

# 36222

## IMPROVEMENT AND REIMBURSEMENT AGREEMENT

THIS IMPROVEMENT AND REIMBURSEMENT AGREEMENT (this "Agreement") is made and entered into as of March 30, 2022 (the "Effective Date"), by and between Kilroy Realty, L.P., a California limited partnership ("Lessee"), and the City of Long Beach, a municipal corporation (the "City").

### Recitals

A. Lessee is the owner of a leasehold interest in certain real property located in the City of Long Beach, County of Los Angeles, State of California, more particularly described in Exhibit A hereto (the "Kilroy Property"), commonly known as the Kilroy Airport Center – Long Beach ("Development").

B. The Kilroy Property is leased to Lessee pursuant to that certain Ground Lease No. 18209 dated as of July 17, 1985 by and between City, as landlord, and Lessee, as tenant (as amended and subdivided, the "Lease").

C. City is the current owner of that certain public right-of-way located within the Development and more particularly described in Exhibit B hereto ("City Property").

D. Lessee and City desire to repave, restripe and otherwise rehabilitate the public right-of-way located on the City Property (the "Rehabilitation Project"), as more particularly described on Exhibit C attached hereto.

E. The parties desire that City, as owner of the City Property, undertake and complete the Rehabilitation Project.

F. Lessee wishes to provide funds for the costs of the Rehabilitation Project, which such funds shall be reimbursed by City to Lessee on the terms and conditions set forth in this Agreement.

### Agreement

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the parties agree as follows:

#### 1. REHABILITATION PROJECT WORK AND PROJECT FUNDS

1.1 Performance of Rehabilitation Project Work. City intends to undertake the completion of the Rehabilitation Project work, including, without limitation, designing, permitting, constructing, and entering into all necessary contracts with contractors for the work. City shall have the sole right to control, manage and complete the Rehabilitation Project, including without limitation the approval of any change orders which do not materially increase the overall budget for the Rehabilitation Project, the application of any funds received from the Lessee, and the hiring and firing of vendors and contractors, all subject to the rights of the Lessee as set forth in this

Agreement. All Rehabilitation Project work shall be completed as shown on Exhibit C and otherwise in accordance with applicable standard public works public right-of-way specifications (collectively, the “Specifications”). Nothing herein shall obligate Lessee to undertake any work except as provided in this Agreement. Notwithstanding the foregoing, City shall use commercially reasonable efforts to protect the recently installed Art Crosswalk that is within the Rehabilitation Project area. To the extent any repairs or restoration is necessary to the Art Crosswalk following the Rehabilitation Project, City will notify Lessee and Lessee may undertake those repairs or restoration. City shall not be obligated to repair, restore or fund repairs or restorations to the Art Crosswalk provided that City uses commercially reasonable efforts to protect the Art Crosswalk.

1.2 Proposals. City shall solicit cost proposals from the on-call paving contractors which currently are under contract with City (“Proposal(s)”) and City shall thereafter submit the lowest-cost qualified Proposal to Lessee for its review. Solely to the extent Lessee reasonably determines that the costs and estimates set forth on the Proposal are unreasonable based on the then current market rate for comparable work in the City of Long Beach, Lessee shall have ten (10) days from the date of its receipt of the Proposal to notify City of its objections to the Proposal, if any. If no such objection notice is received by City within such time period, Lessee shall be deemed to have approved such Proposal, all of the cost estimates set forth therein, and City’s engagement of the contractor of such Proposal (“Contractor”) for the Rehabilitation Project. If Lessee timely notifies City of its objections to the Proposal in accordance with the foregoing, then within ten (10) days thereafter, the parties shall meet and confer in good faith to discuss the Proposal and either mutually agree upon the Proposal or to consider another proposal, in which case the parties shall comply with the same submission and approval process set forth above in this Section 1.2. The parties acknowledge and agree that different components of the Rehabilitation Project may be completed by different Contractors if it results in overall cost savings, and that the selection process set forth in this Section 1.2 shall apply to all such Proposals submitted to the City.

1.3 Funding by Lessee. On or before the date which is sixty (60) days after the Effective Date and as a condition to City’s obligation to perform any work under this Agreement, Lessee shall deliver to City, in immediately available funds, an amount equal to Two Million Six Hundred Thousand Dollars (\$2,600,000) (“Rehabilitation Project Budgeted Funds”). The Rehabilitation Project Budgeted Funds shall be separately accounted for by City and shall not be co-mingled with any other funds. City shall expend the Rehabilitation Project Budgeted Funds only in connection with the Rehabilitation Project work.

1.4 Prevailing Wages. The parties acknowledge and agree that City shall cause all work performed in connection with construction of the Rehabilitation Project to be performed in compliance with all applicable federal and state labor standards, including the prevailing wage provisions of sections 1770 *et seq.* of the California Labor Code.

