

AMENDED AND RESTATED
CONSTRUCTION REIMBURSEMENT AGREEMENT
(MIRO WAY IMPROVEMENTS)

CITY OF RIALTO

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This AMENDED AND RESTATED CONSTRUCTION REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into as of September 8, 2015 (the "Effective Date"), by and between the CITY OF RIALTO, a municipal corporation ("City"), and LEWIS-HILLWOOD RIALTO COMPANY, LLC, a Delaware limited liability company ("Developer").

R E C I T A L S

A. Developer and the City are parties to that certain Second Amended and Restated Contract of Sale for Areas B, C, and D, dated September 25, 2012 (the "**BCD Agreement**"), pursuant to which the City granted to Developer an option to purchase all or a portion of certain real property that comprises or formerly comprised the Rialto Municipal Airport (the "**Airport**") on the terms and conditions set forth therein. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in the BCD Agreement.

B. Developer and the City are parties to the Joint Escrow Instructions, dated February 19, 2013 (the "**Airport Escrow Instructions**"), pursuant to which the City deposited funds ("**Airport Escrow Funds**") into an escrow account (the "**Airport Escrow Account**") to relocate tenants in accordance with Section 6.02 of the BCD Agreement, demolish existing improvements in accordance with Section 6.03 of the BCD Agreement, remediate and/or dispose of hazardous substances in accordance with Section 6.04 of the BCD Agreement, and construct certain infrastructure in accordance with Section 6.05 of the BCD Agreement.

C. Pursuant to the BCD Agreement, Developer purchased approximately 23.9 acres of unimproved real property from the City, and combined it with Developer's separately owned unimproved property; the entirety of which is bounded by Miro Way to the south, Alder Avenue to the west, the recently vacated Laurel Avenue to the east, and Walnut Avenue to the north, in the City of Rialto, County of San Bernardino, State of California, which is collectively identified on the map attached hereto as **Exhibit D** and referred to herein as the "**Niagara Development Parcel**."

D. Developer has completed the transfer of the Niagara Development Parcel to Miro Way Properties, LLC, a Delaware limited liability company ("**Niagara**").

E. Niagara received entitlements and/or permits for the construction of a 596,749 square foot bottling facility and off-site public improvements which are more particularly described within the Conditions of Approval for Precise Plan of Design 2363 ("PPD 2363") (the "**Niagara Project**").

F. The Conditions of Approval for PPD 2363 require Niagara to construct master planned improvements including a portion of Miro Way, a public street within the City, construct storm drain improvements in a portion of Miro Way, construct sewer improvements in a portion of Miro Way and a traffic signal at the intersection of Alder Avenue and Miro Way. Collectively these improvements may be referred to herein as the “**Niagara Public Improvements.**”

G. Developer purchased approximately 55.2 acres of unimproved real property from the City, bounded by Miro Way to the south, Locust Avenue to the east, Laurel Avenue to the west, and the DCT project to the north which is collectively identified on the map attached hereto as **Exhibit E** and referred to herein as the “**Medline Development Parcel.**”

H. Developer completed the transfer of the Medline Development Parcel to Medline Industries, Inc., an Illinois corporation (“**Medline**”).

I. Medline received entitlements and/or permits for the construction of improvements on the Medline Development Parcel, including a 1,070,320 square foot distribution warehouse and off-site public improvements which are more particularly described within the Conditions of Approval for Precise Plan of Design 2365 (“PPD 2365”) (the “**Medline Project**”).

J. The Conditions of Approval for the Medline Project require Medline to construct master planned improvements including a portion of Miro Way, a public street within the City, construct storm drain improvements in a portion of Miro Way and construct sewer improvements in a portion of Miro Way. These improvements may collectively be referred to herein as the “**Medline Public Improvements.**”

K. The City previously initiated a project with I-210 Logistics Center, LLC (“**I-210 Logistics**”) pursuant to that certain Development Agreement between the City and I-210 Logistics dated as of November 13, 2012 and recorded in the Official Records of San Bernardino County on December 12, 2012, as Document No. 2012-0531039 (the “**Development Agreement**”) to construct various improvements in Miro Way from Alder Avenue easterly to the Cactus Basin, including the Niagara Public Improvements and the Medline Public Improvements (the larger project is defined as the “**Miro Way Improvements**”). The City contracted for the preparation of construction plans and on February 10, 2015 approved an Amended and Restated Construction Reimbursement Agreement (the “**ARCRA**”) with I-210 Logistics. As part of the approval for this Agreement, the ARCRA with I-210 Logistics will be terminated. The Developer will now assume the responsibility and obligations of I-210 Logistics under the Development Agreement for constructing the Miro Way Improvements (as defined in **Section 1.0** and **Exhibit A** herein) to improve coordination between the Medline Public Improvements and the Niagara Public Improvements.

L. The City and Developer desire for the Developer to construct, and the City to pay contractors directly or reimburse the Developer for the cost of constructing all of the Miro Way Improvements, including the Niagara Public Improvements and the Medline Public Improvements, pursuant to the terms, conditions, requirements and procedures set forth herein.

M. The City acknowledges that I-210 Logistics has by separate agreement assigned to Developer all of the rights and obligations of I-210 Logistics related to the Miro Way Improvements under the Development Agreement (and related Assignment and Assumption of Right and Obligations Under Development Agreement dated December 12, 2012, and recorded in the Official Records of San Bernardino County on December 12, 2012, as Document No. 2012-0531041 and that certain Assignment and Assumption of Rights and Obligations Under Development Agreement dated August 26, 2014, and recorded in the Official Records of San Bernardino County September 19, 2014, as Document No. 2014-0347054), including all rights to the Developer Fee and Construction Manager Fee as defined in the Development Agreement, and all rights to all funds, reimbursements, and fee credits provided or to be provided by the City to I-210 Logistics under the Development Agreement for the Miro Way Improvements. City, to the extent that the City's approval of that assignment is required under the Development Agreement, approves of that assignment to Developer as the assignee.

N. On March 24, 2015 the City Council approved a Construction Reimbursement Agreement by and between the City and Developer ("Original Construction Reimbursement Agreement"). Since approval of the Original Construction Reimbursement Agreement, additional information regarding the cost of the Miro Way Improvements and the source of funding has become available. The City and Developer negotiated this Agreement to implement the construction of the Miro Way Improvements to replace the Original Construction Reimbursement Agreement.

O. The City and Developer intend that this Agreement shall contain all of rights, requirements and obligations of Developer and the City with regards to the Miro Way Improvements in place and instead of the Development Agreement and ARCRA. If there are any inconsistencies between the Development Agreement and this Agreement with regards to the Miro Way Improvements, this Agreement shall control.

