

SEPULVEDA BRIDGE WORK REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND RREEF AMERICA REIT II CORP BBB

THIS AGREEMENT (“Agreement”) is made as of February 11, 2021, by and between the City of Manhattan Beach, a California municipal corporation (“City”) and RREEF America REIT II Corp BBB, a Maryland corporation (“RREEF”). City and RREEF are collectively referred to herein as the Parties.

RECITALS

- A. On November 7, 2006, RREEF applied for land use entitlements to improve an 18.4-acre portion of the 44-acre Manhattan Village shopping center located at 3200-3600 North Sepulveda Boulevard (“Shopping Center”) with new retail and restaurant gross leasable area, three parking structures and to reconfigure existing surface parking areas and install signs to identify and advertise the businesses within the Shopping Center (the “Project”).
- B. On December 2, 2014, the City Council adopted Resolution No. 14-0025, certifying a Final Environmental Impact Report and adopting a Mitigation Monitoring Program for the Project pursuant to the California Environmental Quality Act.
- C. On December 2, 2014 the City Council also adopted Resolution No. 14-0026, approving an amendment to the existing Master Use Permit, a height variance, and an amendment/exception to the existing Master Sign Program for the Project.
- D. On September 5, 2017 the City Council adopted Resolution No. 17-0119, approving an Addendum to the Final EIR and amending the Master Use Permit to refine certain conditions of approval.
- E. The Parties entered into that certain REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF MANHATTAN BEACH AND RREEF AMERICA REIT II CORP BBB dated January 30, 2017 (“Prior Agreement”), pursuant to which RREEF agreed to reimburse City for certain costs incurred by City, as more particularly described therein. The Prior Agreement was amended by that certain Amendment No. 1 dated July 31, 2017.
- F. Resolution No. 14-0026 contains the following Condition No. 33:

33. Veterans Parkway Linkage Plan. RREEF shall submit a Veterans Parkway Linkage Plan as depicted in the Approved Plans to provide bicycle and pedestrian paths under the Sepulveda Bridge and onto the Shopping Center property that link the Shopping Center property and Veterans Parkway. The Veterans Parkway Linkage Plan shall include lighting, signage, and other improvements to enhance the aesthetics, usability and security of the area, to create an inviting entry and secure environment, and to connect the site. The Veterans Parkway Linkage Plan shall coordinate with the construction of the improvements on the Shopping Center property and the Sepulveda Bridge widening project. RREEF shall submit the Plan to the City Police, Fire, Public Works and Community Development Departments, the City Traffic Engineer, and if necessary Caltrans, with the submittal of plans for Phase I. The City, and any other agency with jurisdiction, will review and approve the Plan, and RREEF shall install the improvements per the approved Plan. The City shall maintain the public portions, and the Mall shall maintain the private portions.

- G. Condition No 33 requires work to be performed by RREEF (the “Work”) within the Caltrans right-of-way (“Caltrans ROW”) under the Sepulveda Bridge adjacent to the Shopping Center. Drawings for the Work are being prepared for RREEF by its civil engineer KPFF (“RREEF Drawings”). The City’ Public Works Department is currently undertaking a major construction project on the Sepulveda Bridge that is being performed for the City by contractor C.A. Rasmussen (“City Contractor”). RREEF and the City desire to have City Contractor perform the Work on behalf of RREEF within the area of the Caltrans ROW in addition to a 5-foot buffer area on either side of the Caltrans ROW and have RREEF reimburse the City for the Work within the Caltrans ROW and the 5-foot buffer area.
- H. In addition to the Work that will be performed by City Contractor, to facilitate the Work, City consultant HDR will perform services for the City to incorporate the RREEF Drawings into the City Contractor’s bridge widening plans, and S2 Engineering will perform construction management and inspection services for the City. Subject to RREEF’s prior concurrence, City may hire additional consultants on an “as-needed” basis. Collectively, HDR, and S2 Engineering, and any other independent consultants engaged by City for these services are referred to herein as “City Consultants”. The City agreements with HDR and S2 Engineering and any additional agreements with other consultants are referred to herein as the “Consultant Services Agreements.” RREEF and the City desire to have RREEF reimburse the City for the Work related services provided by City Consultants as well as City staff time necessary to coordinate and complete the Work and Work related services. At the request of RREEF, City has authorized the City Consultants to commence work prior to the date of this Agreement, and RREEF has agreed to reimburse City for all services provided by City Consultants and City staff time as of August 2, 2020, as described in this Agreement.
- I. The Prior Agreement does not address Condition No. 33. This Agreement is entered into between the Parties to implement Condition No. 33 and to provide for RREEF to reimburse City for costs and expenses incurred by City for Work performed by City Contractor, services provided by City Consultants, and City staff time necessary to coordinate and complete the Work and Work related services, as described in this Agreement.
- J. RREEF acknowledges that the work by City staff, City Contractor and City Consultants described herein shall be immediately suspended if RREEF fails to make any payments in the manner required by this Agreement.

