



Legislation Details (With Text)

File #: 15-137 **Version:** 2 **Name:** TAB 5
Type: Agenda Item **Status:** Agenda Ready
File created: 3/2/2015 **In control:** City Council
On agenda: 3/10/2015 **Final action:**
Title: Request City Council to (1) Adopt Resolution No. 6705 Approving Construction and Credit Agreement by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC and (2) Adopt Budget Resolution No. 6706 Appropriating Funding for the Construction and Credit Agreement related to the **Niagara Project**.
(ACTION)

Sponsors:

Indexes:

Code sections:

Attachments: [Exhibit A Niagara Construction and Credit Agreement](#)
[Exhibit B - Niagara - Cost Estimate for Fee Credits 2 26 2015](#)
[Exhibit C - Reso - Approving a Construction and Credit Agreement with LHR- Niagara](#)
[Exhibit D - Budget Resolution](#)

Date	Ver.	Action By	Action	Result
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For City Council Meeting of March 10, 2015

TO: Honorable Mayor and City Council

APPROVAL: Michael Story, City Administrator

FROM: Robb Steel, Assistant City Administrator/ Development Services Director

Request City Council to (1) Adopt **Resolution No. 6705** Approving Construction and Credit Agreement by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC and (2) Adopt Budget **Resolution No. 6706** Appropriating Funding for the Construction and Credit Agreement related to the Niagara Project.
(ACTION)

BACKGROUND:

Pursuant to the Second Amended and Restated Contract of Sale for Areas B, C, and D dated September 25, 2012, (the "Contract of Sale"), by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC (LHR), LHR has the option to purchase and develop approximately 436 acres of land comprising the former Rialto Airport Municipal Airport (the "Airport Property").

On January 7, 2015, LHR entered into a Purchase and Sale Agreement (the "Niagara PSA") with Miro Way Properties, LLC (Niagara) for approximately 36 acres of land, 23.9 acres of which derive from the Airport Property. On January 27, 2015, the City Council approved Resolution No. 6688, which approved an Addendum to the Renaissance Specific Plan (RSP) for the consolidation of eleven (11) parcels of land into 36 acre development parcel and the construction of a 596,749 square

foot bottling plant and distribution center (the “Niagara Project”).

On February 3, 2015, the City’s Development Review Committee (the “DRC”) reviewed the Precise Plan of Design (PPD 2363) and established various Conditions of Approval (COA) for the development of the Niagara Project. The COA’s require LHR/Niagara to construct certain off-site public improvements including the construction of Alder Avenue along the Project’s frontage, the construction of a master planned storm drain facility within the Laurel Avenue Utility corridor, and the reconstruction of the traffic signal at Walnut Avenue and Alder Avenue (the “Public Improvements”).

Pursuant to the Niagara PSA, LHR will construct most of the Public Improvements identified within the COA and deliver Niagara a finished development parcel. Most of the public improvements required by the COA are master planned facilities and/or are listed within the City’s Development Impact Fee Nexus Studies. Section 3.33.010 of the Rialto Municipal Code permits the City Administrator to negotiate and enter into Construction and Fee Credit Agreements, subject to the approval of the City Council. LHR requests approval of a Construction and Credit Agreement with the City related to the construction of various Public Improvements including the construction and widening of Alder Avenue, the construction of a master planned storm drain and a modification to an existing traffic signal at Walnut Avenue and Alder Avenue. **(Exhibit A).**

ANALYSIS/DISCUSSION:

Under the terms of the Construction and Credit Agreement, the City will reimburse or credit LHR/Niagara for the cost of constructing the following improvements:

1. Construct Alder Avenue (half-width + travel lane) along the Project’s frontage (approximately 1,300 lineal feet from Miro Way northerly to Walnut Avenue).
2. Construct a master planned storm drain within the Laurel Avenue Utility corridor from Miro Way northerly to the intersection of Laurel and Walnut Avenues (approximately 1,750 lf).
3. Relocate and reconstruct the existing traffic signal at the intersection of Alder Avenue and Walnut Avenue.

The estimated cost of these Public Improvements is summarized below and further described in **Exhibit B.**

ESTIMATED FEE CREDITS (NIAGARA PROJECT)

	<u>Impact Fee Assessed</u>	<u>Estimated Cost</u>	<u>Eligible for Reimbursement</u>	<u>Net Fee Collected</u>
<u>Alder Avenue Street Improvements</u> <i>Fund 250 - Traffic</i>	\$ 1,348,653	\$ 1,054,405	\$ 1,054,405 ¹	\$ 294,248
<u>Storm Drain Improvements</u> <i>Fund 230 - Drainage</i>	\$ 1,090,003	\$ 422,759	\$ 422,759	\$ 667,243
<u>Walnut Signal</u> <i>Fund 301- RSP Traffic Fee</i>	\$ 83,885	\$ 239,005	\$ 83,885 ²	\$ -

Notes:

1 - Estimated Cost without landscaping

2 - Maximum Credit / Not to Exceed Fees Paid

LHR/Niagara will pay various development impact fees in connection with the Niagara Project. LHR/Niagara will pay development impact fees in excess of the fee credits requested, with the exception of the RSP Traffic Mitigation Fee. The RSP Traffic Mitigation Fee will be limited to the amount of the RSP Traffic Mitigation Fee paid (\$83,885). Pursuant to Section 3.33.100 of the Rialto Municipal Code, the developer shall not receive a fee credit or reimbursement for any construction costs exceeding the developer's obligation for development impact fees for the type of public facility constructed.

Additionally, the Construction and Credit Agreement provides for a credit against the RSP Specific Plan/Environmental Impact Report (RSP/EIR) Fee obligation. In consideration for LHR's previous expenditures related to the processing and approval of the RSP/EIR, the City shall grant a credit of \$122,217 toward the RSP Fee Obligation (the "RSP Fee Credit"). There shall be no reconciliation or accounting related to the application of the RSP Fee Credit based on the previously adopted fee program for the RSP Fee.

ENVIRONMENTAL IMPACT:

The Public Improvements are master planned facilities that have been analyzed as part of the Program EIR for the Renaissance Specific Plan and California Environmental Quality Act (CEQA) review for Niagara Project. On November 8, 2010, the City certified the EIR for the Renaissance Specific Plan and on November 10, 2010, filed the Notice of Determination for the EIR.

On January 27, 2015, the City Council approved and certified the Addendum to the EIR for the Renaissance Specific Plan, which was prepared for the Niagara Project. A Notice of Determination for the Niagara Project was filed on January 28, 2015.

Approval of the Construction and Credit Agreement is an administrative or fiscal action by the legislative body and will not result in any additional a direct or indirect physical change in the environment than what was already analyzed (Section 15378(b) of the CEQA Guidelines).

GENERAL PLAN CONSISTENCY:

The City of Rialto has identified several goals and objectives within the City's General Plan through which the City looks to improve the community.

Goal 3-1: Strengthen and diversify the economic base and employment opportunities and maintain a positive business environment.