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

1.0 Definitions. As used in this Agreement, the following terms shall have the following meanings:

"Construction Manager" means the construction manager or general contractor, as applicable that is hired by Developer to oversee construction of the Project. Construction Manager shall not perform actual construction work, but shall enter into contracts for construction of the Project. The contracts for the Miro Way Improvements shall only be awarded after competitive bidding in accordance with the City's requirements, attached hereto as **Exhibit B**. Developer's contract with the Construction Manager shall be in the manner of a "cost plus" construction contract. The Construction Manager's fee shall be equal to two and four tenths percent (2.4%) of the actual Hard Costs (as such term is defined below, of constructing the applicable public improvements) of constructing the Miro Way Improvements.

"Developer Fee" as used herein shall mean the fee paid to Developer for construction oversight and administration in connection with the construction of the Miro Way Improvements, which shall equal two and four tenths percent (2.4%) of the actual Hard Costs of constructing the Miro Way Improvements.

“Hard Costs” as used herein shall mean and include the hard or direct costs of construction, but shall exclude any Soft Costs, as such, term is defined below, and further excludes any internal administrative salaries or overhead costs of the Developer or contractor performing the work in question.

“Miro Way Improvements” as used herein means the public improvements described in **Exhibit A** attached hereto and incorporated herein by this reference.

“Project” as used herein means the completion by Developer of the design and construction of the Miro Way Improvements in accordance with this Agreement.

“Soft Costs” mean and include soft, indirect or design costs of construction, including professional services, general contractor fees, development and construction management fees (i.e. the Construction Manager or Developer Fee), 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 Miro Way Improvement(s) for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City Administrator.

2.0 Design.

The Miro Way Improvements will be designed and plan checked through the City by a licensed third party possessed of sufficient skill, qualifications, experience, expertise and capability to perform its obligations hereunder, who shall maintain adequate personnel, manpower, capital, equipment and facilities to perform its obligations hereunder, and holds any and all licenses, certificates, authorizations and registrations required to permit it to perform its obligations hereunder.

3.0 Bidding and Award.

3.1 Developer or Construction Manager shall competitively bid and award construction contracts with contractors for the Miro Way Improvements in accordance with City’s requirements, attached hereto as **Exhibit B** and incorporated herein by reference. Alternately, subcontractors may be pre-qualified in accordance with Public Contract Code Section 20101.

3.2 Prior to soliciting or awarding the bid for any portion of the Miro Way Improvements, Developer or Construction Manager shall submit the bid packet and a set of construction drawings signed by Developer or Construction Manager or another authorized representative designated by Developer or the Construction Manager for the work being bid to the City Engineer/Public Works Director of City for review and approval which approval shall be granted or denied within fifteen (15) calendar days after submission of such bid packet. If the City Engineer/Public Works Director denies approval of such bid packet and construction drawings, the City Engineer/Public Works Director shall specify the reasons for such disapproval and Developer or Construction Manager shall resubmit a revised bid packet for review and approval until such approval is obtained.

3.3 Developer shall provide the City Engineer/Public Works Director with copies of all bids received from subcontractors and a bid summary in a form approved by the Public Works Director to assure that Construction Manager adheres to the applicable legal requirements for public works projects. Developer or Construction Manager shall enter into a construction contract with each contractor selected to perform work on the Miro Way Improvements (after competitive bidding as set forth above), (each, a “**Construction Contract**”) for the performance of the work set forth in the selected subcontractor’s bid, and the terms of each Construction Contract entered into by Developer or Construction Manager and each contractor/subcontractor shall be reasonably acceptable to City Administrator. Developer shall submit to City a copy of each executed Construction Contract for the Miro Way Improvements, within fifteen (15) days after execution thereof.

3.4 City finds that given the need to complete construction of the Miro Way Improvements within a specified period, City finds that full compliance with the otherwise applicable requirements of the Public Contracts Code for the selection of certain construction related professional services would be unavailing, would not produce an advantage for City, and would thus be undesirable, impractical, and cause undue delay, therefore, as authorized by Graydon v. Pasadena Redevelopment Agency et al. (1980) 104 Cal. App. 3rd 631 and the cases cited therein, City hereby approves the following companies to perform professional construction related services because of their existing or prior working knowledge of the Project, their years of experience in the field, and other qualifications:

- | | |
|---|--|
| (a) TT&G or
KEC Engineers | General Civil Engineering Services
Construction Advisory and Information Services
Preparation of Bid Package(s) and Specifications |
| (b) TJW Engineering | Traffic Signal Design Service/Traffic Control Planning |
| (c) Southern California
Geotechnical Services
Leighton Consulting, Inc. | Soil Testing and Compaction |
| (d) MGTL/Leighton/
LOR/RMA | Concrete Testing Services |
| (e) SB&O,
Thienes Engineering, Inc.
or TT&G | Construction Staking and Surveying |
| (f) KEC Engineers,
Developer or
Lewis Operating Corp. | Construction Manager |

3.5 City finds that given the need to complete the construction of the Miro Way Improvements within a specified period, the Developer or City must acquire and pre-order certain construction materials for the Project prior to the award of a Construction Contract. The

procurement of certain specialized construction materials is necessary for materials that require significant lead time to manufacture and deliver. Therefore, to insure the timely completion of the Project, City hereby approves the Developer soliciting bids to procure the following construction materials for the Project:

(a) Storm Drainage -- Reinforced Concrete Pipes/Boxes

(b) Traffic Signal Poles

The Developer shall provide documentation to the City demonstrating a good faith effort to obtain competitive bids for the construction materials and shall recommend award of a purchase order to the City. The City Public Works Director will review and accept or reject the bid documentation within five (5) business days after submittal. If accepted, the City will authorize purchase of the materials and reimburse the Developer in accordance with the terms of Section 5 of this Agreement.

3.6 Developer submitted a Miro Way Improvement Budget, including an engineer's cost estimate, which is attached hereto as **Exhibit C** and incorporated herein by this reference. The Miro Way Improvement Budget includes the following cost elements:

(a) the Hard Costs of construction, including (1) labor and material with unit costs and quantities as applicable, (2) material inspection and testing fees, (3) construction surveying and staking, (4) temporary services, (5) general conditions and mobilization, and (6) a construction contingency reserve.

(b) the Soft Costs of construction, including (1) City permit and inspection fees, (2) labor, material and performance bonds, (3) design costs, (4) Construction Management Fees, and (5) Developer Fees.

Any changes to the Miro Way Improvement Budget after the Effective Date, which exceed the amount appropriated or the amount the City Administrator may be authorized to approve shall be submitted to the City Council for its review and approval.

4.0 Construction of the Miro Way Improvements. Developer shall construct the Miro Way Improvements in accordance with the City's requirements, attached hereto as **Exhibit B** and incorporated herein by reference.

