

TIEBACK AGREEMENT

This Tieback Agreement (“**Agreement**”) is made by and between the City of Los Angeles, a municipal corporation (“**City**”), acting by and through its Board of Library Commissioners (“**Board**”), and Melrose Avenue Owner, LLC (“**Developer**”), a Delaware limited liability company.

RECITALS

WHEREAS, the Developer is the owner and developer of certain real property located in the City of Los Angeles, California, commonly known as 6101-6117 Melrose Avenue, 713-735 Seward Street and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (“**Development Property**”);

WHEREAS, the City is the owner of the real property located adjacent to the Development Property, commonly known as the John C. Fremont Branch Library located at 6121 Melrose Avenue, Los Angeles, California and more particularly described in Exhibit B attached hereto and incorporated herein by this reference (together with the improvements thereon, the “**City Property**”);

WHEREAS, the Developer plans to construct a new four-story commercial building consisting of creative office space, retail use, restrooms, open space and subterranean parking (the “**Project**”) on the Development Property. In conjunction with the development of the Project, the Developer proposes to install a tieback anchor system underneath the surface of a portion of the City Property (“**Tieback Area**”); and

WHEREAS, the City and the Developer desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Developer and its representatives shall be permitted to temporarily insert and maintain tieback rods beneath the surface of the City Property in the Tieback Area.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1.0 Temporary Tieback Anchor System

The City hereby agrees that the Developer may perform subsurface slant drilling to install a temporary tieback anchor system in the subterranean Tieback Area, as described in the drawings attached hereto as Exhibit C (the “**Tieback Work**”). To the extent entry upon the City Property is necessary to perform the Tieback Work, the City hereby consents to the Developer, its employees, consultants, contractors, subcontractors, and agents temporarily entering on and under the City Property to the extent necessary to perform the Tieback Work. The Tieback Work shall be done at the sole cost, liability and expense of the Developer and its agents, employees and independent contractors and shall comply with all applicable law and conform to the drawings approved in conjunction with the issuance of a shoring permit for the Project. All installations made by the

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Developer in the Tieback Area in connection with the Tieback Work shall be made in the fashion that they shall not damage any portion of the City Property. If the Tieback Work damages the City Property, the Developer shall promptly repair the damage at the Developer's sole cost and expense.

2.0 Indemnification; Hold Harmless

The Developer shall indemnify, defend, protect and hold harmless City from and against any and all third-party claims for property damage and third-party claims for damage for personal injury to the extent caused by the Tieback Work, including tieback installation/detensioning and related activities performed by Developer, its agents, employees and independent contractors, including, but not limited to, any damage to existing trees and vegetation at the City Property; provided, however, Developer shall have no obligation to indemnify City for any claims arising out of or caused by the gross negligence, recklessness, or willful misconduct of City or its agents, employees, contractors, tenants, licensees, invitees successors or assigns.

3.0 Insurance

The Developer shall procure and keep in force during the term of this Agreement a commercial general liability insurance policy which insures against claims for bodily injury, personal injury, and property damage occurring in or about the City Property as a result of the Tieback Work. Such commercial general liability insurance shall afford, at a minimum, the following limits: each occurrence: **\$5,000,000.00**; general aggregate: **\$10,000,000.00** as described and attached hereto as Exhibit D. Such commercial general liability insurance shall name City as an additional insured. The Developer shall furnish to the City, from the insurance companies, or cause the insurance companies to furnish, certificates of coverage. All policies required to be carried by Developer hereunder shall be issued by and binding upon an insurance company licensed to do business in California. The City shall be furnished a Certificate of Insurance evidencing the foregoing coverage.