Goal 3-6: Require that all developed areas within Rialto are adequately served with essential public services and infrastructure.

Goal 3-7: Upgrade public infrastructure as an inducement to promote private investment.

LEGAL REVIEW:

The City Attorney reviewed and approved the staff report, the Construction and Credit Agreement and the Resolutions.

FINANCIAL IMPACT:

Development impact fees are paid at issuance of building permits. Niagara will receive credits at building permit issuance for the estimated eligible improvement costs, paying the net amount. Upon Project completion, the final costs will be verified and reconciliation reimbursements to Niagara or payments made to the City.

The City will reimburse or provide credits to Niagara in the amounts stated above. Revenues will be recognized and expenditures will be charged to the appropriate Development Impact Fee accounts. With the exception of the RSP Traffic Mitigation Fee, the City expects to collect DIF fees exceeding the DIF credits granted.

RECOMMENDATION:

1. Adopt Resolution No. 6705 Approving a Construction and Credit Agreement by and between the City of Rialto and Lewis-Hillwood Rialto Company related to the Niagara Project.
2. Approve a Budget Resolution No. 6706 appropriation the following expenditures related to the Construction and Credit as follows:
 - a. Storm Drainage Development Impact Fee Fund Account No. 230-500-4720-3001-150809, in the amount of \$422,759.
 - b. Regional Traffic Development Impact Fee Fund Account No. 250-500-4313-3001-150809, in the amount of \$1,130,542; and
 - c. Renaissance Specific Plan Traffic Mitigation Fee Fund Account No. 301-241-0401-0001-150809 in the amount of \$83,885.

CONSTRUCTION AND CREDIT AGREEMENT

DEVELOPMENT IMPACT FEE PROGRAM

Niagara Bottling Center

This CONSTRUCTION AND CREDIT AGREEMENT ("Agreement") is entered into this 10th day of March 2015, by and between the City of Rialto, a California municipal corporation ("City"), and Lewis-Hillwood Rialto Company, LLC, a Delaware limited liability company ("Developer"). City and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, 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;

WHEREAS, Developer has exercised its option to purchase from the City approximately 23.9 acres of unimproved real property, and combined it with Developer's separately owned unimproved property 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 and more specifically described in the legal description set forth in **Exhibit "A"** attached hereto and incorporated herein by this reference ("Development Parcel");

WHEREAS, Developer and Miro Way Properties, LLC, a Delaware limited liability company ("Niagara") have consummated the transfer of the Development Parcel to Niagara;

WHEREAS, Niagara has requested from City certain entitlements and/or permits for the construction of certain improvements on the Development Parcel, including a 596,749 square foot bottling facility and certain off-site public improvements which are more particularly described and identified within the Conditions of Approval for Precise Plan of Design ("PPD") 2363 and the Declaration of Construction Covenants (the "Project");

WHEREAS, as a condition to City's approval of the Project, City has required Niagara to construct master planned improvements consisting of a portion of Alder Avenue, a public street within the City (the "Alder Improvements"), construct storm drain improvements in Laurel Avenue (including the recently vacated portion) (the "Storm Drain Improvements"), construct a signal at the intersection of Walnut Avenue and Alder Avenue (the "Signal Improvements"), which collectively may be referred to herein as the "Public Improvements" or "Improvements"

as described in **Exhibit “B”** (such plans and specifications, with any changes approved by City and Developer, are collectively referred to herein as the “Plans and Specifications”);

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, as they may be amended from time to time. 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.

WHEREAS, Niagara will pay as a condition of approval prior to the issuance of building permits, all DIF Fees and Fair Share Fees as identified in **Exhibit “C”**.

WHEREAS, Pursuant to Section 3.33.100 of the Rialto Municipal Code, Niagara may be eligible to receive and the City may grant credit towards the DIF Fees for construction of eligible master planned public improvements or facilities as contained in and in accordance with City policies and procedures. 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.

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 provide a means by which the Developer's costs for construction of the Public Improvements is offset by Niagara's obligation to pay the applicable DIF Fees, including the Regional Traffic Development Impact Fee (“Regional Traffic Fee”), the Storm Drain Facilities Development Impact Fee (“Storm Drain Fee”), the Renaissance Specific Plan Traffic Fee (“RSP Traffic Fee”), and the Renaissance Specific Plan/EIR Fee (“RSP Fee”) for the Project.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is 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 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 Improvements.

2.1 **Pre-approval of Plans and Specifications.** Developer is prohibited from commencing work on any portion of the Improvements until all Plans and Specifications for the Improvements 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 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 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 of the Improvements is undertaken as if such Improvements were constructed under the direction and authority of City. Thus, without limitation, Developer shall comply, with the requirements in **Exhibit "D"** with respect to the construction of the Improvements:

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

(b) Developer's General Contractor for the construction of the 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 Approved by the City.

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

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

2.5 Alterations to Improvements. All work shall be done and the 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 Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

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

3.0 Maintenance of Improvements. City shall not be responsible or liable for the maintenance or care of the Improvements until such Improvements are accepted by City. City shall exercise no control over the Improvements until accepted. Developer shall have no obligation to make the Improvements available for public use at any time before the Improvements are accepted by City. Any use by any person of the 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 Improvements. Developer shall maintain all of the 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 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 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 Inspection of Improvements. Developer shall, at its sole cost and expense, and at all times during construction of the Improvements, maintain reasonable and safe facilities and provide safe access for inspection by City of the Improvements and areas where construction of the 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 Civil Code with respect to the 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 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 said 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 portion of the Development Parcel.

7.0 Acceptance of Improvements; As-Built or Record Drawings. If the Improvements are completed by Developer in accordance with the Plans and Specifications, City shall be authorized to accept the Improvements. City may, in its reasonable discretion, accept fully completed portions of the Improvements prior to such time as all of the Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the Improvements. Upon the total or partial acceptance of the Improvements by City, Developer shall file with the Recorder's Office of the County of San Bernardino a notice of completion for the accepted Improvements in accordance with California Civil Code section 3093 ("Notice of Completion"), at which time the accepted Improvements shall become the sole and exclusive property of City without any payment therefor. Notwithstanding the foregoing, City may not accept any 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 Improvements (or the applicable portion thereof). The drawings shall be certified and shall reflect the condition of the Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the Improvements, for a period of one (1) year following completion of the work and acceptance by City ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the Improvements, in accordance with the Plans and Specifications. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost and expense of Developer and its surety. As to any Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following City acceptance of the repaired, replaced, or reconstructed 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 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 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 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 twenty-four (24) hours thereof. Immediately upon City's issuance of the Notice, Developer and its surety shall be liable to City for all costs of construction and installation of the Improvements and all other administrative costs expenses as provided for in Section 9.0 of this Agreement.

