

REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF REDONDO BEACH AND BEACH CITIES HEALTH DISTRICT

This Reimbursement Agreement (the “Agreement”) is made and entered into this 15th day of November, 2022 (the “Effective Date”), by and between the City of Redondo Beach (“City”) and Beach Cities Health District (“BCHD”).

RECITALS

WHEREAS, BCHD is the owner of property in the City of Redondo Beach which BCHD proposes the Health Living Campus Phase 1 project seeking to transform the Beach Cities Health District’s 11-acre campus to include Residential Care for the Elderly (RCFE), Program for All-Inclusive Care for the Elderly (PACE), community services (social workers, assistance, information and referral, youth wellness center), active open green space, and parking (“Proposed Project”); and

WHEREAS, BCHD is prepared to reimburse costs incurred by City to fund a professional planning review of discretionary applications and peer review of the environmental analysis (Environmental Impact Report or EIR) that BCHD prepared pursuant to the California Environmental Quality Act (“CEQA,” Pub. Resources Code, §§ 21000 *et seq.*) for the Proposed Project; and

WHEREAS, CEQA and the CEQA Guidelines (14 Cal. Code Regs., §§ 15000 *et seq.*) provide that City may contract with a private consultant to prepare the environmental review of the Proposed Project (CEQA, § 21082.1, subd. (a); CEQA Guidelines, § 15084, subd. (d)(2)); and

WHEREAS, CEQA authorizes City to collect fees from project applicants to recover the costs for the preparation and processing of environmental review of the Proposed Project (CEQA, § 21089, subd. (a)).

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and BCHD hereby agree as follows:

AGREEMENT

1. NO WAIVER OF CITY’S DISCRETIONARY AUTHORITY.

A. BCHD and City acknowledge and agree that the Planning Commission and City Council retain all discretion granted to them under law in considering the Proposed Project and that nothing in this Agreement is intended to limit their discretionary powers or waive any third party procedural due process rights.

2. TERM AND TERMINATION OF AGREEMENT.

A. The term of this Agreement shall commence upon the Effective Date and shall terminate upon the Termination Date. For purposes of this Agreement, the "Termination Date" shall mean thirty (30) days after (1) the date the City takes its last discretionary action on the Proposed Project or (2) all administrative appeals related to the City's discretionary actions on the Proposed Project are resolved, whichever is later, unless terminated sooner upon notice by either BCHD or City effective as set forth below. At any time, the City or BCHD may withdraw from this Agreement by notifying the other party in writing, which withdrawal shall terminate this Agreement and be without liability or penalty. The effective date of the termination shall be five (5) days after receipt of the notice, as set forth in Section 8.D. below. Upon receipt of a termination notice, the City shall cease work on the review of the Proposed Project, shall instruct its consultants and outside legal counsel to cease all work including on the environmental review, and shall cease all other technical assessments relating to the Proposed Project. In no event shall either party be reimbursed by the other for any further costs incurred after the effective date of such termination that relate to the environmental review of the Proposed Project.

3. ENVIRONMENTAL REVIEW; CONSULTANTS; PAYMENT.

A. All environmental review for the Proposed Project shall be prepared in accordance with all applicable federal, state, city laws, regulations and statutes, including CEQA.

B. City will enter into an agreement with an environmental consultant of City's choosing to conduct the peer review of the prepared environmental documents of the Proposed Project pursuant to CEQA. City will also enter into an agreement with outside legal counsel to assist City in preparing the environmental review in compliance with CEQA, to assist in the procedures related to the discretionary reviews, and coordinate any transactional work. City will enter into an agreement with a professional planning consultant of the City's choosing to conduct the review of the discretionary approvals of the Proposed Project. The environmental consultant, professional planning consultant, and outside legal counsel hired by the City shall collectively be known as "Consultants". City shall provide copies of the executed agreements to BCHD.