NOW, THEREFORE, in consideration of such recitals, and the mutual promises, obligations and covenants herein contained, the Parties hereto agree as follows:

1. City and RREEF accept the above recitals as true and correct and incorporate them herein as if they were fully restated in this Agreement.
2. As more particularly described in Section 3 of this Agreement, RREEF shall reimburse City in full for all documented costs and expenses incurred: (a) in ensuring that Condition No. 33 is complied with; (b) in the processing of Work-related permits and applications, including time spent by City staff and City Consultants to process and review all necessary permits

and applications; (c) by City staff for review of RREEF submittals; (d) by City Consultants to incorporate the RREEF Drawings into City Contractor's bridge widening plans and for construction management and inspection services; and (d) by City Contractor to perform the Work. Collectively, such costs, fees, charges and expenses shall be referred to herein as "Reimbursable Costs." City shall use reasonable efforts to avoid utilizing overtime and, to the extent feasible, will notify Owner when it anticipates the use of overtime will be needed to perform reimbursable work.

3. The following are Reimbursable Costs that RREEF shall pay to the City:

(a) All documented costs and expenses actually incurred pursuant to the Consultant Services Agreements, for the period commencing August 2, 2020 for HDR, December 1, 2020 for S2 Engineering, and for the period commencing on the date of this Agreement for all other Consultant Services Agreements; and

(b) All payments to City Contractor to perform the Work, in accordance with Section 7; and

(c) All documented time spent by City staff (full-time and part-time positions) at their fully burdened rates (see rate schedule attached hereto as Exhibit A) incurred to ensure quality control and quality assurance of the Work performed by City Consultants and City Contractor and other necessary tasks related to the Work, for the period commencing August 2, 2020 for time relating to the Work performed by HDR, December 1, 2020 for time relating to the Work performed by S2 Engineering, and for the period commencing on the date of this Agreement for all other Work; and

(d) All legal fees and expenses incurred by City related to Reimbursable Costs on or after the date of this Agreement, at the rates specified in City's agreement for legal services (see rate schedule attached hereto as Exhibit B).

4. RREEF shall pay City according to the following schedule:

(a) Within forty-five days after the end of the month of the date of the execution of this Agreement, RREEF shall deposit with City the sum of \$212,000 (the "Initial Deposit"). City shall maintain the Initial Deposit in three separate accounts, as follows:

(i) \$100,000 will be deposited in an account titled "Sepulveda Bridge General Deposit Account";

(ii) \$12,000, being the amount of the Design Services Deposit described in Section 6, will be deposited in an account titled "Sepulveda Bridge Design Services Deposit Account"; and

(iii) \$100,000, being the estimated amount of the Construction Deposit described in Section 7, will be deposited in an account titled "Sepulveda Bridge Construction Deposit Account".

(b) City shall deduct from each Deposit Account the documented Reimbursable Costs, in accordance with Sections 5, 6, and 7 below.

(c) This Agreement shall expire upon acceptance of the Work by the City and close out of the contracts with City Contractor and the City Consultants. Upon expiration or termination of this Agreement City shall remit to RREEF within 45 days any balance remaining in the Deposit Accounts, less payment of any outstanding Reimbursable Costs. In its sole discretion, RREEF may direct the City to apply any balance remaining in the Deposit Accounts to apply to Project related reimbursable costs under the Prior Agreement.

5. General Deposit Account.

(a) Monies in the General Deposit Account shall be used to pay for all Reimbursable Costs not paid for out of the Design Services Deposit Account or the Construction Deposit Account, subject to the reconciliation process in Section 8.

(b) RREEF shall replenish the General Deposit Account throughout the term of this Agreement when a minimum balance of \$75,000 is reached. If the General Deposit Account falls below \$75,000, RREEF shall deposit with City funds sufficient to replenish the Deposit Account to \$100,000, within 45 calendar days after the end of the month after written demand by City's Finance Director. The minimum balance amount of \$75,000 may be increased to a greater amount at the determination of the Finance Director, in consultation with RREEF, based on anticipated billings for Reimbursable Costs.

(c) RREEF acknowledges that City, City Contractor and City Consultants' work pursuant to this Agreement shall be immediately suspended, after five days' notice thereof to RREEF, if at any time RREEF fails to make a supplemental deposit as directed by the City's Finance Director. This remedy is available even if RREEF disputes a Reconciliation Statement pursuant to Section 8. RREEF shall be responsible for all costs incurred by City in the event of any such suspension.

