.

10.8 California Public Records Act

(a) The California Public Records Act ("CPRA"), Government Code §§

7920.000, et. seq., provides that all records held by government agencies are accessible to the public unless expressly made exempt from disclosure. The CPRA defines public records as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The CPRA also provides that public records shall be disclosed upon request and that any citizen has a right to inspect any public record, unless the document is exempted from disclosure.

(b) It is the responsibility of Edgemoor to clearly identify any and all information submitted to the City pursuant to this Agreement that it considers to be confidential and/or proprietary. To the extent that the City agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

(c) The City cannot guarantee that any information submitted in the execution of this Agreement will be confidential. If the City receives a request for any record submitted pursuant to this Agreement, it will not assert any privileges that may exist on behalf of Edgemoor. In the event that a demand for disclosure of a record or information designated as "confidential and/or proprietary" by Edgemoor is made, the City as a courtesy will notify Edgemoor in writing of such demand. Edgemoor may then pursue, at its sole cost and expense, all appropriate legal action necessary to maintain the confidentiality of such information. It would be the sole responsibility of Edgemoor to assert any applicable privileges or reasons why the record or information should not be produced, and to obtain a court order prohibiting disclosure. Edgemoor understands that the City is not responsible under any circumstances for any damage caused by disclosure of any record or information. The City assumes no responsibility for disclosure or use of unmarked data for any purpose.

(d) In the event the City is required to defend an action on a Public Records Act request for any of the contents of a record or information marked "confidential", "proprietary", or "trade secret", Edgemoor agrees, upon submission of its written statement of confidential qualifications for City's consideration, to defend and indemnify the City from all costs and expenses, including attorney's fees, in any action or liability arising under the Public Records Act.

10.9 Entire Agreement

This Agreement (including all of the Attachments) constitutes the entire agreement among the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements among the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parol evidence of any prior draft of this Agreement, or of any other agreement shall be permitted to contradict or vary the terms of this Agreement.

10.10 Amendment

Subject to Article 9 hereof, neither this Agreement nor any of its terms may be terminated, amended or modified except by a written instrument executed by the Parties. No person has the authority to, on behalf of any Party, verbally agree to terminate or modify this Agreement.

10.11 Governing Law

This Agreement shall be construed in accordance with the laws of the State of California and the laws of the State of California shall govern any claim, controversy, dispute or disagreement arising from or relating to this Agreement (“**Dispute**”).

10.12 Extensions by the City or Edgemoor

(a) In addition to any Extension granted for a Change Event, upon the request of Edgemoor for any other reason, the City may, by written instrument, extend the time for Edgemoor’s performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate, including, but not limited to, the time within which Edgemoor shall agree to such terms or conditions, provided, however, any such extension or permissive curing of any particular default will not operate to release any of Edgemoor’s obligations nor constitute a waiver of the City’s rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise affect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

(b) Upon the request of the City, Edgemoor may, by written instrument, extend the time for the City performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate, including, but not limited to, the time within which the City shall agree to such terms or conditions, provided, however, any such extension or permissive curing of any particular default will not operate to release any of the City’s obligations nor constitute a waiver of Edgemoor’s rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

10.13 Dispute Resolution

(a) Process.

If a Dispute arises from, or relates to, this Agreement or the breach thereof then the Parties agree to exclusively resolve such Dispute in accordance with this Section 10.13.

(b) Initial Dispute Meeting.

(i) Upon the written demand of any Party (“**Dispute Notice**”), the Parties shall meet to make a good faith effort to resolve any Dispute within thirty (30) days of the Dispute Notice. The Dispute Notice shall specify in reasonable detail, the nature and the material facts underlying the Dispute. Senior representatives of each Party shall meet (“**Initial Dispute Meeting**”) virtually or in person (as agreed between the Parties) no later than six (6) Business Days after the Dispute Notice is provided to all Parties. All Disputes must first attempt to be resolved through an Initial Dispute Meeting prior to either Party initiating arbitration under Section 10.13(c) or the expedited dispute resolution procedures under Section 10.13(d), as applicable.

