

## **CONSTRUCTION REIMBURSEMENT AGREEMENT (RENAISSANCE/AYALA IMPROVEMENTS)**

This **CONSTRUCTION REIMBURSEMENT AGREEMENT** ("**Agreement**") is made and entered into as of March 28, 2017 (the "**Effective Date**"), by and between the **CITY OF RIALTO**, a municipal corporation ("**City**"), and **AYALA AND 210 PARTNERS LLC**, a Delaware limited liability company ("**Developer**").

### **RECITALS**

A. Developer and the City are parties to that certain Option to Purchase and Develop Site Agreement, dated March 14, 2017 (the "**Option Agreement**"), pursuant to which the City granted to Developer an option to purchase all or a portion of certain real property that the City will assemble (the "**Site**") 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 Option Agreement.

B. Pursuant to the Option Agreement, Developer shall submit applications for various land use entitlements to the City, and will be conditioned by the Development Review Committee to dedicate right-of-way and construct certain public improvements as a condition precedent to development of the Site. The Developer intends to construct a shopping center with commercial uses consistent with the development standards in the Renaissance Specific Plan and the Land Use Entitlements (the "**Project**").

C. The public improvements that will be required include, but are not limited to, pavement, curbs/gutters/sidewalks, streetlights, traffic signal modifications, parkway landscape/irrigation, sewer, water, storm drain, and dry utilities in Ayala Drive and Renaissance Parkway. The parties do not currently know the exact scope of improvements, and will not know until the Developer completes civil engineering plans as required under the Option Agreement.

D. Certain public improvements are included within the capital facility plan for specific development impact fee programs implemented by the City. In accordance with Section 3.33.100A of the Rialto Municipal Code, if a "developer constructs a public facility identified in a Nexus Report for which a development impact fee is imposed, then the developer shall be eligible for a fee credit toward the development impact fee imposed on the development project for the same type of facility so constructed." Section 3.33.100A also provides that the developer may not receive a credit in excess of the development impact fees paid for the specific facility constructed, unless a reimbursement agreement is approved by the City Council.

E. The Nexus Study for the Regional Traffic Development Impact Fee levied in accordance with Section 3.33.160 of the Rialto Municipal Code identifies the following projects: (i) widen Renaissance Parkway from the westerly City limits to east of Ayala Drive/Cactus Basins, and (ii) widen Ayala Drive from Baseline Road to Renaissance Parkway. Allowable credits or reimbursements include roadway capacity improvements, including street paving, curb/gutter/sidewalk, streetlights, traffic signal modifications, fire hydrants, and dry utilities solely to



serve the public improvements. Parkway landscaping, utility relocations, and wet or dry utilities are not eligible reimbursements.

F. The Renaissance Specific Plan does not identify master plan storm drain or sewer lines that must be constructed in Renaissance Parkway to serve the Site; however, if during the development review process the City conditions the Developer to construct a master plan storm drain or sewer facility, then the scope of work shall be added to the eligible reimbursements.

G. The City and Developer desire for the Developer to construct, and the City to pay contractors directly for the cost of constructing certain improvements to Ayala Drive and Renaissance Parkway ("**Renaissance/Ayala Improvements**"), which are required to be constructed for the Project, pursuant to the terms, conditions, requirements and procedures set forth herein. The scope of the Renaissance/Ayala Improvements is generally identified in **Exhibit A**.

H. The purchasers and users of the Site shall pay the Development Impact Fees levied by the City without eligibility for credit or reimbursements for any of the public improvements constructed pursuant to this Agreement.

I. The City and Developer intend that this Agreement shall contain all of rights, requirements, and obligations of Developer and the City about the Renaissance/Ayala Improvements.

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

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

"Renaissance/Ayala Improvements" as used herein means the public improvements described in **Exhibit A** attached hereto and incorporated herein by this reference.

"Construction Manager" means the construction manager or general contractor, as applicable that is hired by Developer to oversee construction of the Project. Construction Manager shall not perform actual construction work, but shall enter into contracts for construction of the Project. The contracts for the Renaissance/Ayala Improvements shall only be awarded after competitive bidding in accordance with the City's requirements, attached hereto as **Exhibit B**. Developer's contract with the Construction Manager shall be in the manner of a "cost plus" construction contract. The Construction Manager's fee shall equal two percent (2%) of the actual Hard Costs (as such term is defined below) of constructing the applicable public improvements.

