

## CONSTRUCTION AND CREDIT AGREEMENT

### DEVELOPMENT IMPACT FEE PROGRAM

#### I-10 Valley Logistics Center

This CONSTRUCTION AND CREDIT AGREEMENT (this "**Agreement**") is entered into as of September \_\_, 2019, by and between **THE CITY OF RIALTO**, a California municipal corporation ("**City**"), and **LIBERTY PROPERTY LIMITED PARTNERSHIP**, a Pennsylvania limited partnership ("**Developer**"). City and Developer are sometimes hereinafter referred to individually as "**Party**" and collectively as "**Parties**."

#### RECITALS

WHEREAS, Developer proposes to develop approximately 16.9 acres of unimproved real property located at the southwest corner of Valley Boulevard and Cactus Avenue in the City of Rialto, County of San Bernardino, State of California and more specifically described in the legal description set forth in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"); and

WHEREAS, Developer requested from City certain entitlements and/or permits for the construction of certain improvements on the Property, including an approximately 401,106 square foot distribution warehouse and certain off-site public improvements which are more particularly described and identified within Precise Plan of Design No. 2017-0089 approved by the City on December 19, 2018 ("**PPD**", as set forth in a letter dated January 3, 2019 from the City), the Conditions of Approval for PPD 2017-0089 approved December 19, 2018 ("**COA**"), the Mitigation Monitoring and Reporting Program for PPD 2017-0089 ("**MMRP**"), and certain public storm drain improvements outlined in the City of Rialto General Plan dated December 2010 ("**General Plan**") (collectively, the "**Project**"); and

WHEREAS, as a condition to City's approval of the Project, City required Developer to widen and construct improvements to Valley Boulevard between Spruce Avenue and Cactus Avenue (the "**Valley Improvements**"), to construct a traffic signal at the intersection of Valley Boulevard and Spruce Avenue (the "**Spruce Signal**"), and to modify and relocate a traffic signal at the intersection of Valley Boulevard and Cactus Avenue (the "**Cactus Signal**"; the Valley Improvements, the Spruce Signal and the Cactus Signal shall be referred to collectively as the "**Valley Boulevard Improvements**"), and to construct a public storm drain line within the southerly half of the Valley Boulevard public right-of-way which approximately runs from Station 20+53.56 in Valley Boulevard east of Spruce Avenue to connect to the existing 42" storm drain line at the centerline of Cactus Avenue (the "**Valley Storm Drain**"). The Valley Boulevard Improvements and the Valley Storm Drain are sometimes collectively referred to as the "**Public Improvements**" and are described on the approved plans and specifications attached hereto as **Exhibit B** attached hereto and by this reference incorporated herein (such plans and specifications, with any changes approved by City and Developer, are collectively referred to herein as the "**Plans and Specifications**"); and

WHEREAS, Chapter 3.33 of the Rialto Municipal Code establishes development impact fees ("**DIF Fees**") to finance public facilities in furtherance of the goals and objectives of the

City's general plan, various facility master plans, capital improvement plans, and the Nexus Reports described in Section 3.33.030 of the Rialto Municipal Code, as they may be amended from time to time (collectively, "**Nexus Reports**"). The imposition of DIF Fees ensures that new development in the City bears its proportionate share of the cost of public facilities necessary to accommodate such development, which thereby promotes and protects the public health, safety, and welfare; and

WHEREAS, Developer has paid or will pay all DIF Fees as identified in **Exhibit C** attached hereto and incorporated herein by this reference, subject to credit or reimbursement as provided herein; and

WHEREAS, pursuant to Section 3.33.100 of the Rialto Municipal Code, Developer may be eligible to receive and City may grant credit towards the DIF Fees for construction of eligible public improvements or facilities as contained in and in accordance with the Nexus Reports; *provided, however*, the amount of the fee credit or reimbursement shall not exceed the amount of the DIF Fees assessed for which the fee credit or reimbursement is granted, unless the City Council also approves a Reimbursement Agreement; and

WHEREAS, City and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely construction and completion of the Public Improvements, (2) to ensure that construction of the Public Improvements is undertaken in accordance with the Plans and Specifications, and (3) to compensate Developer for the actual costs to construct the Public Improvements by granting credits (or reimbursements) toward Developer's obligation to pay the Regional Traffic Impact Fee ("**Regional Traffic Fee**") and the Storm Drain Facilities Fee ("**Storm Drain Fee**").

NOW, THEREFORE, for the purposes set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and City hereby agree as follows:

## **TERMS**

1.0 **Incorporation of Recitals.** The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 **Construction of Improvements.** Developer shall construct or have constructed, at its own cost and expense, the Public Improvements in accordance with the Plans and Specifications. Developer (or its contractors) shall provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the Public Improvements.

2.1 **Pre-approval of Plans and Specifications.** Developer is prohibited from commencing work on any portion of the Public Improvements until all Plans and Specifications for the Public Improvements have been submitted to and approved by City. Approval by City shall not relieve Developer from ensuring that all Public Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 **Permits and Notices.** Prior to commencing any work, Developer (through its contractors) shall, at its sole cost and expense, obtain all necessary permits and

licenses and give all necessary and incidental notices required for the lawful construction of the Public Improvements and performance of Developer's obligations under this Agreement. Developer (through its contractors) shall conduct the work in full compliance with the regulations, rules, and other requirements contained in this Agreement, any applicable law, and any permit or license issued to Developer.

2.3 **Public Works Requirements.** Developer shall ensure that the construction standards for the Public Improvements is undertaken as if such Public Improvements were constructed under the direction and authority of City. Thus, without limitation, Developer shall comply or, in some case as noted has complied, with the following requirements with respect to the construction of the Public Improvements:

(a) Developer has obtained bids for the construction of the Public Improvements in a manner which has been approved by the City Engineer. The contract or contracts for the construction of the Public Improvements have been awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Public Improvements.

