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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIALTO, STATE OF CALIFORNIA, AUTHORIZING THE ACTING CITY MANAGER TO EXECUTE A COMMUNITY BENEFITS AGREEMENT WITH HOWARD INDUSTRIAL PARTNERS, LLC FOR THE PEPPER AVENUE SPECIFIC PLAN AMENDMENT AND INDUSTRIAL DEVELOPMENT PROJECT (MASTER CASE NO. 2020-0014).

**WHEREAS**, the applicant, Howard Industrial Partners, LLC, proposes to develop and operate a 470,000 square foot industrial warehouse building (“Project”) on approximately 23.82 gross acres of land (APNs: 0264-201-29 & 0264-201-30) located on the east side of Pepper Avenue approximately 500 feet south of the SR-210 Freeway (“Site”); and

**WHEREAS**, in conjunction with the Project, the applicant has submitted Specific Plan Amendment No. 2020-0002 (“SPA No. 2020-0002”) to amend the Pepper Avenue Specific Plan, and SPA No. 2020-0002 is necessary to facilitate the Project; and

**WHEREAS**, the SPA No. 2020-0002 proposes an amended version of the Pepper Avenue Specific Plan with the following components:

- Provision of a new “Light Industrial” land use designation that will allow warehouses and logistics centers as permitted uses; and
- Provision of development standards for the new “Light Industrial” land use designation; and
- Dividing of Planning Area 1 into two (2) Planning Areas: Planning Area 1, encompassing 2.63 acres, and Planning Area 10, encompassing 11.64 acres; and
- Amending the land use designations of Planning Areas 2, 3, and 10 from Community Commercial with a development maximum of 476,650 square feet to the new Light Industrial land use designation with a development maximum of 735,185 square feet, the residential overlay on Planning Area 3 will be preserved in place; and
- Various traffic circulation improvements, such as provisions of new access points and new medians; and
- Various textual and graphic amendments related to the changes listed above; and

1       **WHEREAS**, in conjunction with the Project, the applicant submitted Conditional  
2 Development Permit No. 2020-0008 (“CDP No. 2020-0008”) to facilitate the development and  
3 operation of a 470,000 square foot industrial warehouse building on the Site, and CDP No. 2020-  
4 0008 is necessary to facilitate the Project; and

5       **WHEREAS**, in conjunction with the Project, the applicant has submitted Precise Plan of  
6 Design No. 2020-0014 (“PPD No. 2020-0014”) to facilitate the development of a 470,000 square foot  
7 industrial warehouse building and related improvements on the Site; and

8       **WHEREAS**, in conjunction with the Project, the applicant proposes to enter into a  
9 Community Benefits Agreement with the City of Rialto to memorialize additional public benefits that  
10 the applicant has voluntarily committed to provide as part of the Project; and

11       **WHEREAS**, the City Council is the approval authority for the Community Benefits  
12 Agreement.

13       **NOW, THEREFORE**, the City of Rialto does hereby find, determine, and resolve as  
14 follows:

15       **SECTION 1.** The City Council hereby specifically finds that all facts set forth in the  
16 Recitals of this Resolution are true and correct.

17       **SECTION 2.** The City Council and the applicant have agreed on the community benefits  
18 obligations, through the terms and conditions set forth in the Community Benefits Agreement  
19 attached hereto as Exhibit A (the “Agreement”).

20       **SECTION 3.** The City Council hereby authorizes the Acting City Manager to execute the  
21 Agreement with Howard Industrial Partners, LLC for the Pepper Avenue Specific Plan  
22 Amendment and Industrial Development Project (Master Case No. 2020-0014).

23       **SECTION 4.** The Mayor shall sign as to the passage and adoption of this resolution and  
24 thereupon the same shall take effect and be in force.

25       **PASSED, APPROVED AND ADOPTED** this    13th    day of    June, 2023.  
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\_\_\_\_\_  
DEBORAH ROBERTSON, MAYOR

**ATTEST:**

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BARBARA MCGEE, CITY CLERK

**APPROVED AS TO FORM:**

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ERIC S. VAIL, CITY ATTORNEY

1 STATE OF CALIFORNIA )  
2 COUNTY OF SAN BERNARDINO ) ss  
3 CITY OF RIALTO )  
4

5 I, BARBARA MCGEE, City Clerk of the City of Rialto, do hereby certify that the foregoing  
6 Resolution No. \_\_\_\_\_ was duly passed and adopted at a regular meeting of the City Council  
7 of the City of Rialto held on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

8 Upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember  
9 \_\_\_\_\_, the foregoing Resolution No. \_\_\_\_\_ was duly passed and adopted.

