

**CITY OF SOUTH SAN FRANCISCO  
COMMUNITY FACILITIES DISTRICT NO. 2021-01  
(PUBLIC FACILITIES AND SERVICES),  
CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA**

**AMENDED AND RESTATED  
ACQUISITION, CONSTRUCTION AND FUNDING AGREEMENT**

THIS AMENDED AND RESTATED ACQUISITION, CONSTRUCTION AND FUNDING AGREEMENT (“Agreement”) is made and entered into effective April 1, 2022, by and between CITY OF SOUTH SAN FRANCISCO (the “City”), acting for and on behalf of itself and CITY OF SOUTH SAN FRANCISCO COMMUNITY FACILITIES DISTRICT NO. 2021-01 (PUBLIC FACILITIES AND SERVICES), CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO, STATE OF CALIFORNIA (the “District” or “CFD”) and KILROY REALTY TRS, INC., a Delaware corporation (the “Developer”), each individually a “Party” and collectively the “Parties.”

WHEREAS, affiliates of the Developer acquired certain real property commonly known as the “Oyster Point Business Park” and which was part of a redevelopment project of the South San Francisco Redevelopment Agency (“Project”). Pursuant to that certain Consent, Assignment and Assumption Agreement dated August 18, 2016, Oyster Point Development, LLC, City, and the Successor Agency to the former South San Francisco Redevelopment Agency (“Agency”) are parties to that certain Disposition and Development Agreement (“DDA”), dated March 23, 2011. The DDA was assigned to the KR Oyster Point Developer, LLC, a Delaware limited liability company, and then pursuant to that certain Assignment and Assumption Agreement dated June 1, 2018, the DDA was assigned to Developer;

WHEREAS, the DDA provides for the construction of certain public improvements on property owned by the City, and in part, by affiliates of the Developer, as more particularly set forth and described in section 3.2 and Exhibit 3.2 to the DDA (collectively, “Project Improvements”). The DDA allocates costs and responsibility of design and construction responsibility between the Developer and the Agency with respect to some of the Project Improvements or makes elements of Project Improvements eligible for reimbursement from funds obtained by the issuance of bonds by a community facilities district to be formed by the City. As discussed below, some of the Project Improvements were already under construction at the time that the Parties entered into this Agreement. Those Project Improvements are known as the Clay Cap Repair in Phase ID, Phase IC Improvements, Phase IIC Improvements, and Relocation of Sewer Pump Station No. 1 as each is described in the DDA (“Shared Improvements”). In accordance with the terms of the DDA, certain funds were deposited by the Agency into an escrow account controlled by the City to reimburse the Developer on an on-going basis for the Agency’s share of the costs of the Shared Improvements. Other Project Improvements are eligible for CFD reimbursement for some or all elements but the Agency and the City are making no financial contribution toward their costs (collective, “Developer Improvements”). Where in this Agreement there is no need to differentiate between the Shared Improvements and Developer Improvements, the Shared Improvements and Developer Improvements may be referred to collectively as “Improvements.” The respective shares of the costs of the Shared Improvements and the elements of the Improvements eligible for CFD reimbursement are identified in Exhibit 3.4.1 of the DDA;

WHEREAS, in October 2018, the City and Developer entered into an Amended and Restated Development Management Services Agreement dated October (“DMSA”) which sets out the terms by which Developer will provide development management services for the design, engineering, permitting, construction, completion and dedication of the Shared Improvements. A copy of the DMSA is attached hereto as **Exhibit “A”** and incorporated herein;

WHEREAS, in accordance with the terms of the DMSA, since March 2018, Developer (and its predecessor) and the City have been cooperating in the construction of the Shared Improvements. As provided under the DMSA, Developer has been reimbursed, in part, for the construction of Agency allocated Shared Improvements. Developer anticipates that certain of the Shared Improvements will be ready to be dedicated to the City in the second quarter of 2022, with the balance being completed and dedicated by the fourth quarter of 2022;

WHEREAS, in January 2021, KR Oyster Point III, LLC, a Delaware limited liability company (“OP III”), an affiliate of the Developer and owner of property subject to the terms of the DDA, requested that the City consider the formation of a community facilities district (“CFD”) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (the “Act”) encompassing the parcels identified on **Exhibit “B”** attached hereto (collectively “Developer Property”), all of which are owned by affiliates of Developer. Developer, OP III, and the other property owners within the CFD are each under the ownership or control of Kilroy Realty, L.P., a Delaware limited partnership, whose general partner is Kilroy Realty Corporation, a Real Estate Investment Trust listed on the NYSE;

WHEREAS, the City Council has adopted the City’s policies and procedures concerning the use of special district financing programs to finance City public improvement facilities (the “Policy”);

WHEREAS, on March 10, 2021, the City Council adopted Resolution Nos. 53-2021 and 54-2021, after approval by more two-thirds of the votes cast by the qualified electors within the District held on March 10, 2021, (i) establishing the District under the Act, (ii) authorizing the lien and the levy of special taxes (“Special Taxes”) pursuant to a rate and method of apportionment (“Rate and Method”), and (iii) authorizing the issuance of bonded indebtedness by the District in an amount not to exceed \$105,000,000 (“Bonds”) for the payment of the construction of certain public improvements within the boundaries of the CFD to be owned, operated or maintained by the City and incidental expenses in accordance with the Act;

