

**FIRST AMENDMENT TO THE  
CONSTRUCTION FEE CREDIT AND REIMBURSEMENT AGREEMENT  
DEVELOPMENT IMPACT FEE PROGRAM**

**BETWEEN THE CITY OF RIALTO  
AND  
SIRWIN ENTERPRISES**

**1. PARTIES AND DATE.**

This First Amendment to the CONSTRUCTION FEE CREDIT AND REIMBURSEMENT AGREEMENT ("First Amendment") is made and entered into this **July 23, 2019** by and between the **City of Rialto** ("City") and **Sirwin Enterprises** ("Developer"). City and Developer are sometimes individually referred to as "Party" and collectively as "Parties" in this First Amendment.

**2. RECITALS.**

2.1 Agreement. City and Developer entered into that certain CONSTRUCTION FEE CREDIT AND REIMBURSEMENT AGREEMENT dated April 9, 2019 ("Agreement").

2.2 Amendment. City and Developer desire to amend the Agreement to grant the Developer a credit of \$164,000 that would otherwise be due as a Fair Share Fee for Traffic Mitigation Improvements in accordance with Condition No. 109 of PPD 2018-0041 and, by so doing, correspondingly reduce the City's obligation to reimburse the Developer from Regional Traffic Development Impact Fees. The City will instead reimburse the separate and distinct Fair Share Fee Account in the amount of \$164,000 using Regional Traffic Development Impact Fees that would have otherwise been reimbursed to Developer in accordance with the Agreement. The purpose of this Amendment is to improve the Developer's early cash flow, while ensuring that the various development impact fee accounts receive the full amounts otherwise allocable.

**3. TERMS.**

3.1 Section 5.3.5 of the Agreement is hereby added as follows:

"5.3.5 Fair Share Fee Credit and Reduction of Reimbursement Amount from Regional Traffic Development Impact Fees. Condition Number 109 for PPD 2018-0041 requires the Developer to pay a Fair Share Traffic Mitigation Fee of One Hundred Sixty-Four Thousand and 00/100 Dollars (**\$164,000.00**) for future improvements at the Ayala Drive/Casmalia Street intersection and the Ayala Drive/210 Freeway ramps (the "**Fair Share Fee**"). The City shall credit the Developer the full amount of the Fair Share

Fee of \$164,000, but correspondingly reduce the Developer's entitlement to receive a reimbursement from Regional Traffic Development Impact Fees by a like amount. Instead of receiving Two Hundred Fourteen Thousand Seven Hundred Eighty Nine and 19/100 Dollars (**\$214,789.19**) as specified in Section 5.1.3(i) of the Agreement, the Estimated Reimbursement Amount to the Developer is Fifty Thousand and 19/100 Dollars (**\$50,789.19**) from Regional Traffic Development Impact Fees. The City shall reimburse the Fair Share Fee Account the amount of \$164,000 from Regional Traffic Development Impact Fees upon project completion.

3.2 Continuing Effect of Agreement. Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

3.4 Counterparts. This First Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

**[SIGNATURES ON FOLLOWING PAGE]**

**CITY OF RIALTO**

**DEVELOPER**

By: \_\_\_\_\_  
Deborah Robertson  
Mayor

By: \_\_\_\_\_

*Attest:*

\_\_\_\_\_  
Barbara McGee  
City Clerk

*Approved as to Form:*

\_\_\_\_\_  
Fred Galante,  
City Attorney