10 Vote on the motion:

11 AYES:

12 NOES:

13 ABSENT:

14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of  
15 Rialto this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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19 \_\_\_\_\_  
20 BARBARA MCGEE, CITY CLERK  
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Exhibit "A"

**MEMORANDUM OF UNDERSTANDING  
REGARDING COMMUNITY ENHANCEMENT CONTRIBUTIONS**

This Memorandum of Understanding Regarding Community Enhancement Contributions ("Agreement") is entered into as of May ~~31~~<sup>31<sup>st</sup></sup>, 2023 ("Effective Date"), by and between the City of Rialto, a municipal corporation ("City") and Howard Industrial Partners, LLC, a California limited liability company ("Developer"). City and Developer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement:

A. On April 25, 2023, the City Council certified a subsequent environmental impact report ("SEIR") analyzing the Project's impacts on the environment pursuant to the California Environmental Quality Act ("CEQA") and adopted a Mitigation and Monitoring Program, Findings of Fact, and a Statement of Overriding Considerations (Environmental Assessment Review No. 2020-0010). On that same date, the City Council approved Developer's application for a Specific Plan Amendment (SPA No. 2020-0002), Conditional Development Permit (CDP No. 2020-0008), and a Precise Plan of Design (PPD No. 2020-0014), to allow development of a 470,000 square-foot industrial warehouse building and associated facilities and improvements (the "Project") on approximately 23.82 acres located on the east side of Pepper Avenue approximately 500 feet south of State Route 210 Freeway in the County of San Bernardino, Accessor Parcel Numbers ("APNs") 0264-201-29, & 0264-201-30 ("Project Site").

B. As set forth in the Findings of Fact and the Statement of Overriding Considerations, the City Council finds the Project will result in substantial public benefits sufficient to outweigh its impacts on the environment.

C. The purpose of this Agreement is to memorialize additional public benefits that Developer has voluntarily committed to provide as part of the Project, which are not required by the EIR, and instead is above and beyond the Project's actual impacts on the environment. Specifically, Developer is offering to provide: (1) large lump sum community enhancement contributions totaling \$11,000,000 for the specific purpose of providing additional funding to the Rialto Unified School District for various programs, providing technical assistance and training programs to locally based inland empire Latina and women of color entrepreneurs and small business owners, funding additional commercial enforcement officers in the City police department, and constructing a new City police department facility; and (2) provide the land and funding to construct a sewer lift station, and the funding to construct a traffic signal, subject to reimbursement by the City pursuant to a reimbursement agreement. This Agreement constitutes Developer's full compliance with Condition of Approval No. 7 imposed on the City's approval of CDP No. 2020-0008 regarding entering into a Community Benefit Agreement with the City.

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3 D. The Agreement is in the best interests of the City, Developer, and the public, and for  
4 good and valuable consideration, the City and Developer desire to enter into the Agreement pursuant  
5 to the following provisions.

6 **AGREEMENT**

7 NOW, THEREFORE, based on the forgoing Recitals, which are incorporated by reference  
8 as if full set forth herein, the Parties hereto agree as follows:

9 1. **Lump Sum Community Enhancement Contributions.**

10 a. Upon the City's issuance of a building permit for the Project, Developer shall  
11 make a lump sum payment of five million dollars (\$5,000,000) to the Rialto Unified School District  
12 for the specific purpose of funding programs and infrastructure for the Rialto Unified School  
13 District.

14 b. Upon the City's issuance of a building permit for the Project, Developer shall  
15 make a lump sum payment of one million dollars (\$1,000,000) to the National Latina Business  
16 Women Association Inland Empire Institute.

17 c. Upon the City's issuance of a building permit for the Project, Developer shall  
18 make a lump sum payment of two million five hundred thousand dollars (\$2,500,000) to the City  
19 for the specific purpose of staffing additional commercial enforcement officers.

20 d. Upon the City's issuance of a building permits for the Project, Developer  
21 shall make a lump sum payment of two million five hundred thousand dollars (\$2,500,000) to the  
22 City for the specific purpose of constructing a new police station in the City.