(b) Developer's General Contractor for the construction of the Public Improvement shall require that the General Contractor pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of City with respect to the construction of its public works projects or as otherwise directed by the City Engineer.

(c) All contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Public Improvements which they will construct in conformance with Section 13.0 of this Agreement.

2.4 **Compliance with Plans and Specifications.** The Public Improvements shall be completed in accordance with the Plans and Specifications as approved by City.

2.5 **Standard of Performance.** Developer and its contractors shall perform all work required, constructing the Public Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 **Alterations to Public Improvements.** All work shall be done and the Public Improvements completed as shown on the Plans and Specifications, and any subsequent alterations thereto mutually agreed upon by City and Developer. If Developer desires to make any alterations to the Plans and Specifications, it shall provide written notice to City of such

proposed alterations. City shall have ten (10) business days after receipt of such written notice to approve or disapprove such alterations, which approval shall not be unreasonably withheld, conditioned or delayed. If City fails to provide written notice to Developer of its approval or disapproval of the alterations within such ten (10) business day period, City will be deemed to have approved such alterations to the Plans and Specifications. Any and all alterations in the Plans and Specifications and the Public Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

**3.0 Maintenance of Public Improvements.** City shall not be responsible or liable for the maintenance or care of the Public Improvements until such Public Improvements are accepted by City. City shall exercise no control over the Public Improvements until accepted. Developer shall have no obligation to make the Public Improvements available for public use at any time before the Public Improvements are accepted by City. Any use by any person of the Public Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to City's acceptance of the Public Improvements. Developer shall maintain all of the Public Improvements in a state of good repair until they are completed by Developer and accepted by City, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Public Improvements or their condition prior to acceptance, except to the extent such damage or injury is caused by the negligence or willful misconduct of City, its elected officials, employees and/or agents.

**4.0 Fees and Charges.** Developer shall, at its sole cost and expense, pay all fees, charges, and taxes arising out of the construction of the Public Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by City.

**5.0 City/County Inspection of Public Improvements.** Developer shall, at its sole cost and expense, and at all times during construction of the Public Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Public Improvements and areas where construction of the Public Improvements is occurring or will occur.

**6.0 Liens.** Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the California Civil Code with respect to the Public Improvements, Developer shall provide to City such evidence or proof as City shall reasonably require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the Public Improvements have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the time for the recording of claims of liens, Developer may elect to provide to City a title insurance policy or other security reasonably acceptable to City guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 **Acceptance of Public Improvements; As-Built or Record Drawings.** If the Public Improvements are completed by Developer in accordance with the Plans and Specifications, City shall be authorized to accept the Public Improvements. City may, in its reasonable discretion, accept fully completed portions of the Public Improvements prior to such time as all of the Public Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Public Improvements. Upon the total or partial acceptance of the Public Improvements by City, Developer shall file with the Recorder's Office of the County of San Bernardino a notice of completion for the accepted Public Improvements in accordance with California Civil Code Section 8182 ("**Notice of Completion**"), at which time the accepted Public Improvements shall become the sole and exclusive property of City without any payment therefor. Notwithstanding the foregoing, City may not accept any Public Improvements (or the applicable portion thereof) unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the City for all such Public Improvements (or the applicable portion thereof). The drawings shall be certified and shall reflect the condition of the Public Improvements as constructed, with all changes incorporated therein.

8.0 **Warranty and Guarantee.** Developer hereby warrants and guarantees all the Public Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the Public Improvements (the "**Warranty**"), for a period of one (1) year following completion of the work and acceptance by City ("**Warranty Period**"). During the Warranty Period, Developer shall repair, replace, or reconstruct any defective or otherwise materially unsatisfactory portion of the Public Improvements, in accordance with the Plans and Specifications. All repairs, replacements, or reconstruction during the Warranty Period shall be at the sole cost and expense of Developer and its surety. As to any Public Improvements which have been repaired, replaced, or reconstructed during the Warranty Period, Developer and its surety hereby agree to provide a warranty for one (1) year period following City acceptance of the repaired, replaced, or reconstructed Public Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any Public Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 **Administrative Costs.** If Developer fails to construct and install all or any part of the Public Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to City for all administrative expenses, fees, and costs, including reasonable attorneys' fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 **Default; Notice; Remedies.**

10.1 **Notice.** If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if City determines there is a violation of any federal, state, or local law, ordinance, regulation or code, City may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("**Notice**"). Developer shall substantially commence the work required to remedy the default or

violation within five (5) business days after delivery of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Developer shall substantially commence the required work within one (1) business day thereof.

10.2 **Failure to Remedy; City/County Action.** If the work required to remedy the noticed default or violation is not commenced within the time required under Section 10.1 of this Agreement and diligently prosecuted to completion, City may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its reasonable discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost and expense of Developer and its surety, without the necessity of giving any further notice to Developer or surety. In the event City elects to complete or arrange for completion of the remaining work and the Public Improvements, City may require all work by Developer or its surety to cease in order to allow adequate coordination by City.

10.3 **Other Remedies.** No action by City pursuant to this Section 10.0 et seq. of this Agreement shall prohibit City from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. City may exercise its rights and remedies independently or cumulatively, and City may pursue inconsistent remedies. City may institute an action for damages, injunctive relief, or specific performance.

11.0 **Security; Surety Bonds.** Prior to the commencement of any work on the Public Improvements, Developer or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below or, at City's request, in lieu of surety bonds, a letter of credit or letters of credit by a banking institution with a rating to be approved by City and terms to be approved by City ("**Security**"). The amount of the Security shall be based on the estimated actual costs (the "**Estimated Costs**") to construct the Public Improvements, as determined by City after Developer has awarded a contract for construction of the Public Improvements to the lowest responsive and responsible bidder in accordance with this Agreement. If City determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by City. Developer's compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement.