(ii) As part of the Initial Dispute Meeting resolution process, either

Party may submit the Dispute to non-binding mediation before a mediator agreeable to the Parties within ten (10) days of commencement of the Initial Dispute Meeting. The cost of the mediator shall be shared by the Parties. It shall be a material obligation of each Party to reasonably cooperate in good faith with the mediator's efforts to resolve such Dispute. The mediator shall establish a schedule and procedure for mediation of such Dispute in accordance with the American Arbitration Association's Construction Rules and Mediation Procedures ("**AAA Rules**") in force as of the Effective Date. All mediations shall last not more than thirty (30) days from the appointment of the mediator.

(c) Arbitration Procedures. Except Disputes to be resolved under the expedited dispute resolutions procedures in Section 10.13(d), any Dispute remaining unresolved at the later of the expiration of thirty (30) days from the Dispute Notice or appointment of a mediator under Section 10.13(b) shall be resolved by arbitration through a three-member panel in accordance with the AAA Rules. Within 30 days after the commencement of arbitration, each Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The arbitrators shall be reputable construction industry-recognized independent experts having a background and skills in design, engineering, construction and/or law related to projects similar to this Project (each, a "**Construction Expert**"). Time is of the essence for any arbitration under this Section and arbitration hearings shall take place within 90 days of filing and awards rendered within 120 days. Judgment on the award rendered by the Construction Experts may be entered in any court having jurisdiction thereof.

(d) Expedited Dispute Resolution.

(i) Notwithstanding Section 10.13(c), any Dispute arising out of, or relating to, the Guaranteed Maximum Price, Disbursement, Approved Design Documents, Final Construction Documents, Change Events, Change Orders, Approval Failure Notice, rejection of the Construction Work, Punch List Items, Substantial Completion, Final Completion or any other matter arising during design or construction of the Project related to a Target Completion Date or Maximum Completion Date (each, a "**Expedited Dispute Matter**") shall be subject to the expedited dispute resolution procedure in this Section 10.13(d). Any dispute involving termination shall not be an Expedited Dispute Matter subject to this Section 10.13(d). No Expedited Dispute Matter will be subject to mediation under Section 10.13(b)(ii) unless otherwise expressly agreed between the Parties in writing.

(ii) If the Parties fail to resolve an Expedited Dispute Matter under Section 10.13(b), the Expedited Dispute Matter shall be finally resolved in accordance with this Section 10.13(d) and within ten (10) days after any such failure shall:

(A) jointly appoint a single Construction Expert to resolve an Expedited Dispute Matter estimated to be \$1,000,000 or less; or

(B) appoint a three-member panel in accordance with the AAA Rules and Section 10.13(c) to resolve all other Expedited Dispute Matters in excess of \$1,000,000,

and in each case, if the Parties have not appointed Construction Expert(s) within such timeframe or if any Construction Expert(s) becomes unwilling or unable to continue as such, either Party may make a request to the American Arbitration Association to appoint the Construction Expert(s) in accordance with its AAA Rules.

(iii) The Construction Expert(s) will be required to conduct a review of the unresolved Expedited Dispute Matter in accordance with the AAA Rules. The Construction Expert(s) are required to deliver its reasoned opinion no later than thirty (30) days following the appointment of the last Construction Expert to be appointed (if applicable). Judgment on the award rendered by the Construction Expert(s) may be entered in any court having jurisdiction thereof.

(e) Arbitration Rules Generally

For any arbitration under Sections 10.13(c) or 10.13(d), the Parties agree as follows:

(i) before commencing their review of a Dispute under this Section 10.13, each Construction Expert shall be required to confirm their independence and the absence of any conflicts in reviewing and determining the result of the Dispute;

(ii) each Party shall have reasonable and equal opportunities to present evidence and arguments to the Construction Experts with respect to its position in the Dispute, and each Party shall respond promptly to any requests from the Construction Experts for additional information to support their review;

(iii) the place of arbitration shall be Orange County, California;

(iv) the arbitration shall be governed by the laws of the State of California;

(v) the arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute;

(vi) arbitrators shall agree to the required time limits prior to accepting appointment;

(vii) the award of the arbitrators shall be accompanied by a reasoned and detailed opinion;

(viii) all opinions rendered will be final and binding and not subject to appeal; and

(ix) except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

(f) Temporary Injunctive Relief / Judgement Enforcement

Notwithstanding the requirement that all Disputes be resolved through the alternative dispute resolution procedures in Sections 10.13(a) through 10.13(e) (inclusive) above, the Parties agree that such requirement does not preclude the Parties from seeking temporary injunctive relief where necessary to protect their rights or interests under this Agreement which cannot otherwise be adequately preserved under the above provisions or to enforce any award rendered by an arbitral panel appointed under this Agreement. Any such actions may be sought in accordance with applicable Law and shall be brought in the Superior Court of Orange County and the Parties consent that any service of process in such action or proceeding may be made by personal service or by certified or registered mail directed to the Parties at the address set forth in Section 10.1 for the delivery of notices.