"Developer Fee" as used herein shall mean the fee paid to Developer for construction oversight and administration in connection with the construction of the Renaissance/Ayala Improvements, which shall equal two percent (2%) of the actual Hard Costs of constructing the Renaissance/Ayala Improvements.

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



“Project” as used herein means the completion by Developer of the construction of the Renaissance/Ayala Improvements in accordance with this Agreement.

“Soft Costs” mean and include soft, indirect or design costs of construction, including professional services, general contractor fees, development and construction management fees (i.e. the Construction Manager or Developer Fee). In order for Soft Costs to be reimbursable to Developer pursuant to this Agreement, City must be able to verify that such Soft Costs are specifically attributable to the specified Renaissance/Ayala Improvement(s) for which reimbursement is being made, by reference to separate subcontract(s) or by another means approved by the City Administrator.

## 2.0 Design.

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

## 3.0 Bidding and Award.

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

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

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



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

Massaro & Welch Inc.	General Civil Engineering Services Construction Advisory and Information Services
----------------------	--

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

3.6 The Renaissance/Ayala Improvements Budget, including an engineer's cost estimate, is attached hereto as **Exhibit C** and incorporated herein by this reference. The Renaissance/Ayala Improvements Budget includes the following cost elements:

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

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

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

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

4.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the Renaissance/Ayala Improvements until all plans and specifications for the Renaissance/Ayala Improvements (the "**Plans and Specifications**") have been submitted to and approved by the City Administrator, Public Works Director, City Engineer, or their



designee, any of which may act individually on behalf of the City (“**Approved by the City**” or “**City Approval**”). City Approval shall not relieve Developer from ensuring that all Renaissance/Ayala Improvements conform to all other requirements and standards set forth in this Agreement. The cost of preparing plans and specifications specifically for the eligible Renaissance/Ayala Improvements is reimbursable by the City. The Developer shall provide a proposal from a qualified civil engineer to the City for review and approval as to scope and budget prior to the commencement of work.

4.2 Permits and Notices. Prior to commencing any work, Developer (through its contractors) shall, at its sole cost and expense, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the Renaissance/Ayala Improvements and performance of Developer’s obligations under this Agreement. Developer (through its contractors) shall conduct the work in full compliance with the regulations, rules, and other requirements contained in this Agreement, any applicable law, and any permit or license issued to Developer.

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

(a) Developer will obtain bids for the construction of the Renaissance/Ayala Improvements in a manner approved by the City. The Developer shall award the contract or contracts for the construction of the Renaissance/Ayala Improvements to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the Renaissance/Ayala Improvements.

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

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

4.4 Compliance with Plans and Specifications. The Renaissance/Ayala Improvements shall be completed in accordance with the Plans and Specifications as Approved by City.

4.5 Alterations to Improvements. All work shall be done and the Renaissance/Ayala 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 alter 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. All alterations in the Plans and Specifications and the Renaissance/Ayala Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

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

5.0 Reimbursement for Renaissance/Ayala Improvements. City shall pay the cost of constructing the Renaissance/Ayala Improvements in accordance with this Agreement. Disbursements shall be made in accordance with Sections 5.2, 5.3.1, *et seq.*, and 5.3.2, *et seq.*, of this Agreement. Within fifteen (15) days after the later of (1) the Effective Date of this Agreement or (2) the Effective Date of the Escrow Instructions establishing the Escrow Account, City shall deposit into an Escrow Account the amount of **One Million Three Hundred Thousand Four Hundred Ninety One Dollars (\$1,321,491.00)**, the amount appropriated by the City and deemed necessary to complete the construction of the Renaissance/Ayala Improvements in accordance with the budget attached hereto **Exhibit C ("RA Amount")**. The RA Amount shall include the Developer Fee and Construction Manager's Fee payable in accordance with this Agreement.

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



purposes). All fees, costs, and other expenses incurred in connection with the Escrow Account shall be paid by City.