4.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the Miro Way Improvements until all plans and specifications for the Miro Way Improvements (the "**Plans and Specifications**") have been submitted to and approved by the City Administrator, Public Works Director, City Engineer, or their designee, any of which may act individually on behalf of the City ("**Approved by the City**" or "**City Approval**"). City Approval shall not relieve Developer from ensuring that all Miro Way Improvements conform with all other requirements and standards set forth in this Agreement.

4.2 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 Miro Way 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.

4.3 Public Works Requirements. Developer shall ensure that the construction of the Miro Way Improvements is undertaken as if such Miro Way Improvements were constructed under the direction and authority of City. Thus, without limitation, Developer shall comply with the requirements in **Exhibit B** with respect to the construction of the Miro Way Improvements.

(a) Developer will obtain bids for the construction of the Miro Way Improvements in a manner which has been approved by the City. The contract or contracts for the construction of the Miro Way Improvements will be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Miro Way Improvements.

(b) Developer shall require that its General Contractor for the construction of the Miro Way Improvements 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 Approved by the City.

(c) All contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the Miro Way Improvements which they will construct in conformance with Section 7.0 of this Agreement.

4.4 Compliance with Plans and Specifications. The Miro Way Improvements shall be completed in accordance with the Plans and Specifications as Approved by City.

4.5 Alterations to Improvements. All work shall be done and the Miro Way 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 disapproved such alterations to the Plans and Specifications. Any and all alterations in the Plans and Specifications and the Miro Way Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

4.6 Standard of Performance. Developer and its contractors shall perform all work required, constructing the Miro Way 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.

5.0 Reimbursement for Miro Way Improvements. City shall pay the cost of constructing the Miro Way Improvements in accordance with this Agreement. Disbursements shall be made in accordance with Sections 5.2, 5.3.1, *et seq.*, and 5.3.2, *et seq.*, of this Agreement. Within fifteen (15) days after the later of (1) the Effective Date of this Agreement or (2) the Effective Date of the Escrow Instructions establishing the Escrow Account, the City shall deposit the sum of **Thirteen Million Five Hundred Thirty Seven Thousand Dollars (\$13,537,000)** (the “MWI Amount”) derived from the following:

(a) City Funds. The City shall deposit into the Escrow Account the amount of **Twelve Million Six Hundred Seventy One Thousand Dollars (\$12,671,000)**. This amount represents the City’s share of the amount deemed necessary to complete the construction of the Miro Way Improvements in accordance with the budget attached hereto as **Exhibit C** (identified in the budget as the Total Estimated MWI Amount for the Total City Project). The City shall also pay certain design and right-of-way acquisition costs from funds outside the Escrow Account.

(b) In-Lieu Fee I. The City shall deposit into the Escrow Account the amount of **Two Hundred Sixty Seven Thousand Six Hundred Six Dollars (\$267,606)** (the “In-Lieu Fee I”). This deposit derives from the Operating Memorandum RE 210 Logistics Center Development Agreement dated August 26, 2014 and recorded as Document No. 2014-0347052 on September 19, 2014 (“Operating Memorandum #1”). Upon completion of the Miro Way Street Improvements as defined, the City is entitled to receive the In-Lieu Fee I as compensation for completing the Miro Way Street Improvements. The City shall advance the In-Lieu Fee I amount into the Escrow Account using Airport Escrow Funds, and request release of the In-Lieu Fee I upon satisfaction of all conditions required for release pursuant to the Operating Memorandum #1. All released funds shall be returned to the Airport Escrow Account maintained by First American Trust FSB pursuant to the Airport Escrow Instructions.

(c) In-Lieu Fee II. The City shall deposit into the Escrow Account the amount of **Five Hundred Thirty Eight Thousand One Hundred Seventy Four Dollars (\$538,174)** (the “In-Lieu Fee II”). This deposit derives from the Operating Memorandum RE 210 Logistics Center II Development Agreement dated September 8, 2015 (“Operating Memorandum #2”). Upon completion of the Miro Way Street Improvements as defined, the City is entitled to receive the In-Lieu Fee II as compensation for completing the Miro Way Street Improvements. The City shall advance the In-Lieu Fee II amount into the Escrow Account using Airport Escrow Funds, and request release of the In-Lieu Fee II upon satisfaction of all conditions required for release pursuant to the Operating Memorandum #2. All released funds shall be returned to the Airport Escrow Account maintained by First American Trust FSB pursuant to the Airport Escrow Instructions.

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.

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(d) The MWI Amount includes the Developer Fee and Construction Manager's Fee payable in accordance with this Agreement.

5.1 Escrow Agreement. Disbursements from the Escrow Account shall be governed by the terms of an Agreement between City, Developer, and Escrow Holder reasonably acceptable to City and Developer (the "**MWI Escrow Agreement**"), which MWI Escrow Agreement shall (1) impose a fiduciary duty on Escrow Holder in favor of Developer and City, (2) provide that the MWI Amount deposited into the Escrow Account by City shall be maintained in a separate, interest bearing account and shall be invested for the benefit of City in low risk, secure investments, (3) provide that City shall have discretion to direct the investment of the MWI Amount, provided that such investments are sufficiently liquid to allow for timely disbursements as contemplated by this Agreement, (4) provide that all interest on the MWI Amount in the Escrow Account shall accrue to the benefit of City, (5) provide that disbursements of the MWI Amount from the Escrow Account shall require the prior written authorization of City, signed by both the City Administrator and Director of Public Works or Director of Development Services (counterpart signatures are acceptable), which authorization shall be granted or denied in accordance with the terms of this Agreement (specifically including satisfaction by Developer or written waiver by City of the requirements of Section 5.2 and of all applicable Conditions Precedent set forth in Section 5.3 below), and (6) provide that all moneys in the Escrow Account shall remain the property of City until disbursed in accordance with the terms of this Agreement and the Escrow Agreement, and shall not be accessible by Developer or creditors of Developer prior to such disbursement; provided, however, that City shall not take any actions which would impair the ability of City to authorize disbursements from the Escrow Account (including, without limitation, pledging or assigning its interest in the MWI Amount for security purposes). All fees, costs, and other expenses incurred in connection with the Escrow Account shall be paid by City.