C. For purposes of this Agreement, "environmental review" shall refer to all work performed by City's Consultants and City staff in conducting the City's environmental review, which includes the peer review, of the Proposed Project as required by CEQA and other applicable laws.

D. For purposes of this Agreement, "professional planning review" shall refer to all work performed by the City's Consultants and City staff in conducting the City's discretionary review of the Proposed Project as required by applicable laws.

E. For the purposes of this Agreement, “transactional work” shall refer to all work performed by the City’s Consultants and City staff in coordinating any transactional work.

F. Subject to the limits set forth below, BCHD agrees to reimburse all costs and fees incurred by City on the environmental review, professional planning review, and transactional work for the Proposed Project by the Consultants and City staff, including City staff time. City agrees to provide a copy of the Consultants’ bills to BCHD within ten (10) days of receipt by City. The legal counsel invoices provided to BCHD shall include the number of hours spent and the hourly rate without violating attorney-client privilege and confidentiality between the City and its attorney or such other privileges allowed by law. The maximum reimbursement amount BCHD agrees to pay under this Agreement shall be **\$316,755**. In the event the fees and costs will exceed the amounts stated above, this Agreement must be amended by the parties to reflect the additional amounts as agreed to by the parties before such additional fees and expenses are incurred. All work shall be suspended pending the parties reaching an agreement for the additional amounts.

G. Attached as Exhibit A is the Scope of Services which identifies the services to be performed and to the extent possible the identity of Consultants and the estimated cost for their services. City reserves absolute discretion as to the selection and hiring of any Consultants not specifically identified in Exhibit A.

H. Within 14 days after the Effective Date, BCHD shall make a payment of One Hundred Fifty Thousand dollars (\$150,000) to City as an advance on City’s costs and fees for the environmental review and professional planning review by Consultants (“Advance”).

I. Following commencement of preparation of the environmental review and professional planning review of the Proposed Project, City shall request (but in no event if the Advance is sufficient to pay such fees and costs), that BCHD provide City with the remainder of One Hundred Sixty-Six Thousand Seven Hundred Fifty-Five dollars (\$166,755) payment for the costs and fees that will be incurred in preparing the environmental review and professional planning review by Consultants. Such payment shall be made within 14 days of City’s request.

J. In the event that, for any reason, BCHD does not provide City with payments requested within the timeframe set forth in paragraphs (E, F, G and H), above, City reserves the right to cease environmental review and/or professional planning review of the Proposed Project, and to deny the Proposed Project.

K. City agrees that, within thirty (30) days after termination of this Agreement, City will return to BCHD any funds paid by BCHD that were not expended (this does not include expenses incurred by City prior to the effective date of termination) by City on the environmental review, professional planning review, or transactional work for the Proposed Project and provide BCHD with an accounting of the amounts expended.

4. LEAD AGENCY'S INDEPENDENT JUDGMENT REGARDING THE PROPOSED PROJECT AND ENVIRONMENTAL REVIEW.

- A. Section 4 of this Agreement shall survive termination of the Agreement.
- B. City's decision to approve or deny the project application, and City's determinations pursuant to CEQA, must reflect the lead agency's independent judgment. (CEQA, § 21082.1(c); 14 Cal. Code Regs., § 15084.) Accordingly, final responsibility and final authority on all questions concerning the content and quality of the environmental review of the Proposed Project lies in City's sole discretion. BCHD understands and agrees that the environmental consultant and outside counsel only owe a duty to City, and not to BCHD or to any other third-person or entity. BCHD agrees that the adequacy of performance of the environmental consultant and the extent of payment to the environmental consultant for its work shall be determined at the sole discretion of City.
- C. BCHD is expressly prohibited from directly or indirectly exercising any supervision or control over any employee, agent or Consultant of the City involved in the Proposed Project. This prohibition shall not be construed to preclude BCHD, its agents or representatives, from providing information to the City or any employee, agent or Consultant of the City for incorporation into the Proposed Project, or from seeking information from the City, or any employee, agent or Consultant of the City with respect to the Proposed Project.
- D. BCHD's advance of funds shall not be dependent upon the City's approval or disapproval of any of BCHD's application(s), or upon the result of any action, and shall in no way influence the Proposed Project. Neither BCHD nor any other person providing funding for the Proposed Project shall, as a result of such funding, have any expectation as to the outcome of any application or the selection of an alternative favorable to or benefiting Developer.
- E. In no event shall the City's decisions regarding the Proposed Project or its environmental review of the Proposed Project result in any liability on the part of the City with respect to BCHD or any of its affiliates. BCHD hereby agrees to defend and indemnify the City against any actions or claims against the City by third parties, arising from the City's decisions regarding the Proposed Project or its environmental review of the Proposed Project. There are no third-party beneficiaries to this agreement.