11.1 **Performance Bond.** To guarantee the faithful performance of Developer's obligations with respect to the Public Improvements and all the provisions of this Agreement, to protect City if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, Developer or its contractor shall provide City a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as the Public Improvements are partially accepted by City, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than twenty percent (20%) of the Estimated Costs. All security provided under this section shall be released by the City immediately upon the acceptance of the Public Improvements by the City, provided that Developer is not in default on any provision of this Agreement.

11.2 **Labor & Material Bond.** To secure payment to the contractors, subcontractors, laborers, material suppliers, and other persons furnishing labor, materials, or equipment for performance of the construction of the Public Improvements and this Agreement, Developer or its contractor shall provide City a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by City immediately upon the acceptance of the Public Improvements by the City.

11.3 **Maintenance and Warranty Bond.** To secure the faithful performance of Developer's obligations under Section 8 of this Agreement during the Warranty Period and the payment to the contractors, subcontractors, laborers, material suppliers, and other persons furnishing labor, materials, or equipment for performance of such warranty work on the Public Improvements under this Agreement, Developer or its contractor shall provide City a maintenance and warranty bond in an amount which sum shall not be less than ten percent (10%) of the Estimated Costs. The security provided under this section shall be released by City immediately after (a) the expiration of the Warranty Period, and (b) City's inspection of the Public Improvements.

11.4 **Additional Requirements.** The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorneys' fees and costs, incurred by City in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the Public Improvements, or the Plans and Specifications shall in any way affect its obligation on the Security.

11.5 **Evidence and Incorporation of Security.** Evidence of the Security shall be provided on the forms set forth in Exhibit D unless other forms are deemed acceptable by City, and when such forms are completed to the satisfaction of City, the forms and evidence of the Security shall be attached hereto as Exhibit D and incorporated herein by this reference.

12.0 **Indemnification.** Developer shall defend, indemnify, and hold harmless City, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence or willful misconduct of Developer in connection with the performance of this Agreement ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of City as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

### 13.0 **Insurance.**

13.1 **Types; Amounts.** Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("**Required Insurance**"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply on a per Project basis.

13.1.1 **General Liability.** Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 **Business Automobile Liability.** Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 **Workers' Compensation.** Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 **Professional Liability.** For any consultant or other professional who will engineer or design the Public Improvements, liability insurance for errors and omissions with limits not less than One Million Dollars (\$1,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Public Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 **Deductibles.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 **Additional Insured; Separation of Insureds.** The Required Insurance, except for the professional liability and workers' compensation insurance, shall name City as an additional insured with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, or agents.

13.4 **Primary Insurance; Waiver of Subrogation.** The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering City, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against City in connection with any damage or harm covered by such policy.



13.5 **Certificates; Verification.** Developer and its contractors shall furnish City with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by City before work pursuant to this Agreement can begin. City reserves the right to require complete, certified copies of all Required Insurance policies, at any time.

13.6 **Term; Cancellation Notice.** Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to City.

13.7 **Insurer Rating.** Unless approved in writing by City, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A-" and FSC-VIII.

#### 14.0 **Fees Credit and Reimbursement.**

14.1 **Regional Traffic Fee Obligation.** City and Developer acknowledge that as of the date of this Agreement, Developer has an obligation to pay City a total amount of One Million One Hundred and Twenty-Three Thousand Ninety-Six and 80/100ths Dollars (\$1,123,096.80) for the Regional Traffic Fee (the "**Regional Traffic Fee Obligation**"), which has already been paid by Developer to City as of April 22, 2019.

14.1.1 **Reimbursement for Regional Traffic Fee Obligation & Estimated Regional Traffic Fee Credit/Reimbursement.** As noted above, Developer has already paid One Million One Hundred and Twenty-Three Thousand Ninety-Six and 80/100ths Dollars (\$1,123,096.80) toward the Regional Traffic Fee Obligation. As set forth in **Exhibit E** attached hereto and incorporated herein, the Regional Traffic Fee credit/reimbursement for the Valley Boulevard Improvements is estimated to be One Million One Hundred Seventy-One Thousand Four Hundred Twenty-Two and no/100ths Dollars (\$1,171,422.00)(the "**Estimated Regional Traffic Fee Credit/Reimbursement**"). Accordingly, City hereby agrees to reimburse Developer immediately for One Million One Hundred and Twenty-Three Thousand Ninety-Six and 80/100ths Dollars (\$1,123,096.80) for the Regional Traffic Fee previously paid by Developer. Such reimbursement to Developer shall be made by City via wire transfer of immediately available funds pursuant to the wire instructions delivered to City via secure email upon request from City to Developer. The actual credit against the Regional Traffic Fee is defined and shall be calculated as provided in Section 14.3 of this Agreement.

14.2 **Storm Drain Fee Obligation.** City and Developer acknowledge that as of the date of this Agreement, Developer has an obligation to pay to City the total amount of Eight Hundred and One Thousand Three Hundred Sixty Five and 67/100ths Dollars (\$801,365.67) for the Storm Drain Fee (the "**Storm Drain Fee Obligation**"), which has already been paid by Developer to City as of April 22, 2019.

14.2.1 **Reimbursement for Storm Drain Fee Obligation & Estimated Storm Drain Fee Credit/Reimbursement.** As noted above, Developer has already paid Eight Hundred and One Thousand Three Hundred Sixty Five and 67/100ths Dollars (\$801,365.67) toward the Storm Drain Fee Obligation. As set forth in **Exhibit E**, the Storm Drain Fee credit/reimbursement for the Valley Storm Drain is estimated to be Three Hundred Forty-Eight Thousand Eight Hundred Nineteen and no/100ths Dollars (\$348,819.00) (the "**Estimated Storm Drain Fee Credit/Reimbursement**"). Accordingly, City hereby agrees to reimburse Developer immediately for Three Hundred Forty-Eight Thousand Eight Hundred Nineteen and no/100ths Dollars (\$348,819.00) against the Storm Drain Fee previously paid by Developer. Such reimbursement to Developer shall be made by City via wire transfer of immediately available funds pursuant to the wire instructions delivered to City via secure email upon request from City to Developer. The actual credit against the Storm Drain Fee is defined and shall be calculated as provided in **Section 14.3** of this Agreement.