1.5 Cost Overruns. If at any point during the Rehabilitation Project work City or Lessee reasonably determines that the Rehabilitation Project work costs may exceed the Rehabilitation Project Budgeted Funds, the parties shall promptly meet and confer in good faith in an effort to determine how to fund such cost overruns and/or otherwise complete the Rehabilitation Project. Lessee shall pay City in advance for any upgrades to the street improvements requested by Lessee beyond what is provided for in the Specifications, and such additional funds

("Rehabilitation Project Upgrade Funds") shall be accounted for with the Rehabilitation Project Budgeted Funds but shall not be subject to reimbursement by City to Lessee. Any upgrades to the Rehabilitation Project selected by the City shall be at the City's sole cost and expense.

1.6 Project Schedule. City shall make all reasonable efforts to ensure that the Rehabilitation Project is completed on or before the date which is twelve (12) months after the date on which City actually receives Rehabilitation Project Budgeted Funds pursuant to Section 1.3. City shall have two (2) options to extend such completion deadline by a period of three (3) months each, upon written notice to Lessee.

## 2. REIMBURSEMENTS AND GENERAL TERMS

2.1 Reimbursement of Lessee. City shall reimburse Lessee for the Rehabilitation Project Budgeted Funds, in accordance with the following terms and conditions:

2.1.1 Notification of Amounts. No later than fifteen (15) business days after completion of the Rehabilitation Project, City agrees to notify Lessee in writing the costs incurred for completing the Rehabilitation Project work ("Rehabilitation Project Actual Costs"), and City shall thereafter deliver to Lessee, within sixty (60) days following completion of the Rehabilitation Work, in immediately available funds, any unused Rehabilitation Project Budgeted Funds still held by City.

2.1.2 Reimbursement Payment. On or before the date which is five (5) years after the completion of the Rehabilitation Project ("Reimbursement Payment Date"), City shall reimburse Lessee the Rehabilitation Project Actual Costs, either in installments or in a lump sum. Such reimbursement payment(s) to be made by City under this Agreement, shall be paid solely from moneys made available to City from an appropriation of funds for the purpose of making all such payments coming due in such fiscal year ("Appropriation"). The City Council of City shall have the absolute and unconditional right, to be exercised in its discretion, for any reason, not to appropriate such funds. Unreimbursed Rehabilitation Project Actual Costs shall not accrue interest until the Reimbursement Payment Date, after which such unreimbursed Rehabilitation Project Actual Costs shall accrue compound annual interest at a rate equal to (a) six percent (6%) plus (b) the difference (which may be negative or positive) between (i) the yield of the 10 Year Treasury on the Effective Date and (ii) the yield of the 10 Year Treasury on each anniversary of Effective Date, provided that in no event shall the interest rate be less than four and one-half percent (4.5%) or greater than ten percent (10%).

2.2 Lessee's Inspection Rights. Lessee shall have the right, upon reasonable advance notice, to inspect the Rehabilitation Project to ensure that such work is proceeding in compliance with the Specifications. City shall have the right to be present at each such inspection.

## 3. TERM

The term of this Agreement shall commence on the Effective Date and expire upon the date on which City has reimbursed the Rehabilitation Project Actual Costs to Lessee.

4. **TEMPORARY CONSTRUCTION LICENSE**

4.1 **Grant of License.** Lessee hereby grants, establishes and reserves unto City, for the benefit of City and its agents, a temporary exclusive license over, across and through those portions of the Kilroy Property shown on Exhibit D attached hereto, for temporary construction storage and staging in connection with the Rehabilitation Project.

4.2 **Indemnity and Termination of License.** The license granted in Section 4.1 shall automatically terminate upon the completion of the Rehabilitation Project. City shall hold harmless and indemnify Lessee and its successors, assigns and agents against any and all liability arising from City's use of the Licensed Area, and City shall, at its own expense, ensure that the Licensed Area is in the same condition at the expiration of the license as it was upon delivery to City.

5. **DEFAULTS AND REMEDIES**

5.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by the non-performing party (the "Defaulting Party"):

5.1.1 The failure to make any payment required to be made hereunder within ten (10) days after the due date, subject to Appropriation.

5.1.2 The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, other than as described in Section 5.1.1, within thirty (30) days after the issuance of a written notice by another party (the "Non-Defaulting Party") specifying the nature of the default claimed.

