

APN: 176-35-201-001 & 176-35-201-002

WHEN RECORDED PLEASE RETURN TO:
Clark County Department of Public Works
Attention: Timothy D Piparo, Design Engineering
500 S. Grand Central Parkway, #2001
Las Vegas, Nevada 89106

ROAD IMPROVEMENT PARTICIPATION AGREEMENT

THIS Agreement ("Agreement") is made and entered into this 3rd day of January, 2023 between Clark County, Nevada, a political subdivision of the State of Nevada ("County"), and I20 Rainbow LLC, A Nevada Limited Liability Company ("Property Owner").

RECITALS

WHEREAS, the County is proposing to improve Rainbow Blvd from Erie Ave. to Blue Diamond Rd., improvements include, but are not limited to, widening pavement, curb and gutter, culverts and storm drain, traffic signal upgrades, street lights, underground conduit, signage, and pavement markings as specified in the improvement plans for Rainbow Blvd. from Erie Ave. to Blue Diamond Rd., hereinafter referred to as ("County Project"); and

WHEREAS, Property Owner is developing property described in Exhibit "A" ("Property Owner's Property"), attached hereto; and

WHEREAS, Property Owner has requested that the County construct, at the Property Owner's sole cost and expense, a portion of the offsite improvements that are the responsibility of Property Owner including, but not limited to, asphalt pavement, curb and gutter, underground storm drain laterals, drop inlets, and commercial driveways, relative to the proposed development, improvement or use of the Property Owner's Property, hereinafter referred to as Offsite Improvements and described in Exhibit B, attached hereto and by this reference incorporated herein; and

WHEREAS, the Property Owner desires the County to include in the County Project the design and construction of a portion of these Offsite Improvements and pay the County all costs for such Offsite Improvements, the cost to construct these Offsite Improvements is defined as Construction Costs; and

WHEREAS, the County is willing and able to include these Offsite Improvements in the County Project as long as the Property Owner pays for all costs and expenses associated with

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the construction of the Offsite Improvements and the County does not incur any additional costs or expenses;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, it is agreed as follows:

AGREEMENT

1. IMPROVEMENTS

The County agrees to include in the County Project a portion of the Offsite Improvements that are the responsibility of the Property Owner, as detailed in Exhibit B, subject to approval of the County Engineer, this Agreement by the Board of County Commissioners ("BCC"), and the Property Owner's compliance with the terms and conditions set forth herein. The Offsite Improvements consist of approximately 1,048-tons of plantmix bituminous surface, 1302 cubic yards of roadway excavation, 901 cubic yards of type II aggregate base, 3,605 square yards of Ultra-Thin Asphalt Concrete Surface (UTACS), 1084 linear feet of "L" type curb and gutter, 4 sidewalk ramps, 1,277 square feet of concrete spandrel/cross gutter, 4 drop inlets of various sizes, storm drain manhole, 59 linear feet of 24-inch reinforced concrete pipe (RCP), 167 linear feet of 36-inch RCP, and water line facility adjustment/relocation, fronting Property Owner's Property. Offsite Improvements are identified in Exhibit "C" which is attached thereto and by this reference incorporated.

Property Owner acknowledges and agrees, and County agrees, that the Offsite Improvements are to be constructed as part of the County Project. Property Owner understands and agrees that the County is not and will not be responsible for constructing any other Offsite Improvements or other Improvements that may be required or desired by the Property Owner.

Property Owner acknowledges and agrees, that as conditions of its proposed development and use of its property, it will likely be responsible for offsite improvements, outside of the scope of this Agreement and in addition to those that are the subject of this Agreement.

2. COSTS OF IMPROVEMENTS / PAYMENT BY PROPERTY OWNER

a. Construction Costs: The Construction Costs of the Offsite Improvements are estimated to be \$462,865.90, per Exhibit C which estimated price is subject to the contract price bid for this work as part of the County Project.

Said estimated construction costs shall be paid to the County within ten (10) calendar days after approval of this Agreement by the BCC. If for any reason, including, but not limited to cost escalation, extra work, or utility conflicts, etc., and the actual construction costs are greater than

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the estimated Construction Costs set forth above, then the County will notify the Property Owner of the increased amount of Construction Costs due to be paid by the Property Owner.