WHEREAS, on March 24, 2022, the City Council adopted Resolution No. \_\_-2022, authorizing the issuance of the first series of Bonds in an aggregate principal amount not to exceed \$25,000,000;

WHEREAS, as contemplated in the DDA, the Developer desires to be reimbursed from the proceeds of Bonds issued by the District for the elements of the Improvements that are eligible for CFD reimbursement according to Exhibit 3.4.1 of the DDA, as more particularly set forth and described on **Exhibit “C”** attached hereto;

WHEREAS, pursuant to the DDA, the Improvements are required as a condition of developing the Project and are necessary to mitigate impacts arising from such development. The City will benefit from a coordinated plan of design, engineering and construction of the Improvements;

WHEREAS, similar to its reasoning for entering into the DMSA, the City has determined that it will obtain no advantage from undertaking the construction of the Improvements and that the Improvements may be constructed by the Developer as if they had been constructed under the direction and supervision, or under the authority of, the City; and

WHEREAS, the purpose of this Agreement is to constitute a formal understanding between the Developer and the City (pursuant to the requirements of Government Code Section 53313.51 and other provisions of the Act and the Policy) concerning financial and other obligations and responsibilities related to the formation of the CFD, the Improvements to be financed in whole or in part by the District, when and if formed, to the extent funds are available, and to set forth the conditions upon which the District will reimburse the Developer or its designee for the cost of elements of the Improvements constructed by or on behalf of the Developer that are eligible for CFD reimbursement according to Exhibit 3.4.1 of the DDA, which have not been previously paid for by the Agency.

NOW, THEREFORE, it is mutually agreed between the respective Parties as follows:

## SECTION 1. FEASIBILITY STUDY

The City has retained, at the Developer's expense, the necessary consultants to analyze the proposed formation of the CFD, including the special tax consultant, bond counsel, and other consultants deemed necessary by the City. The Developer has advanced to the City a sum of money for such costs, all or a part of which may be eligible for reimbursement from the District in accordance with the Reimbursement Agreement dated as of January 27, 2021 (the "Reimbursement Agreement") between the Developer and the City.

## SECTION 2. SALE OF BONDS

2.1. City Policies. The City Council has adopted the Policy, setting forth the City's policies and procedures concerning the use of special district financing programs to finance the Improvements. The Parties hereby agree that, unless waived by the City if certain findings can be made as provided in the Policy and/or Act, at the time of issuance of the Bonds, the ratio of the value of all parcels of property for which the Bonds are being issued to the amount of outstanding community facilities district or assessment district bonds attributable to such parcels (the "Value-to-Lien Ratio") may not be less than three-to-one (3:1). Unless waived by the City, the value of the property within the CFD for purposes of determining the foregoing ratio will be determined based on the appraised value of the property based on the appraisal made by an appraiser selected by the City with a valuation date within three (3) months of the date of pricing of the Bonds (or a longer period as determined by the City), or, with respect to developed projects (as determined in the sole discretion of the City) or issuance of refunding bonds, the assessed value of the property. Subject to satisfaction of the Policy and the requirements of this Agreement, the City shall use its best efforts to issue and sell the Bonds in one or more series in an amount sufficient to fund the Improvements in accordance with the schedule for development of the Developer Property, unless otherwise agreed to by the Developer.

2.2. Major Landowner Initial and Continuing Disclosure. An owner of land (or owners which are affiliates) within the boundaries of the CFD which is responsible for twenty percent (20%) or more of the Special Tax in the fiscal year in which the Bonds are issued or in the fiscal year following the fiscal year in which the Bonds are issued (a "Major Landowner") will be required to provide all information regarding the development of its property, including the financing plan for such development, which is necessary to ensure that the official statement for such Bonds complies with the

requirements of Rule 15c2-12 of the Securities and Exchange Commission (the “Rule”) and all other applicable federal and state securities laws. The Developer acknowledges that, if it (or its affiliates) is a Major Landowner at the time of issuance of the Bonds, it will be necessary that the Developer or its affiliates enter into a continuing disclosure agreement to provide such continuing disclosure pertaining to the development of the land owned by the Developer or its affiliates within the CFD as necessary to assist the underwriter in complying with the continuing disclosure requirements of the Rule and/or to assist in the marketing of the Bonds.

2.3. Bond Issuance Parameters. The terms and conditions upon which each series of the Bonds shall be issued and sold, the method of sale of the Bonds and the pricing of the Bonds shall be determined solely by the City in its reasonable discretion in conformance with the requirements of Government Code Section 53313.5, the Act, the Policy, and this Agreement. The Bonds shall be issued with a term not to exceed 35 years from the date of issuance of the Bonds, or such longer term as is then permitted by law. The proceeds of the Bonds shall be used in the following priority to (1) fund a reserve fund for the payment of principal and interest with respect to the Bonds in an initial amount equal to the least of (i) ten percent (10%) of the total bond issue, (ii) maximum annual debt service on the Bonds, or (iii) 125% of average annual debt service on the Bonds; (2) fund capitalized interest through the interest payment date on the Bonds for which Special Taxes are not available for payment of debt service on the Bonds; (3) reimburse the Developer or its designee pursuant to Section 1 hereof for CFD formation costs which have not already been reimbursed to the Developer; (4) pay for costs of issuance of the Bonds including, without limitation, underwriter’s discount, bond counsel and disclosure counsel fees, municipal advisor fees, appraisal and special tax consultant fees, printing, and fiscal agent fees, not otherwise already paid pursuant to the terms of the Reimbursement Agreement; and (5) pay for the actual costs of the elements of the Improvements that are eligible for CFD reimbursement according to Exhibit 3.4.1 of the DDA. The District shall maintain records relating to the disbursements of proceeds of the sale of the Bonds. The Indenture or Resolution (hereinafter “Indenture”) for the Bonds shall establish an acquisition and construction fund or improvement fund (herein, the “Improvement Fund”) into which shall be deposited initially the proceeds of the Bonds net of the amount of proceeds required to fund items (1) through (4) in the second preceding sentence.