4.0 Removal of Tiebacks

The tieback anchor system must be detensioned and all portions of tieback system within the top 20 feet of the surface elevation must be removed after the need for shoring required in the shoring permit has ended. The Developer will detension the Tieback Work on or before completion of the Project, as evidenced by final certificate of occupancy issued for the Project. During excavation of the Tieback Area and installation of the Tieback Work, the Developer will use all commercially reasonable efforts to remove the tieback anchor system. If for some reason tieback rods are unable to be removed, there will be no link between property and development after detachment. Even if the tieback anchor system cannot feasibly be removed in its entirety, but only partially removed, there would nevertheless be no link or connection between the City Property and the Development Property after detensioning. If there are portions of the tieback system that are not removed, the Developer will provide the City with As-Built plans depicting the locations of any remaining tieback anchors. Any tieback

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abandoned in-place (due to inability to be removed) must be detensioned. For each tieback anchor that remains within the top 20 feet of the surface elevation, the Developer shall pay the City a fee of \$5,000. All of the activities specified in this Section shall be performed by the Developer at its sole expense.

5.0 Timing of Work; Notice

The Developer anticipates that the Tieback Work will commence in or around _____, 2023 and will take approximately ninety (90) days to complete. The Developer shall provide written notice of commencement of work to the City not less than fifteen (15) calendar days prior to the commencement of the Tieback Work.

6.0 Term

The Term ("**Term**") of this Agreement shall be for 180 days, commencing on the execution of the agreement

7.0 Conduct of Tieback Work

All Tieback Work shall be done under the supervision of a licensed contractor and the continuous inspection of a City certified building inspector and a representative from the licensed geotechnical engineering firm of record for the project. No construction activities associated with the Tieback Work may be undertaken before 7:00 a.m. or after 9:00 p.m. Monday through Friday, before 8:00 a.m. or after 7:00 p.m. on Saturday, or at any time on Sunday or holidays. Nothing in this Agreement authorizes an exemption to any federal, state or municipal statute regarding construction activity hours and related requirements.

8.0 Compensation

On the date this Agreement is attested to by the City Clerk, the Developer shall deliver to the Library Department, Facilities Division, a payment in the amount of Twenty Thousand Dollars (\$20,000) ("**Payment**"), which shall constitute the payment for the entire Term of the Agreement. Payment shall be non-refundable to the Developer and shall belong to and be retained by the City in consideration of permissions granted herein.

9.0 Movement Monitoring Program

The John C. Fremont Branch Library on City Property is a historic building that is particularly vulnerable to damage from construction-induced movement. The following Movement Monitoring Program is designed to protect such vulnerabilities.

- (a) Prior to the commencement of any Tieback Work, Developer's engineers shall implement a movement monitoring program to monitor the structural integrity of the Project, install movement and settlement survey points at appropriate points, and calculate a safe maximum movement value for any structures on the City Property. Developer's engineers must be licensed by the State of California and the licensed personnel shall monitor and log the movement and settlement survey points daily, submit these calculations on a

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weekly basis to the City's Bureau of Engineering for review, and certify that the City may rely on the calculations as if they were prepared for the City. Either the City's Bureau of Contract Administration or an independent, third-party inspection agency shall also provide inspection services and monitor the movement and settlement survey points during excavation of the City Property, construction of the Project, and installation and removal of the tieback anchor system, and all associated costs shall be paid by Developer.

- (b) In the event the movement of any structures on the City Property exceeds the point that is fifty percent (50%) of the maximum permitted movement value as calculated by Developer's engineers, the City shall be notified immediately, and all work related to the Tieback Work shall immediately cease. Developer shall then immediately submit a mitigation plan to the City's Bureau of Engineering for review and approval and such mitigation plan must be approved before excavation work and all work related to the Tieback Work may recommence.
- (c) After completion of the Tieback Work or upon termination of the Agreement, Developer shall remove all equipment and materials placed or installed on the City Property as part of the required monitoring system. If installation, removal or operation of any portion of such monitoring system damages any portion of the City Property, Developer shall repair such damage after completion of the Project, or upon earlier termination of the Agreement, at Developer's sole cost. Such repair work shall include the repainting of any structure on which movement or settlement monitoring points were painted. If Developer fails to repair any damages in connection with the Agreement within a reasonable period of time, City may make or cause to be made such repairs. After delivering evidence of the cost of such repairs to Developer, Developer will reimburse the City for all costs associated with those repairs. Developer will deliver such reimbursement within ten (10) days after receiving reasonable evidence of the amount of such repair costs. Developer's obligations under this Section 9 shall survive termination of this Agreement.