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 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 Improvements, Developer or its contractor shall provide City with surety bonds in the amounts and under the terms set forth below or, at the 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 the City and terms to be approved by the City ("Security"). The amount of the Security shall be based on the estimated actual costs (the "Estimated Costs") to construct the Improvements, as determined by City after Developer has awarded a contract for construction of the 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 the 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, and to secure the Warranty of the Improvements, 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. The City may, in its reasonable discretion, partially release a portion or portions of the security provided under this section as the Improvements are 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 at the end of the Warranty period, 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, materialmen, and other persons furnishing labor, materials, or equipment for performance of the 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 six (6) months after the date City accepts the Improvements.

11.3 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 Improvements, or the Plans and Specifications shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in **Exhibit "E"** unless other forms are deemed acceptable by the 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 "E"** 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 separately to this Agreement or be no less than two times the specified occurrence limit.

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 Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 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.

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, the total amount of Regional Traffic Fee owing to the City is One Million Three Hundred Forty Eight Thousand Six Hundred Fifty Two Dollars and Seventy Four Cents (**\$1,348,652.74**) (the "Regional Traffic Fee Obligation").

14.1.1 Credit Offset against Regional Traffic Fee Obligation. In consideration for Developer's obligation under this Agreement to construct the Alder Improvements, a credit shall be applied by City to offset the Regional Traffic Fee Obligation (the "Regional Traffic Fee Credit") at the earlier of (1) completion of the Alder Improvements or (2) when adequate security is posted for the Alder Improvements. At the time of this Agreement, the estimated cost to construct the Alder Improvements is **\$1,054,405**, as set forth on **Exhibit "F"** (the "Estimated Regional Traffic Fee Credit"). The Actual Regional Traffic Fee Credit shall be calculated as provided in Section 14.5 of this Agreement.

14.1.2 Application of Estimated Regional Traffic Fee Credit against Regional Traffic Fee Obligation. Prior to the issuance of a building permit for the Project, Niagara shall pay to City the amount of **\$294,247.74** representing the Regional Fee Traffic Obligation less the Estimated Regional Traffic Fee Credit.

14.2 RSP Traffic Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of RSP Traffic Fee owing to the City is Eighty Three Thousand Eight Hundred Eighty Five Dollars and No Cents (**\$83,885.00**) (the "RSP Traffic Fee Obligation").

14.2.1 Credit Offset against RSP Traffic Fee Obligation. In consideration for Developer's obligation under this Agreement to construct the Signal Improvements, a credit shall be applied by City to offset the RSP Traffic Fee Obligation (the "RSP Traffic Fee Credit") at the earlier of (1) completion of the Signal Improvements or (2) when adequate security is posted for the Signal Improvements. At the time of this Agreement, the estimated cost to construct the Signal Improvements is **\$239,005**, as set forth on **Exhibit "F"** (the "Estimated Signal Improvements Credit"). As the estimated cost to construct the Signal Improvements exceeds the RSP Traffic Fee Obligation, Developer intends to enter into a reimbursement

agreement with the City when the actual costs of the Signal Improvements are known. The Actual RSP Traffic Fee Credit shall be calculated as provided in Section 14.5 of this Agreement.

14.2.2 Application of Estimated Signal Credit against RSP Traffic Fee Obligation. Prior to the issuance of a building permit for the Project, Niagara shall pay to City the amount of \$156,020 representing the RSP Traffic Fee less the Estimated Signal Credit.

14.3 Credit Offset against Storm Drain Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of Storm Drain Fee owing to the City is One Million Ninety Thousand Two Dollars and Fifty Three Cents (**\$1,090,002.53**) (the “Storm Drain Fee Obligation”).

14.3.1 Credit Offset against Storm Drain Fee Obligation. In consideration for Developer's obligation under this Agreement to construct the Storm Drain Improvements, a credit shall be applied by City to offset the Storm Drain Fee Obligation (the “Storm Drain Credit”) at the earlier of (1) completion of the Storm Drain Improvements or (2) when adequate security is posted for the Storm Drain Improvements. At the time of this Agreement, the estimated cost to construct the Storm Drain Improvements is **\$422,759**, as set forth on **Exhibit “F”** (the “Estimated Storm Drain Credit”). The Actual Storm Drain Credit shall be calculated as provided in Section 14.5 of this Agreement.

14.3.2 Application of Estimated Storm Drain Credit against Storm Drain Fee Obligation. Prior to the issuance of a building permit for the Project, Niagara shall pay to City the amount of **\$667,423.53** representing the Storm Drain Fee Obligation less the Estimated Storm Drain Credit.

14.4 RSP Fee Obligation. City and Developer acknowledge that as of the date of this Agreement, the total amount of the RSP Fee owing to the City is (**\$122,217**) (the “RSP Fee Obligation”).

14.4.1 Credit Offset against RSP Fee Obligation. In consideration for Developer's previous expenditures, a credit of \$122,217 shall be applied by City to offset the RSP Fee Obligation (the “RSP Fee Credit”) at the time such fee is due to be paid by Niagara. There shall be no reconciliation or accounting related to the application of the RSP Fee Credit based on the previously adopted fee program for the RSP Fee.

14.5 Reconciliation; Final Offset against Outstanding Fee Obligations. Upon completion of the Public Improvements by Developer, Developer shall submit to the City Engineer such information as the 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”). The Actual Regional Traffic Fee Credit, the Actual Signal Fee Credit and the Actual Storm Drain Fee Credit shall equal the Verified Construction Costs for the purposes of final reconciliation.

If the Actual Regional Traffic Fee Credit is less than the Estimated Regional Traffic Fee Credit, Developer shall pay the balance to City to fully satisfy Developer's Regional Traffic Fee Obligation within 30 days. If the Actual Regional Traffic Fee Credit exceeds the

Estimated Regional Traffic Fee Credit, City shall refund the balance to Developer within 30 days.

If the Actual Signal Credit is less than the Estimated Signal Credit, Developer shall pay the balance to City to fully satisfy Developer's RSP Traffic Fee Obligation within 30 days. If the Actual Signal Fee Credit exceeds the Estimated Signal Credit, City shall refund the balance to Developer within 30 days.

If the Actual Storm Drain Fee Credit is less than the Estimated Storm Drain Fee Credit, Developer shall pay the balance to City to fully satisfy Developer's Storm Drain Fee Obligation within 30 days. If the Actual Storm Drain Fee Credit exceeds the Storm Drain Estimated Credit, City shall refund the balance to Developer within 30 days.

14.6 Fee Credit Limits. Notwithstanding anything to the contrary in this Section 14, the following limits apply with respect to credit and reimbursement of Regional Traffic Fees, Wastewater Fees, and Storm Drain Fees.

14.6.1. DIF Fee Categories. Developer acknowledges that DIF Fees are imposed in various separate categories to fund specific public facilities. Credit 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 the Storm Drain Fee for the street improvement.

14.6.2 Maximum Credit. The amount of the Actual Fee Credit for each respective DIF Fee category shall not exceed the amount of the DIF Fees paid in that category.