5.2 Disbursements for the Miro Way Improvements. Notwithstanding anything to the contrary contained in the Development Agreement or this Agreement, the Parties acknowledge and agree that it is not their intent that Developer advance funds to pay for the construction of any of the Miro Way Improvements and that the entire Hard Costs and Soft Costs of the Miro Way Improvements be advanced and funded by City through the Escrow Account. Accordingly, prior to the commencement of construction of the Miro Way Improvements, and during such construction, Developer shall prepare and submit to City a request for reimbursement (an "**MWI Funding Request**") not more frequently than monthly (unless approved by the City) with respect to the Miro Way Improvements, which MWI Funding Request shall contain a reasonably detailed accounting of the Hard Costs and Soft Costs actually incurred to date and since the last MWI Funding Request and a projection of the Hard Costs and Soft Costs anticipated to be incurred by Developer in the next thirty (30) days (the "**Projected Costs**") for the Miro Way Improvements. Within ten (10) business days following City's receipt of a complete MWI Funding Request, including all appropriate back-up documentation reasonably requested by City, and subject to satisfaction of all applicable Conditions Precedent set forth in Section 5.3, City shall either inform Developer of objections to the MWI Funding Request or direct the Escrow Holder to disburse the Projected Costs shown in the MWI Funding Request to Developer. Within three (3) business days of the approval of any MWI Funding Request, Escrow Holder shall disburse the amount so requested to Developer. Notwithstanding anything to the contrary contained in this Agreement, Developer's obligations to complete the

Miro Way Improvements is expressly contingent upon City's compliance with its funding obligations under this Agreement and Developer shall have the right to suspend such construction to the extent City improperly withholds such funding, which suspension shall be deemed a Force Majeure for Developer and City shall be responsible for any increased costs resulting therefrom.

5.3 Conditions Precedent to Disbursements for Miro Way Improvements.

5.3.1 Periodic Reimbursements. The City's obligation to provide the initial and each and every MWI Funding Request for Projected Costs pursuant to Section 5.0 is conditioned upon the prior satisfaction by Developer or written waiver by City of each of the following Conditions Precedent set forth in this Section 5.3.1 within the times designated below:

(a) No Default. Developer shall not be in Default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.

(b) Submission of Bills/Invoices. Developer shall have made full and complete payment of all undisputed claims for work performed on the Miro Way Improvements, or in the event of a dispute between Developer and the general contractor or a subcontractor, Developer shall have obtained a commercially reasonable bond reasonably satisfactory to City to release any applicable mechanics' lien or stop notice and Developer shall have submitted and City shall have approved the final MWI Funding Request, including copies of all bills and/or invoices evidencing the Hard Costs and Soft Costs of constructing the Miro Way Improvements actually incurred by Developer.

5.3.2 Final Reimbursement. The City's obligation to provide the final funding of Projected Costs pursuant to an MWI Funding Request and Section 5.0 is conditioned upon the prior satisfaction by Developer or written waiver by City of each of the following Conditions Precedent set forth in this Section 5.3.2 within the times designated below:

(a) No Default. Developer shall not be in Default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects

(b) Completion of Construction. Developer shall have completed the construction of the Miro Way Improvements, notices of completion shall have been recorded in relation to the Miro Way Improvements in accordance with California Civil Code Sections 3093 and/or 8182 (as applicable), and 35 days shall have elapsed since the recordation of such notices of completion. The purposes of this provision are to ensure that the Miro Way Improvements will be independently functional and to maintain consistency with vesting rights, and nothing herein shall be deemed to make any part of the Project other than the Miro Way Improvements a public work.

(c) Submission of Bills/Invoices. Developer shall have made full and complete payment of all undisputed claims for work performed on the Miro Way Improvements, or in the event of a dispute between Developer and the general contractor or a subcontractor, Developer shall have obtained a commercially reasonable bond

reasonably satisfactory to City to release any applicable mechanics' lien or stop notice and Developer shall have submitted and City shall have approved the final MWI Funding Request, including copies of all bills and/or invoices evidencing the Hard Costs and Soft Costs of constructing the Miro Way Improvements actually incurred by Developer.

(d) As-Built Drawings. Developer shall have submitted two (2) sets of final as-built drawings for the Miro Way Improvements to the City Public Works Director.

(e) Acceptance of Miro Way Improvements by City. City, through the City Council, shall have accepted title to the Miro Way Improvements and Developer shall have provided the maintenance guarantees and landscaping requirements reasonably required by City. The City agrees it will not unreasonably withhold or condition its acceptance of title to the Miro Way Improvements. City will accept the Miro Way Improvements in phases and release the final reimbursement based on the phase that has been accepted by the City. Phasing of the Miro Way Improvements shall be determined in the reasonable discretion of the City.

6.0 Indemnification. Developer agrees to indemnify, defend and hold the City and their officers, employees, agents, representatives, and assigns ("**Indemnitees**") harmless from and against any and all losses, claims, demands, actions, or causes of action, of any nature whatsoever, arising out of or in any way connected with the performance under this Agreement with respect to the Miro Way Improvements, including costs of suit and reasonable attorney's fees. In the event the Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding in any way involving such losses, claims, demands, actions, or causes of action, Developer shall provide a defense to the Indemnitees, including reasonable attorney's fees and expert witness fees, incurred in defense of such claim. In addition, Developer shall promptly pay any final judgment or portion thereof rendered against the City Indemnitees.

7.0 Insurance. Developer shall procure and maintain and shall cause its contractors to take out and maintain, until the completion of construction of the Miro Way Improvements, all of the policies of insurance described herein. Upon request by the City, Developer shall provide certificates of such insurance or such other evidence that Developer maintains such required policies of insurance as may reasonably be requested by City.

7.1 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 separately to this Agreement or be no less than two times the specified occurrence limit.

7.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than One-Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage.

7.1.2 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.

7.1.3 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.

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

7.2 Deductibles. Any deductibles or self-insured retentions in excess of \$50,000 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

8.0 City Officers and Employees. No officer or employee of the City shall be personally liable to Developer or any successors in interest in the event of any default or breach by the City or for any amount that may become due to Developer or any successor(s) in interest or for breach of any obligation of the terms of this Agreement. No officer or employee of Developer shall be personally liable to the City or any successor(s) in interest in the event of any default or breach by Developer or for any amount that may become due to the City or their successors in interest or for breach of any obligation of the terms of this Agreement.

9.0 Notice. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any person shall be in writing and either served personally, communicated by fax or electronic mail, or sent by prepaid, first-class mail to the address set forth below. Notice shall be deemed communicated immediately upon personal delivery, fax or email receipt, or forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

To City:	City of Rialto 150 S. Palm Avenue Rialto, CA 92376 Attn: City Administrator Tel: (909) 820-2689 Fax: (909) 820-2527
Copy to:	Fred Galante, Esq. Aleshire & Wynder, LLP 18881 Von Karman Avenue, Tower 17, Suite 1700, Irvine, CA 92612 Tel: (949) 250-5410 Fax: (949) 223-1180 Email: fgalante@awattorneys.com
To Developer:	Lewis-Hillwood Rialto Company, LLC c/o Lewis Operating Corp. 1156 N. Mountain Ave Upland, CA 91786 Attn: Bryan Goodman Phone No.: 909-946-7537 Email: bryan.goodman@lewisop.com

Copy to: Lewis Operating Corp.
1156 N. Mountain Ave
Upland, CA 91786
Attn: W. Bradford Francke
Phone No. 909-946-7538
Fax: 909-949-6725
Email: brad.francke@lewisop.com

10.0 Assignment of Agreement. The parties hereto may not assign their obligations hereunder to any assignee without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld. Assignment may be made only to an assignee willing, financially capable and competent to carry out the assignor's obligations.