The increased amount and Construction Costs must be paid by the Property Owner to the County within ten (10) calendar days following receipt of invoice from the County. Property Owner further understands and agrees that all funds will be necessary for the construction of the Offsite Improvements and, except as provided in the termination clause in Paragraph 3, there will not be any unused or excess funds available for reimbursement to the Property Owner.

b. Sole Responsibility: The Property Owner acknowledges and agrees that the County is not responsible for any of the costs of the Offsite Improvements, and that the Property Owner is solely responsible for all costs of the Offsite Improvements.

If the Property Owner does not provide the payment amount for the Construction Costs within 10 calendar days following receipt of an invoice from the County, the County is under no obligation to construct the Offsite Improvements, and the Property Owner shall be responsible to construct the Offsite Improvements at its own cost and expense and no cost or expense by the County.

If the County elects in its sole discretion not to bid and/or award the County Project then Property Owner will be responsible, at its sole cost and expense, to construct the Improvements.

3. TERMINATION BY THE COUNTY

The County may terminate this Agreement at any time prior to the start of the County Project construction for any reason, without any cost to the County. The County may terminate this Agreement following award of the County Project in the event that the Property Owner fails to perform any of the provisions of this Agreement, without any cost to the County. Property Owner is responsible for all costs incurred by the County in the event County terminates this Agreement due to Property Owner's failure to perform the provisions of this Agreement. Property Owner shall pay for all such costs within 30 calendar days of receipt of an invoice from the County.

4. TERMINATION BY PROPERTY OWNER

The Property Owner may terminate this Agreement by providing written notice to the County at any time up to 30 calendar days prior to award of the bid for the County Project. If the Property Owner terminates this Agreement, the Property Owner agrees to pay any and all costs and/or expenses incurred by the County arising out of and or related to the Offsite Improvements and termination of this Agreement.

5. NOTICE OF TERMINATION

In the event that either party elects to terminate as provided herein, that party shall provide written notice of termination to the other party and the Agreement shall be deemed terminated upon receipt of such advice.

6. INDEMNIFICATION

Property Owner, or its successors in interest, shall indemnify, defend and hold harmless the County and its officers, agents, employees and volunteers, against and from any and all liability, fines, loss, damage, claims, demands, lawsuits, judgments, actions, litigation, costs and expenses of whatever nature, including court costs, expert witness fees and attorney's fees, and all court or arbitration or other alternative dispute resolution costs, which may result from injury to or death of any person, or against and from damage to or loss, or destruction, or claims relating to property or construction of the Offsite Improvements, whatsoever when such injury, death, loss, destruction, or claim or damage is due to or arising from or as a result of any action or inaction by Property Owner, relating to or in connection with the Offsite Improvements and/or the design, installation, construction, completion and maintenance of the Offsite Improvements, relating to or arising out of Property Owner's rights and obligations in this Agreement, relating to or arising out of this Agreement, including but not limited to termination of this Agreement. Notwithstanding any other provision, this section survives termination of this Agreement.

7. NO RECOURSE AGAINST COUNTY

The Property Owner shall not have any recourse against the County, and waives any and all claims and/or causes of action it may have, for the workmanship of the Offsite Improvements or any claims whatsoever regarding the condition, location, design, construction or maintenance of the Offsite Improvements. The Property Owner also has no recourse and waives any claims and/or causes of action it may have with respect to the costs of the Offsite Improvements and/or the County's failure to construct and/or its election not to construct the Improvements.

8. NOTICE

All payments, notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given either when personally delivered, or three business days after deposit in the U.S. Mail, registered or certified mail, return receipt requested, postage pre-paid, addressed as follows:

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COUNTY:

Clark County Public Works
Attention: Business Office
Reference Project Number R010HSB
P. O. Box 554000
Las Vegas, Nevada 89155-4000

PROPERTY OWNER:

I20 Rainbow LLC
Jason Lybbert
APN: 176-35-201-001&176-35-201-002
7490 West Sahara Ave.
Las Vegas, Nevada 89117

9. MISCELLANEOUS

a. Term: This Agreement shall be in full force and effect from and after the date of execution of the Agreement and shall continue until the obligations of the Property Owner and the County are fulfilled, unless terminated as provided in this Agreement.

b. Waiver: None of the conditions of this Agreement shall be considered waived by either party unless such waiver is in writing and signed by both parties. No such waiver shall be a waiver of any past or future default, breach, or modification of any of the conditions of this Agreement unless expressly stipulated in such waiver.