(d) Notwithstanding Section 8, RREEF acknowledges that City will withdraw from the General Deposit Account a sum equivalent to the amount paid by City to S2 Engineering for period commencing December 1, 2020, immediately upon deposit of the General Deposit.

6. Design Services Account.

(a) Attached hereto as Exhibit C is a cost proposal prepared by HDR ("HDR Cost Proposal"), for the cost of HDR incorporating the RREEF Drawings into the City Contractor's bridge widening plans. RREEF hereby approves the amount of the HDR Cost Proposal. By the date specified in Section 4(a), RREEF shall deposit with City the sum of the HDR Cost Proposal, plus a 20% contingency amount. The amount of the HDR Cost Proposal, together with the 20% contingency amount, is referred to herein as the Design Services Deposit.

(b) City shall use the Design Services Deposit solely for payments to HDR (or for reimbursement to City for such payments) for the services described in the HDR Cost Proposal, including for any unanticipated work that in the reasonable discretion of the City Engineer is consistent with the purpose and intent of this Agreement. All payments to HDR from

the Design Services Deposit shall be made in accordance with standard City procedures and the contract between City and HDR. If the cost of HDR incorporating the RREEF Drawings into the City Contractor's bridge widening plans exceeds the sum of the Design Services Deposit, the additional cost will be addressed from the General Deposit Account referenced in Section 5, subject to the reconciliation process in Section 8. Although payments to HDR are subject to the reconciliation process in Section 8, prior approval by RREEF is not required for any payments to HDR out of the Design Services Deposit.

(c) Notwithstanding Section 8, RREEF acknowledges that City will withdraw from the Design Services Account a sum equivalent to the amount paid by City to HDR for period commencing August 2, 2020, immediately upon deposit of the Design Services Deposit.

7. Construction Deposit Account. RREEF shall pay the Construction Deposit in accordance with this Section.

(a) Upon completion of the RREEF Drawings and the services by HDR to incorporate the RREEF Drawings into the City Contractor's bridge widening plans, City shall obtain from City Contractor a Change Order proposal ("Change Order Proposal") for completion of the Work. RREEF shall have ten days to accept the Change Order Proposal, or to request modifications. If the Parties are unable to reach agreement on the Change Order Proposal within twenty-one days from the date it is first received by RREEF, either Party may terminate this Agreement. RREEF shall deposit with City the sum of the Change Order Proposal, plus a 20% contingency amount (the "Construction Deposit"). At the request of RREEF, the City has agreed to accept the sum of \$100,000 as a payment towards the Construction Deposit (Section 4(a)(iii)). In the event that the amount of the Construction Deposit exceeds the sum of \$100,000, RREEF shall deposit with City the amount of the shortfall within 45 days of the end of the month of the date of RREEF's approval of the Change Order Proposal, which sum City shall deposit in the Construction Services Account. In the event that the amount of the Construction Deposit is less than the sum of \$100,000, City shall transfer the difference from the Construction Services Account into the General Deposit Account.

(b) City shall use the Construction Deposit solely for payments to the City Contractor (or reimbursement to City for such payments) for the services described in the Change Order Proposal, including for any unanticipated costs that in the reasonable discretion of the City Engineer are consistent with the purpose and intent of this Agreement. All payments to the City Contractor from the Construction Deposit shall be made in accordance with standard City procedures and the contract between City and the City Contractor. Prior approval by RREEF is not required for any payments to the City Contractor out of the Construction Deposit for services included in the Change Order Proposal. Payments to the City Contractor are subject to the reconciliation process in Section 8.

(c) City Contractor services that are not included in the Change Order Proposal and would result in unanticipated costs that exceed \$10,000, shall require prior review and approval by RREEF. RREEF shall provide the review and approval of the unanticipated costs that exceed \$10,000 within one Business Day from receiving notice of the unanticipated costs. For purposes of this Agreement, "Business Day" means every day except Saturday, Sunday, and City designated holidays. If a response rejecting approval of payment is not received from RREEF

within one Business Day from receiving notice of the unanticipated costs, City shall be authorized to proceed with the associated work and payments to the City Contractor. Payments shall be made out of the Construction Deposit Account if sufficient funds remain therein, or out of the General Deposit Account once the Construction Deposit Account has been depleted.