5.2 Disbursements for the Renaissance/Ayala Improvements. Notwithstanding anything to the contrary contained in this Agreement, the Parties acknowledge and agree that it is not their intent that Developer advance funds to pay for the construction of any of the Renaissance/Ayala Improvements and that the entire Hard Costs and Soft Costs of the Renaissance/Ayala Improvements be advanced and funded by City through the Escrow Account. Accordingly, prior to the commencement of construction of the Renaissance/Ayala Improvements, and during such construction, Developer shall prepare and submit to City a request for reimbursement (an “**RA Funding Request**”) not more frequently than monthly (unless approved by the City) with respect to the Renaissance/Ayala Improvements, which RA Funding Request shall contain a reasonably detailed accounting of the Hard Costs and Soft Costs actually incurred to date and since the last RA Funding Request and a projection of the Hard Costs and Soft Costs anticipated to be incurred by Developer in the next thirty (30) days (the “**Projected Costs**”) for the Renaissance/Ayala Improvements. Within ten (10) business days following City’s receipt of a complete RA Funding Request, including all appropriate back-up documentation reasonably requested by City, and subject to satisfaction of all applicable Conditions Precedent set forth in Section 5.3, City shall either inform Developer of objections to the RA Funding Request or direct the Escrow Holder to disburse the Projected Costs shown in the RA Funding Request to Developer. Within three (3) business days of the approval of any RA Funding Request, Escrow Holder shall disburse the amount so requested to Developer. Notwithstanding anything to the contrary contained in this Agreement, Developer’s obligations to complete the Renaissance/Ayala Improvements is expressly contingent upon City’s compliance with its funding obligations under this Agreement and Developer shall have the right to suspend such construction to the extent City improperly withholds such funding, which suspension shall be deemed a Force Majeure for Developer and City shall be responsible for any increased costs resulting therefrom.

5.3 Conditions Precedent to Disbursements for Renaissance/Ayala Improvements.

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

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

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



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

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

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

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

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

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

6.0 Indemnification. Developer agrees to indemnify, defend and hold the City and their officers, employees, agents, representatives, and assigns ("Indemnitees") harmless from and against any and all losses, claims, demands, actions, or causes of action, of any nature whatsoever, arising out of or in any way connected with the performance under this Agreement with respect to the Renaissance/Ayala Improvements, including costs of suit and reasonable attorneys' fees, provided, however, that in no event shall the Indemnitees be indemnified for any loss caused by their gross negligence or willful misconduct. In the event the Indemnitees are made a party to any action, lawsuit, or other adversarial proceeding in any way involving such losses, claims, demands, actions, or causes of action, Developer shall provide a defense to the Indemnitees, including reasonable attorneys' fees



and expert witness fees, incurred in defense of such claim. In addition, Developer shall promptly pay any final judgment or portion thereof rendered against the City Indemnitees.

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

7.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("**Required Insurance**"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

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

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

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

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

7.2 Deductibles. Any deductibles or self-insured retentions in excess of \$50,000 must be declared to and approved by City. At the option of City, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

7.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name City as an additional insured with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall



contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to City, its elected officials, officers, employees, or agents.

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

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

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

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

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

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

To City: City of Rialto  
150 S. Palm Avenue  
Rialto, CA 92376  
Attn: City Administrator  
Tel: (909) 820-2689  
Fax: (909) 820-2527



Copy to: Fred Galante, Esq.  
Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Tower 17, Suite 1700,  
Irvine, CA 92612  
Tel: (949) 250-5410  
Fax: (949) 223-1180  
Email: [fgalante@awattorneys.com](mailto:fgalante@awattorneys.com)

To Developer: Ayala and 210 Partners LLC  
1130 North Yucca Avenue  
Rialto, CA 92376  
Tel: (714) 307-8018  
Email: [facosta123@aol.com](mailto:facosta123@aol.com)

Copy to: Liner LLP  
1100 Glendon Ave., 14<sup>th</sup> Floor  
Los Angeles, CA 90024  
Attn: Richard A. Schloss, Esq.