11.0 Authority for 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.

12.0 General Provisions.

(a) Except as otherwise provided herein, the terms, conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns, and successors of the parties hereto.

(b) The parties to this Agreement do not rely upon any warranty or representation not contained in this Agreement. Notwithstanding the foregoing, the City represents and warrants that it is authorized to proceed with this Agreement and has obligated the funding required for the Developer to construct the Miro Way Improvements. The Developer represents and warrants that it is authorized to proceed with the Miro Way Improvements pursuant to the terms of this Agreement.

(c) This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

(d) Any failure or delay by any party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies provided for herein.

(e) This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing signed by the parties.

13.0 Force Majeure. Developer agrees that the time within which it shall be required to perform any act under this Agreement shall not be extended except as follows: (i) the Developer is delayed by the City (including, without limitation, restrictions on priority, initiative or referendum, or moratoria), in which case Developer shall provide written notice to the City specifically describing the nature and extent of the delay caused by the City and Developer's detailed efforts to avoid such delay, which references this Section and deliver such notice within twenty (20) days of discovering such delay, and Developer's obligations shall be extended for such time as the City deems reasonable as a result of the delay if and only if Developer provides

such written notice to the City within such time; or (ii) the Developer is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, processing with any governmental agencies, unusually severe weather, or any other similar causes beyond the control of Developer or without the fault of Developer. An extension of time for any such cause shall be for the period of the enforced delay equal to the number of days during which Developer's performance was delayed and shall commence to run from the time of the commencement of the cause, if written notice by Developer claiming such extension is sent to the City within twenty (20) days of knowledge of the commencement of the cause.

14.0 Severability. In the event that any provision or provisions of this Agreement are held unenforceable, all provisions not so held shall remain in full force and effect.

15.0 Authority of Signatories. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties are formally bound to the provisions of this Agreement.

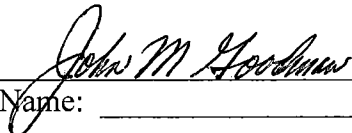
[Signatures appear on following page.]

DEVELOPER:

LEWIS-HILLWOOD RIALTO COMPANY, LLC,
a Delaware limited liability company

By: LEWIS-RIALTO COMPANY, LLC,
a Delaware limited liability company
Its Managing Member

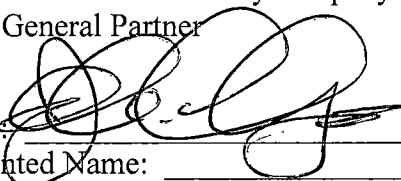
By: LEWIS OPERATING CORP.,
a California corporation
Its Sole Manager

By: 
Printed Name: _____
Title: _____

Date: _____

By: HGI CA INVESTORS, L.P.,
a California limited partnership
A Member

By: HGI GP, LLC,
a Texas limited liability company
its General Partner

By: 
Printed Name: _____
Title: John M. Magness
Senior Vice President


Date: _____

DEVELOPER:

LEWIS-HILLWOOD RIALTO COMPANY, LLC,
a Delaware limited liability company

By: LEWIS-RIALTO COMPANY, LLC,
a Delaware limited liability company
Its Managing Member

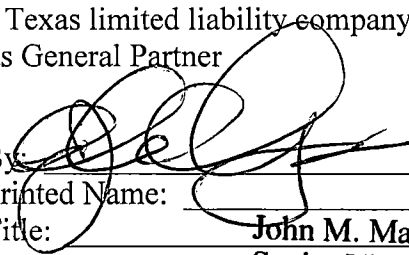
By: LEWIS OPERATING CORP.,
a California corporation
Its Sole Manager

By: 
Printed Name: _____
Title: _____

Date: _____

By: HGI CA INVESTORS, L.P.,
a California limited partnership
A Member

By: HGI GP, LLC,
a Texas limited liability company
its General Partner

By: 
Printed Name: _____
Title: **John M. Magness**
Senior Vice President

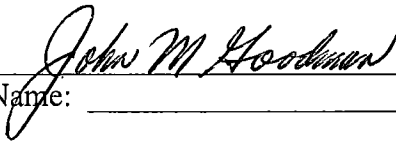
Date: _____

DEVELOPER:

LEWIS-HILLWOOD RIALTO COMPANY, LLC,
a Delaware limited liability company

By: LEWIS-RIALTO COMPANY, LLC,
a Delaware limited liability company
Its Managing Member

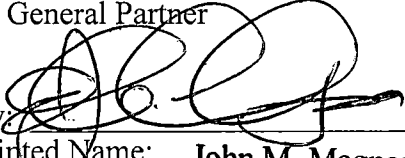
By: LEWIS OPERATING CORP.,
a California corporation
Its Sole Manager

By: 
Printed Name: _____
Title: _____

Date: _____

By: HGI CA INVESTORS, L.P.,
a California limited partnership
A Member

By: HGI GP, LLC,
a Texas limited liability company
its General Partner

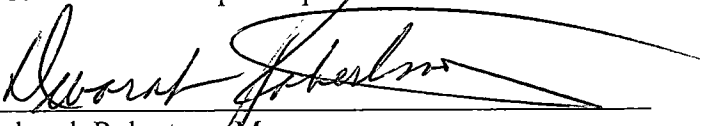
By: 
Printed Name: John M. Magness
Title: Senior Vice President

Date: _____

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

CITY:

CITY OF RIALTO,
a California municipal corporation


Deborah Robertson, Mayor

ATTEST:


Barbara McGee, City Clerk

APPROVED AS TO FORM:

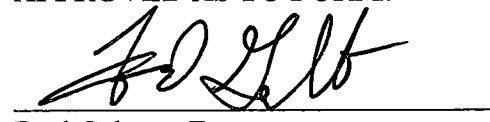

Fred Galante, Esq.
City Attorney

EXHIBIT A

MIRO WAY IMPROVEMENTS

SEGMENT 1 (ROW from Alder Avenue to West Property Line of 1920 W. Baseline)

- 1. Construct Miro Way from Alder Avenue to west property line of Baseline/Locust Development Project (PPD - 2080R2 – 1920 West Baseline Road)**

Construct Miro Way improvements to meet TI-10 standards consistent with Figure 3-7 Secondary Arterial (84' of right-of-way) of the Renaissance Specific Plan. The improvements shall consist of the construction of the roadway from curb to curb (e.g. curbs, gutters, parking, and travel lanes) along with the dry utility infrastructure, street lights, master planned sanitary sewer line, and master storm drain line and catch basins. The sidewalk and parkway landscaping (if any) on the south side of Miro Way east of Laurel Avenue to the westerly boundary of 1920 West Baseline Road shall be constructed.