10.0 Temporary Work Stoppages

City may require all work related to the Tieback Work to cease for the duration of any events held on City Property with 48 hours of written notice.

11.0 Nature of Agreement

The permissions granted herein shall commence upon issuance of a shoring permit for the Project and shall terminate upon completion of the Tieback Work. The installation of the tieback anchor system shall not constitute an easement or encumbrance against the City Property but shall be a license coupled with an interest and irrevocable during the term of this Agreement.

12.0 Relationship of Parties

It is understood that the contractual relationship between the City and Developer is such that Developer is an independent contractor and not the agent of City.

13.0 Binding Effect

The parties intend that the provisions of this Agreement shall constitute covenants which shall run with the City Property and that the burdens and benefits thereof shall bind and inure to the benefit of all successors-in-interest, heirs, representatives, and assigns to the parties hereto. It is not the intent of the parties that this Agreement be interpreted as an easement, but rather it shall be interpreted as a license.

14.0 Notice

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with this Agreement may be served by personal service or by registered or certified mail. Any such notice or demands served by registered or certified mail shall be deposited in the United States mail with postage thereon fully prepaid, addressed to the party to be served and delivered to the party as follows:

If to Developer:

Melrose Avenue Owner, LLC
1015 N. Fairfax Ave
West Hollywood, CA 90046

If to City:

City of Los Angeles
c/o Facilities Division, Library Department
Los Angeles Public Library
630 W. 5th Street, 4th Floor
Los Angeles, CA 90071

With a copy to:

Office of the Los Angeles City Attorney
Real Property/Environment Division
700 City Hall East, 200 North Main Street
Los Angeles, California 90012
Telephone: (213) 978-8175

Service of notice hereunder shall be deemed complete on the date of actual delivery as shown by the certified or registered receipt or upon expiration of the second day after the date of mailing, whichever is earlier. Any party may, by notice in writing served upon the other party as aforesaid, designate a different mailing address or a different person to whom all notices and demands are thereafter to be addressed.

15.0 Waivers

Waiver by any party hereto of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or different character.

16.0 Assignment

This Agreement shall not be severable from Developer's interest in the Development Property. Any transfer of the Development Property or Developer's interest therein shall automatically operate to transfer the benefits and burdens of this Agreement.

17.0 Authority

Each party warrants and represents that each person executing this Agreement to the other party that the person(s) signing this Agreement on behalf of each party have full power and authority to enter into this Agreement and to perform its obligations hereunder.

18.0 Counterparts and Fax Signature

This Agreement may be executed in counterparts, and a facsimile signature shall be considered an original signature.

19.0 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California without application of its choice of law principles.

20.0 Time of Essence

Time is of the essence in respect to all provisions of this Agreement in which a definite time-period of performance is specified.

21.0 Termination

Upon completion of the Project, without the need for any additional documentation of any kind, this Agreement shall automatically terminate and be of no further force or effect. The Parties shall fully cooperate with each other in the execution of any additional documentation required to give effect to the provisions of this Section. Such covenant to cooperate shall survive the termination of this Agreement.

22.0 Ordinance Mandated Provisions

(a) Child Support Assignment Orders

This Agreement is subject to Section 10.10, Article 1, Chapter 1, Division 10 of the Los Angeles Administrative Code related to Child Support Assignment Orders. Pursuant to this Section, Developer (and any subcontractor of Developer providing services to City under this Agreement) shall (1) fully comply with all State and Federal employment reporting requirements for Operator's or Operator's subcontractor's employees applicable to Child

Support Assignment Orders; (2) certify that the principal owner(s) of Developer and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (3) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230, et seq.; and (4) maintain such compliance throughout the Term of this Agreement. Pursuant to Section 10.10.b of the Los Angeles Administrative Code, failure of Developer or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Developer or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally shall constitute a default of this Agreement subjecting this Agreement to termination where such failure shall continue for more than ninety (90) days after notice of such failure to Developer by City (in lieu of any time for cure provided in this Agreement).