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

11.0 Authority for Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

12.0 General Provisions.

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

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

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

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



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

13.0 Force Majeure. Developer agrees that the time within which it shall be required to perform any act under this Agreement shall not be extended except as follows: (i) the Developer is delayed by the City (including, without limitation, restrictions on priority, initiative or referendum, or moratoria), in which case Developer shall provide written notice to the City specifically describing the nature and extent of the delay caused by the City and Developer's detailed efforts to avoid such delay, which references this Section and deliver such notice within thirty (30) days of discovering such delay, and Developer's obligations shall be extended for such time as reasonable as a result of the delay if and only if Developer provides such written notice to the City within such time; or (ii) the Developer is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, processing with any governmental agencies, unusually severe weather, or any other similar causes beyond the reasonable control of Developer or without the fault of Developer. An extension of time for any such cause shall be for the period of the enforced delay equal to the number of days during which Developer's performance was delayed and shall commence to run from the time of the commencement of the cause, if written notice by Developer claiming such extension is sent to the City within thirty (30) days of knowledge of the commencement of the cause.

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

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

**[Signatures appear on following page.]**



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

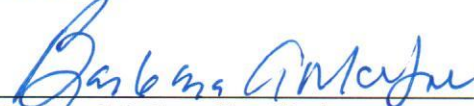
**CITY:**

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


  
Deborah Robertson, Mayor

*Ed Scott Mayor Pro Tem*

**ATTEST:**

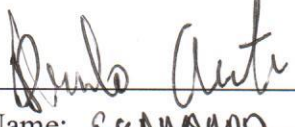
  
Barbara McGee, City Clerk

**APPROVED AS TO FORM:**

  
Fred Galante, Esq., City Attorney

**DEVELOPER:**

**AYALA AND 210 PARTNERS LLC**,  
a California Limited Liability Company

By:   
Printed Name: fernando Acosta  
Title: Authorized Agent  
Date: 4-18-17



## EXHIBIT A

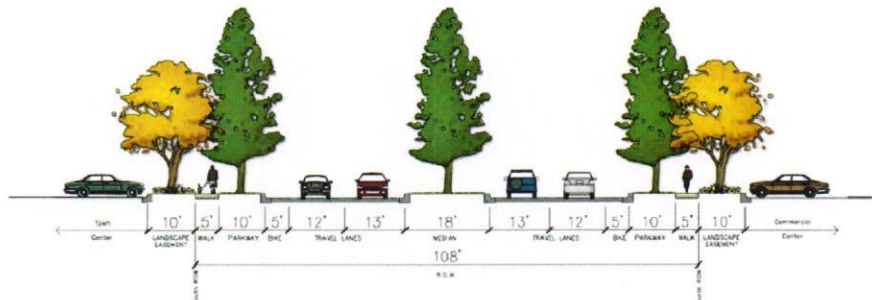
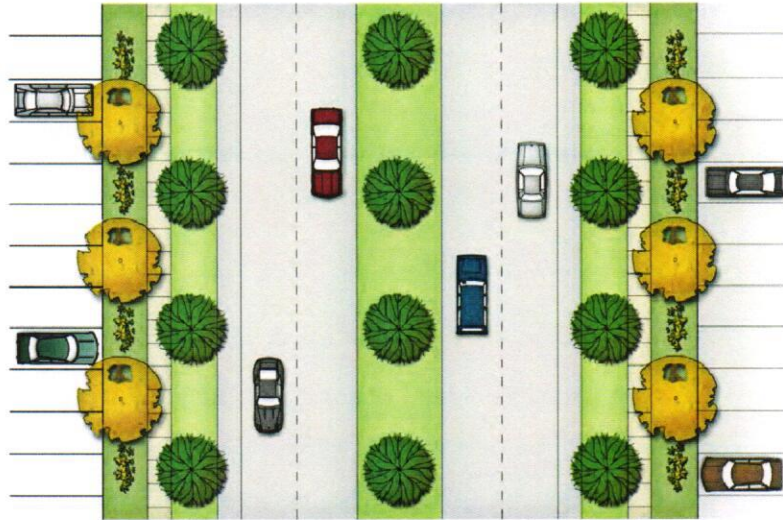
### RENAISSANCE/AYALA IMPROVEMENTS