10.14 Further Assurances

The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Agreement. Without limiting the foregoing, if and to the extent that any of the Attachments hereto are not final and complete as of the Effective Date, the Parties agree to work together in good faith to finalize and complete such Attachments as soon as possible, subject in all events to the approval of such final and complete Attachments by all Parties hereto, at which time the final, complete, and approved Attachments shall be attached to this Agreement and made a part hereof.

10.15 Attorneys' Fees and Costs

In all Disputes arising from or related to this Agreement, each Party shall bear their own Attorneys' Fees and Costs and other dispute resolution costs.

10.16 Relationship of Parties

The subject of this Agreement is a private development with no Party acting as the Agent of the other Parties in any respect. None of the provisions in this Agreement shall be deemed to render any Party a partner in another Party's business, or joint venturer or member in any joint enterprise with another Party.

10.17 Severability

If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

10.18 Section 179D

The City and Edgemoor agree that Edgemoor will be designated as the Party primarily responsible for designing the Project, within the meaning of Internal Revenue Code Section 179D, and to the

extent it relates to the Project, the Parties agree to issue and execute at Financial Close the “**179D Letter Agreement**” substantially in the form attached hereto as Attachment 10.18, whereby Edgemoor shall be entitled to claim any effective tax savings that result from the tax deductions available under Section 179D, if any; provided that the City receives an opinion from qualified tax counsel, or is otherwise reasonably satisfied as to the content of the 179D Letter Agreement and that the execution of the 179D Letter Agreement would not render the Bond Financing taxable.

10.19 Acts of Agents

Edgemoor has appropriately subcontracted certain of its design and construction obligations to the Design Builder on a back-to-back basis with this Project Agreement. Whether or not expressly provided in this Agreement and notwithstanding Edgemoor subcontracting obligations to the Design Builder, the acts or omissions of a Party shall be deemed to include the acts or omissions of such Party’s respective authorized agents, employees, contractors and subcontractors (including the Design Builder) to the extent such parties are acting within the scope of their employment or agency, as the case may be.

10.20 LEED

The Project shall be designed and constructed to enable the City to achieve a rating of, at a minimum, LEED Silver.

10.21 Additional Scope

If offered by the City and permitted by applicable Law and City procurement guidelines, as an additional service, not part of the Project’s base scope, the City may request that Edgemoor create a price and /or schedule for new developments. In which case this agreement would serve as a “Master Project Agreement” to which specific developments could be added via a Statement of Work.

10.22 Monthly Reporting

No later than the fifth (5th) Business Day of each month, commencing the month following the notice to proceed, Edgemoor will provide to City a report (the “**Monthly Report**”). The Monthly Report shall, with respect to the month immediately prior to the delivery of the Monthly Report, include, at a minimum: (i) executive summary of the information contained in such Monthly Report; (ii) status of performance of Edgemoor’s Work, including with respect to all milestones and submittals; (iii) project safety statistics; (iv) status of delivery of equipment and materials that are part of Edgemoor’s Work; (v) updated project schedule; (vi) photographs documenting progress of the work.

10.23 Counterparts

This Project Agreement may be executed in counterparts, which together shall constitute a single instrument. Further, any copy, facsimile, or electronic signature (such as a pdf) of any signatory shall be considered to have the same binding effect as an original signature.

10.24 Situs of Sales

Edgemoor shall require Design Builder and its subcontractors to use commercially reasonable efforts in the purchase of materials subject to sales tax, so that such materials acquired for the Project by Design Builder and its subcontractors have the City as situs for sales tax.

10.25 Local Enterprises

Edgemoor shall exercise good faith efforts to engage local enterprises to perform some of the work hereunder, provided this clause shall not prevent Edgemoor from engaging an enterprise with whom Edgemoor has a preferred supplier or strategic relationship.