To the extent authorized by applicable law, interest earned on moneys deposited in the Improvement Fund shall remain in such account until such time as all of the Improvements have been funded. The Indenture shall provide that amounts remaining in the Improvement Fund after funding all proposed Improvements or sooner, as agreed by the City and the Developer, shall be deposited in the special tax fund or bond service fund and be applied to pay debt service on the Bonds and/or to call Bonds in advance of maturity.

### SECTION 3. ALLOCATION OF SPECIAL TAXES

Prior to the issuance of Bonds, the City Council of the City, acting as the legislative body of the District, may levy Special Taxes on all parcels classified as Developed Property and, if applicable, Undeveloped Property pursuant to the Rate and Method. Such Special Taxes collected by the City shall first be applied to fund annual administrative expenses of the District and then to fund Improvements in the same manner as the proceeds of Bonds as set forth herein. Upon sale and delivery of the Bonds, the City shall annually levy the Special Tax as provided for in documents pursuant to which the Bonds were issued. Following the issuance of the Bonds, the City shall have no obligation to levy Special Taxes to reimburse the Developer for the costs of any Improvements not paid for from Bond proceeds and/or Special Taxes. The entire amount of any Special Tax levied by the District to

repay the Bonds and recover costs and expenses allowable pursuant to Government Code Section 53313.5, shall be allocated to the District.

#### SECTION 4. [INTENTIONALLY OMITTED]

#### SECTION 5. DESIGN PLANS AND SPECIFICATIONS

The requirements of this Section 5 shall not apply to any Shared Improvement, rather the design plan and specification requirements set forth in the DMSA shall apply to the Shared Improvements. The requirements set forth in this Section 5 shall apply to the Developer Improvements.

All plans, specifications and bid documents for the Developer Improvements (“Plans”) to be constructed by the Developer shall be prepared by the Developer at the Developer’s initial expense, subject to approval by the applicable public agency. Costs for preparation of the Plans will be eligible for reimbursement, conditioned upon the final approval of the applicable public agency and the availability of funds. Reimbursement of costs for plan revisions will be considered on a case by case basis. All facilities shall be bid in accordance with “public works” requirements of Section 6.4 to be eligible for reimbursement. The Developer shall not award bids for construction, or commence or cause commencement of construction, of an Improvement until the Plans and bidding documents have been approved by the City.

#### SECTION 6. CONSTRUCTION OF IMPROVEMENTS

6.1. Construction. All Improvements to be acquired hereunder shall be constructed by or at the direction of the Developer in accordance with the approved Plans or the DMSA. The Developer shall perform all of its obligations hereunder or pursuant to the DMSA. The Developer shall conduct all operations with respect to the construction of the Improvements in a good, workmanlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their best efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ at all times adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Improvements to be acquired by the City from the Developer hereunder.

6.2. City-Step In Rights. The Developer shall not be relieved of its obligation to construct Improvements and to convey each such Improvement to the City in accordance herewith, even if there are insufficient Bond proceeds to pay the acquisition price thereof. Should the Developer notify the City that the Developer is unable to complete any such Improvement, the City shall have the right but not the obligation to require the Developer to make an irrevocable offer of dedication to the City of the land owned by the Developer for the Improvement identified in the notice and to assume responsibility for the work to be performed thereunder. In the event the City elects to assume the responsibility for any work on a previously awarded contract as described in the preceding sentence, the following will occur: (i) the Developer will make an irrevocable offer of dedication to the City of the land owned by the Developer for such Improvement identified in the notice; (ii) to the extent permitted by law and the applicable contract, the Developer will assign all of the contracts for the work performed to date on the Improvement identified in the notice to the City, if requested to do so by the City Manager; the City will use its best efforts to complete the Improvement within a reasonable time frame; and upon completion of the Improvement, to the extent there are Special Taxes or proceeds of the Bonds available following payment to the City for the costs of completing such Improvement, the Developer

will be reimbursed for the lesser of the cost or value of the previously unreimbursed satisfactory work performed or paid for by the Developer. The cost of such work will be determined by taking the unreimbursed amounts expended by the Developer under the contract(s) taken over by the City and deducting any incremental cost incurred by the City to complete the work under the contracts in question. Incremental cost shall be costs in excess of the sum of the original contract cost plus change orders approved by the City.

6.3. Relationship to Public Works. This Agreement is for the acquisition of the Improvements by the City from proceeds of Bonds or if applicable Special Taxes and is not intended to be a public works contract. The City and the Developer agree that the Improvements are of local, and not state-wide concern, and that the provisions of the California Public Contracts Code shall not apply to the construction of the Improvements. The City and the Developer agree that this Agreement is necessary to assure the timely and satisfactory completion of the Improvements and that compliance with the Public Contracts Code with respect to the Improvements would work an incongruity and would not produce an advantage to the City or the District. Notwithstanding the foregoing, the Developer agrees that, in accordance with the Act, it shall construct the Improvements as if they were constructed under the direction and supervision or under the authority of the City. As noted above, the Shared Improvements were already under construction at the time that the Parties entered into this Agreement and undertaken by Developer according to the DMSA and applicable provisions of this Agreement.