1. **Renaissance Parkway.** Construction of public roadway improvements within the right-of-way of Renaissance Parkway from Ayala Drive to the Cactus Basin. The improvements shall consist of a minimum of four travel lanes, two travel lanes in the eastbound direction and two travel lanes in the westbound direction, all in accordance with the plans and specifications to be prepared by the Developer and approved by the City. The street sections for Renaissance Parkway are attached hereto as Exhibit A-1, showing additional requirements for a median, bike lanes, parkways, sidewalks, and a landscape easement. The Developer shall construct full width improvements to Renaissance Parkway within the existing right-of-way.
2. **Ayala Drive.** To the extent required, construction of public roadway improvements within the right-of-way of Ayala Drive to eastbound on-ramp of the 210 Freeway. The improvements shall consist of a minimum of four travel lanes, two travel lanes in the northbound direction and two travel lanes in the southbound direction, all in accordance with the plans and specifications to be prepared by the Developer and approved by the City. The street sections for Ayala Drive are attached hereto as Exhibit A-2, showing additional requirements for a median, bike lanes, parkways, sidewalks, and a landscape easement. The Developer shall only construct Site adjacent improvements on Ayala Drive (easterly half-width).
3. **Storm Drain.** The Renaissance Specific Plan does not identify a master plan storm drain in Renaissance Parkway or Ayala Drive adjacent to Site. If required by the City, the Developer shall construct storm drain improvements in Renaissance Parkway and Ayala Drive in accordance with the plans and specifications to be prepared by Developer and approved by the City, and subject to reimbursement from the City from Storm Drainage Development Impact Fees.
4. **Sewer Line.** The Renaissance Specific Plan does not identify a master plan sewer collection line in Renaissance Parkway. If required by the City, the Developer shall construct a mainline sewer facility in Renaissance Parkway subject to reimbursement from the City from Sewage Collection Development Impact Fees.
5. **Dry Utilities.** Construction of any dry utility improvements in Renaissance Parkway or Ayala Drive necessary to serve the street improvements (streetlights and traffic signals).



## EXHIBIT A-1

### RENAISSANCE/AYALA IMPROVEMENTS



#### NOTES:

1. In cases where the ultimate Right-of-Way cannot be obtained due to existing structures or unique conditions, the City Engineer may approve a reduced Right-of-Way street section.
2. Standard street sections do not apply at intersections. Modifications are necessary to maintain the City's level of service goals and accommodate features such as turn lanes and deceleration lanes.
3. Setbacks measured from the back of landscape easement.
4. Meandering sidewalks may be utilized on this street. A minimum separation of 5 feet must be maintained between the sidewalks edge and back of curb and back of landscape easement.

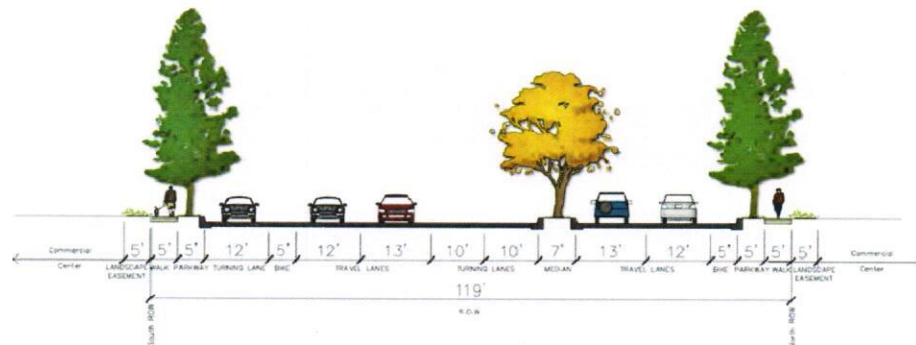
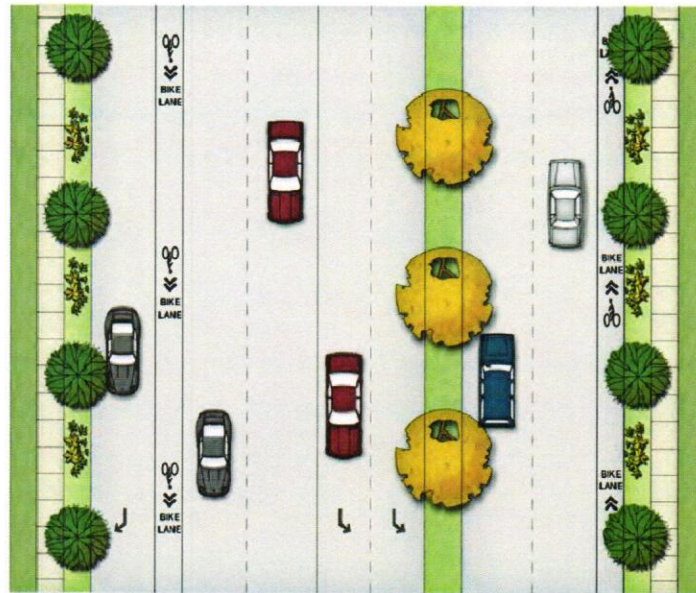
**Figure 3-10: Renaissance Parkway**