10.26 Cooperation

(a) The Parties will cooperate with each other in good faith to ensure proper and efficient execution of the Project. In connection therewith, to the extent that any documents and materials require review and approval by one or more of the Parties hereunder, such cooperation shall include good faith efforts by the Parties to respond to one another as expeditiously as possible with regard to requests for reviews and approvals required hereby and for requests for information relating thereto. With regard to materials or documents requiring the approval of one or more Parties, if such materials or documents are not approved as initially submitted, then the Parties shall engage in such communications as necessary under the circumstances to resolve the issues resulting in such disapproval so as not to impede or delay the ability of Edgemoor to obtain any permits or approvals required by Edgemoor for the Project.

(b) A spirit of good faith and a mutual desire to fulfill the obligations of this Agreement and for the success of the Project shall govern the Parties' relationship. All comments provided by any Party on documents or materials for which approval is required shall be detailed and sufficient in order to enable the other Party to address such comments and to move the process forward in a timely manner.

(c) Unless expressly provided elsewhere in this Agreement, including Section 5.5 through Section 5.16 (inclusive) and the Schedule of Submittals:

(i) With respect to any documents and materials requiring review and approval by the City hereunder (which will be identified in the Schedule of Submittals), Edgemoor shall request the City's review and approval of such documents and materials in writing (such request, together with such documents and materials, the "**Approval Request**") and, unless the parties otherwise agree in this Agreement or the Schedule of Submittals, the City shall have [#insert] minimum time period for [#insert]¹ types of submittals (the "**City Review Period**") to review and approve or disapprove the Approval Request (which approval or disapproval must be in writing). Should the City not approve the Approval Request because it failed to comply with the terms of this Agreement, the City's written notice of disapproval to Edgemoor (the "**Notice of Disapproval**") shall set forth the detailed reasons for such disapproval.

(ii) If the City issues a Notice of Disapproval in response to an Approval Request from Edgemoor during the City Review Period, the Parties shall confer and mutually agree upon any modifications to Approval Request within five (5) days following the City's

¹ NTD – Parties to advise.

issuance of such Notice of Disapproval. In the event that Edgemoor submits an Approval Request to the City and the City fails to respond to such Approval Request within the City Review Period, Edgemoor may thereafter perform its obligations under this Agreement and such Approval Request will be deemed approved, subject to the City's right to subsequently pursue available remedies with respect to any non-conformance with the requirements under this Agreement.

10.27 Supplier Diversity

Edgemoor shall work with the Design Builder to exercise good faith efforts to engage minority-owned, women-owned and other small disadvantaged business enterprises, as well as local businesses to perform some of Edgemoor's Work hereunder; provided, however, this clause shall not prevent Edgemoor from engaging an enterprise with whom Edgemoor has a preferred supplier or strategic relationship.

10.28 IRC Section 48(a)(10)

In connection with the portion of the Work that is relevant to receiving IRC tax-credits, Edgemoor and the Design Builder will comply with the prevailing wage restrictions of IRC Section 48(a)(10) and the qualified apprenticeship restrictions of IRC Section 48(a)(11) (including keeping records and providing sufficient records to the City). Edgemoor and the Design Builder acknowledge that the City will be filling to obtain the investment tax credit under the Inflation Reduction Act ("IRC"), Section 48 and other available credits and Edgemoor and the Design Builder will cooperate with the City and not take any action to jeopardize the City obtaining such credits.

ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties of Edgemoor

Edgemoor represents and warrants as follows, as of the Effective Date:

(a) Valid Existence; Good Standing. Edgemoor is a limited liability company duly organized and validly existing under the laws of the State of Maryland. Edgemoor has all requisite power and authority to own its property and conduct its business as presently conducted. Edgemoor has made all required filings and is in good standing in Maryland and qualified and permitted to do business in the State of California;

(b) Authority. Edgemoor has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated by this Agreement;

(c) No Limitation on Ability to Perform. Neither Edgemoor's articles of organization or operating agreement, nor the organization documents of any of Edgemoor's members, nor any other agreement or Laws in any way prohibits, limits or otherwise affects the right or power of Edgemoor to enter into and perform all of the terms and covenants of this

Agreement. Neither Edgemoor nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit or limit the same. Except for the customary licenses and the Permits contemplated hereby, no consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by Edgemoor of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting Edgemoor or any of its members before any court, governmental agency, or arbitrator which might materially adversely effects the enforceability of this Agreement or the business, operations, assets or condition of Edgemoor;

(d) Valid Execution. The execution and delivery of this Agreement and the agreements contemplated hereby by Edgemoor have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Edgemoor, enforceable against Edgemoor in accordance with its terms;