14.3 **Reconciliation; Final Offset against Outstanding Fee Obligations.** Upon completion of the Public Improvements by Developer, Developer shall submit to City Engineer such information as City Engineer may require to calculate and verify the total eligible and actual costs incurred by Developer to construct the Public Improvements ("**Verified Construction Costs**"). For the avoidance of doubt, the Verified Construction Costs shall include a general contractor's construction management fee not to exceed four percent (4%) and insurance/general conditions, which shall not be included in the Soft Costs (specified in **Section 14.4.2** of this Agreement).

If (a) the Verified Construction Costs for the Valley Boulevard Improvements are less than the Regional Traffic Fee Obligation and/or (b) if the Verified Construction Costs for the Valley Storm Drain are less than the Storm Drain Fee Obligation, then Developer shall pay an amount to City to fully satisfy Developer's Regional Traffic Fee Obligation or Developer's Storm Drain Fee Obligation, as applicable, within thirty (30) days. If the Verified Construction Costs for the Valley Storm Drain exceed the Storm Drain Fee Obligation, City shall reimburse Developer for such applicable excess amounts within thirty (30) days, subject to the fee credit limits contained in **Section 14.4**. If the Verified Construction Costs for the Valley Boulevard Improvements exceed the Regional Traffic Fee Obligation, City shall reimburse Developer for such applicable excess amounts in accordance with **Section 14.5** below, subject to the fee credit limits contained in **Section 14.4**.

14.4 **Fee Credit Limits.** Notwithstanding anything to the contrary in this **Section 14**, the following limits apply with respect to credit and reimbursement of DIF Fees.

14.4.1. **DIF Fee Categories.** Developer acknowledges that DIF Fees are imposed in various separate categories to fund specific public facilities. Final reconciliation against DIF Fees may only be applied for eligible improvements identified in the specific DIF category. As an example, if Developer constructs a street improvement that is eligible for credit against the Regional Traffic Fee, Developer shall not receive credit against any other Development Impact Fee (e.g., Storm Drain Fee) for such street improvement.

14.4.2 **Soft Costs.** City shall reimburse Developer for soft costs for the Public Improvements in an amount up to fifteen percent (15%) of the Verified Construction Costs. Such "**soft costs**" may include but shall not be limited to the reasonable soft costs

incurred by Developer related to the Public Improvements including indirect costs of construction, including professional engineering and design services, Developer's management fee, testing and inspection fees and costs, administrative costs, permits, and plan check fees. In order for soft costs to be reimbursable to Developer pursuant to this Agreement, City must be able to verify that such soft costs are specifically attributable to the specified Public Improvement(s) for which reimbursement is being made, by reference to separate subcontract(s) or by another reasonable means approved by City. The total amount of the soft costs reimbursable to Developer shall not exceed fifteen percent (15%) of the Verified Construction Costs.

14.5 **Availability of Unencumbered Impact Fees.** In the event that the Verified Construction Costs for the Valley Boulevard Improvements exceed the Regional Traffic Fee Obligation, City shall have an obligation to reimburse Developer, subject to the provisions of this Section 14.5. If at the time such reimbursement obligation accrues, there are insufficient unencumbered funds in City's account for such reimbursement, then City may elect, exercisable by written notice delivered to Developer (a "**Deferral Notice**"), to defer payment of such reimbursement until the time funds become available in City's account for such reimbursements, which Deferral Notice shall set forth the amount of such deferred reimbursement (the "**Deferral Amount**"), and shall set forth City's continuing obligation to reimburse Developer for the Deferral Amount. The Deferral Amount shall not accrue interest. Upon written request from Developer from time to time, City shall execute a statement prepared by Developer acknowledging the then outstanding Deferral Amount as of the date of such request (a "**Deferral Amount Statement**"). Developer shall have no right to receive the Deferral Amount unless and until all of the following are met: (a) the Valley Boulevard Improvements are completed and accepted in accordance with the requirements of Section 7 above, (b) City has sufficient funds in City's Regional Traffic Fee account to pay the Deferral Amount in accordance with the then priority schedule for reimbursements from such account, and (c) the City Council appropriates such funds to pay the Deferral Amount in accordance with the priority schedule for City Council approved projects. City Council may appropriate the funds by resolution. Developer acknowledges and agrees that as of the date of this Agreement, City has established the priority schedule set forth in Exhibit F attached hereto, which sets forth City current obligations with respect to Regional Traffic Fee reimbursement obligations. City agrees that no reimbursements shall be given priority over City's reimbursement obligation with respect to the Deferral Amount beyond that set forth in Exhibit F after the execution of this Agreement.

15.0 **Miscellaneous.**

15.1 **Assignment.** Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("**Assignment**"). Developer and such purchaser and assignee ("**Assignee**") shall provide to City such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property, provided that City hereby agrees that a copy of the deed or conveyance document shall be sufficient proof.

15.2 **Relationship Between the Parties.** The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of City.

15.3 **Authority to Enter Agreement.** Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 **Notices.** All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To City:	City of Rialto 150 S. Palm Avenue Rialto, CA 92376 Attn: City Administrator Fax No. (909) 820-2527
To Developer:	Liberty Property Limited Partnership 650 East Swedesford Road, Suite 400 Wayne, PA 19087 Attn: Erin C. Plourde Phone No.: (610) 648-1730 E-Mail: eplourde@libertyproperty.com

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.5 **Cooperation; Further Acts.** The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.6 **Construction; References; Captions.** It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to "**Developer**" include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to "**City**" include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.7 **Amendment; Modification.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.8 **Waiver.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit,

privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.9 **Binding Effect.** Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.10 **No Third Party Beneficiaries.** There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.11 **Invalidity; Severability.** If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.12 **Consent to Jurisdiction and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of San Bernardino, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.13 **Time is of the Essence.** Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.14 **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.15 **Entire Agreement.** This Agreement contains the entire agreement between City and Developer and supersedes any prior oral or written statements or agreements between City and Developer.