(b) Living Wage Ordinance

The Department of General Services has made an initial determination that this contract is not covered under the Living Wage Ordinance (“LWO”) (Section 10.37, et seq, of the Los Angeles Administrative Code). Determinations as to whether this contract is covered by the LWO are not final, but are subject to review and revision as additional facts are examined and/or other interpretations of the law are considered. City shall notify Developer in writing about any re-determination by City of coverage or exemption status. Notwithstanding any other provision in this Agreement to the contrary, in the event it is determined that this Agreement is covered by the LWO, Developer shall be allowed to pass-through as Additional Rent any actual and necessary differential increase in costs related to wages and salaries paid as the result of compliance with the LWO. In addition, if this Agreement is covered by the LWO, violation of the LWO shall constitute a material breach of this Agreement and City shall be entitled to terminate this Agreement and otherwise pursue legal remedies that may be available. Whether or not subject to the LWO, Developer shall not retaliate against any employee claiming non-compliance with the provisions of the LWO, and, in addition, pursuant to section 10.37.6(c), Developer agrees to comply with federal law prohibiting retaliation for union organizing.

(c) Non-Discrimination In Employment

1. General Provision. Developer agrees and obligates itself in the performance of this Agreement not to discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition.

2. Equal Employment Practices. This Agreement is a contract with or on behalf of the City for which the consideration is \$1000.00 or more. Accordingly, during the performance of this Agreement, Developer further agrees to comply with Section 10.8.3 of the Los Angeles Administrative Code ("Equal Employment Practices"). By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of the Los Angeles Administrative Code, the failure of Developer to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Developer. Upon a finding duly made that Developer has failed to comply with the Equal Employment Practices provisions of this Agreement, this Agreement may be forthwith terminated.

(d) Equal Benefits Provisions

This Agreement is subject to Section 10.8.2.1, Article I, Chapter 1, Division 10 of the Los Angeles Administrative Code ("Equal Benefits Provisions") related to equal benefits to employees. Developer agrees to comply with the provisions of Section 10.8.2.1. By way of specification but not limitation, pursuant to Section 10.8.2.1.c of the Los Angeles Administrative Code, the failure of Developer to comply with the Equal Employment Practices provisions of this Agreement may be deemed to be a material breach of this Agreement. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Developer. Upon a finding duly made that Developer has failed to comply with the Equal Employment Practices provisions of this Agreement, this Agreement may be forthwith terminated.

(e) Tax Registration Certificates and Tax Payments

This Section is applicable where Developer is engaged in business within the City and Developer is required to obtain a Tax Registration Certificate ("TRC") pursuant to one or more of the following articles (collectively "Tax Ordinances") of Chapter II of the Los Angeles Municipal Code: Article 1 (Business Tax Ordinance) [section 21.00, et seq.], Article 1.3 (Commercial Developer's Occupancy Tax) [section 21.3.1, et seq.], Article 1.7 (Transient Occupancy Tax) [section 21.7.1, et seq.], Article 1.11 (Payroll Expense Tax) [section 21.11.1, et seq.], or Article 1.15 (Parking Occupancy Tax) [section 21.15.1, et seq.]. Prior to the execution of this Agreement, Developer shall provide to the Department of General Services proof satisfactory to the General Manager of the Department of General Services that Developer has the required TRCs and that Developer is not then currently delinquent in any tax payment required under the Tax Ordinances. City may terminate this Agreement upon thirty (30) days' prior written notice to Developer if City determines that Developer failed to have the required TRCs or was delinquent in any tax payments required under the Tax Ordinances at the time

of entering into, extending the Term of, or renewing this Agreement. City may also terminate this Agreement upon thirty (30) days prior written notice to Developer at any time during the Term of this Agreement if Developer fails to maintain required TRCs or becomes delinquent in tax payments required under the Tax Ordinances and Developer fails to cure such deficiencies within the thirty (30) day period.