(d) If RREEF rejects the unanticipated costs that exceed \$10,000 within one Business Day from receiving notice of the unanticipated costs, City shall attempt in good faith to work with RREEF, the City Contractor, and City Consultants (if needed), to resolve RREEF's concerns with the unanticipated costs. RREEF shall be responsible for all costs, including delay damages, incurred by the City due to the RREEF's review of unanticipated costs, even if RREEF reviews and approves the unanticipated costs within the stipulated one Business Day deadline. If agreement cannot be reached between the City and RREEF regarding the unanticipated costs within Ten Business Days of receipt of RREEF's rejection of the unanticipated costs, City staff may direct the City Contractor and City Consultants to cease the Work. In that event, RREEF shall be responsible for all costs incurred by City in terminating the Work. Termination of this Agreement by RREEF shall not relieve it of its obligations under Condition No. 33 nor the obligation to pay City for undisputed Reimbursable Costs.

8. Reconciliation Process. On or before the 30th day of any month, City shall submit to RREEF a statement of expenses for the preceding month's Reimbursable Costs ("Reconciliation Statement"). The Reconciliation Statement shall itemize and describe with reasonable particularity the Reimbursable Costs that have been incurred during the period covered by the invoice. City may carry over to the next month's Reconciliation Statement any charges not billed in a particular month. To the extent RREEF disputes any of the Reimbursable Costs, RREEF must notify City in writing within ten Business Days after receipt of the Reconciliation Statement the particular Reimbursable Costs it disputes. Failure to send such written notices to City within ten Business Days after receipt of the Reconciliation Statement by RREEF shall result in RREEF's waiver of its right to dispute the Reconciliation Statement. RREEF and City shall attempt in good faith to resolve the dispute within 30 calendar days of the date RREEF notifies City of such dispute in writing. If there is no resolution within 30 calendar days, RREEF may terminate this Agreement upon written notice to City, which notice shall be effective ten Business Days after receipt by City. In that event, City staff may cease all Work and direct City Contractor and City Consultants to do the same. RREEF shall be responsible for all costs incurred by City in terminating the Work. Termination of this Agreement by RREEF shall not relieve it of its obligations under Condition No. 33 nor the obligation to pay City for undisputed Reimbursable Costs. If resolution is achieved within 30 calendar days, the next following Reconciliation Statement will be adjusted if necessary.

9. Notwithstanding the foregoing, RREEF and its representatives shall have the right, upon reasonable notice to City, to audit and copy City's records regarding any matter for which City requests reimbursement or payment from RREEF.

10. It is not the intent of this Agreement to have RREEF pay to City any amounts in excess of those costs actually incurred by City for the Work and Work related services actually performed.

11. Nothing in this Agreement shall be construed to abrogate or waive City's or RREEF's attorney client privileges.

12. This Agreement is deemed to have been prepared by all of the parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity or uncertainty exists, shall be interpreted according to applicable rules of interpretation of contracts under the laws of the State of California.

13. This Agreement shall not be assignable by RREEF in whole or in part without the prior written consent of City, which written consent shall not be unreasonably withheld. RREEF shall provide to City 30 days' advanced notice of any such assignment.

14. Notices. Any notices, demands or communications under this Agreement shall be given as follows:

To RREEF: RREEF AMERICA REIT II CORP BBB
13450 Maxella Ave., Suite 240
Marina del Rey, CA 90292
Attn: Callie Paranick

Developer Manager
Janes Lang LaSalle Americas, Inc.
515 South Flower Street, Suite 1300
Los Angeles, California 900071
Attn: Jason Giannantonio

To City: City of Manhattan Beach
3621 Bell Ave.
Manhattan Beach, California 90266
Attn: Director of Public Works

Written notices, demands and communications between City and RREEF shall be sufficiently given by personal service or dispatched by first class mail, postage prepaid, to the addresses set forth above. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Notwithstanding anything to the contrary contained herein, notice personally served shall be presumed to have been received as of the date of such service, and notices sent via mail as provided herein shall be presumed to have been received on the second Business Day after deposit of same in the mail.

15. This Agreement represents the entire integrated agreement between City and RREEF regarding the subject matter hereof, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and RREEF.

16. Should any dispute under this Agreement lead to litigation, the prevailing party shall be entitled to recover from the other party actual attorneys' fees and costs for the prosecution of the action.

17. This Agreement shall be governed by, and interpreted according to the laws of the State of California.

18. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

19. The persons signing this Agreement warrant that each of them has the authority to execute this Agreement on behalf of the party on whose behalf that person is purporting to execute this Agreement, and that this Agreement is a binding obligation of that party.

EXECUTED in the day and year first above written.