6.4. City Requirements. In order that the Developer Improvements may be properly and readily acquired by the City with funds in the Improvement Fund, the Developer shall comply with all of the requirements in this Section 6.4. Funds in the Improvement Fund shall be available to reimburse Developer for completed Shared Improvements provided that the Developer has followed the requirements set forth in the DMSA that are consistent with the requirements in Sections 6.4(a) through 6.4(i) below. The Developer shall provide such proof to the City as the City may reasonably require and at such intervals and in such form as the City may reasonably require, that the following requirements have been satisfied as to all such Improvements:

(a) The Developer shall prepare a bid package for review, comment and approval by the City Manager of the City or the Public Works Director, and/or his or her designee (the "City Representative"). The City Representative shall respond with any comments within ten (10) calendar days. If the City Representative fails to respond within such 10 calendar day period, City approval shall be deemed received after delivery by electronic mail of a notice to the City Representative that the Developer is proceeding with the bid process.

(b) Developer shall provide notice of the competitive bid process to and obtain competitive bids from a minimum of three (3) bidders. If there are less than 3 qualified bidders due to the nature of Improvement, the construction timeline, or any other relevant factor then the minimum number of bidders shall be one, provided the City Representative approves such lower number of bidders. Developer shall mail notices inviting bids to the recipients approved (or deemed to have been approved) by the City Representative. The notices shall be distributed (by mail or electronic mail) no less than thirty (30) calendar days before the opening date of the bids. The notices shall distinctly describe the project and state the time and place for submission of bids and may disclose the Developer's right to elect to perform the work under Section 53329.5 of the Act. Bids shall be submitted to the Developer either via hard copy or email. The bids shall be received and opened by the Developer and there shall be no requirement for a public bid opening. After the bids are received and opened by the Developer, the Developer may contact one or more of the bidders and request

clarification of any bid or adjustments to the bid to comply with the specifications of the proposed project so that all bids may be evaluated on a comparable basis. Notwithstanding the foregoing in this Section 6.4(b), Developer and City Representative may agree to different procedures with respect to the procedures set forth herein should the facts and circumstances warrant such different procedure.

(c) The Developer shall submit to the City written evidence of such competitive bidding procedure set forth herein, including evidence of the means by which bids were solicited, a listing of all responsive bids and their amounts (as may be adjusted in Section 6.4(b) above), and the name or names of the contractor or contractors to whom the Developer proposes to award the contracts for such construction.

(d) The contract for the construction of any Improvements shall be awarded to the responsible bidder submitting the lowest responsive bid (as adjusted pursuant to subsection 6.4(b)(4)), if applicable) for the construction of such Improvements or, if the Developer elects to perform the work pursuant to Section 53329.5 of the Act, the Developer shall perform the work at the prices specified in the bid of the lowest responsible bidder.

(e) The specifications and bid and contract documents shall require all such contractors to pay prevailing wages and to otherwise comply with applicable provisions of the Labor Code and the Government Code relating to public works projects and as required by the procedures and standards of the City with respect to the construction of its public works projects.

(f) The Developer shall submit faithful performance and payment bonds in form and substance reasonably acceptable to the City with respect to the construction of the Improvements.

(g) The Developer and its contractor and subcontractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Improvements, which they will construct in conformance with the City's standard procedures and requirements. The City's insurance requirements are set out in Section 18 herein.

(h) The Developer and all such contractors shall comply with such other requirements relating to the construction of the Improvements which the City may impose by written notification delivered to the Developer and each such contractor at the time either prior to the receipt of bids by the Developer for the construction of such Improvements or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof; provided that such other requirements shall only be imposed to the extent the City reasonably determines they are required in order to comply with applicable law. In accordance with Section 7, the Developer shall be deemed the awarding body and shall be solely responsible for compliance and enforcement of the provisions of the Labor Code and Government Code.

(i) A "Change Order" is an order from the Developer to a contractor authorizing a change in the work to be performed. The Developer shall receive comments from the City Representative prior to the Developer's approval of any Change Order. The City Representative shall comment on or deny the Change Order request within five (5) business days of receipt of all necessary information. The City's comments to a Change Order shall not be unreasonably delayed, conditioned or withheld. The Developer shall not be entitled to be compensated for costs associated with a "Change Order" that has not been approved by the City Representative.

The Developer shall provide proof to the City, at such intervals and in such form as the City may reasonably require, that the foregoing requirements have been satisfied as to all of the Improvements which are funded through Bond proceeds.

## SECTION 7. INSPECTION; COMPLETION OF CONSTRUCTION

The City shall have primary responsibility for inspecting the Improvements to assure that the work is being accomplished in accordance with the Plans and in accordance with Section 6.10 of the DDA (notwithstanding that the DDA references only Phase IC and Phase ID Improvements). Such inspection does not include inspection for compliance with safety requirements by the Developer's contractor(s). The City's personnel shall be granted access to each construction site at all reasonable times for the purpose of accomplishing such inspection. In accordance with Section 6.10.1 of the DDA, promptly after substantial completion (subject to correction of punch list items of all construction and development of all or any distinct portion of the Improvements capable of independent use, Developer shall notify the City in writing certifying the same ("Written Notification"). With respect to Improvements not identified as Phase IC and Phase ID Improvements, any actual costs reasonably incurred by the City for inspection not previously paid by the Developer shall be reimbursed from funds in the Improvement Fund.