14.6.3 Soft Costs. The City Engineer shall, in his/her sole discretion, determine the amount of reasonable soft costs eligible for reimbursement under the Fee Credit provisions of Rialto Municipal Code Section 3.33.100. Such amounts may include the reasonable soft costs of the City related to the improvements including indirect costs of construction, including professional engineering and design services, construction management, soils testing, administrative costs, permits, plan check fees and inspections. 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 means Approved by the City. The total amount of the soft costs shall not exceed fifteen percent (15%) of the amount eligible for reimbursement. The City may, in its sole discretion, reduce or disallow reimbursement for any costs the City finds excessive or unreasonable.

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 Development Parcel ("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 Development Parcel, provided that City hereby agrees that a copy of the deed or conveyance document shall be sufficient proof. The City hereby approves Niagara Industries, Inc. as a

prospective Assignee under this section. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement in the form attached hereto as **Exhibit "G"**.

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)

To Developer: Lewis-Hillwood Rialto Company, LLC
1156 N. Mountain Ave
Upland, CA 91786
Attn: Bryan Goodman
Phone No.: 909-946-7537

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:

LEWIS-HILLWOOD RIALTO COMPANY, LLC,
a Delaware limited Liability Company

By: LEWIS-RIALTO COMPANY, LLC,
a Delaware Limited Liability Company
It's Managing Member

By: LEWIS OPERATING CORP.,
a California corporation
Its sole member

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: _____

Date: _____

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 THE NIAGARA DEVELOPMENT PARCEL

THE LAND REFERRED TO IN THIS COMMITMENT IS SITUATED IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1: APN: 0240-231-06

THE SOUTH 132 FEET TO THE WEST 660 FEET OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE WEST 44 FEET THEREOF AS CONVEYED TO THE CITY OF RIALTO FOR STREET AND HIGHWAY PURPOSES, BY DEED RECORDED FEBRUARY 13, 1968 IN BOOK 6974, PAGE 346, OFFICIAL RECORDS.

PARCEL 2: APN: 0240-231-10

THE NORTH 132.00 FEET OF THE SOUTH 330.00 FEET OF THE WEST 660.00 FEET OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 3: APN: 0240-231-11

THE NORTH 66 FEET OF THE SOUTH 198 FEET OF THE WEST 660 FEET OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 4: APN: 0240-231-13

THE SOUTH 132 FEET OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, SAVING AND EXCEPTING THEREFROM THE WEST 660 FEET.

PARCEL 5: APN: 0240-231-25

PARCEL 2 OF PARCEL MAP NO. 3365, AS PER PLAT RECORDED IN BOOK 36 OF PARCEL MAPS, PAGE 13, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 6: APN: 0240-231-16

THE NORTH 66 FEET OF THE SOUTH 396 FEET OF THE EAST 330 FEET OF THE WEST 660 FEET

OF THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 7: APN: 0240-231-17

THE NORTH 66 FEET OF THE SOUTH 396 FEET OF THE WEST 330 FEET OF THE SOUTH ONEHALF OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 8: APN: 0240-231-18

THE SOUTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONEQUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE WEST 660 FEET.
ALSO EXCEPTING THEREFROM THE SOUTH 132 FEET OF SAID LAND.

PARCEL 9: APN: 0240-231-27

THAT PORTION OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE FULLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL;
THENCE NORTH 0° 04' 48" EAST ALONG THE EAST LINE OF SAT NORTH 1/2, 290.00 FEET;
THENCE SOUTH 76° 04' 32" WEST, 1205.84 FEET TO THE SOUTH LINE OF SAID NORTH 1/2;
THENCE NORTH 89° 59' 29" EAST ALONG THE SOUTH LINE OF SAID NORTH 1/2, 1170.00 FEET
TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE EAST 32 FEET OF SAID LAND AS GRANTED TO THE CITY OF RIALTO, A MUNICIPAL CORPORATION, BY DEED RECORDED MAY 19, 1982 AS INSTRUMENT NO. 82-098460 OF OFFICIAL RECORDS.

PARCEL 10: APN: 0240-231-29

THE EASTERLY 290.40 FEET OF PARCEL 1 OF PARCEL MAP NO. 3365, AS PER PLAT RECORDED IN BOOK 36 OF THE PARCEL MAPS, PAGE 13, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 11: APN 0240-231-28

THE NORTH ONE-HALF OF THE NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONEQUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RIALTO, IN THE COUNTY OF SAN BERNARDINO, STATE OF

CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE EAST 32 FEET OF SAID LAND GRANTED TO THE CITY OF RIALTO, A MUNICIPAL CORPORATION, BY DEED RECORDED MAY 19, 1982 AS INSTRUMENT NO. 82098460 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, MORE FULLY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE ABOVE DESCRIBED PARCEL;
THENCE NORTH 0° 04' 48" EAST ALONG THE EAST LINE OF SAID NORTH 1/2, 290.00 FEET;
THENCE SOUTH 76° 04' 32" WEST, 1205.84 FEET TO THE SOUTH LINE OF SAID NORTH 1/2;
THENCE NORTH 89° 59' 29" EAST ALONG THE SOUTH LINE OF SAIE NORTH 1/2, 1170.00 FEET TO THE POINT OF BEGINNING.

PARCEL 12:

THE WESTERLY 30.00 FEET OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 1 NORTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF RIALTO, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

APN(S): 0240-231-29; 0240-231-28; 0240-231-27; 0240-231-25; 0240-231-16; 0240-231-17;
0240-231-18; 0240-231-10; 0240-231-11; 0240-231-06, 0240-231-13, AND PORTIONS OF 0240-231-09
AND 0240-231-21

EXHIBIT “B”

PUBLIC IMPROVEMENTS

1. Construction of master planned roadway improvements along project’s frontage along Alder Avenue a lineal distance of approximately 1,300 lineal feet from Miro Way to Walnut Avenue (the “Alder Improvements”),
2. Construction of master planned storm drain improvements in Laurel Avenue and within the recently vacated portions of Laurel Avenue from Walnut Avenue to Miro Way, (the “Storm Drain Improvements”).
3. The relocation and modification of the traffic signal at the signal at the intersection of Walnut Avenue and Alder Avenue (the “Signal Improvements”).