Sidewalks and landscaping within the southern parkway section of the roadway between Alder Avenue and Laurel Avenue will be constructed by others at their sole cost as development occur.

The domestic water line within Segment 1 shall be constructed by Fontana Water Company with funds to be provided by others. The water line improvements shall be installed prior to the roadway improvements.

- 2. Intersection of Miro Way and Alder Avenue**

Construct a traffic signal (3-way) at the intersection of Miro Way and Alder Avenue. Signal to be constructed at the master planned full width location and shall provide for phasing.

- 3. Intersection of Miro Way and Laurel Avenue**

Install a 3-way stop at the intersection of Miro Way and Laurel Avenue, including necessary signage and striping to meet City Standards.

SEGMENT 2 (Miro Way East of Segment 1 to Locust Avenue)

0

Construct/Reconstruct Miro Way

Construct northern half width of Miro Way to meet TI-10 standards consistent with Figure 3-7 (84' of right-of-way) of the Renaissance Specific Plan. The improvements shall consist of the construction of the roadway (e.g. curbs, gutters,

parking, and travel lanes) along with the dry utility infrastructure, street lights, master planned sanitary sewer line, and master storm drain and catch basins.

Sidewalks and landscaping within the southern parkway section of the roadway have been constructed by previous development and should be protected in place.

The domestic water line within Segment 2 shall be constructed by Fontana Water Company with funds to be provided by others. The water line improvements shall be installed prior to the roadway improvements.

Existing roadway improvements within southern half-width should be protected in place and/or reconstructed as necessary following installation of storm drain, and wet/dry utilities.

SEGMENT 3 (Miro Way from Locust Avenue to Maple Avenue)

5. Construct/Reconstruct Miro Way from Locust Avenue to Maple Avenue

Construct or reconstruct full width of Miro Way to meet TI-10 standards consistent with Figure 3-7 of the Renaissance Specific Plan (84' of right-of-way). The improvements shall consist of the construction of the roadway (e.g. curbs, gutters, parking, and travel lanes) along with the dry utility infrastructure, street lights, master planned sanitary sewer line, and master storm drain line and catch basins.

Sidewalks and parkway landscaping located on the southern portion of the roadway between Locust Avenue and Maple Avenue have been constructed by others at their sole cost.

The domestic water line within Segment 3 shall be constructed by Fontana Water Company with funds to be provided by others. The water line improvements shall be installed prior to the roadway improvements.

6. Intersection of Miro Way and Locust Avenue

Install a 4-way stop at the intersection of Miro Way and Locust Avenue, including necessary signage and striping to meet City Standards.

7. Intersection of Miro Way and Maple Avenue

Install a 3-way stop at the intersection of Miro Way and Maple Avenue, including necessary signage and striping to meet City Standards.

SEGMENT 4 (Miro Way from Maple Avenue to Linden Avenue)

8. Construct/Reconstruct Miro Way from Maple Avenue to Linden Avenue.

Construct or reconstruct Miro Way to meet TI-10 standards consistent with Figure 3-7 of the Renaissance Specific Plan (84' of right-of-way). The improvements shall consist of the construction of the roadway (e.g. curbs, gutters, sidewalks, parking, and travel lanes) along with the dry utility infrastructure, street lights, master planned sanitary sewer line, and master storm drain and catch basins will be installed within Miro Way.

Sidewalks and parkway landscaping located on the southern portion of the roadway between Maple Avenue and Linden Avenue will be constructed by others at their sole cost.

The domestic water line within Segment 4 shall be constructed by Fontana Water Company with funds to be provided by others. The water line improvements shall be installed prior to the roadway improvements.

Existing roadway improvements within the full-width right-of-way should be protected in place and/or reconstructed as necessary following installation of storm drain, and wet/dry utilities.

9. Linden Avenue Sewer

Construct master planned sanitary sewer line in Linden Avenue from Miro Way to existing sewer line in Baseline Road.

10. Intersection of Miro Way and Linden Avenue

Construct a 3-way stop at the intersection of Miro Way and Linden Avenue, including necessary signage and striping to meet City Standards.

SEGMENT 5 (Miro Way ROW from Linden Avenue to Ayala Drive)

11. Storm Drain Improvements

Construct master planned storm drain improvements from Linden Avenue to Ayala Drive within designated 84' wide right-of way and along and across Ayala Drive (with necessary catch basins if needed) on Ayala Drive.

12. Water Line Improvements

Construct a master-planned water line from Linden Avenue to existing facilities located in Ayala Drive north of Base Line Road.

13. Ayala Improvements

Reconstruct/Patch roadway improvements within Ayala Drive damaged due to construction of storm drain and water line.

14. Miro Way Improvements

No roadway improvements will be constructed within the Miro Way right-of-way from Linden Avenue to Ayala Drive at this time.

SEGMENT 6 (Ayala Drive to Cactus Basin #3)

15. **Storm Drain Improvements:** Construct master planned storm drain from east side of Ayala Drive into the Cactus Basin #3.