c. Successors and Assigns: The terms, provisions, covenants, and conditions of this Agreement shall apply to, bind, and inure to the benefit of the parties hereto, their heirs, executors, administrators, legal representatives, successors, and assigns.

d. Captions: The captions appearing at the commencement of the sections and articles hereof are descriptive only and for convenience in reference to the Agreement and in no way whatsoever define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement.

e. Governing Law: The laws of the State of Nevada shall be applied in interpreting and construing this Agreement.

f. Third Party/No Partnerships: It is not intended by this Agreement to, and nothing contained in this Agreement shall, create a partnership, joint venture, or other arrangement between the County and the Property Owner except as specifically provided herein. No term or provision of this Agreement is intended to benefit any person, partnership, corporation or other entity not a party hereto, including, without limitation, any broker, and no such other person, partnership, corporation or entity shall have any right or cause of action hereunder.

g. Recording: This Agreement will be recorded in the Office of the Clark County Recorder and will be binding upon the owner of the property described in Exhibit "A" attached hereto and by this reference incorporated herein, including successors and interest to the property described in Exhibit "A"

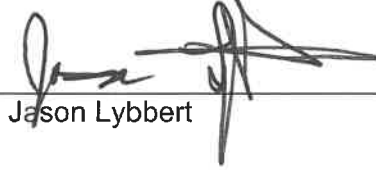
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IN WITNESS THEREOF, the parties hereto have set their hands and official seal on the date first above written.


CLARK COUNTY, NEVADA

PROPERTY OWNER: I20 Rainbow LLC

Randall J. Tarr
Deputy County Manager


Jason Lybbert

APPROVED AS TO FORM:

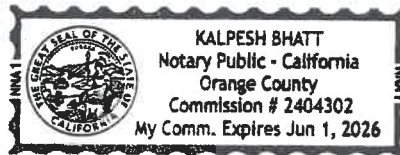

Laura C. Rehfeldt
Deputy District Attorney

~~CALIFORNIA~~
STATE OF NEVADA)
~~ORANGE~~ss.
COUNTY OF CLARK)

On this 10th day of AUGUST, 2022, Jason Lybbert, personally appeared before me, a Notary Public in and for said County and State, and acknowledged to me that he executed the above instrument.

WITNESS my hand and official seal.





NOTARY PUBLIC in and for said County and State

Project Number: R010HSB

Parcel Numbers: 176-35-201-001&176-35-201-002

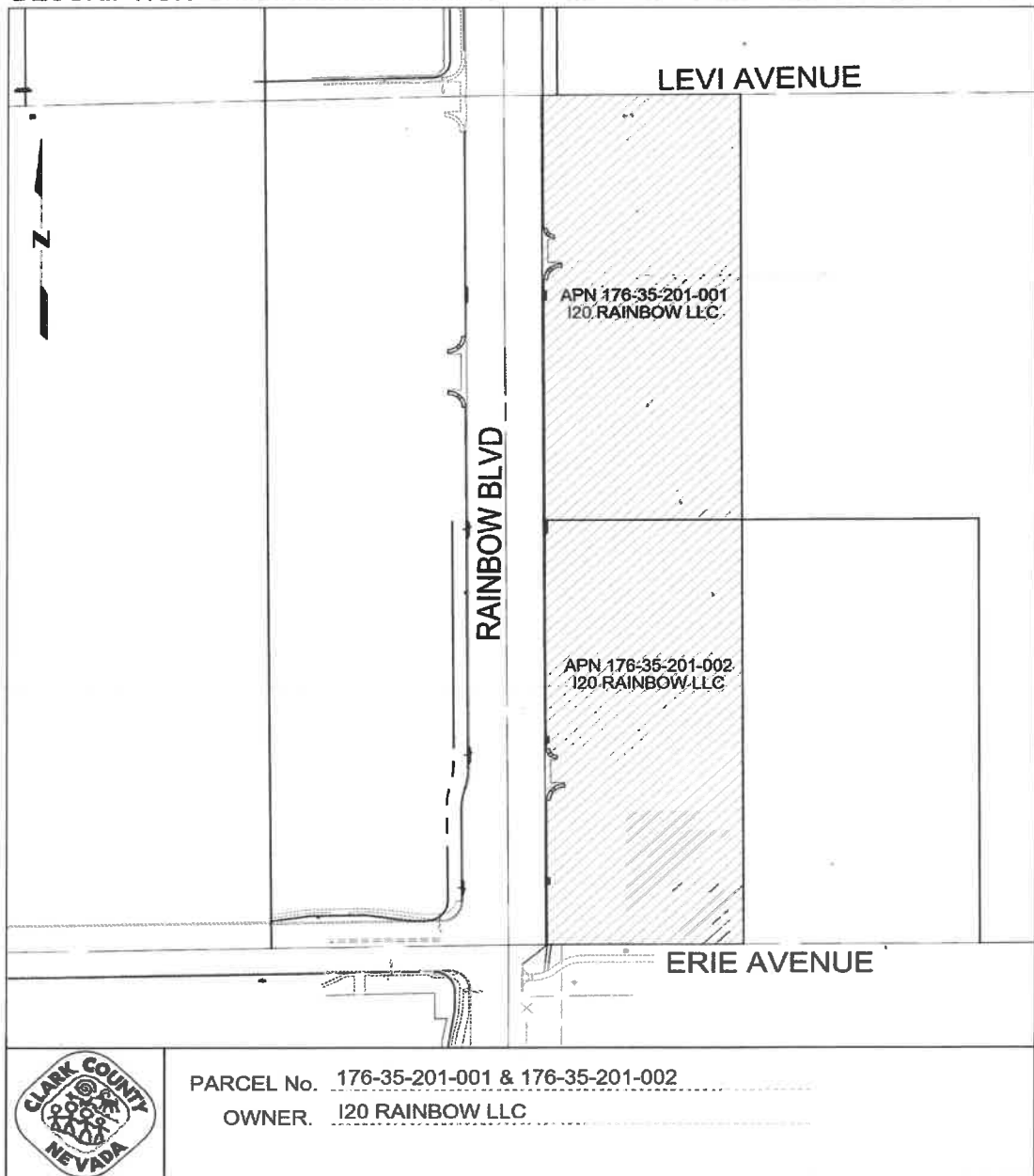
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EXHIBIT "A"