EXHIBIT “C” **DEVELOPMENT IMPACT FEES**

<u>DIF Fund Account</u>	<u>RMC Section</u>	<u>Development Impact Fee</u>		<u>Fee Assessed</u>
220-400-8348-7679	3.33.230	Open Space	\$	71,609.88
230-400-4720-7662	3.33.270	Storm Drain Facilities	\$	1,090,002.53 ¹
250-400-4314-7679	3.33.180	Street Median	\$	11,934.98
670-400-7952-7677		Fire Protection Facilities	\$	
250-400-4312-7679	3.33.160	Regional Traffic Impact Fee:	\$	1,348,652.74 ²
270-400-2147-7679	3.33.190	General Municipal Facilities	\$	37,238.93
660-400-7150-7703	3.33.240	Sewage Collection Facilities	\$	86,348.77 ³
660-400-7856-7705	3.33.250	Sewage Treatment Facilities	\$	1,085,563.65 ⁴
218-400-6282-7679	3.33.210	Law Enforcement Facilities	\$	23,545.99
217-400-5176-7679	3.33.220	Fire Facilities Impact Fee:	\$	<u>35,009.17</u>
		DIF TOTAL	\$	3,789,906.65
FAIR SHARE FEES				
301-241-0401-0000	3.33.280	Renaissance - Traffic Mitigation	\$	83,885.01
301-241-0401-0001	3.33.280	Renaissance - Specific Plan - EIR Fee	\$	<u>122,216.85</u>
		FAIR SHARE FEE TOTAL	\$	<u>206,101.86</u>
TOTAL ALL DEVELOPMENT IMPACT AND FAIR SHARE FEES				\$ 3,996,008.50

Notes

- ¹ Drainage fee is assessed upon the higher of the Square Footage rate and acreage rate.
- ² Transportation Fee is based upon the General Industrial Rate
- ³ Sewage Collection Fee may be credited or waived if install and extend sewer line which serve others .
- ⁴ Sewage Connection (Treatment) based upon Softwater service and 12,612 sf of Office
- ⁵ Fees are adjusted annually July 1 each year. Fee will be assessed and paid prior to issuance of building permits.

EXHIBIT “D”

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 Additional Public Improvements).
 5. The contractor shall be required to pay prevailing wages pursuant to Section 2.7 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. Owner 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. Owner 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. Owner must implement an appeals procedure for responding to disputes in compliance with California Public Contract Code Section 20101(d). If Owner 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 Owner (and approved by City) shall be permitted to bid on any portion of the construction work for the Public Improvements.
- C. Owner 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 Owner at Owner's place of business or other site mutually acceptable to Owner 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. Owner 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 Owner, 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 Owner 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. Owner must file a Notice of Completion within 30 days of City's approval of the Public Improvements (determining substantial completion).
- G. Owner must comply with all applicable requirements of the Public Contract Code with regard to stop notices and liens filed.
- H. Owner shall make prompt payment to all contractors and subcontractors.
- I. Amounts reflected in any stop notice filed against Owner or City shall be withheld from progress payments to contractors/subcontractors.
- J. All public improvements constructed by Owner 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 Owner'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 “E”

FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

PERFORMANCE BOND

WHEREAS the City of Rialto has executed an agreement with Lewis-Hillwood Rialto Company, a Delaware limited liability company (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Credit and Construction Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Rialto in the sum of _____ (\$_____), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their 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, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless City, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As 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 City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this 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.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 2014.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me, _____, a Notary Public in and for said state, personally appeared _____, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the _____ (surety) and acknowledged to me that he subscribed the name of the _____ (surety) thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal was
then _____ of said corporation; that I know his signature, and
his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in
behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be
attached hereto.

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS the City of Rialto has executed an agreement with Lewis-Hillwood Rialto Company, LLC, a Delaware limited liability company (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Credit and Construction Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Rialto and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of _____ (\$_____), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of

California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430 or 9100 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 said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this 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.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 2014.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

STATE OF CALIFORNIA)
)
COUNTY OF _____) ss.

On this ____ day of _____, in the year _____, before me,
_____, a Notary Public in and for said state,
personally appeared _____, known to me (or proved to
be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within
instrument as the Attorney-in-Fact of the _____ (surety) and
acknowledged to me that he subscribed the name of the _____ (surety)
thereto and his own name as Attorney-in-Fact.

Notary Public in and for said State

(SEAL)

My Commission Expires _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that
_____ who signed the said bond on behalf of the principal was
then _____ of said corporation; that I know his signature, and
his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in
behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT “F”

ESTIMATED CONSTRUCTION COSTS



OFF-SITE IMPROVEMENT COST ESTIMATE				
PROJECT - Niagara			DATE: 2/23/2015	
SUMMARY OF COSTS				
NO.	DESCRIPTION		TOTALS	
1	Alder Avenue - Street Improvements		\$	1,054,404.71
4	Storm Drain Improvements			\$422,759.47
9	Walnut Signal - RSP Traffic Fee Credit			\$83,885.00
10	Renaissance Specific Plan Fee		\$	122,217.00
11	Total Estimate of Fee Credits		\$	1,683,266.18
12	amounts subject to change based on final costs and reconciliation			
Alder Avenue - Street Improvements				
NO.	DESCRIPTION	QUANTITY	UNIT COST	TOTAL
1	DEMOLITION - EXISTING A.C. PAVEMENT	42000 SF	\$1.00 /SF	\$42,000.00
2	DEMOLITION - EXISTING CONC. CURB & GUTTER	140 LF	\$2.50 /LF	\$350.00
3	DEMOLITION - EXISTING FENCING	1250 LF	\$5.00 /LF	\$6,250.00
4	DEMOLITION - GRUB EXISTING TREES/VEGETATION	1 LS	\$500.00 /LS	\$500.00
5	RELOCATE EXISTING TRAFFIC SIGNAL STANDARD	2 EA	\$40,000.00 /EA	\$80,000.00
6	ADJUST EXISTING MANHOLE TO GRADE	3 EA	\$1,200.00 /EA	\$3,600.00
7	ADJUST EXISTING VALVE TO GRADE	6 EA	\$350.00 /EA	\$2,100.00
8	SAWCUT PAVEMENT	600 LF	\$5.00 /LF	\$3,000.00
9	ROADWAY GRADING	98420 SF	\$0.60 /SF	\$59,052.00
10	GRIND, OVERLAY AND JOIN EXISTING A.C. PAVEMENT	2000 SF	\$1.30 /SF	\$2,600.00
11	CONSTRUCT 5" A.C. PAVEMENT	50540 SF	\$2.00 /SF	\$101,080.00
12	CONSTRUCT 6" AGG. BASE	50540 SF	\$1.50 /SF	\$75,810.00
13	CONSTRUCT 8" CURB & GUTTER	930 LF	\$18.50 /LF	\$17,205.00
15	CONSTRUCT 5' WIDE CONCRETE SIDEWALK	4950 SF	\$4.50 /SF	\$22,275.00
16	CONSTRUCT PARKWAY LANDSCAPING & IRRIGATION	6435 SF	\$4.50 /SF	\$0.00
17	CONSTRUCT MEDIAN HARDSCAPE / LANDSCAPING	11200 SF	\$6.00 /SF	\$0.00
18	CONSTRUCT CONCRETE COMMERCIAL DRIVEWAY	1 EA	\$5,500.00 /EA	\$5,500.00
19	CONSTRUCT ACCESS DRIVEWAY FOR EXISTING USE	1 EA	\$3,000.00 /EA	\$3,000.00
20	INSTALL SIGNAGE	3 EA	\$300.00 /EA	\$900.00
21	INSTALL STREET STRIPING / CURB PAINTING	3990 LF	\$4.00 /LF	\$15,960.00
22	INSTALL STREET TREE	24 EA	\$350.00 /EA	\$0.00
23	INSTALL STREET LIGHT	4 EA	\$4,000.00 /EA	\$0.00
24	INSTALL STREET LIGHT CONDUIT	1100 LF	\$15.00 /LF	\$0.00
25	INSTALL STREET LIGHT PULL BOX	4 EA	\$500.00 /EA	\$0.00
26	INSTALL STREET LIGHT PEDESTAL - ELECT. CONNECTION	1 EA	\$5,000.00 /EA	\$0.00
27	INSTALL HANDICAP RAMP	2 EA	\$1,750.00 /EA	\$3,500.00
28	INSTALL LOCAL DEPRESSION	1	\$1,500.00 /EA	\$1,500.00
29				
30	INSTALL TRAFFIC SIGNAL	1	\$400,000.00 /EA	\$400,000.00
31				
32				
33				
34	CONSTRUCTION STAKING			\$14,000.00
35	SOILS & MATERIALS TESTING			\$8,500.00
36	TRAFFIC CONTROL			\$60,000.00
37				
38	SUBTOTAL			\$928,682.00
39	10%CONTINGENCY			\$92,868.20
40				
41	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K			\$32,854.51
42				
43				
44	TOTAL			\$1,054,404.71