5. INFORMATION SHARING.

- A. The City and the BCHD both seek to ensure environmental documents are prepared in compliance with CEQA. Similarly, the City and the BCHD both seek to ensure that all potential land use entitlements are processed in compliance with all applicable laws, including but not limited to the City's Municipal Code. The City and BCHD therefore may agree to share information, as reasonably necessary to

accomplish their common goals and interests, without waiver of the Attorney Client Privilege, Work Product Doctrine, or other applicable privileges ("Joint Defense and Common Interest Doctrine"). BCHD agrees to provide City with all information regarding the Proposed Project, including a description of the Proposed Project, as may be reasonably requested by City.

B. City and BCHD shall meet on a regular basis or as requested by either party to discuss the progress of the environmental review.

6. COMMUNICATIONS.

A. BCHD agrees that neither BCHD, nor its employees or agents will contact the environmental consultant, professional planning consultant, or City's outside legal counsel in connection with the Proposed Project without prior approval from City, except that BCHD's attorneys may contact City's outside legal counsel.

7. NO CONFIDENTIALITY.

A. The parties may reveal all or part of this Agreement to others as required by law.

8. ASSIGNMENTS.

A. BCHD may not assign its rights under this Agreement to any third party but may assign the entire Agreement to any subsidiary or affiliate of BCHD. Any assignment by BCHD shall not relieve BCHD from its duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and BCHD shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. City may not assign its rights under this Agreement.

9. MISCELLANEOUS.

A. Applicable Law. This Agreement will be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles.

B. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

C. Legal Capacity. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

D. Notice. The following addresses shall serve as the locations to which notices and other correspondences between City and BCHD shall be sent, which

notices shall be deemed received two (2) business days after being sent by overnight courier or one (1) day after being sent by personal delivery:

To the City:	Michael W. Webb City Attorney City of Redondo Beach 415 Diamond Street Redondo Beach, CA 90277
With a copy to:	Community Development Director City of Redondo Beach 415 Diamond Street Redondo Beach, CA 90277
To BCHD:	Tom Bakaly, CEO Beach Cities Health District 1200 Del Amo Street Redondo Beach, CA 90277

WITNESS WHEREOF, the parties hereto have executed this Reimbursement Agreement as of the Effective Date.

Date:_____

THE CITY OF REDONDO BEACH

William C. Brand, Mayor

ATTEST:

Eleanor Manzano, City Clerk

APPROVED AS TO FORM:

Michael W. Webb, City Attorney

BEACH CITIES HEALTH DISTRICT,
a California Healthcare District

By: _____
Name: Tom Bakaly
Title: CEO
Date:_____

**EXHIBIT A
SUMMARY OF REIMBURSABLE COSTS**

Service	Provider of Service	Estimated Cost of Service
Planning and Land Use Services. Assist city in conducting planning and land use review of requested entitlements for Proposed Project.	Placeworks	\$119,647
CEQA Consultant. Assist city in completing peer review of applicant prepared Environmental Impact Report and traffic study.	Rincon Consultants, Inc.	\$97,108
CEQA Legal Counsel. Assist City in the planning and land use review and environmental review in compliance with CEQA.	Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.	\$100,000