CLARK COUNTY PUBLIC WORKS
DESIGN ENGINEERING DIVISION

PROJECT No. R010HSB
DATE APRIL 2022
CHECKED BY PIPARO

DESCRIPTION EXHIBIT 'A' TO ACCOMPANY ROAD PARTICIPATION AGREEMENT



PARCEL No. 176-35-201-001 & 176-35-201-002
OWNER. I20 RAINBOW LLC

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EXHIBIT "C"

IMPROVEMENTS

ESTIMATED CONSTRUCTION COST FOR ROAD IMPROVEMENT PARTICIPATION AGREEMENT

East side of Rainbow Boulevard from Erie Avenue to Levi Avenue

I20 RAINBOW LLC -- APN: 176-35-201-001 & 176-35-201-002

Bid Item No.	Improvements	Unit	Quantity	Engineer's Unit Price	Engineer's Cost	Bid Unit Price	Bid Cost
203.01	Roadway Excavation	CY	1,302	\$25.00	\$32,550.00		
302.01	Type II Aggregate Base	CY	901	\$27.00	\$24,327.00		
402.01	Plantmix Bituminous Surface	TON	1,048	\$103.00	\$107,944.00		
413.01	1" UTACS – S3 Gradation	SY	3,605	\$7.60	\$27,398.00		
603.02	24-Inch RCP Storm Drain (Class III)	LF	59	\$310.00	\$18,290.00		
603.03	36-Inch RCP Storm Drain (Class III)	LF	167	\$530.00	\$88,510.00		
609.02	60" Type III Storm Drain Manhole	EA	1	\$12,500.00	\$12,500.00		
609.04	10' Type "CM2" Drop Inlet	EA	2	\$20,500.00	\$41,000.00		
609.05	15' Type "CM2" Drop Inlet	EA	1	\$26,000.00	\$26,000.00		
609.06	20' Type "CM2" Drop Inlet	EA	1	\$32,000.00	\$32,000.00		
613.01	Concrete Spandrel / Cross Gutter	SF	1,277	\$18.50	\$23,624.50		
613.02	Cast-In-Place Detectable Warning Panel (5'x2')	EA	4	\$415.00	\$1,660.00		
613.05	Concrete Sidewalk	SF	550	\$7.90	\$4,345.00		
613.06	"L" Type Curb and Gutter	LF	1,084	\$19.85	\$21,517.40		
629.01	Adjust Water Valve to Grade	EA	1	\$1,200.00	\$1,200.00		
	Total				\$462,865.90		
Recorder Doc No.	Doc.				COST		