5.2 **Remedies.** Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto violating or attempting to violate or defaulting upon any of the provisions contained in this Agreement, and to recover damages for any such violation or default. All of the remedies permitted or available to a party under this Agreement or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

6. **COVENANT AGAINST ASSIGNMENT**

Lessee shall not assign its rights or delegate its duties under this Agreement, or any interest in this Agreement, or any portion of it, except that Lessee may upon notice to the City Manager of City, assign any moneys due or to become due Lessee under this Agreement. Any other attempted assignment or delegation without City approval shall be void, and any assignee or delegate shall acquire no right or interest by reason of an attempted assignment or delegation.

7. **NEGATION OF PARTNERSHIP/JOINT VENTURE**

None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in their respective businesses or otherwise, nor shall it cause them

to be considered joint ventures or members of any joint enterprise. Each party shall be considered a separate owner, and no party shall have the right to act as an agent for another party, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

8. **MISCELLANEOUS**

8.1 **Notices.**

8.1.1 All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (a) upon the delivery (or refusal to accept delivery) by messenger or overnight express delivery service (or, if such date is not on a business day, on the business day next following such date), or (b) on the third (3rd) business day next following the date of its mailing by certified mail, postage prepaid, at a post office maintained by the United States Postal Service, or (c) upon the receipt by facsimile transmission as evidenced by a receipt transmission report (followed by delivery by one of the other means identified in (a)-(b)), or (d) on the date and time shown on the sender's e-mail caption if the sender does not receive a failed delivery notification from its email software application of network server, addressed as follows:

**LESEE:**

Kilroy Realty, LP  
12200 W Olympic Boulevard, Suite 200  
Los Angeles, CA 90064  
Attention: Phillip Tate

Email: [ptate@kilroyrealty.com](mailto:ptate@kilroyrealty.com)

**CITY:**

City of Long Beach  
411 W. Ocean Blvd., 10th Floor  
Long Beach, CA 90802  
Attention: City Manager

Upon at least ten (10) business days prior written notice, each party shall have the right to change its address to any other address within the United States of America.

8.2 **Construction and Interpretation.**

8.2.1 This Agreement and the Exhibits hereto contain all the representations and the entire agreement between the parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this Agreement and the Exhibits attached hereto. This Agreement has been fully negotiated at arms-length between the signatories hereto, and after advice by counsel and other representatives chosen by such parties, and such parties are fully informed with respect thereto; no such party shall

be deemed the scrivener of this Agreement; and, based on the foregoing, the provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any party.

8.2.2 The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.

8.2.3 Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

8.2.4 This Agreement may be amended by, and only by, a written agreement signed by all of the parties.

8.2.5 This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.

8.3 No Third-Party Beneficiaries. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third-party person or entity, nor shall any third-party person or entity be deemed to be a beneficiary of any of the provisions contained herein.

8.4 Time is of the Essence. Time is of the essence of this Agreement and each and every provision thereof.

8.5 No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any party of any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

8.6 Further Actions. Each of the parties agrees to execute and deliver all further documents and to take all further actions reasonably necessary to effectuate the purposes of this Agreement; provided that such further documents or actions do not impose upon the parties any obligations, duties, liabilities or responsibilities which are not expressly provided for in this Agreement.

8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

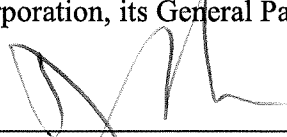
*[Signatures appear on the following page.]*

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

**LESSEE:**

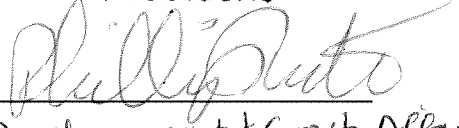
**KILROY REALTY, L.P.,**  
a Delaware limited partnership

By: Kilroy Realty Corporation,  
a Maryland corporation, its General Partner

By:   
\_\_\_\_\_

Name: **Tyler H. Rose**  
\_\_\_\_\_

Title: **President**  
\_\_\_\_\_

By:   
\_\_\_\_\_

Name: **Development & Govt Affairs**  
\_\_\_\_\_

Title: **SVP**  
\_\_\_\_\_

**CITY:**

**CITY OF LONG BEACH**, a municipal corporation

By: \_\_\_\_\_

Thomas B. Modica  
City Manager

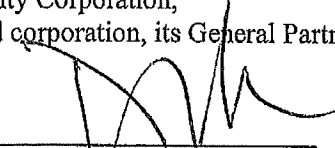


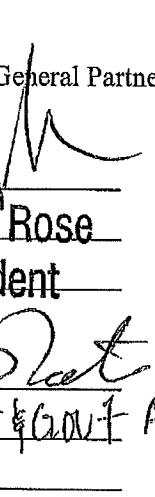
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**LESSEE:**