**[SIGNATURES OF PARTIES ON NEXT PAGE]**

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

**DEVELOPER:**

**LIBERTY PROPERTY LIMITED PARTNERSHIP,**  
a Pennsylvania limited partnership

By: **LIBERTY PROPERTY TRUST**  
Its sole general partner

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

**CITY:**

**CITY OF RIALTO,**  
a California municipal corporation

By: \_\_\_\_\_  
Deborah Robertson, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Barbara McGee, City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Fred Galante, Esq., City Attorney

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of Rialto, County of San Bernardino, State of California, described as follows:

**PARCEL 1:**

THE EAST 200 FEET OF THE WEST 1/2 OF LOT 343, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED DATED FEBRUARY 10, 1965 AND RECORDED JULY 1, 1965, IN BOOK 6422, PAGE 891, OF OFFICIAL RECORDS.

**PARCEL 2:**

THE WEST 1/2 OF LOT 343, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY; PROPERTY HEREIN DESCRIBED LIES WITHIN THE BOUNDARIES OF THE RIALTO IRRIGATION DISTRICT.

EXCEPTING THEREFROM THE EAST 200 FEET.

ALSO EXCEPT THAT PORTION DEEDED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 4, 1965, IN BOOK 6342, PAGE 946, OF OFFICIAL RECORDS.

**PARCEL 3:**

THAT PORTION OF FARM LOT 343, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH TO THE SOUTHEAST CORNER THEREOF; THENCE WEST 360 FEET; THENCE NORTH TO THE NORTH LINE OF SAID LOT; THENCE EAST 360 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE WEST 65 FEET.

ALSO EXCEPT THAT PORTION DEEDED TO THE STATE BY DEED RECORDED MAY 3, 1965, IN BOOK 6382, PAGE 694, OF OFFICIAL RECORDS.

**PARCEL 4:**

THE EAST 1/2 OF LOT 343, ACCORDING TO MAP OF SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 11 OF MAPS, PAGE 12, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THE EAST 360 FEET THEREOF.

ALSO EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 9, 1965, IN BOOK 6367, PAGE 572, OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID EAST 1/2 OF LOT 343; THENCE ALONG THE SOUTH LINE OF SAID LOT 343, NORTH 89° 31' 58" EAST 269.81 FEET TO THE WEST LINE OF THE EAST 360 FEET OF SAID EAST 1/2 OF LOT 343; THENCE ALONG SAID WEST LINE NORTH 0° 31' 53" WEST 34.51 FEET; THENCE SOUTH 88° 02' 30" WEST 269.89 FEET TO THE WEST LINE OF SAID EAST 1/2, DISTANT ALONG SAID WEST LINE NORTH 0° 31' 49" WEST 27.49 FEET FROM THE POINT OF BEGINNING; THENCE ALONG SAID WEST LINE SOUTH 0° 31' 49" EAST 27.49 FEET TO THE POINT OF BEGINNING.

**PARCEL 5:**

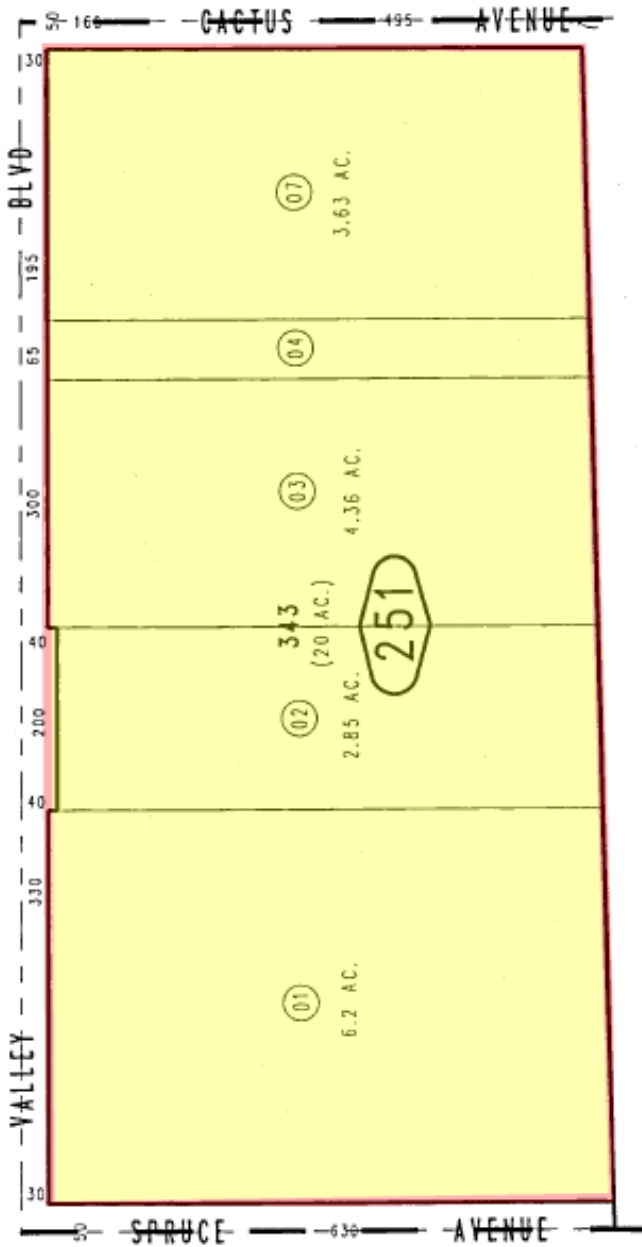
THE WEST 65 FEET OF THE EAST 360 FEET OF LOT 343, ACCORDING TO MAP SHOWING SUBDIVISION OF LANDS BELONGING TO THE SEMI-TROPIC LAND AND WATER CO., IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 12 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM THAT PORTION CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED MARCH 23, 1965 IN BOOK 6355, PAGE 7, OF OFFICIAL RECORDS.