In accordance with Section 6.10.2 of the DDA, within ten (10) business days of receipt of Written Notification from the Developer that all or any distinct portion of the Improvement(s) capable of independent use has been completed (or substantially completed) in accordance with the Plans, the City shall either (i) confirm the same, which confirmation may be based upon inspection by the Public Works Director and any other City official necessary, and upon such confirmation of the same shall furnish Developer with a final Certificate of Completion, in the form attached to the DDA, as approved by City Council, or (ii) provide Developer with a Written Statement of the reasons City refused or failed to furnish a Certificate of Completion and the action Developer must take to obtain a Certificate of Completion. If the City fails to provide such Written Statement within the 10-day period, Developer shall be deemed entitled to the Certificate of Completion, and City shall promptly issue the same to Developer. The Certificate of Completion shall be in a form as to permit it to be recorded in the Office of the County Recorder of San Mateo County ("County Recorder"), if appropriate. The Developer shall file the Certificate of Completion with the County Recorder upon its receipt, if appropriate.

## SECTION 8. LIENS

With respect to any Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, prior to any payment by the CFD to the Developer for such Improvement, the Developer shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. With respect to Improvements, upon the earlier of (i) receipt of all applicable lien releases, or (ii) expiration of the time for the recording of claim of liens as prescribed by Sections 3115 and 3116 of the Civil Code, the Developer shall provide to the City such evidence or proof as the City shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment for the construction of the Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation.

## SECTION 9. ACQUISITION; ACQUISITION PRICE; SOURCE OF FUNDS

The costs eligible to be included in the acquisition price of an Improvement (the “Actual Costs”) shall include:

- (i) The actual hard costs for the construction of such Improvement as established by the City-approved construction contracts and approved Change Orders, including costs of payment, performance and maintenance bonds and insurance costs, pursuant to this Agreement;
- (ii) The design and engineering costs of such Improvement including, without limitation, the costs incurred in preparing the Plans. Costs for plan revisions will be considered on a case by case basis;
- (iii) The costs of environmental evaluations and public agency permits and approvals attributable to the Improvement;
- (iv) Costs incurred by the Developer for construction management and supervision of such Improvement, not to exceed five percent (5%) of the actual construction cost, subject to prior approval by the City of any construction management or supervision contract with respect to an Improvement;
- (v) Professional costs associated with the Improvement such as engineering, inspection, construction staking, materials, testing and similar professional services; and
- (vi) Costs approved by the City in accordance with the Act of acquiring any real property or interests therein required for the Improvement including, without limitation, any water tank sites, temporary construction easements, temporary by-pass road and maintenance easements.

Provided the Developer has complied with the requirements of this Agreement and/or DMSA, as applicable, the City agrees to pay the acquisition price of a completed Improvement to the Developer or its designee within thirty (30) days after the Developer’s satisfaction of the preconditions to such payment stated herein, but only to the extent there are sufficient funds available in the Improvement Fund, and thereafter when funds are available in the Improvement Fund until Developer is paid in full. The acquisition price to be paid from Bond proceeds for the acquisition of an Improvement by the City shall be the total of the Actual Costs of the Improvement as determined by the Developer’s engineer in consultation with the City’s Engineer.

As a condition to the payment of the acquisition price, the ownership of the completed Improvement shall be transferred to the City by grant deed, bill of sale or such other documentation as such public agency may require free and clear of all taxes, liens, encumbrances, and assessments, but subject to any exceptions determined by the City to not interfere with the actual or intended use of the land or interest therein (including the lien of a community facilities district so long as the subject property is exempt from taxation or is otherwise not taxable by such community facilities district). Upon the transfer of ownership of Improvements or any portion thereof to the City, the City shall be responsible for the maintenance of such Improvements or the portion transferred. Notwithstanding the foregoing, the acquisition price of an Improvement may be paid prior to transfer of ownership and acceptance of the Improvement if it is substantially completed at the time of payment. The Improvement shall be considered “substantially complete” when it has been reasonably determined by

the City to be usable, subject to final completion of such items as the final lift or any other items not essential to the primary use or operation of the Improvement.

For purposes of determining the acquisition price to be paid by the District for the acquisition of the Improvements by the City, the value of such Improvements shall include the construction costs specified in the City-approved contracts and City-approved Change Orders conforming to Section 6, as hereinbefore specified. City approval is a condition prior to initiation of contract work.

Upon completion of the construction of an Improvement, the Developer shall deliver or cause to be delivered to the City a Disbursement Request Form in substantially the form of **Exhibit "D,"** attached hereto, copies of the contract(s) with the contractor(s) who have constructed the Improvement and other relevant documentation with regard to the payments made to such contractor(s) and each of them for the construction of the Improvement, documentation evidencing payment of prevailing wages, and shall also provide to the City invoices and purchase orders with respect to all equipment, materials and labor purchased for the construction of the Improvements. The City shall require the City Engineer to complete its determination of the acquisition price of the Improvements as promptly as is reasonably possible.