**KILROY REALTY, L.P.,**  
a Delaware limited partnership

By: Kilroy Realty Corporation,  
a Maryland corporation, its General Partner

By:   
Name: Tyler H. Rose  
Title: President

By:   
Name: Development & Govt Affairs  
Title: VP

**CITY:**

**CITY OF LONG BEACH**, a municipal corporation

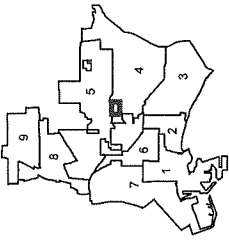
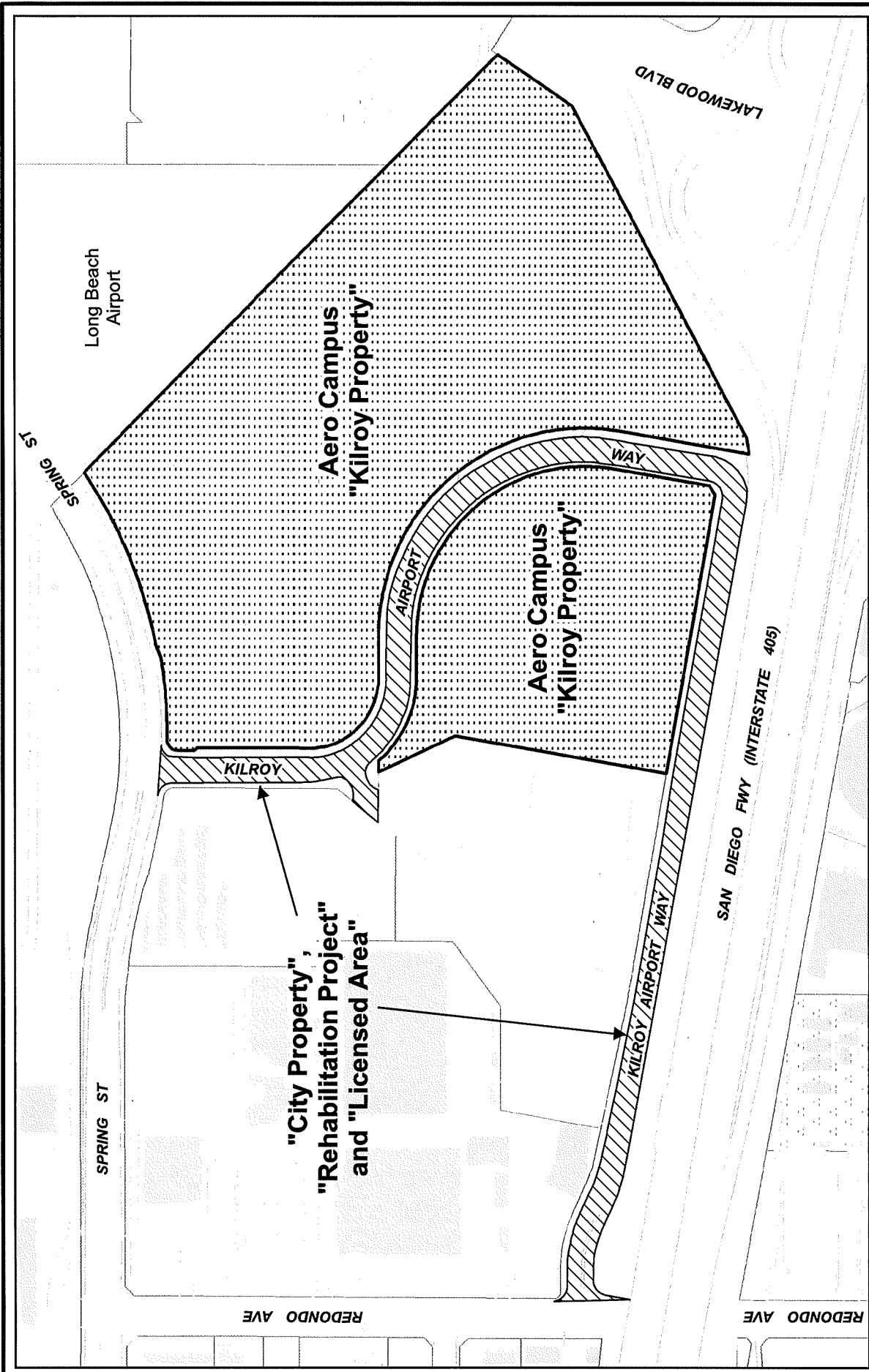
By: Sunda J. Fabron for  
Thomas B. Modica  
City Manager

EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER.

APPROVED AS TO FORM

3-18-20-22  
CHARLES PARKIN, City Attorney

By:   
RICHARD ANTHONY  
DEPUTY CITY ATTORNEY



**Exhibit A/B/C/D**

**Subject Property:**  
 3600-3699 Kilroy Airport Way  
 APNs: 7149-014-917 to 7149-014-926  
 Council District : 4