CITY OF MANHATTAN BEACH,
a California municipal corporation

DocuSigned by:
By: Bruce Moe 2/26/2021
EAD3C06646684FC...
Bruce Moe, City Manager

RREEF AMERICA REIT II CORP BBB,
a Maryland corporation

DocuSigned by:
By: Callie Paranick 2/24/2021
8E43711F078644E...
Callie Paranick, Vice President

ATTEST:

DocuSigned by:
Liza Tamura 2/26/2021
AFC50C3B11C0841E...
Liza Tamura, City Clerk

DocuSigned by:
By: Jane Benefield 2/25/2021
C2CD25BB95D445B...
Jane Benefield, Vice President

APPROVED AS TO FORM:

DocuSigned by:
Quinn Barrow 2/26/2021
96FA866DAA974E9...
Quinn M. Barrow, City Attorney

APPROVED AS TO FISCAL IMPACT:

DocuSigned by:
By: Steve S. Charelian 2/26/2021
E6C7B3D6337748F...
Steve S. Charelian, Finance Director

APPROVED AS TO CONTENT:

DocuSigned by:
By: Carrie Tai 2/25/2021
5EA704D7A2C949F...
Carrie Tai
Acting Director of Public Works

EXHIBIT A

**SCHEDULE OF FULLY BURDENED HOURLY RATES-
Rates effective beginning July 1, 2020***

Community Development Department –

Director:	\$194.14
Planning Manager:	\$175.15
Traffic Engineer:	\$159.12
Associate Planner:	\$143.01
Senior Permits Technician:	\$132.27
Executive Secretary:	\$75.03

Public Works Department –

Director:	\$210.82
City Engineer:	\$191.58
Principal Civil Engineer:	\$159.15
Senior Civil Engineer:	\$137.38

Fire Department –

Fire Marshall/Captain:	\$279.94
Fire Inspector:	\$111.86

Police Department –

Lieutenant:	\$219.83
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*These rates may be adjusted in 2021 and annually thereafter; the City will provide such updated information when informed of that adjustment by the City Finance Director.

City reserves the right to use other employees. Prior to other employees working on this matter, City will notify RREEF.

EXHIBIT B

SCHEDULE OF HOURLY RATES- LEGAL SERVICES*

City Attorney Quinn M. Barrow	\$490
Assistant City Attorney Michael Estrada	\$465
Assistant City Attorney Brendan Kearns	\$405

*These rates may be adjusted in 2021 and annually thereafter; the City will provide such updated information when informed of that adjustment. City reserves the right to use other attorneys.

EXHIBIT C

HDR COST PROPOSAL



November 25, 2020

Ms. Anastasia Seims, PE
Senior Civil Engineer
City of Manhattan Beach
3621 Bell Ave
Manhattan Beach, CA 90266

**Subject: Sepulveda Bridge Widening Project
Extension of Veterans Parkway Pedestrian Path/Bike Lane**

Dear Ms. Seims:

Please find this letter proposal in support of the reimbursement agreement between City of Manhattan Beach (City) and RREEF for HDR to incorporate the extension of the pedestrian/bike path into the design of the Sepulveda Bridge Widening Project.

RREEF, through their engineering consultant KPFF, is preparing design plans to extend a paved path along Veterans Parkway under the bridge to connect to the Manhattan Village Shopping Center. Once these plans have been preliminary approved by the City, HDR will update the bridge plan set to incorporate the extension of the path and submit to Caltrans for review and approval.

The additional effort to update the Caltrans bridge plans is anticipated as follows:

- Update Layout Sheet L-1
- Generate up to two new construction detail sheets, as required
- Update the project specifications and cost estimate, as required
- Conduct several rounds of coordination calls with KPFF to incorporate their design
- Conduct several rounds of communication and comment reviews with Caltrans to finalize the plans and obtain approval
- Support the City and Construction Manager with generating a Change Order for the City's Construction Contractor

For budgeting purposes, we anticipate a total of 48 hours of effort to complete the above tasks, which includes time for a Project Manager, Design Engineer, and a CAD operator. This effort equates to \$10,000 and will be performed on a time and materials basis not to exceed this budget.

It is assumed that HDR and the City will come to a reasonable agreement as to the scope and fee for any additional effort that may be required beyond the services listed above. It is further assumed that the plans and electronic CAD files prepared by KPFF will be complete and in a format that is readily incorporated into the Sepulveda Bridge Plan set.

HDR looks forward to our continued effort in working together to successfully deliver this Project. Please do not hesitate to contact me if you have any questions regarding this letter proposal or would like to discuss in greater detail.

Sincerely,

HDR ENGINEERING, INC.

A handwritten signature in blue ink, appearing to read "GAK", is positioned below the company name.

Girair A. Kotchian, PE
Project Manager

CC: File