FIGURE 3-7

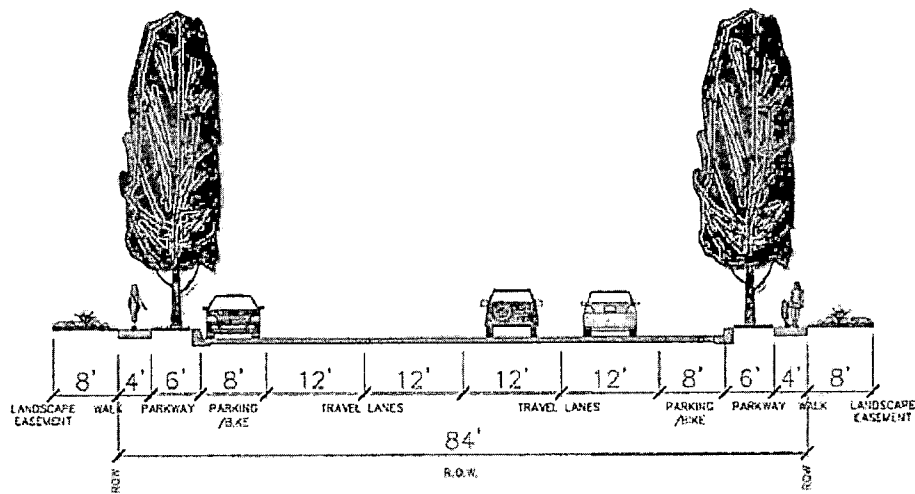


EXHIBIT B

**BIDDING AND CONTRACT REQUIREMENTS FOR
PUBLIC IMPROVEMENTS**

Bidding Phase

- A. Bidding Documents. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to City for its prior written approval before release for bid. City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt:
1. Unless impractical due to the nature of the Public Improvements, the bid proposal shall be unit priced rather than lump sum or time and materials.
 2. It is recommended that the bidding documents require the bidder/contractor to provide the following bonds:
 - a. Bid Bond - 10% of the amount of the bid.
 3. The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in the amount of at least \$2,000,000 prior to the award of the contract.
 4. The bidding documents shall provide for monthly progress payments to the contractor (with respect to the Miro Way Improvements).
 5. The contractor shall be required to pay prevailing wages pursuant to Section 4.3 of this Agreement.
 6. The bidding documents must clearly state the time, date, and place where bids are to be submitted and opened.
 7. The bidding documents shall clearly state the amount of time to complete the work. The time allowed must be reasonable for the amount of work. Accelerated construction time allowances must be supplementally bid, and are not eligible for public finance unless previously approved by the City's Public Works Director.
 8. The bid documents must require the contractor to provide 100% faithful performance and 100% labor/materials bonds.
 9. Developer shall keep a bidders list with e-mail addresses, and addenda should be sent via email to ensure quick receipt
 10. Conditioned bids shall not be accepted.

- B. Developer may pre-qualify bidders in accordance with California Public Contract Code Section 20101, by requiring all persons interested in bidding on any portion of the Public Improvements to submit current financial statements and a pre-qualification questionnaire in a form approved by City, and by scoring each submission based on reasonable, objective criteria reasonably acceptable to City. Developer must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Developer elects to pre-qualify bidders, only those bidders who have submitted complete pre-qualification packets and obtained the minimum required score based on the objective rating system adopted by Developer (and approved by City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Developer shall keep a log of all persons obtaining pre-qualification questionnaires and/or bidding documents and all persons who submit pre-qualification questionnaires and/or bids and their mailing addresses.
- D. Addenda shall be mailed by first class mail (or submitted by confirmed electronic transmission) to all bidding document holders and the City's Public Works Director at the same time. The last addendum shall be issued no later than three (3) Business Days prior to the date of opening bids.
- E. Submitted bids shall be in sealed envelopes.
- F. Bids shall not be accepted after the stated time for submission.
- G. Bid opening shall be conducted by Developer at Developer's place of business or other site mutually acceptable to Developer and City's Public Works Director.
- H. Sealed bids shall be opened and read aloud immediately following the submission time. The City's Public Works Director shall be invited to attend the bid opening.
- I. Conditioned bids, unless the bid proposal lists them for all to bid on, shall not be accepted.
- J. The arithmetic of the lowest bid proposals received shall immediately be checked for errors.
- K. All bids received shall be provided to the City's Public Works Director. The City's Public Works Director may, in his or her reasonable discretion, reject any and all bids that he or she determines to be nonresponsive.
- L. Award shall be made to the lowest responsible qualified bidder within five (5) Business Days after the bid opening. No fewer than three (3) bids must be received for each Construction Contract to be awarded.
- M. A preconstruction meeting shall be held with the contractor prior to beginning the work. A City representative shall be invited to attend the meeting.

- N. The Notice to Proceed shall be issued within a reasonable period of time following the contract execution.

Construction Phase

- A. The City's Public Works Director shall be provided a copy of the construction schedule.
- B. Developer shall require the contractor to conduct weekly construction status meetings to which the City's Public Works Director shall be invited.
- C. Any additional costs incurred for the benefit of Developer, such as accelerating the construction schedule, shall not be eligible for reimbursement unless previously approved by the City's Public Works Director.
- D. Any additional construction costs incurred due solely to unexcused delays caused by Developer shall not be eligible for reimbursement under this Agreement.
- E. All contracts and construction related records shall be available to City as and when required for the final determination of eligible costs for reimbursement.
- F. Developer must file a Notice of Completion within thirty (30) days of City's approval of the Public Improvements (determining substantial completion).
- G. Developer must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Developer shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Developer or City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Developer are subject to inspection by or on behalf of the City Engineer. Construction shall be scheduled to allow for periodic inspection by the City Engineer or his designee. The Developer's contractor will be required to provide adequate quality assurance and quality control measures to ensure all public improvements are constructed in accordance with the Standard Specifications for Public Works Construction or Caltrans Standard Specifications, as appropriate for the work to be constructed.

General

Any deviation from these rules must be approved by either the City Administrator, Public Works Director, or City Engineer or their designee.