Signal Improvements - Walnut/Alder				
NO.	DESCRIPTION	QUANTITY	UNIT COST	TOTAL
3	CONSTRUCT TRAFFIC SIGNAL STANDARD	2 EA	\$100,000.00 /EA	\$200,000.00
26				
33				
34	CONSTRUCTION STAKING			\$4,000.00
35	SOILS & MATERIALS TESTING			\$3,000.00
36	TRAFFIC CONTROL			\$2,000.00
37				
38	SUBTOTAL			\$209,000.00
39	10%CONTINGENCY			\$20,900.00
40				
41	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K			\$9,105.00
42				
43				
44	TOTAL			\$239,005.00

22	STORM DRAIN IMPROVEMENTS - LAUREL AVENUE (EASEMENT): WALNUT TO MIRO			
23	INSTALL 24" STORM DRAIN	104 LF	\$96.00 /LF	\$9,984.00
24	INSTALL 30" STORM DRAIN	24 LF	\$120.00 /LF	\$2,880.00
25	INSTALL 36" STORM DRAIN	56 LF	\$144.00 /LF	\$8,064.00
26	INSTALL 48" STORM DRAIN	1256 LF	\$192.00 /LF	\$241,152.00
27	INSTALL 54" STORM DRAIN	144 LF	\$216.00 /LF	\$31,104.00
28	INSTALL STORM DRAIN MANHOLE	3 EA	\$5,000.00 /EA	\$15,000.00
29	INSTALL STORM DRAIN TRANSITION STRUCTURE	1 EA	\$4,500.00 /EA	\$4,500.00
30	INSTALL SIDE INLET TYPE CATCH BASIN - 7'WIDE	1 EA	\$5,000.00 /EA	\$5,000.00
31	INSTALL SIDE INLET TYPE CATCH BASIN - 28'WIDE	2 EA	\$15,000.00 /EA	\$30,000.00
32	INSTALL STORM DRAIN JUNCTION STRUCTURE	2 EA	\$5,500.00 /EA	\$11,000.00
33	INSTALL STORM DRAIN CONCRETE COLLAR	2 EA	\$2,500.00 /EA	\$5,000.00
34	BRICK AND MORTAR "PLUG" END OF PIPE	1 EA	\$1,000.00 /EA	\$1,000.00
35				
36	CONSTRUCTION STAKING			\$3,500.00
37	SOILS & MATERIALS TESTING			\$2,000.00
38	TRAFFIC CONTROL			\$1,000.00
39	SUBTOTAL			\$371,184.00
40	10%CONTINGENCY			\$37,118.40
41	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K			\$14,457.07
42	TOTAL			\$422,759.47

EXHIBIT "G"

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is made as of the _____ day of March, 2015 by: (i) Lewis-Hillwood Rialto Company, LLC, a Delaware limited liability company ("Assignor"), and (ii) Miro Way Properties, LLC, a Delaware Limited Liability Company ("Assignee").

RECITALS

A. Concurrently with the execution and delivery hereof, pursuant to a certain Agreement of Purchase and Sale dated December 15, 2014 (the "Purchase Agreement") between Assignor and Assignee, Assignor is conveying to Assignee all of Assignor's right, title and interest in and to the real property described on Exhibit A attached hereto and made a part hereof (the "Development Parcel").

B. It is the desire of Assignor to hereby sell, assign, transfer, convey, set-over and deliver to Assignee Assignor's right, title and interest to sections 14.1 through 14.3.2, inclusive, of that certain Credit and Construction Agreement between Assignor, as Developer, and the City of Rialto, a California municipal corporation, dated as of _____, 2015 (the "Agreement").

AGREEMENT

1. Subject to the terms of the Purchase Agreement, Assignor does hereby sell, assign, transfer, set-over and deliver unto Assignee, its successors and assigns, all right, title and interest of Assignor only to sections 14.1 through 14.3.2, inclusive, to the Agreement.

2. Assignee accepts the foregoing assignment and assumes and agrees to be bound by and to perform and observe all of the obligations, covenants, terms and conditions to be performed or observed under the Agreement arising on or after the date hereof. Assignee further agrees to indemnify Assignor and hold Assignor harmless from and against any and all claims, liens, damages, demands, causes of action, liabilities, lawsuits, judgments, losses, costs and expenses (including, without limitation, attorneys' fees and expenses) asserted against or incurred by Assignor by reason of or arising out of any failure by Assignee to perform or observe the obligations, covenants, terms and conditions assumed by Assignee hereunder arising in connection with the Agreement and related to the period on or after the date hereof.

3. Notwithstanding anything to the contrary set forth in this Assignment, Section _____ of the Purchase Agreement shall govern the allocation of the "Estimated Costs" and the "Credit" (as such terms are defined in the Agreement) between Assignor and Assignee.

4. This Assignment may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Assignment.

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption to be executed as of the date first written above.