Notwithstanding the preceding provisions of this Section, the source of funds for the acquisition of the Improvements or any portion thereof shall be funds in the Improvement Fund. If for any reason beyond the City's control the Bonds are not sold, the City shall not be required to acquire the Improvements from the Developer, except to the extent of funds from the collection of Special Taxes. In addition to the foregoing, the City shall have the right to withhold payment for acquisition of an Improvement, if:

(a) the Developer or any of its affiliates is delinquent in the payment of any Special Taxes levied by the District on properties then owned by the Developer or any of its affiliates within the CFD, or

(b) the Developer is not then in substantial compliance with a condition or obligation imposed upon the Developer Property by the City, including but not limited to, payment of all applicable fees, dedication of all applicable rights-of-way or other property and construction requirements.

The City shall immediately provide written notice to the Developer of the decision to withhold any such payment and shall specify the reason for such decision. If the payment is withheld as a result of the delinquency in the payment of Special Taxes, the notice shall identify the delinquent parcels and the amount of such delinquency. If the payment is withheld as a result of substantial non-compliance with a condition or obligation, the notice shall specify such condition or obligation and what action will be necessary by the Developer to substantially comply with such condition or obligation. Upon receipt of evidence reasonably satisfactory to the City that the Developer has paid the delinquent Special Taxes or complied with the subject condition or obligation, the City shall forthwith make all payments which have been withheld pursuant to the provisions of this Section.

## SECTION 10. EASEMENTS

Without limiting the Developer's rights to reimbursement for such grants pursuant to Section 9 above, the Developer and City agree, at the time the City acquires the Improvements as provided in Section 9 hereof, to grant, execute and record instruments in the form acceptable to each of the parties,

granting to the other party, access, utility and maintenance easements in connection with each party's proposed use, which may be reasonably necessary for the proper operation and maintenance of such Improvements, or any part thereof.

#### SECTION 11. PERMITS

The Developer shall be responsible for obtaining all necessary construction permits from the City and/or the County (if appropriate) covering construction and installation of the Improvements.

#### SECTION 12. MAINTENANCE

Prior to the transfer of ownership of an Improvement by the Developer to the City, as provided in Section 9 hereof, the Developer shall be responsible for the maintenance thereof and shall require its contractor(s) to repair all facilities damaged by any party other than the City, prior to acceptance by the City and/or make corrections determined to be necessary by the City's inspection personnel. The City shall not be permitted to place any Improvement in service prior to acceptance of the same, unless the Developer otherwise consents in writing.

#### SECTION 13. INSPECTION OF RECORDS

The City shall have the right to review all books and records of the Developer pertaining to the costs and expenses incurred by the Developer for the design and construction of the Improvements during normal business hours by making arrangements with the Developer. The Developer shall have the right to review all books and records of the City pertaining to costs and expenses incurred by the City for services of the Engineer by making arrangements with the City.

#### SECTION 14. OWNERSHIP OF IMPROVEMENTS

Notwithstanding the fact that some or all of the Improvements may be constructed in dedicated street rights-of-way or on property which has been or will be dedicated to the City, each Improvement shall be and remain the property of the Developer until acquired by the City as provided in this Agreement.

#### SECTION 15. MATERIALS AND WORKMANSHIP WARRANTY

The requirements of this Section shall not apply to any Improvement that was complete (as determined by the City Council) prior to the adoption by the City Council of the resolution forming the CFD, but they shall apply to all other Improvements.

Upon the completion of the acquisition of an Improvement by the City, the performance bond related to such individual Improvement provided by the Developer pursuant to Section 6.4(f) hereof, shall be reduced by 90%, and the remaining 10% shall serve as a maintenance bond to guarantee that such Improvement will be free from defects due to faulty workmanship or materials for a period of one year.

#### SECTION 16. INDEPENDENT CONTRACTOR

In performing this Agreement, the Developer is an independent contractor and not the agent of the City. The City shall not have any responsibility for payment to any contractor or supplier of the

Developer. It is not intended by the Parties that this Agreement create a partnership or joint venture among them and this Agreement shall not otherwise be construed.

#### SECTION 17. INDEMNIFICATION

The Developer shall assume the defense of, indemnify and save harmless, the City, its officers, members, employees and agents, and the District, its officers, employees and agents, from and against all actions, damages, claims, losses or expenses of every type and description to which they may be subject or put, by reason of, or resulting from such person's or entity's performance of its obligations under this Agreement, the issuance of the Bonds and the construction of the Improvements, or arising out of any alleged misstatements of fact or alleged omission of a material fact made by the Developer, its officers, directors, employees or agents to the City, the District, the underwriter of the Bonds and its counsel, the appraiser, the special tax consultant, the market absorption consultant or bond counsel regarding the Developer, its proposed developments, its property ownership, and any contractual arrangement it may enter into in a disclosure document describing the District and the risks relating to the Bonds. No provision of this Agreement shall in any way limit the extent of the Developer's responsibility for payment of damages resulting from the operations of Developer and its contractors; provided, however that the Developer shall not be required to assume the defense or indemnify and save harmless any person or entity, including the City and Agency, or any of their respective officers, employees and agents as to actions, damages, claims, losses or expenses resulting from the breach of this Agreement, the negligence or willful misconduct of such person or entity or their officers, agents, consultants or employees.