**APNs:           0253-251-01  
                  0253-251-02  
                  0253-251-03  
                  0253-251-04  
                  0253-251-07**



15



24

T.R.A. STATE  
T.R.A.

SEE PAGE 24

S. P. R. R.

0254  
24

0254  
09

**EXHIBIT B**

**PLANS AND SPECIFICATIONS**

[ATTACHED BEHIND THIS PAGE]

## EXHIBIT C

### DIF FEES

#### EXHIBIT C TO FEE CREDIT AGREEMENT

I-10 Valley Logistics Center

9/4/2019

Impact Fee Category	Agency	Unit	Fee/Unit	Total Fee Assessed <sup>1</sup>
Regional Traffic Fees	City of Rialto	401.106 tsf	\$2,800.00	\$1,123,096.80
Storm Drain Facilities <sup>1</sup>	City of Rialto	19.162 ac	\$34,794.63	
Storm Drain Facilities <sup>1</sup>	City of Rialto	401.106 tsf	\$1,997.89	\$801,365.67
<b>Total - City of Rialto DIF Fees Due</b>				<b>\$1,924,462.47</b>

**Notes:**

<sup>1</sup>Storm Drain Facilities Fee is assessed upon the higher of the Square Footage and Acreage Rate.

**EXHIBIT D**

**FORMS FOR SECURITY**

[ATTACHED BEHIND THIS PAGE]

Bond No. \_\_\_\_\_  
Premium: \_\_\_\_\_

**CITY OF RIALTO  
FAITHFUL PERFORMANCE BOND**

**WHEREAS**, THE CITY OF RIALTO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California (hereinafter designated as the "**City**"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter designated as the "**Principal**"), have entered into a Precise Plan of Design No. \_\_\_\_\_ (the "**Agreement**"), whereby Principal agrees to install and complete certain designated public improvements as set forth in the Conditions of Approval letter for said Agreement dated \_\_\_\_\_, 20\_\_\_\_, is hereby referred to and made a part hereof; and

**WHEREAS**, Principal is required under the terms of said Agreement to furnish a bond for the faithful performance of said Agreement.

**NOW, THEREFORE**, we, the Principal and \_\_\_\_\_, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, as Surety (the "**Surety**"), are held firmly bound unto the City in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the Agreement, and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligations on this Faithful Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work or to the specifications.

**IN WITNESS WHEREOF**, this Faithful Performance Bond has been duly executed by the Principal and the Surety above named on \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** \_\_\_\_\_

By: **SEE ATTACHED SIGNATURE PAGE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(This Faithful Performance Bond must be signed in the above space by one that can show signature authority to bind the Principal for purposes of this Faithful Performance Bond.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of \_\_\_\_\_ }

County of \_\_\_\_\_ }

On \_\_\_\_\_, 201\_, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature: \_\_\_\_\_

(Seal)

**PRINCIPAL SIGNATURE PAGE**  
**TO**  
**CITY OF RIALTO FAITHFUL PERFORMANCE BOND**  
**Bond No. \_\_\_\_\_**  
**\_\_\_\_\_, 20\_\_**

[Add signature Block]

**SURETY SIGNATURE PAGE**  
**TO**  
**CITY OF RIALTO FAITHFUL PERFORMANCE BOND**  
**Bond No. \_\_\_\_\_**  
**\_\_\_\_\_, 20\_\_**

**SURETY:** [Add Signature Block]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, 201\_, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature: \_\_\_\_\_ (Seal)



**IMPORTANT:** Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code, and the Surety, if required, must also appear on the Treasury Department's most current list (Circular 570, as amended). **THIS IS A REQUIRED FORM.**

Any claims under this Bond may be addressed to:

(Name and Address of Surety)

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(Name and Address of Agent or Representative  
for service of process in California if different  
than above)

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Telephone Number of Surety

(\_\_\_\_) \_\_\_\_ - \_\_\_\_

Telephone Number of Agent or Representative  
for service of process in California

(\_\_\_\_) \_\_\_\_ - \_\_\_\_

Bond No. \_\_\_\_\_  
Premium: \_\_\_\_\_

**CITY OF RIALTO  
LABOR & MATERIALS (PAYMENT) BOND**

**WHEREAS**, THE CITY OF RIALTO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California (hereinafter designated as the "**City**"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter designated as the "**Principal**"), have entered into Precise Plan of Design No. \_\_\_\_\_ (the "**Agreement**"), whereby Principal agrees to install and complete certain designated public improvements set forth in the Conditions of Approval letter for said Agreement dated \_\_\_\_\_, 20\_\_, is hereby referred to and made a part hereof; and

**WHEREAS**, under the terms of the Agreement, Principal is required before entering upon the performance of the work to be undertaken to file a good and sufficient payment bond with the City to secure claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

**NOW, THEREFORE**, Principal and \_\_\_\_\_, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, as Surety (the "**Surety**"), are held firmly bound unto the City and all contractors, subcontractors, laborers, material suppliers and other persons employed in the performance of the Agreement, and referred to in the aforesaid Civil Code in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this Labor & Materials (Payment) Bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this Labor & Materials (Payment) Bond be fully performed, then the obligation shall become null and void, and otherwise it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or the specifications accompanying the same, shall in manner affect its obligations on this Labor & Materials (Payment) Bond, and it does hereby waive notice of any such change, extension, alteration or addition.