EXHIBIT C MIRO WAY IMPROVEMENT BUDGET

Sources and Uses Of Project Funding
Miro Way Improvement Project

	Fund 230 Drainage Drainage DIF	Fund 250 Traffic DIF	Fund 660 Sewer DIF	Fund 010 Airport Escrow	Total City Project	In Lieu Fee I	In Lieu Fee II	Total In-Lieu Fees	Total Project
MWI Amount per Section 6.0 of Construction Reimbursement Agreement									
Hard Construction Costs									
Dry Utilities	0	0	0	1,530,000	1,530,000	0	0	0	1,530,000
Fire Hydrants	0	0	0	150,000	150,000	0	0	0	150,000
Parkway Landscaping	0	0	0	0	0	15,160	0	15,160	15,160
Sewer	0	0	1,351,000	0	1,351,000	0	0	0	1,351,000
Storm Drain	4,088,000	0	0	0	4,088,000	0	0	0	4,088,000
Street Improvements (All Segments)	0	0	0	1,454,000	1,454,000	187,788	339,391	527,179	1,981,179
Street Improvements (Adjustments for Segment 5)	0	0	0	(737,000)	(737,000)	0	0	0	(737,000)
Street Lights	0	0	0	364,000	364,000	0	31,179	31,179	395,179
Traffic Improvements (Alder/Miro Signal)	0	350,000	0	0	350,000	0	0	0	350,000
Traffic Control	180,000	0	45,000	0	225,000	0	3,200	3,200	228,200
Water Lines (east of Linden -City)	0	0	0	65,000	65,000	0	0	0	65,000
Sub-Total Construction Costs	4,268,000	350,000	1,396,000	2,826,000	8,840,000	202,948	373,770	576,718	9,416,718
Bonds	0	0	0	0	0	0	21,409	21,409	21,409
Construction Engineering	98,000	8,000	32,000	81,000	219,000	4,641	9,848	14,489	233,489
Erosion Control and SWPPP	0	0	0	0	0	0	7,115	7,115	7,115
Mobilization	213,000	18,000	70,000	141,000	442,000	10,209	43,300	53,509	495,509
Soil Test/Compaction	72,000	6,000	24,000	59,000	161,000	3,403	14,772	18,175	179,175
Survey/Staking	120,000	10,000	39,000	98,000	267,000	5,569	4,000	9,569	276,569
Utility Fees (SCE, Gas, etc.)	0	0	0	777,000	777,000	0	0	0	777,000
Hard Cost Contingency	427,000	35,000	140,000	283,000	885,000	20,418	19,138	39,556	924,556
Sub-Total Other Hard Construction Costs	930,000	77,000	305,000	1,439,000	2,751,000	44,240	119,582	163,822	2,914,822
Total Estimated Hard Costs (HCC)	5,198,000	427,000	1,701,000	4,265,000	11,591,000	247,188	493,352	740,540	12,331,540
Soft Construction Costs									
Dry Utility Design	25,000	0	0	25,000	25,000	0	0	0	25,000
Traffic Signal Design	15,000	0	15,000	0	15,000	0	0	0	15,000
Traffic Control Plans	25,000	20,000	0	5,000	25,000	0	0	0	25,000
Plancheck/Permits/Inspections	400,000	168,000	14,000	55,000	375,000	7,734	16,980	24,714	399,714
Soft Cost Contingency	19,000	3,000	6,000	16,000	44,000	928	4,161	5,089	49,089
Sub-Total Soft Construction Costs	207,000	32,000	66,000	179,000	484,000	8,662	21,141	29,803	513,803
Developer Fees									
CM Fee	125,000	10,000	41,000	102,000	278,000	5,878	11,840	17,718	295,718
Developer Fee	125,000	10,000	41,000	102,000	278,000	5,878	11,840	17,718	295,718
	250,000	20,000	82,000	204,000	556,000	11,756	23,681	35,437	591,437
Total Estimated MWI Amount	5,655,000	519,000	1,849,000	4,648,000	12,671,000	267,606	538,174	805,780	13,476,780
Other Project Costs to be Paid by City Outside Construction Reimbursement Agreement									
Right of Way	0	40,000	0	0	40,000	0	0	0	40,000
Design (LHR)	380,000	0	0	380,000	380,000	0	0	0	380,000
Total Project Budget	5,655,000	559,000	1,849,000	5,028,000	13,091,000	267,606	538,174	805,780	13,896,780
City Council Appropriation	5,724,000	524,000	1,872,000	5,126,000	13,246,000	AE Fund	AE Fund	AE Fund	

Note: In Lieu Fees may have hard coded budgets.

**EXHIBIT D
NIAGARA DEVELOPMENT PARCEL**

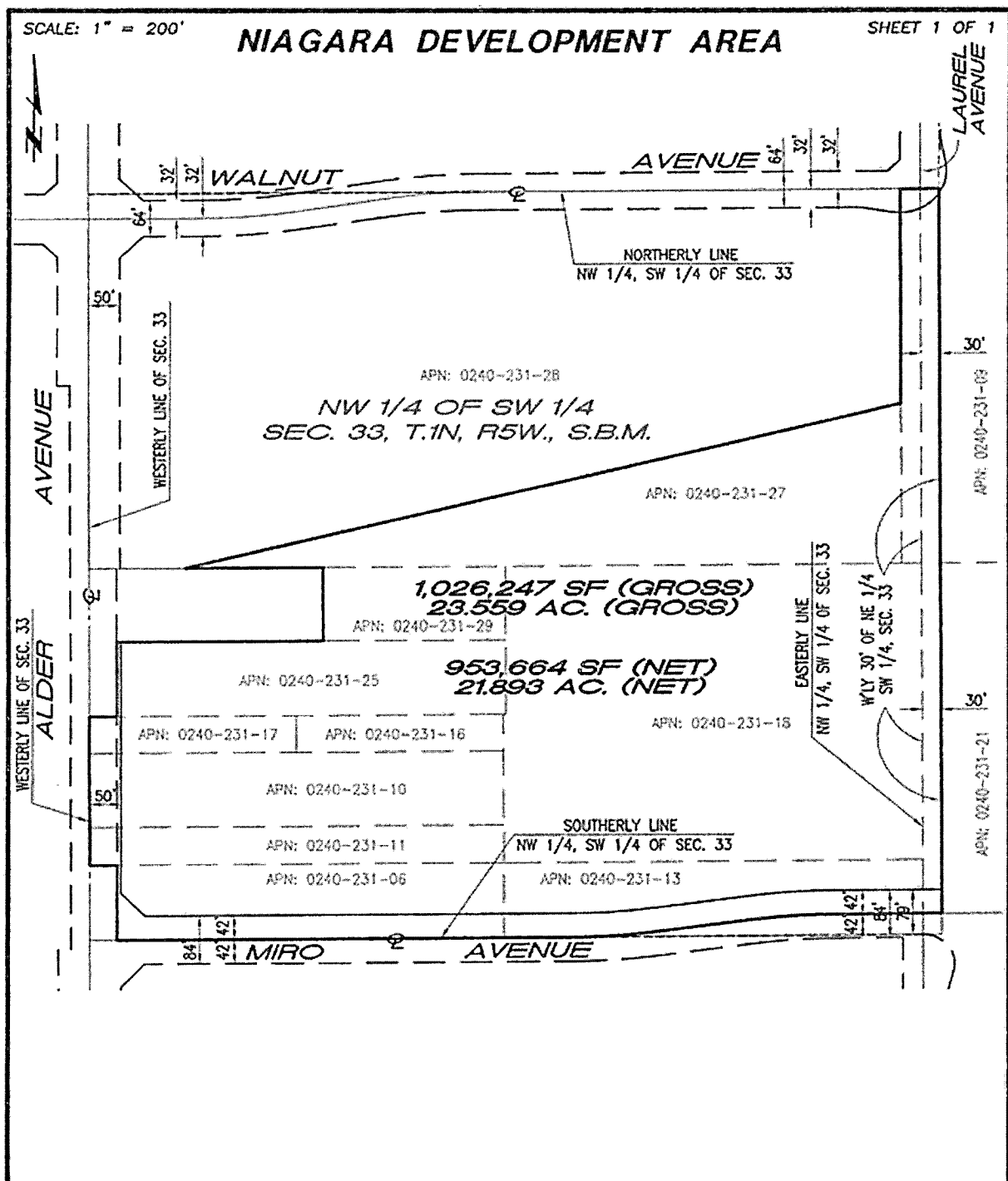


EXHIBIT E
MEDLINE DEVELOPMENT PARCEL