#### SECTION 18. INSURANCE REQUIREMENTS

Neither the Developer nor its contractor shall commence work on an Improvement under this Agreement prior to obtaining insurance with a company or companies acceptable to the City, nor shall the Developer's contractor allow any subcontractor to commence work on its subcontract until all insurance required of the subcontractor has been obtained.

The Developer shall, during the life of this Agreement, notify the City in writing of any incident giving rise to any potential bodily injury or property damage claim and any resultant settlements, whether in conjunction with this or any other project which may affect the limits of the required coverage, as soon as is reasonable and practical.

#### SECTION 19. CONFLICT WITH OTHER AGREEMENTS

Except as specifically provided herein, nothing contained herein shall be construed as releasing the Developer from any condition of development or requirement imposed by any other agreement with City. In the event of a conflicting provision, such other agreement shall prevail unless such conflicting provision is specifically waived or modified in writing by City.

#### SECTION 20. TERMINATION

The provisions of this Agreement related to the acquisition and financing of the Improvements shall terminate and be of no further force or effect if the first series of Bonds for the CFD are not sold within ten years from the date of this Agreement unless extended by agreement of all the Parties. If the City is unable to sell the first series of Bonds for the CFD after diligent, commercially reasonable efforts to do so, this Agreement shall terminate and be of no further force and effect; provided,

however, in such event, any collected Special Taxes remaining after the payment of administrative expenses of the CFD and reimbursement to the Developer of CFD formation costs shall be used to pay for Improvements in accordance with this Agreement.

## SECTION 21. NOTICES

Any notice or approval required or permitted to be given hereunder by one party to the other shall be in writing, and the same shall be given and shall be deemed to have been received (i) upon actual receipt when personally delivered, (ii) on the date of transmission, if given by electronic mail or other electronic means (with suitable evidence of transmission retained by sender); (iii) on the delivery date as recorded by the delivery service, if sent by Federal Express or other overnight mail; or (iv) on the date of receipt as noted on the signature card, if sent by certified mail, return receipt requested; provided that all such notices are sent to the party at the addresses hereinafter specified:

City or District: City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080  
Attn: City Manager and Assistant City Manager

With a copy to: Meyers Nave  
555 12<sup>th</sup> Street, suite 1500  
Oakland, California 94607  
Attn: Sky Woodruff, City Attorney

To Developer: c/o Kilroy Realty Corporation  
100 First Street, Suite 250  
San Francisco, California 94105  
Attn: Jonas Vass, SVP Development

With a copy to: Kilroy Realty Corporation  
12200 W. Olympic Blvd., Suite 200  
Los Angeles, California 90064  
Attn: Legal Department

Each Party may change its address for delivery of notice by delivering written notice of such change of address to the other Party hereto.

## SECTION 22. NO GIFT OR WAIVER

The Developer and the City acknowledge and agree that:

(a) The Developer or its predecessor may have constructed or may be constructing Improvements before funds that will be used to acquire them are available with the expectation that the Developer will be reimbursed for such Improvements to the extent and in the manner set forth in this Agreement.

(b) The City may inspect Improvements and process Disbursement Request Forms even if funds from the proceeds of Bonds available at the time of such inspection and processing do not exist or are not sufficient to satisfy the Disbursement Request in full.

(c) The Developer may convey Improvements to the City and the City may accept such Improvements even if funds from the proceeds of Bonds available at the time of such conveyance and acceptance do not exist or are not then sufficient to satisfy the Disbursement Request in full.

(d) If the City accepts Improvements before a Disbursement Request is paid in full, the unpaid balance of the Disbursement Request will be paid from time to time, in any number of installments and irrespective of the length of time payment is deferred, as funds from the proceeds of Bonds become available.

(e) The Developer's conveyance or dedication of Improvements to the City before the availability of funds from the proceeds of Bonds to acquire the Improvements is not, and shall not be deemed, a gift or a waiver of the Developer's right to payment of the purchase price of such Improvements pursuant to this Agreement.

## SECTION 23. GENERAL PROVISIONS

(a) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the City and the Developer and their respective heirs, executors, legal representatives, successors, and authorized assigns.

(b) Amendment. This Agreement may be amended at any time but only in writing signed by each Party hereto.

(c) Entire Agreement. This Agreement, and the agreements referenced herein, contains the entire understanding and agreement between the Parties with respect to the matters provided for herein and supersedes all prior agreements and negotiations between the Parties with respect to the subject matter of this Agreement. There are no oral or written representations, understanding, undertakings or agreements which are not contained or expressly referred to herein, and any such representations, understandings or agreements are superseded by this Agreement. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Parties hereto, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Parties with the terms of this Agreement thereafter This Agreement shall be binding upon, and enforceable by and against the District upon the establishment of the District.

(d) Exhibits. All exhibits attached hereto are incorporated into this Agreement by reference.

(e) Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

(f) Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Parties hereto, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by such other Parties with the terms of this Agreement thereafter.

(g) No Third Party Beneficiaries. Except as provided explicitly in this Agreement, no person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement

(either express or implied) is intended to confer upon any person or entity, other than the City, the District, and the Developer (and their respective successors and assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement.

(h) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute but one instrument.