**IN WITNESS WHEREOF**, this Labor & Material (Payment) Bond has been duly executed by the Principal and the Surety above named on \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** \_\_\_\_\_

By: **SEE ATTACHED SIGNATURE PAGE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(This Labor & Materials (Payment) Bond must be signed in the above space by one that can show signature authority to bind the Principal for purposes of this Labor & Materials (Payment) Bond.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of \_\_\_\_\_ }

County of \_\_\_\_\_ }

On \_\_\_\_\_, 201\_\_, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature: \_\_\_\_\_

(Seal)

**PRINCIPAL SIGNATURE PAGE**  
**TO**  
**CITY OF RIALTO LABOR & MATERIALS (PAYMENT) BOND**  
**Bond No. \_\_\_\_\_**  
**\_\_\_\_\_, 20\_\_**

[Add signature Block]

**SURETY SIGNATURE PAGE**  
**TO**  
**CITY OF RIALTO LABOR & MATERIALS (PAYMENT) BOND**  
**Bond No.** \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

**SURETY:** [Add Signature Block]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, 201\_, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**IMPORTANT:** Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code, and the Surety, if required, must also appear on the Treasury Department's most current list (Circular 570, as amended). **THIS IS A REQUIRED FORM.**

Any claims under this Bond may be addressed to:

(Name and Address of Surety)

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(Name and Address of Agent or Representative  
for service of process in California if different  
than above)

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Telephone Number of Surety

(\_\_\_\_) \_\_\_\_ - \_\_\_\_

Telephone Number of Agent or Representative  
for service of process in California

(\_\_\_\_) \_\_\_\_ - \_\_\_\_

Bond No. \_\_\_\_\_  
Premium: \_\_\_\_\_

**CITY OF RIALTO  
MAINTENANCE AND WARRANTY BOND**

**WHEREAS**, THE CITY OF RIALTO, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California (hereinafter designated as the "**City**"), and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter designated as the "**Principal**"), have entered into Precise Plan of Design No. \_\_\_\_\_ (the "**Agreement**"), whereby Principal agrees to install and complete certain designated public improvements as set forth in the Conditions of Approval letter for said Agreement dated \_\_\_\_\_, 20\_\_\_\_, is hereby referred to and made a part hereof; and

**WHEREAS**, Principal is required under the terms of the Agreement to maintain and guarantee the costs or repair and/or replacement of defective materials or defective workmanship in the improvements constructed pursuant to the Agreement, which guarantee shall remain in effect for a period of one (1) year from the date of acceptance of the work by the City, and to furnish a Maintenance and Warranty Bond for the faithful performance of the Agreement, and the payment of all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of any such maintenance and warranty work.

**WHEREAS**, Principal has completed the work required by the Agreement, and the City has accepted, or substantially concurrently herewith is accepting, the work, subject to the requirement of delivery of this obligation.

**NOW, THEREFORE**, we, the Principal and \_\_\_\_\_, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California, as Surety (the "**Surety**"), are held and firmly bound unto the City, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the Agreement, for one (1) year from and after the date of completion and acceptance of the work required by the Agreement, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.\_\_) lawful money of the United States, for replacement and repair of any and all defective materials or defective workmanship within said improvements, and the payment of all materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with any such maintenance or warranty, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

It is hereby expressly stipulated and agreed that this Maintenance and Warranty Bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The condition of this obligation is such that if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Agreement having been used or incorporated in any part of the work performed under the Agreement, which shall have appeared or been discovered within said one-year period from final acceptance of the work done under the Agreement, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligations on this Maintenance and Warranty Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work or to the specifications.

[Signatures on next page]



**IN WITNESS WHEREOF**, this Maintenance and Warranty Bond has been duly executed by the Principal and the Surety above named on \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** \_\_\_\_\_

By: **SEE ATTACHED SIGNATURE PAGE**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(This Maintenance and Warranty Bond must be signed in the above space by one that can show signature authority to bind the Principal for purposes of this Maintenance and Warranty Bond.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
--

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, 201\_, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature: \_\_\_\_\_

(Seal)

**PRINCIPAL SIGNATURE PAGE**  
**TO**  
**CITY OF RIALTO MAINTENANCE AND WARRANTY BOND**  
**Bond No. \_\_\_\_\_**  
**\_\_\_\_\_, 20\_\_**

[Add Signature Block]

**SURETY SIGNATURE PAGE**  
**TO**  
**CITY OF RIALTO MAINTENANCE AND WARRANTY BOND**

**Bond No.** \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

**SURETY:** [Add Signature Block]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ }

On \_\_\_\_\_, 201\_\_, before me, \_\_\_\_\_, a Notary Public for the State of California, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under **PENALTY OF PERJURY** under the laws of the State of California that the foregoing paragraph is true and correct.

**WITNESS** my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**IMPORTANT:** Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code, and the Surety, if required, must also appear on the Treasury Department's most current list (Circular 570, as amended). **THIS IS A REQUIRED FORM.**

Any claims under this Bond may be addressed to:

(Name and Address of Surety)

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(Name and Address of Agent or Representative  
for service of process in California if different  
than above)

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Telephone Number of Surety

(\_\_\_\_) \_\_\_\_ - \_\_\_\_

Telephone Number of Agent or Representative  
for service of process in California

(\_\_\_\_) \_\_\_\_ - \_\_\_\_

## EXHIBIT "E"

### ESTIMATED FEE CREDITS

#### 1. VALLEY BOULEVARD IMPROVEMENTS

Description of Improvements:	% Fee-Credit Eligible:
Install Traffic Signal(s) at Valley Boulevard & Spruce Avenue and all related improvements <sup>1</sup>	100% <sup>2</sup>
Modify Traffic Signal at Valley Boulevard & Cactus Avenue and all related improvements <sup>1</sup>	100%
Valley Boulevard (between Spruce Avenue and Cactus Avenue): Sidewalk, Curb & Gutter, Street Lights, and Street Improvements up to centerline of Valley Boulevard and all related improvements <sup>1</sup>	100%

Estimated Costs:	Amount:
1. Construction Costs	\$1,008,139
2. Permits & Fees	\$14,259
3. Design Costs	\$103,970
4. Developer's Management Fee (4%)	\$45,054
<b>Total – Estimated Costs for Valley Boulevard Improvements</b>	<b>\$1,171,422</b>

#### Notes:

<sup>1</sup>Due to the long lead times for fabrication required, the Traffic Signal improvements at Valley Boulevard & Spruce Avenue and Valley Boulevard & Cactus Avenue, and the Street Light Poles along Valley Boulevard have been pre-ordered/prepaid by Developer. These prepaid improvements shall still be deemed as fee-credit eligible at the percentages stated above.

