

**AMENDMENT NO. 1
TO THE CONSTRUCTION REIMBURSEMENT AGREEMENT
(RENAISSANCE/AYALA IMPROVEMENTS)**

This AMENDMENT TO THE CONSTRUCTION REIMBURSEMENT AGREEMENT (“**Amendment**”) by and between the CITY OF RIALTO, a California municipal corporation (“**City**”) and AYALA & 210 PARTNERS LLC, a Delaware limited liability company (“**Developer**”) is effective as of the 23rd day of January, 2018.

RECITALS

A. City and Developer entered into that certain Construction Reimbursement Agreement dated March 28, 2017 (“**Agreement**”) whereby the City agreed to reimburse Developer for certain actual construction costs related to the construction of improvements up to an amount not to exceed \$1,321,491, including the 2% Developer Fee and Construction Manager’s Fee (“**Reimbursement Amount**”).

B. Following a detailed review of the required improvements, City and Developer now desire to amend the Agreement to increase the Reimbursement Amount to \$4,080,227 based on actual off-site improvement bids.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

a. **Section 5.0 (Reimbursement for Renaissance/Ayala Improvements) is hereby modified as follows (new text is shown in *bold italics* and deleted text is shown in ~~strikethrough~~):**

“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)~~ **Four Million Eighty Thousand Two Hundred and Twenty Seven Dollars (\$4,080,227.00)**, or adjusted to lower amount depending on costs paid directly by the City, 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.”

b. **Exhibit C (Renaissance/Ayala Improvements Budget)** is deleted in its entirety and replaced with the table attached to this Amendment as Attachment 1.

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

3. **Affirmation of Agreement.** City and Developer each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

4. **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 Amendment.

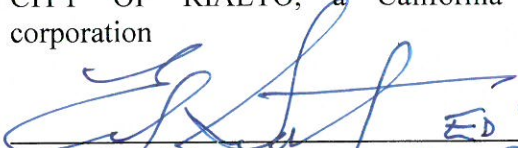
5. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

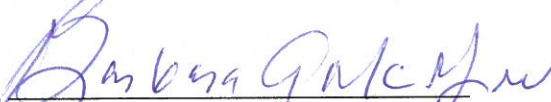
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

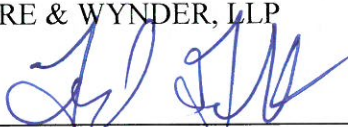
CITY OF RIALTO, a California municipal corporation


Deborah Robertson, Mayor *Ed Scott Mayor Pro Tem*

ATTEST:



Barbara McGee, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP


Fred Galante, City Attorney

DEVELOPER:

AYALA & 210 PARTNERS LLC, a Delaware limited liability company

By: 
Name: FERNANDO ALOSA
Title: AUTHORIZED AGENT.

By: _____
Name: _____
Title: _____
Address: _____

Two corporate officer signatures required when Developer is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

Attachment 1

- replaces the table in Exhibit C (Renaissance/Ayala Improvements Budget) of the Agreement -

Renaissance Parkway (Off-Site) Improvement Costs

	Updated Budget	Approved Budget	Change	Notes
Direct Construction				
Roadway Improvements	\$ 1,058,535	\$ 627,110	\$ 431,425	Increase include adding wall at County flood channel
Street Lights	\$ 155,699	\$ 96,700	\$ 58,999	Increased for additional street lights
Signals, Striping and Signage	\$ 339,000	\$ 130,000	\$ 209,000	Increased for new signal light to enter center
Sewer Line	\$ 162,500	\$ 102,500	\$ 60,000	
Storm Drain	\$ 161,128		\$ 161,128	Added item
Water Line	\$ 168,495		\$ 168,495	Added item
Landscaping	\$ 275,000		\$ 275,000	Added item
South Wall	\$ 290,450		\$ 290,450	Added wall adjacent to County flood property
Total Construction Costs	\$ 2,610,807	\$ 956,310	\$ 1,654,497	
Indirect Costs				
Design Consultant (Kimley Horn)	\$ 354,052	\$ 75,000	\$ 279,052	Increased for additional services and under budget
Construction Manager (KEC Eng.)	\$ 112,784		\$ 112,784	Increased for addition services including prevailing wage
Landscape Design (CDPC)	\$ 31,500		\$ 31,500	Increased due to under budget.
Soil Study	\$ 50,000	\$ 8,000	\$ 42,000	Increased due to under budget.
Construction Inspection	\$ 75,000		\$ 75,000	Performed by Public Works consultant
General	\$ 294,193	\$ 57,500	\$ 236,693	
Bond	\$ 20,000	\$ 20,000	\$ -	
Total Indirect Costs	\$ 937,529	\$ 160,500	\$ 777,029	
Total Improvement Costs:	\$ 3,548,336	\$ 1,116,810	\$ 2,431,526	
Direct Contingency	\$ 75,000	\$ -	\$ 75,000	
Construction Contingency 10.0% of C. Costs	\$ 261,081	\$ 111,681	\$ 149,400	Based on construction cost
Construction Admin. 2.0% of C. Costs	\$ 52,216	\$ 25,000	\$ 27,216	Amount is for KEC services --- total \$165,000
Developer Fee 2.0% of C. Costs	\$ 52,216	\$ 25,000	\$ 27,216	Based on construction cost
City Permits/Fee 3.5% of C. Costs	\$ 91,378	\$ 43,000	\$ 48,378	Based on construction cost
Total Project Costs	\$ 4,080,227	\$ 1,321,491	\$ 2,758,736	