**Kimley»Horn**



## EXHIBIT A-1

### RENAISSANCE/AYALA IMPROVEMENTS



#### NOTES:

1. In cases where the ultimate Right-of-Way cannot be obtained due to existing structures or unique conditions, the City Engineer may approve a reduced Right-of-Way street section.
2. Setbacks measured from the back of landscape easement.

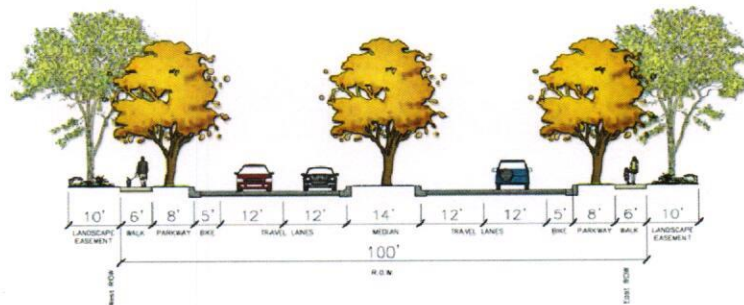
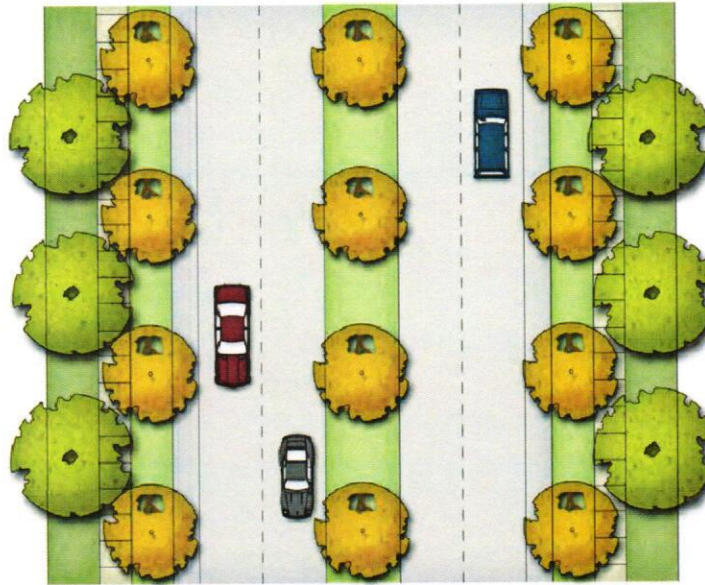
**Figure 3-11: Modified Renaissance at Ayala Intersection**

Kimley » Horn



## EXHIBIT A-2

### RENAISSANCE/AYALA IMPROVEMENTS



#### NOTES:

1. In cases where the ultimate Right-of-Way cannot be obtained due to existing structures or unique conditions, the City Engineer may approve a reduced Right-of-Way street section.
2. Standard street sections do not apply at intersections. Modifications are necessary to maintain the City's level of service goals and accommodate features such as turn lanes and deceleration lanes.
3. Setbacks measured from the back of landscape easement.
4. Meandering sidewalks may be utilized on this street. A minimum separation of 5 feet must be maintained between the sidewalks edge and back of curb and back of landscape easement.