23 2. **Sewer Lift Station.** Prior to the City's issuance of a certificate of occupancy for the  
24 Project, Developer shall donate to the City 0.26 acres of land located at the southeast corner of the  
25 Project site ("Donated Land"), and construct a sewer lift station on the Donated Land.

26 3. **Traffic Signal.** Upon the City's issuance of a building permit for the Project,  
27 Developer shall make a lump sum payment of three hundred and seventy-five (\$375,000) to the City  
28 for the specific purpose of constructing a traffic signal on Pepper Avenue.

4. **Reimbursement Agreement.** City shall execute a reimbursement agreement with all  
applicants seeking approval of a project within the Pepper Avenue Specific Plan area. The  
reimbursement agreement shall require the City to collect fair share costs from applicants which  
will be used to reimburse Developer for the value of the Donated Land as of the date of donation,  
the reasonable, verified cost to construct the sewer lift station, and the lump sum payment made to  
fund the construction of the traffic signal set forth in sections 2 and 3 in this Agreement.

5. **Project Labor Agreements.** Concurrent with, or prior to, the execution of this  
Agreement, Developer or its general contractor for the Project shall have entered into three (3)  
agreements to govern hiring and labor relations during project construction.

6. Local Job Fair. Developer shall advertise employment opportunities at a local job fair.

7. Termination. This Agreement shall have no force or effect if, (i) prior to the issuance of any building permit for the Project the Project's entitlements approved by the City are overturned or rescinded, (ii) prior to the issuance of any building permit for the Project, the Project does not successfully obtain all permits needed for its development from all applicable government agencies, or (iii) prior to the expiration of Conditional Development Permit No. 2020-0008, including any extensions thereof, an application for a building permit has not been submitted to the City by the Developer.

8. Notices.

If to Developer:

Howard Industrial Partners, LLC  
Attn: Tim Howard  
2244 North Pacific Street  
Orange, CA 92865  
thoward@hipre.net

With copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Jonathan E. Shardlow  
2010 Main Street, 8<sup>th</sup> Floor  
Irvine, CA 92614  
jshardlow@allenmatkins.com

City:

City of Rialto  
Attn: City Manager  
150 S Palm Avenue  
Rialto, CA 92376  
abrown@rialto.ca.gov

With Copy to:

Burke, Williams & Sorensen LLP  
Attn: Eric S. Vail  
1770 Iowa Ave., Ste. 240  
Riverside, CA 92507  
evail@bwslaw.com

9. Integration. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement, as of

the Effective Date, and supersedes any and all prior written and oral agreements and understandings. This Agreement may be amended or modified only through a writing executed by all the Parties.

10. Governing Law and Venue. This Agreement shall be deemed executed and delivered within the State of California. The rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, City of San Bernardino.

11. Severability. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

12. No Presumption Against Drafting Party. This Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party. The Parties acknowledge that this Agreement documents a negotiated agreement and it shall not be construed or interpreted in favor of any Party due to the fact that one of the Party's attorneys drafted this Agreement.

13. Further Assurances. From and after the Effective Date, the Parties shall cooperate in good faith with the each other in taking such actions and executing such instruments as may be reasonably necessary to effectuate the purposes of entering into this Agreement and to perfect the rights granted hereunder.


14. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement, with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. Duly executed signatures to this Agreement may be delivered by facsimile or e-mail, and signature pages delivered by such methods shall be deemed equivalent to, and of the same force and effect as, original signature pages.

*[Signatures on Following Pages]*



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3 **IN WITNESS THEREOF**, the Parties hereto have executed this Agreement as of the date  
4 first above written.

5 **DEVELOPER:**  
6 Howard Industrial Partners, LLC

7   
8 By: Tim Howard  
9 Its: Authorized Agent

**CITY:**  
City of Rialto

By: \_\_\_\_\_  
Arron Brown, Acting City Manager

ATTEST:

10 \_\_\_\_\_  
11 Barbara A. McKee, City Clerk

12 APPROVED AS TO FORM:

13 \_\_\_\_\_  
14 Eric S. Vail, City Attorney

EXHIBIT A

Legal Description of Property

That certain real property located in the City of Rialto, County of San Bernardino, State of California  
legally described as follows:

119/025068-0020  
9581934.2 #05/30/23

-6-

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE § 1189

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 California  
County of Orange

On 05-31-2023 before me Melinda A. Thompson, Notary Public  
(insert name and title of the officer)

Personally appeared Timothy Howard  
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 Melinda A. Thompson (Seal)