Assignor:

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 member

By: _____
Printed Name: _____
Title: _____

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: _____

MIRO WAY PROPERTIES, LLC,
a Delaware limited liability company

By: _____
Printed Name: _____
Title: _____

Exhibit " B"

Construction Cost Estimates - Niagara Project

OFF-SITE IMPROVEMENT COST ESTIMATE

Alder Avenue - Street Improvements				
NO.	DESCRIPTION	QUANTITY	UNIT COST	TOTAL
1	DEMOLITION - EXISTING A.C. PAVEMENT	42000 SF	\$1.00 /SF	\$42,000.00
2	DEMOLITION - EXISTING CONC. CURB & GUTTER	140 LF	\$2.50 /LF	\$350.00
3	DEMOLITION - EXISTING FENCING	1250 LF	\$5.00 /LF	\$6,250.00
4	DEMOLITION - GRUB EXISTING TREES/VEGETATION	1 LS	\$500.00 /LS	\$500.00
5	RELOCATE EXISTING TRAFFIC SIGNAL STANDARD	2 EA	\$40,000.00 /EA	\$80,000.00
6	ADJUST EXISTING MANHOLE TO GRADE	3 EA	\$1,200.00 /EA	\$3,600.00
7	ADJUST EXISTING VALVE TO GRADE	6 EA	\$350.00 /EA	\$2,100.00
8	SAWCUT PAVEMENT	600 LF	\$5.00 /LF	\$3,000.00
9	ROADWAY GRADING	98420 SF	\$0.60 /SF	\$59,052.00
10	GRIND, OVERLAY AND JOIN EXISTING A.C. PAVEMENT	2000 SF	\$1.30 /SF	\$2,600.00
11	CONSTRUCT 5" A.C. PAVEMENT	50540 SF	\$2.00 /SF	\$101,080.00
12	CONSTRUCT 6" AGG. BASE	50540 SF	\$1.50 /SF	\$75,810.00
13	CONSTRUCT 8" CURB & GUTTER	930 LF	\$18.50 /LF	\$17,205.00
14	CONSTRUCT 5' WIDE CONCRETE SIDEWALK	4950 SF	\$4.50 /SF	\$22,275.00
15	CONSTRUCT PARKWAY LANDSCAPING & IRRIGATION	6435 SF	\$4.50 /SF	\$0.00
16	CONSTRUCT MEDIAN HARDSCAPE / LANDSCAPING	11200 SF	\$6.00 /SF	\$0.00
17	CONSTRUCT CONCRETE COMMERCIAL DRIVEWAY	1 EA	\$5,500.00 /EA	\$5,500.00
18	CONSTRUCT ACCESS DRIVEWAY FOR EXISTING USE	1 EA	\$3,000.00 /EA	\$3,000.00
19	INSTALL SIGNAGE	3 EA	\$300.00 /EA	\$900.00
20	INSTALL STREET STRIPING / CURB PAINTING	3990 LF	\$4.00 /LF	\$15,960.00
21	INSTALL STREET TREE	24 EA	\$350.00 /EA	\$0.00
22	INSTALL STREET LIGHT	4 EA	\$4,000.00 /EA	\$0.00
23	INSTALL STREET LIGHT CONDUIT	1100 LF	\$15.00 /LF	\$0.00
24	INSTALL STREET LIGHT PULL BOX	4 EA	\$500.00 /EA	\$0.00
25	INSTALL STREET LIGHT PEDESTAL - ELECT. CONNECTION	1 EA	\$5,000.00 /EA	\$0.00
26	INSTALL HANDICAP RAMP	2 EA	\$1,750.00 /EA	\$3,500.00
27	INSTALL LOCAL DEPRESSION	1	\$1,500.00 /EA	\$1,500.00
28				
29	INSTALL TRAFFIC SIGNAL	1	\$400,000.00 /EA	\$400,000.00
30				
31				
32				
33	CONSTRUCTION STAKING			\$14,000.00
34	SOILS & MATERIALS TESTING			\$8,500.00
35	TRAFFIC CONTROL			\$60,000.00
36				
37	SUBTOTAL			\$928,682.00
38	10% CONSTRUCTION CONTINGENCY			\$92,868.20
39				
40	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K			\$32,854.51
41				
42				
43	TOTAL			\$1,054,404.71

Exhibit " B"

Construction Cost Estimates - Niagara Project

OFF-SITE IMPROVEMENT COST ESTIMATE

Storm Drain Improvements					
NO.	DESCRIPTION	QUANTITY		UNIT COST	TOTAL
1	STORM DRAIN IMPROVEMENTS - LAUREL AVENUE (EASEMENT): WALNUT TO MIRO				
2	INSTALL 24" STORM DRAIN	104	LF	\$96.00 /LF	\$9,984.00
3	INSTALL 30" STORM DRAIN	24	LF	\$120.00 /LF	\$2,880.00
4	INSTALL 36" STORM DRAIN	56	LF	\$144.00 /LF	\$8,064.00
5	INSTALL 48" STORM DRAIN	1256	LF	\$192.00 /LF	\$241,152.00
6	INSTALL 54" STORM DRAIN	144	LF	\$216.00 /LF	\$31,104.00
7	INSTALL STORM DRAIN MANHOLE	3	EA	\$5,000.00 /EA	\$15,000.00
8	INSTALL STORM DRAIN TRANSITION STRUCTURE	1	EA	\$4,500.00 /EA	\$4,500.00
9	INSTALL SIDE INLET TYPE CATCH BASIN - 7' WIDE	1	EA	\$5,000.00 /EA	\$5,000.00
10	INSTALL SIDE INLET TYPE CATCH BASIN - 28' WIDE	2	EA	\$15,000.00 /EA	\$30,000.00
11	INSTALL STORM DRAIN JUNCTION STRUCTURE	2	EA	\$5,500.00 /EA	\$11,000.00
12	INSTALL STORM DRAIN CONCRETE COLLAR	2	EA	\$2,500.00 /EA	\$5,000.00
13	BRICK AND MORTAR "PLUG" END OF PIPE	1	EA	\$1,000.00 /EA	\$1,000.00
14					
15					\$3,500.00
16	CONSTRUCTION STAKING				\$2,000.00
17	SOILS & MATERIALS TESTING				\$1,000.00
18	TRAFFIC CONTROL				
19				SUBTOTAL	\$371,184.00
20	10% CONSTRUCTION CONTINGENCY				\$37,118.40
21					
22	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K				\$14,457.07
23					
24				TOTAL	\$422,759.47

Exhibit " B"

Construction Cost Estimates - Niagara Project

OFF-SITE IMPROVEMENT COST ESTIMATE

Walnut Avenue - Signal Improvements				
NO.	DESCRIPTION	QUANTITY	UNIT COST	TOTAL
1	CONSTRUCT TRAFFIC SIGNAL STANDARD	2 EA	\$100,000.00 /EA	\$200,000.00
2				
3				
4	CONSTRUCTION STAKING			\$4,000.00
5	SOILS & MATERIALS TESTING			\$3,000.00
6	TRAFFIC CONTROL			\$2,000.00
7				
8			SUBTOTAL	\$209,000.00
9	10% CONSTRUCTION CONTINGENCY			\$20,900.00
10				
11	OFFSITE IMPROVEMENT PERMIT / INSPECTION - \$5208 + 3% OF VAL. > 100K			\$9,105.00
12				
13				
14			TOTAL	\$239,005.00

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
RIALTO, CALIFORNIA, APPROVING A CONSTRUCTION
AND CREDIT AGREEMENT BY AND BETWEEN THE CITY OF
RIALTO AND LEWIS-HILLWOOD RIALTO COMPANY, LLC**