<sup>2</sup> Twenty-five percent (25%) of such credit is subject to the collection of reimbursements from the County of San Bernardino on or before the date which is the fifth (5<sup>th</sup>) anniversary of the date of completion of such Valley Boulevard Improvements; *provided, however*, such reimbursements shall be limited to reimbursements from the County of San Bernardino that are with respect to Valley Boulevard Improvements completed by Developer and with respect to the Valley Boulevard and Spruce Avenue intersection. City shall only be required to use good faith efforts to secure such reimbursement from the County of San Bernardino and to reimburse Developer only the actual amount City receives from the County of San Bernardino. In no event shall City's share of any required reimbursement exceed seventy-five percent (75%) of Fee-Credit Eligible costs.

#### 2. VALLEY STORM DRAIN

Description of Improvements:	% Fee-Credit Eligible:
Public Storm Drain Line within Valley Boulevard east of Spruce Avenue connecting to existing 42" storm drain line within centerline of Cactus Avenue and all related improvements.	100%

Estimated Costs:	Amount:
1. Construction Costs	\$287,128
2. Permits & Fees	\$11,636
3. Design Costs	\$36,639

4. Developer's Management Fee (4%)	\$13,416
<b>Total - Estimated Costs for Valley Storm Drain</b>	<b>\$348,819</b>

# EXHIBIT "F"

## REGIONAL TRAFFIC FEE FUND PRIORITY SCHEDULE

### Fund 250 -- Regional Traffic Development Impact Fee Obligations

			Date of City Council Approval	Project Type	Project Credit Amount	Project Reimburse Amount	(Note 2) Total Fee Credits/Reimb
CIP Project #	Project Description						
Sources of Funding							
	Beginning Cash Balance (July 1, 2018)(unaudited)					\$15,494,607	
	FY19 Cash Received (as of June 26, 2019)					\$8,015,810	
	Other Cash (Alder Project Bond Fund)					<u>\$450,000</u>	
	Total Cash Balance (as of June 26, 2019)(unaudited)					\$23,960,417	
Uses of Funding							
1	140802	Valley/Cactus/Linden Widening	9/24/2013	CIP	\$0	\$245,000	\$245,000
2	140816	Traffic Analysis -- Iteris	2/5/2014	CIP	\$0	\$87,000	\$87,000
3	140813	Riverside/UPRR Bridge	2/24/2014	CIP	\$0	\$4,400,000	\$4,400,000
4	140801-03	Alder Avenue Construction Phase II	5/12/2015	CIP	\$0	\$2,440,000	\$2,440,000
5	130703	Miro Way/Alder Avenue Traffic Signal	5/24/2015	CIP	\$0	\$526,000	\$526,000
6		Baseline Road between Linden & Maple (Panattoni III)	10/13/2015	DA/FCA	\$1,678,000	\$562,000	\$2,240,000
7		PSIP	2/9/2016	DA/FCA	\$369,000	\$0	\$369,000
8		State Pipe	11/8/2016	DA/FCA	\$100,000	\$0	\$100,000
9		Proficiency Capital	3/14/2017	DA/FCA	\$954,000	\$1,072,000	\$2,026,000
10	140809	Randall Ave. Widening	6/27/2017	CIP	\$0	\$2,100,000	\$2,100,000
11		Cedar/I-10 Interchange - Rialto Fair Share Obligation	9/25/2017	CIP	\$0	\$6,740,000	\$6,740,000
12		LHR RSP Improvements	11/21/2017	DA/FCA	\$2,394,000	\$3,329,000	\$5,723,000
13		Caprock III/Riverside Avenue Widening	12/12/2017	DA/FCA	\$345,000	\$0	\$345,000
14		Renaissance Plaza	1/23/2018	DA/FCA	\$1,180,000	\$0	\$1,180,000
15		Pegasus on South Riverside	6/26/2018	DA/FCA	\$224,000	\$0	\$224,000
16		Operon at Casmalia and Linden	8/28/2018	DA/FCA	\$378,000	\$1,018,000	\$1,396,000
17		Sirwin Enterprises	4/9/2019	DA/FCA	\$189,000	\$215,000	\$404,000
18		Christopher Homes	6/11/2019	DA/FCA	\$522,042	\$328,692	\$850,734
19		CDRE Holdings 11, LLC	7/23/2019	DA/FCA	\$279,997	\$259,549	\$539,546
20		Liberty Property Limited Partnership (Note 3)	9/10/2019	FCA	\$1,123,097	\$48,325	\$1,171,422
					=====	=====	=====
Total Uses of Funding					\$9,736,136	\$23,370,566	\$33,106,702
Surplus/(Deficit) of Current FY Cash (without impact of Note 1 and Note 2 below)						\$589,851	

#### Notes:

1. The City levies an administration fee each year equal to 5% of costs. These administration fees claim priority repayment.
2. The City reserves the right to increase the reimbursement for each project by up to 10% of total costs for contingencies, before paying lower ranking claims.
3. The Developer paid the Project Credit Amount to the City -- the City will reimburse the Project Credit Amount to Developer as if fee credit granted.