(e) Defaults. The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Edgemoor is a party or by which Edgemoor's assets may be bound or affected, (B) any Laws, or (C) the limited liability company agreement of Edgemoor, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Edgemoor;

(f) Suits, Proceedings or Judgements. To Edgemoor's actual knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Edgemoor before any court, governmental agency or arbitrator which might materially adversely affect the enforceability of this Agreement;

(g) Skill and Capacity. Edgemoor has the requisite skill and capacity to perform all obligations hereunder, and is not debarred or otherwise forbidden from performing its obligations hereunder; and

(h) Business Licenses. Edgemoor has all obtained the California Business License and City of Garden Grove Business License as required to perform Edgemoor's Work under this Agreement.

11.2 Representations and Warranties of the City

The City represents and warrants, as follows, as of the Effective Date:

(a) Authority. The City is duly organized and validly existing under the laws of the State of California and has and shall exercise all requisite power to execute and deliver and perform its obligations under this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated by this Agreement;

(b) Requisite Power. The City has all requisite power to execute and deliver and perform its obligations under this Agreement;;

(c) Defaults. The execution, delivery and performance by the City of this Agreement do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the City is a party or by which the City's assets may be bound or affected, (B) any Laws or (C) the bylaws of the City. Except as expressly stated in this Project Agreement, and except for the customary licenses and the Permits contemplated hereby, no consent, authorization or approval of, or action by, and no notices to or filing with any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the City of this Agreement or any of the terms and covenants contained in this Agreement. To its actual knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting the City or the formation of the GGPFA before any court, governmental agency or arbitrator which might materially adversely affect the enforceability of this Agreement; and

(d) Valid Execution. The execution and delivery of this Agreement and the agreements contemplated hereby by the City have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. City has provided to Edgemoor a written resolution authorizing the execution of this Agreement and the agreements contemplated by this Agreement.

(e) No Conflicts. The execution, delivery and performance by the City of this Agreement will not, in any material respect, violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award in effect and having applicability to the (i) City, or result in a breach of or constitute a default under any agreement, lease or commitment to which the City is a party or by which the City is bound.

(f) Site Access. The City has all requisite power to grant Edgemoor sufficient access to the Site, and no liens or encumbrances exist on the Site which might adversely impact Edgemoor's performance in accordance with this Agreement.

11.3 Survival.

The Parties' respective liabilities for any breach of the representations and warranties in this Article 11 shall survive the Term and any termination of this Agreement.

ARTICLE 12 DEFINITIONS.

The following terms used in this Agreement, shall have the meanings ascribed to them in this Article 12:

“179D Letter Agreement” is defined in Section 10.18 and attached as Attachment 10.18.

“AAA Rules” is defined in Section 10.13(b)(ii)

“Agents” means, when used with reference to any Party to this Agreement or any other Person, the members, managers, officers, directors, commissioners, and employees of such Party or other Person, and each of them.

“Agreement” means this Project Agreement, as it may be amended in accordance with its terms.

“AIA Notice of Substantial Completion” means the AIA Document G704- 2017 certificate.

“Approval Cure Period” is defined in Section 5.13(d).

“Approval Failure Notice” is defined in Section 5.13(d).

“Approved Design Documents” is defined in Section 5.5(a).

“Attorneys’ Fees and Costs” means any and all reasonable attorneys’ fees (including the fees and costs of in-house counsel and legal staff), costs, expenses, and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative, or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

“Authorized Individuals” is defined in Section 5.13(a).

“Bond Trustee” shall mean the trustee, appointed as such pursuant to the Bond Financing.

“Business Day” or “Business Days” means any day other than a Saturday, Sunday or California, City or federal legal holiday.

“Certificate of Final Completion” is the certificate in the form of Attachment 6.5 issued in accordance with Section 6.5.

“Certificate of Occupancy” is defined in Section 6.2.

“Certificate of Substantial Completion” shall mean the certificate in the form of Attachment 6.2 issued in accordance with Section 6.2.

“Change Event” is defined in Section 5.21.

“Change Order” means a City Change Order or Edgemoor Change Order, as applicable.

“Change Request Supporting Materials” is defined in Section 5.21(a).

“City” is defined in the Preamble.

“City Assumed Regulatory Approvals” is defined in Section 4.3(c).

“City Change Order” is defined in Section 5.21(a).