(i) Assignment. The Developer may assign all or any of its rights pursuant to this Agreement to a purchaser of all or any portion of the Developer Property. Such a purchaser and assignee shall, as a condition to taking an assignment of such rights, enter into an assignment and assumption agreement with the City and the Developer, in a form reasonably acceptable to the Developer and the City, whereby such rights assigned are specified and such purchaser agrees, except as may be otherwise specifically provided therein, to assume the obligations of the Developer pursuant to this Agreement and to be bound thereby. A company that acquires all of the assets of the Developer, including ownership of the Developer itself, shall be deemed a successor and shall not require an assignment or assumption agreement to be bound by, and enjoy the benefits of, this Agreement.

(j) Governing Law. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

(k) Construction of Agreement. This Agreement has been reviewed by legal counsel for both the City and the Developer and shall be deemed for all purposes to have been jointly drafted by the City and the Developer. No presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

(l) Attorneys' Fees. In the event of any action or proceeding, including an arbitration or a reference pursuant to Section 638, et seq., of the Code of Civil Procedure brought by any Party against any other under this Agreement, the prevailing Party shall be entitled to recover its actual attorneys' fees and all fees, costs and expenses incurred for prosecution, defense, consultation, or advice in such action or proceeding. In addition to the foregoing, the prevailing Party shall be entitled to its actual attorneys' fees and all fees, costs and expenses incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

(m) Venue and Forum. Any action at law or in equity arising under this Agreement brought by any Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of San Mateo, State of California, and the Parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

(n) Prior Acquisition, Construction, and Funding Agreement. Upon execution, this Agreement shall be deemed to have repealed and replaced the prior Acquisition, Construction, and Funding Agreement entered into by the Parties in May of 2021 and the prior Acquisition, Construction, and Funding Agreement shall be of no future force or effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written below.

Dated: April \_\_, 2021

CITY OF SOUTH SAN FRANCISCO, a political subdivision of the State of California

By: \_\_\_\_\_  
Mike Futrell, City Manager

ATTEST:

By: \_\_\_\_\_  
Rosa Govea Acosta, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Sky Woodruff, City Attorney

*[SIGNATURES CONTINUED ON NEXT PAGE.]*

*[SIGNATURE PAGE CONTINUED]*

KILROY REALTY TRS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LIST OF EXHIBITS**

EXHIBIT A – AMENDED AND RESTATED DEVELOPMENT MANAGEMENT SERVICES AGREEMENT

EXHIBIT B - DESCRIPTION OF DEVELOPER PROPERTY

EXHIBIT C – DESCRIPTION OF IMPROVEMENTS

EXHIBIT D - DISBURSEMENT REQUEST FORM

EXHIBIT A

AMENDED AND RESTATED DEVELOPMENT MANAGEMENT SERVICES AGREEMENT

(Attached hereto)

EXHIBIT B

DESCRIPTION OF DEVELOPER PROPERTY

County of San Mateo Assessor Parcel Numbers:

015-010-910

015-010-940

015-010-950

015-010-240

015-010-930

EXHIBIT C

DESCRIPTION OF IMPROVEMENTS

<i>Phase</i>	<i>Description</i>	<i>Estimated Cost</i> **
Phase 1C - ID	Streets and Utilities at Hub, including Clay Cap Repair at Conveyor Property and Refuse Reclamation Area	30,363,348
Phase 1C	Landscaping at Bay Trail and Palm Promenade	10,317,837
Phases IID-IVD	Streets and Utilities	22,220,743
Phases IID-IVD	Relocation of Sewer Pump Station No. 1	4,165,342
	New Sewer Pump Station Marina	839,490
Phases IID-IVD	Landscaping at BCDC Area	17,029,053
		<b>\$84,935,813</b>

\*\* Costs are based on actual costs of improvements paid through December 31, 2021 plus estimates for improvements yet to be constructed, with such estimates calculated using 4<sup>th</sup> Quarter 2022 actual costs. Consequently, actual costs for improvements yet to be constructed may be higher than what has been estimated herein.

EXHIBIT D  
CITY OF SOUTH SAN FRANCISCO  
COMMUNITY FACILITIES DISTRICT NO. 2021-01  
(PUBLIC FACILITIES AND SERVICES),  
CITY OF SOUTH SAN FRANCISCO, COUNTY OF SAN MATEO,  
STATE OF CALIFORNIA

1. City of South San Francisco to Establish City of South San Francisco Community Facilities District No. 2021-01 (Public Facilities and Services), City of South San Francisco, County of San Mateo, State of California (the “CFD”) is hereby requested to pay from the Improvement Fund account, established by the CFD in connection with its 20\_\_ Special Tax Bonds (the “Bonds”) to City of South San Francisco (the “City”) as payee, the sum set forth below:

\$ \_\_\_\_\_ (the Requested Amount”)

2. The Requested Amount represents the payment of Improvements as supported by attached documentation.

3. The Requested Amount is due and payable, has not formed the basis of any prior request or disbursement.

4. The City, as payee, is hereby directing payment of the Requested Amount be payable to KILROY REALTY TRS, INC., a Delaware corporation (the “Developer”), pursuant to the wiring instructions attached hereto.

5. The Requested Amount is authorized and payable pursuant to the terms of the certain Amended and Restated Acquisition, Construction and Funding Agreement (the “Agreement”) between the City of South San Francisco, acting for and on behalf of itself and the CFD and the Developer.

6. Capitalized undefined terms used herein shall have the meaning ascribed to them in the Agreement.

Dated: \_\_\_\_\_

DEVELOPER:

KILROY REALTY TRS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF SOUTH SAN FRANCISCO

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

[ATTACH WIRING INSTRUCTIONS]

5079127.1