(f) Slavery Disclosure Ordinance

This Agreement is subject to the applicable provisions of the Slavery Disclosure Ordinance. ("SDO") (Section 10.41, et seq., of the Los Angeles Administrative Code). Unless otherwise exempt in accordance with the provision of this Ordinance, Developer certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of the Los Angeles Administrative Code, the City has the authority, under appropriate circumstances, to terminate this Agreement and otherwise pursue legal remedies that may be available to the City if the City determines that the Developer failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

(g) Disclosure of Border Wall Contracting Ordinance

This Agreement is subject to the applicable provisions of the Disclosure of Border Wall Contracting Ordinance ("**DBWCO**") (Section 10.50, et seq, of the Los Angeles Administrative Code). Unless otherwise exempt in accordance with the provision of the DBWCO, Developer certifies that it has complied with the applicable provisions of the DBWCO. City may terminate this Agreement and otherwise pursue legal remedies that may be available to City if Developer failed to fully and accurately complete the DBWCO affidavit or otherwise violated any provision of the DBWCO.

(h) COVID-19 Vaccination

Employees of Developer and/or persons working on its behalf, including, but not limited to, subcontractors, volunteers, and interns (collectively, "**Developer Personnel**") must be fully vaccinated against the novel coronavirus 2019 ("COVID-19") prior to (1) interacting in person with City employees, contractors, or volunteers, (2) working on City property while performing services under this Agreement, and/or (3) coming into contact with the public while performing services under this Agreement (collectively, "In-Person Services"). "Fully vaccinated" means that fourteen (14) or more days have passed since Developer Personnel have received the final dose of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech) or a single dose of a one-dose COVID-19 vaccine (Johnson & Johnson/Janssen) and all booster doses recommended by the Centers for Disease Control and Prevention. Prior to assigning Developer Personnel to perform In-Person Services, Developer shall obtain proof that such Developer Personnel have been fully vaccinated. Developer shall retain such proof for the document retention period set forth in this Agreement. Developer shall grant medical and religious exemptions to Developer Personnel as required by law.

[Signature(s) begin on next page]

Contract for Tieback Work at the John C. Fremont Branch Library

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

By _____
JOHN F. SZABO
City Librarian
Los Angeles Public Library

By _____
NAME
Title
Melrose Avenue Owner, LLC

Date _____

Date _____

APPROVED AS TO FORM:

ATTEST:

HYDEE FELDSTEIN SOTO, City Attorney

By _____
LINDSEY ZWICKER
Deputy City Attorney

By _____
RAQUEL BORDEN
Secretary to the Board

Date _____

Date _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____

Date: _____

EXHIBIT A

DEVELOPMENT PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 18 OF TRACT NO.4427, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 48, PAGE 65 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER. OF SAID COUNTY.

PARCEL 2:

LOTS 19, 20, 21 AND THE NORTH 40 FEET OF LOT 22, OF TRACT NO. 4427, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 48, PAGE(S) 65 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APNs: 5533-037-023 and 5533-037-005

PARCEL 3:

THE SOUTH 20 FEET OF LOT 22 AND ALL OF LOT 23, TRACT NO. 4427, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 48, PAGE 65 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 5533-037-0

EXHIBIT B

CITY PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 24 OF TRACT NO. 4427 AS PER MAP RECORDED IN BOOK 48, PAGE 65 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF LOS ANGELES;
AND

LOT 25 OF TRACT NO. 4427 AS PER MAP RECORDED IN BOOK 48, PAGE 65 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF LOS ANGELES.

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EXHIBIT C

TIEBACK WORK

[See Attached EXHIBIT C - **Drawings and Calculations**]

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EXHIBIT D

INSURANCE

[See Attached EXHIBIT D – **Required Insurance and Minimum Limits**]