“City Claim” is defined in Section 4.4(a).

“City Event of Default” or “City Events of Default” is defined in Section 9.4.

“City Furnished Equipment” is defined in Section 5.27.

“City Manager” means Lisa Kim or any other person notified by the City in writing to Edgemoor replacing Lisa Kim.

“City Permitted Site Uses” means access to the City to allow for its ongoing use of and necessary access and egress to the existing PSF, Orange County Fire Authority (“OCFA”) and portions of the Civic Center Park not impacted by the Work.

“Civic Center Park” is defined in Recital B.

“Claim” is defined in Section 4.4(a).

“Construction” means all new excavation, construction, replacement, rehabilitation, and demolition occurring on the Site pursuant to this Agreement.

“Construction Documents” means the Design Development Documents and all other shop drawings, working drawings, fabrication plans, material and hardware descriptions, specifications, construction quality control reports, construction quality assurance reports and samples necessary or desirable for the Construction Work in accordance with this Agreement, which in each case, are required or necessary under applicable building codes and Laws to be submitted with an application for the required Permits for the Project (or a portion of the Project) to construct all or a portion of the Improvements.

“Construction Expert” is defined in Section 10.13(c).

“Defect’s Warranty Period” is defined in Section 5.22.

“Delay Credit” is defined in Section 9.3(d).

“Design/Build Agreement” or “DBA” is defined in Recital F.

“Design Builder” means, Clark Construction Group, LLC, a Maryland limited liability company.

“Design Development Documents” means the design development documents in sufficient detail and completeness to show that the Improvements and the Construction thereof shall comply with the Project Requirements, and which shall include, without limitation:

- (a) Site plan(s) at appropriate scale showing the buildings, streets, walks, and other open spaces. All land uses shall be designated. All Site development details and bounding streets, points of vehicular and pedestrian access shall be shown;
- (b) All building plans and elevations at appropriate scale;
- (c) Building sections showing typical cross sections at appropriate scale;
- (d) Floor plans;

- (e) Outline specifications for materials, finishes and methods of construction;
- (f) Interior and exterior signage plans;
- (g) Site and exterior and interior lighting plans;
- (h) Material and color samples; and
- (i) Roof plans showing all mechanical and other equipment.

“Differing Site Conditions” means surface, subsurface, latent physical, chemical or any other physical conditions at, below or adjacent to the Site which (a) differs materially in concentration, identity or location from those indicated in the Existing Site Reports listed in Attachment 12-2, or (b) are not reasonably capable of being identified by an appropriately qualified and experienced contractor, engineer or qualified professional working in that field exercising due care and skill by visual inspections through access made available to Edgemoor prior to the Setting Date for inspection and investigation of the Site, or (c) are of an unusual nature, which differ materially from those ordinarily encountered at or around the Site and generally recognized as inhering in work of the character provided in this Agreement.

“Disabled Access Laws” means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.

“Disbursement” is defined in Section 2.7.

“Dispute” is defined in Section 10.11.

“Dispute Notice” is defined in Section 10.13.

“Dispute Resolution Procedures” means the procedures described in Section 10.13 to resolve a dispute.

“Edgemoor” is defined in the Preamble.

“Edgemoor Affiliate” shall mean any entity wholly owned or controlled by Edgemoor Infrastructure & Real Estate, LLC.

“Edgemoor Assumed Hazardous Materials Obligations” is defined in Section 4.2(c).

“Edgemoor Assumed Regulatory Approvals” is defined in Section 4.3(c).

“Edgemoor Change Order” is defined in Section 5.21(b).

“Edgemoor Change Request” is defined in Section 5.21(b).

“Edgemoor Claim” is defined in Section 4.4(b).

“Edgemoor Event of Default” or “Edgemoor Events of Default” is defined in Section 9.2.

“Edgemoor Responsible Party” shall mean Edgemoor, Design Builder, Edgemoor’s employees and Agents, and any other Persons who are involved in the Project under contract with directly or indirectly (including all subcontractors or suppliers at any-tier thereto) Edgemoor.

“Edgemoor’s Change Fees” is defined in Section 5.21(a)(iv).

“Edgemoor Project Relief” is defined in Section 5.21(x).

“Edgemoor’s Work” or “Work” is defined in Recital F.

“Effective Date” is the date set out in the first paragraph of this Agreement, being the date both Parties have approved and signed this Agreement.