**Figure 3-12: Ayala Drive**

Kimley»Horn



## **EXHIBIT B**

### **BIDDING AND CONTRACT REQUIREMENTS FOR PUBLIC IMPROVEMENTS**

#### **Bidding Phase**

- A. Bidding Documents. Unless otherwise noted, the bidding documents shall conform to the following minimum requirements and shall be submitted to City for its prior written approval before release for bid. City shall review and approve, conditionally approve, or disapprove the bidding documents within fifteen (15) days after receipt:
1. Unless impractical due to the nature of the Public Improvements, the bid proposal shall be unit priced rather than lump sum or time and materials.
  2. It is recommended that the bidding documents require the bidder/contractor to provide the following bonds:
    - a. Bid Bond - 10% of the amount of the bid.
  3. The bidding documents shall require the successful bidder to provide evidence of comprehensive public liability insurance in the amount of at least \$2,000,000 prior to the award of the contract.
  4. The bidding documents shall provide for monthly progress payments to the contractor (with respect to the Renaissance/Ayala 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. Developer shall keep a bidders list with e-mail addresses, and addenda should be sent via email to ensure quick receipt
  10. Conditioned bids shall not be accepted.



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



### **Construction Phase**

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

### **General**

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



## EXHIBIT C

### RENAISSANCE/AYALA IMPROVEMENTS BUDGET

Renaissance Parkway Improvements -- East of Ayala Drive						
	Item #	Item Description	Quantity	Unit	Unit Price	Total
General						
	1	Mobilization	1	LS	\$ 25,000.00	\$ 160,500.00
	2	Clearing & Grubbing	50,000	sf	\$ 0.15	\$ 7,500.00
	4	Traffic Control	1	LS	\$ 5,000.00	\$ 5,000.00
	5	Erosion Control	1	LS	\$ 5,000.00	\$ 5,000.00
	6	Soils Testing and Inspection	1	LS	\$ 8,000.00	\$ 8,000.00
	7	Survey and Construction Staking	1	LS	\$ 10,000.00	\$ 10,000.00
	8	Bonds	1	LS	\$ 20,000.00	\$ 20,000.00
	9	Construction Water, Power, etc.	1	LS	\$ 5,000.00	\$ 5,000.00
	10	Plan Design/Specs/Bidding	1	LS	\$ 75,000.00	\$ 75,000.00
Roadway Improvements						
	11	AC Removal	15,000	sf	\$ 1.00	\$ 15,000.00
	12	Grading/Subgrade Preparation	50,000	sf	\$ 1.75	\$ 87,500.00
	13	Sawcut Existing Pavement	5,000	sf	\$ 2.50	\$ 12,500.00
	14	5" AC on 6" AB	50,000	sf	\$ 4.00	\$ 200,000.00
	15	Sidewalk	12,500	sf	\$ 5.50	\$ 68,750.00
	16	Median Curb	2,560	lf	\$ 16.00	\$ 40,960.00
	17	Curb and Gutter	2,500	lf	\$ 20.00	\$ 50,000.00
	18	Cross Gutter	1,600	sf	\$ 10.00	\$ 16,000.00
	19	Commercial Driveway	2,000	sf	\$ 10.00	\$ 20,000.00
	20	ADA Ramps	2	sf	\$ 2,500.00	\$ 5,000.00
	21	Catch Basin	1	sf	\$ 9,000.00	\$ 9,000.00
	22	Median Landscape/Irrigation	12,800	sf	\$ 8.00	\$ 102,400.00
Street Lights						
	23	Street Lights	6	ea	\$ 5,000.00	\$ 30,000.00
	24	Street Light Conduit	2,500	lf	\$ 25.00	\$ 62,500.00
	25	Pull Boxes	12	ea	\$ 350.00	\$ 4,200.00
Signals, Signage and Striping						
	26	Traffic Signal Modification	1	LS	\$ 125,000.00	\$ 125,000.00
	27	Striping & Signage	1	LS	\$ 5,000.00	\$ 5,000.00
Sewer						
	28	Sewer Collection Line (8")	1,250	lf	\$ 50.00	\$ 62,500.00
	29	Sewer Manholes	8	ea	\$ 5,000.00	\$ 40,000.00
	30					
Other						
	31					
	32					
	33					
SUB-TOTAL						
\$ 1,116,810.00						
Contingency			10%	of HCC		\$ 111,681.00
TOTAL CONSTRUCTION COSTS						
\$ 1,228,491.00						
	34	Permits & Fees	3.50%	of HCC		\$ 43,000.00
	35	Construction Administration	2.00%	of HCC		\$ 25,000.00
	36	Developer Fee	2.00%	of HCC		\$ 25,000.00
TOTAL ALL IMPROVEMENT COSTS						
\$ 1,321,491.00						