WHEREAS, pursuant to the Second Amended and Restated Contract of Sale for Areas B, C, and D dated September 25, 2102, (the “Contract of Sale”), by and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC (“LHR”), LHR has the right to purchase and develop approximately 438 acres of land that previous contained Rialto Airport Municipal Airport (the “Airport Property”) in accordance with the terms of the Contract of Sale; and

WHEREAS, on January 7, 2015, LHR entered into a Purchase and Sale Agreement with Miro Way Properties, LLC (“Niagara”) for approximately 40 acres of land, 23.9 acres of which are from from a portion of the Airport Property and Contract of Sale (“Niagara PSA”); and

WHEREAS, on January 27, 2015 the City Council approved Resolution No. 6688, which approved an Addendum to the Renaissance Specific Plan for the consolidation of eleven (11) parcels of land into 35.83 acre development parcel and the construction of a 596,749 square foot bottling plant and distribution center (the “Project”); and

WHEREAS, on February 3, 2015 the City’s Design Review Committee (the “DRC”) reviewed the Precise Plan of Design for the Niagara Project (“PPD 2363”) and established various Conditions of Approval (“COA”) for the development of the Project; and

WHEREAS, the COA for the Project will require the Developer/Niagara to construct certain off-site public improvements including the construction of Alder Avenue along the Project’s frontage, the construction of a master planned storm drain facilities within the Laurel Avenue utility corridor, and the relocation and reconstruction of an existing traffic signal located at the intersection of Walnut Avenue and Alder Avenue (collectively the “Public Improvements” or “Improvements”); and

WHEREAS, pursuant to the Niagara PSA, LHR will construct most of the off-site public improvements identified within the COA and deliver Niagara a finished development parcel; and

1 **WHEREAS**, the Public Improvements required by the COA are master planned facilities
2 and/or are listed within the City’s Development Fee Nexus Studies; and

3 **WHEREAS**, Section 3.33.010 of the Rialto Municipal Code, permits the City Administrator
4 to negotiate and enter into Construction and Fee Credit Agreement, subject to the approval of the City
5 Council.

6 **WHEREAS**, LHR has requested to enter into a Construction and Credit Agreement with the
7 City related to the construction of the Public Improvements; and

8 **WHEREAS**, LHR and the City have negotiated the terms and wish to enter into a
9 Construction and Credit Agreement related to the construction of the Public Improvements in Locust
10 Avenue a copy of which is attached hereto as Exhibit A and is incorporated herein by reference; and

11 **WHEREAS**, the construction of the off-site public improvements for which LHR will receive
12 fee credits or reimbursements were reviewed and considered by the environmental review for the
13 Niagara Project and since there will not be any additional impacts to the environment other than those
14 that have previously been studied and analyzed, no further environmental review is necessary or
15 warranted.

16 **NOW, THEREFORE**, the City Council of the City of Rialto hereby resolves as follows:

17 **Section 1.** The foregoing recitals are determined to be true and correct;

18 **Section 2.** The City Council hereby finds and determines, based on substantial evidence in
19 the record that LHR is entitled to receive credit or reimbursements from the City for the costs to
20 construct the Public Improvements for which a development impact fees are imposed

21 **Section 3.** The City Council hereby finds and determines, based on substantial evidence in
22 the record, that based upon the analysis and environmental review completed as a part of the
23 Addendum to the previously certified Environmental Impact Report for the Renaissance Specific Plan
24 prepared and approved with respect to the Project, that there will be no significant adverse impact on
25 the environment resulting from entering into the Construction and Credit Agreement.

26 **Section 4.** The City Council hereby approves the Construction and Credit Agreement by
27 and between the City of Rialto and Lewis-Hillwood Rialto Company, LLC, substantive in form and
28 content to that attached hereto in Exhibit A along with any non-substantive changes as may be

mutually agreed upon by the City Administrator (or his duly authorized representative), City Attorney and Developer. Copies of the final form of the Construction and Credit Agreement, when duly executed and attested, shall be placed on file in the office of the City Clerk.

Section 5. The City Administrator (or his duly authorized representative) is authorized to implement the Construction and Credit Agreement, take all further actions, and execute all documents referenced therein and/or necessary and appropriate to carry out the Project, including causing the issuance of warrants.

Section 6. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 10th day of March, 2015.

Deborah Robertson, Mayor

ATTEST:

BARBARA McGEE, City Clerk

APPROVED AS TO FORM:

FRED GALANTE, ESQ., City Attorney

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

4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing
5 Resolution No.____ was duly passed and adopted at a regular meeting of the City Council of the City
6 of Rialto held on the ____ day of _____, 2015.

7 Upon motion of Council Member _____, seconded by Council Member
8 _____, the foregoing Resolution No. _____ was duly passed and adopted.

9 Vote on the motion:

10 AYES:

11 NOES:

12 ABSENT:

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14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
15 Rialto this ____ day of _____, 2015

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18 **BARBARA MCGEE, CITY CLERK**
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EXHIBIT “A”

CONSTRUCTION AND CREDIT AGREEMENT

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIALTO, CALIFORNIA, AMENDING ITS 2015 - 2016 FISCAL BUDGET.

WHEREAS, the budget for fiscal year 2015 -2016 of the City of Rialto has been adopted by this Council in its original form, and said budget will need to be amended at times to fulfill the goals of the City; and

WHEREAS, the City departments may not exceed their appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and transfers, without the consent of the City Administrator; and

WHEREAS, the City Administrator may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Council.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIALTO DOES
HEREBY FIND, DETERMINE, AND RESOLVE AS FOLLOWS:**

Section 1: 1. Appropriate the following expenditures related to the Construction and

Credit as follows:

a. Storm Drainage Development Impact Fee Fund Account No. 230-500-4720-3001-150809, in the amount of \$422,759.

b. Regional Traffic Development Impact Fee Fund Account No. 250-500-4313-3001-150809, in the amount of \$1,130,542; and

c. Renaissance Specific Plan Traffic Mitigation Fee Fund Account No. 301-241-0401-0001-150809, in the amount of \$83,885.

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PASSED APPROVED AND ADOPTED this ____ day of _____, 2015.

DEBORAH ROBERTSON, Mayor

ATTEST:

BARBARA McGEE, City Clerk

APPROVED AS TO FORM:

FRED GALANTE, ESQ., City Attorney

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

4 I, Barbara McGee, City Clerk of the City of Rialto, do hereby certify that the foregoing
5 Resolution No.____ was duly passed and adopted at a regular meeting of the City Council of the City
6 of Rialto held on the ____ day of _____, 2015.

7 Upon motion of Council Member _____, seconded by Council Member
8 _____, the foregoing Resolution No. ____ was duly passed and adopted.

9 Vote on the motion:

10 AYES:

11 NOES:

12 ABSENT:

13
14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
15 Rialto this ____ day of _____, 2015.

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17 _____
18 BARBARA McGEE, CITY CLERK
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