“Effective Date Design” is defined in Section 5.5.

“ENA” is defined in Recital D.

“Event of Default” means a Edgemoor Event of Default or a City Event of Default, as applicable.

“Existing Site Reports” is defined in Section 4.2(e).

“Expedited Dispute Matter” is defined in Section 10.13(d)(i).

“Extension” means an extension granted to the Master Project Schedule due to a Change Event or as otherwise permitted under this Agreement.

“Extra Work Request” is defined in Section 5.21(a).

“Final Completion” is defined in Section 6.3.

“Final Construction Documents” means the final approved Construction Documents as approved by the City in accordance with Sections 5.5 and 5.9.

“Financial Close” means the issuance of bonds by the GGPFA as described in Recital E.

“Financial Close Target Date” is defined in Section 3.3.

“Financial Closing Date” is the date of Financial Close identified in Recital E.

“Force Majeure Event” means acts of a public enemy; fires; floods; explosions; epidemics; quarantine restrictions; blockades; freight embargoes; strikes; boycotts; labor disputes; demonstrations; earthquakes; tidal waves; hurricanes; landslides; tornados; pandemics; epidemics; shortage of, or inability to obtain materials or reasonably acceptable substitute materials; acts of terror or terrorism; unreasonable delays in issuing necessary Permits or approvals or conducting inspections not caused by Edgemoor; the inability to obtain easements, licenses, dedications, approvals or title required for utilities not caused by Edgemoor; power outages; war and related causes; nuclear perils; explosion or nuclear, radioactive, chemical or biological contamination not caused by Edgemoor; any adverse or inclement weather conditions, including thunderstorms,

lighting, tornadoes and other windstorms; or other actions outside of the control of Edgemoor, including acts of god.

“Furniture, Fixtures and Equipment or FF&E” is defined in Section 5.27.

“General Conditions” means the conditions listed in Attachment 5.2(c).

“GGPFA” is the Garden Grove Public Financing Authority.

“GMP Change Order” is defined in Section 2.3.

“Guaranteed Maximum Price” or “GMP” is defined in Section 2.3, with the binding GMP being the amount determined pursuant to the GMP Change Order or any other Change Order.

“Hazardous Material” means any (a) hazardous or toxic substance, waste, pollutant, contaminant or other material whatsoever that is listed, regulated, or for which standards of conduct are provided under any Environmental Law as hazardous or toxic; (b) petroleum hydrocarbons excluding de minimis amounts and excluding petroleum hydrocarbon products contained within regularly operated motor vehicles; (c) hazardous building materials including asbestos or asbestos-containing materials, lead or PCBs in structures and/or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground); and (d) per- and polyfluoroalkyl substances.

“Hazardous Materials Laws” means any applicable federal, state or local Laws relating to Hazardous Material (including, without limitation, its handling, transportation or Release) or to human health and safety, industrial hygiene and the use of or exposure to Hazardous Materials.

“Improvements” means and the physical Construction on the Site and all buildings, structures, fixtures and other improvements required by the Construction Documents to be erected, built, placed, installed or constructed by Edgemoor upon or within the Site on or after the Effective Date pursuant to this Agreement to construct the PSF and the Civic Center Park.

“Indemnified Parties” means the City, Edgemoor, as the case may be, and, as the case may be, their respective boards, departments, affiliates, members, selected officials, partners, officers, directors, agencies, managers and other subdivisions, including, without limitation, all of the Agents and each of them.

“Indemnify” means defend, indemnify, and hold harmless.

“Initial Dispute Meeting” is defined in Section 10.13(b).

“Laws” shall mean all applicable laws, ordinances, rules, regulations, Permits and orders. The phrase “Law” shall be construed to mean the same as the above in the singular as well as the plural.

“Licensed Professional’s Certificate” is defined in Section 6.2.

“Loss” or “Losses” means any and all claims, demands, losses, liabilities, damages

(including foreseeable and unforeseeable damages), liens, obligations (except for obligations in the ordinary course pursuant to Permits), interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

“Manufacturer Warranties” is defined in Section 5.22.

“Master Project Schedule” means the initial schedule of performance agreed between the Parties and attached as Attachment 5.15, subject to updates, extensions and adjustments as provided in this Agreement, including without limitation Article 2 and Sections 5.15 and 5.21.

“Material Adverse Effect” means any adverse impact that is more than immaterial, de minimus or negligible on the Project or any Edgemoor Responsible Party in connection with the performance of the Work or in connection with the Project.

“Material Damage Event” is defined in Section 4.1(c)(i).

“Maximum Completion Date” means, as applicable, those certain Maximum Completion Dates for either the PSF and the Civic Center Park as set forth on the Master Project Schedule, which in each case are 180 days from the applicable Target Completion Dates, in each case, which may be modified for an Extension.

“Monthly Report” is defined in Section 10.21.

“Notice to Proceed” is defined in Section 2.3.

“OCFA” means the Orange County Fire Authority.

“Outside Financial Closing Date” is defined in Section 3.3.

“Party” or “Parties” means the City and Edgemoor.

“Permits” means all permit(s), licenses and governmental approvals required to be obtained under applicable Law for the use or construction of the Project, including Exhibit A from Conditional Use Permit CUP-250-2023 and the Civic Center Revitalization Project, Initial Study/Mitigated Negative Declaration, each approved by the Planning Commission on December, 14, 2023.

“Person” means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a Federal, State or political subdivision thereof.

“PLA” is defined in Section 5.23.

“Prime Rate” means the WSJ Prime Rate publicly announced from time to time by Wall Street Journal, and if such rate in its present form becomes unavailable, such similar reference rate

as may be agreed by the parties, acting reasonably.

“Project” means the Construction of the Improvements in accordance with the Project Requirements, including the Design Development Documents and Final Construction Documents.

“Project Agreement” is defined in the Preamble.

“Project Fund” means all amounts financed for the Project by GGPPA.

“Project Requirements” is defined in Section 5.2(c), as may be updated by the GMP Change Order or any other Change Order.

“Proposed Recovery Schedule” is defined in Section 5.15(c).

“PSF” is defined in Recital B.

“Punch List Items” is defined in Section 6.3.

“Recovery Schedule” is defined in Section 5.15(c).

“Regulatory Approval” means any authorization, approval or Permit required to develop the Project by any governmental agency having jurisdiction over the Site or the Improvements, including the [Orange County Public Works Division]. The term “Regulatory Approval” shall not include any authorization, approval or Permit required for the City’s use and occupancy of the Project, including without limitation any approvals required by the FDA, and any other applicable Federal, State, or local agencies.

“Release” when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment.

“Required Element” is defined in Section 5.11(a).

“Required Warranties” are set forth in Attachment 5.22.

“Responsible Party” is defined in Section 4.4(c).

“Requisition” is defined in Section 2.7(a).

“RFQ” is defined in Recital B.

“Schedule of Values” is defined in Section 2.6.

“Schedule of Submittals” is the version of the schedule of submittals agreed by the Parties as part of the GMP Change Order.

“Setting Date” means (i) prior to the GMP Change Order execution, March 12, 2024 and (ii) thereafter, the date of submission of the GMP Change Order by Edgeomor for approval by the City.

“Site” is defined in Recital A.

“Site Map” is defined in Section 1.3.

“Specialties” is defined in Section 5.27(e).

“Standard of Care” means the level of skill, knowledge, care and diligence that a reasonably careful Person (including architects and engineers) would use under similar circumstances.

“Substantial Completion” or “Substantially Completed” is defined in Section 6.2.

“Target Completion Date(s)” means, as applicable, those certain Target Completion Dates for the PSF and the Civic Center Park as set forth on the Master Project Schedule, in each case, which may be modified by an Extension or otherwise in accordance with this Agreement.

“Term” is defined in Section 1.4.

“Total Available Funds” is defined in Recital E.

“Transfer” is defined in Section 8.1.

“Work Area” means the portion of the Site on which Edgemoor is obligated to perform, or is performing, Construction as identified in Attachment A-2.

“Work” is defined in Recital F.

*Remainder of page intentionally left blank.
Signatures on following page.*

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly appointed representatives as of the date first above written.

City:

CITY OF GARDEN GROVE,
a municipal corporation

By: _____
City Manager

APPROVED AS TO FORM:

Stradling Yocca Carlson & Rauth PC
Special Counsel to City

Woodruff & Smart
City Attorney
By Omar Sandoval

Edgemoor:

EDGEMOOR GARDEN GROVE CIVIC PARTNERS LLC,
a Maryland limited liability company

By: _____
Brian Dugan
Authorized Representative

By: _____
Frank J. Baltz
Authorized Representative