

Contract Number

SAP Number

San Bernardino County

Department Contract Representative	<u>Noel Castillo</u>
Telephone Number	<u>909-387-7906</u>
Contractor	<u>City of Rialto</u>
Contractor Representative	<u>Tanya Williams</u>
Telephone Number	<u></u>
Contract Term	<u>Not Applicable</u>
Original Contract Amount	<u>\$859,100</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$859,100</u>
Cost Center	<u></u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the San Bernardino County ("**COUNTY**") and the City of Rialto ("**RIALTO**") are signatories to this **AGREEMENT**, and may hereinafter be individually referred to as a "**PARTY**" and, collectively referred to as the "**PARTIES**"; and

WHEREAS, the **PARTIES** desire to cooperate and jointly participate in the development, installation, and construction of solar lighting on Cactus Trail (hereinafter referred to as the "**PROJECT**"); and

WHEREAS, the **PARTIES** agree that the **PROJECT** will be of mutual benefit to the **PARTIES**; and

WHEREAS, the estimated **PROJECT** cost is eight hundred fifty-nine and one hundred Dollars (\$859,100) as shown on Exhibit A; and

WHEREAS, the **PARTIES** agree that for the **PROJECT** shall be (100%) funded by the **COUNTY**; and

WHEREAS, the **PARTIES** agree that the **COUNTY** will contribute to the total **PROJECT** costs by reimbursing **RIALTO** 100% of the estimated **PROJECT** cost, in an amount not to exceed eight hundred fifty-nine and one hundred Dollars (\$859,100) as shown on Exhibit A; and

WHEREAS, the **PARTIES** agree that the **PROJECT** costs include engineering design, inspection, materials testing, construction management, environmental permitting, utility relocation, construction, and contingencies of the **PROJECT**; and

WHEREAS, the **PARTIES** acknowledge that a portion of the **PROJECT** is located within or will impact the railroad right-of-way owned or controlled by the applicable railroad company; and

WHEREAS, the **PARTIES** further acknowledge that any work within or affecting railroad right-of-way requires advance review, approval, and permitting from the railroad owner/operator, and that **RIALTO**, as Lead Agency, will be solely responsible for obtaining all necessary railroad permits, approvals, agreements, and clearances required for the **PROJECT**; and

WHEREAS, **RIALTO** will act as the Lead Agency on the **PROJECT**; and

WHEREAS, as the Lead Agency, **RIALTO** is willing to advance the total funding for the **PROJECT** and will be responsible for all costs, including engineering design, inspection, materials testing, construction management, environmental permitting, property acquisition, utility relocation, construction, and contingencies of the **PROJECT**, and the **COUNTY** will reimburse **RIALTO**; and

WHEREAS, upon completion of the **PROJECT**, the **PARTIES** agree that **RIALTO** shall operate and maintain the **PROJECT** within the San Bernardino County Flood Control District ("**FLOOD CONTROL DISTRICT**") right-of-way accordingly; and

WHEREAS, the **PARTIES** desire to set forth their respective responsibilities and obligations regarding the construction of the **PROJECT**.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION I

1.0 RIALTO AGREES TO:

- 1.1 Act as the Lead Agency to prepare all environmental documents, construction plans, specifications, engineer's estimates, and administer construction, including advertisements for bids, bid reviews, contract awards, construction, and all other needed inspections of the **PROJECT**.
- 1.2 Submit to the **COUNTY** contract plans, specifications, engineer's cost estimates, invoices, and progress reports regarding the **PROJECT** for review and approval prior to reimbursement. **RIALTO** shall not commence advertising for the **PROJECT** contract bids until **COUNTY** has reviewed and approved the contract plans, specifications, and engineer's cost estimates ("**CONTRACT PLANS**") for the **PROJECT** in writing, provided that **COUNTY's** review and determination shall be subject to Section 2.4.
- 1.3 Process and complete all necessary environmental documents as required, including but not limited to, pursuant to the California Environmental Quality Act, and obtain all necessary environmental agencies' clearances for the construction of the **PROJECT**.
- 1.4 Provide all services to acquire any right-of-way needed for the **PROJECT**, including, but not limited to, eminent domain procedures, contacting owners or occupants, entering properties, inspecting, negotiating right-of-way takes, negotiating easements or replacement property for impacted trees, fences, drive approaches, and other property structures.
- 1.5 Obtain, at its sole cost and responsibility, all necessary agreements, permits, approvals, licenses, and clearances required by the railroad owner/operator for any portion of the **PROJECT** constructed within, over, under, or impacting railroad right-of-way. **RIALTO** shall be solely responsible for coordinating with the railroad, complying with all railroad requirements and conditions, and ensuring that all railroad permits are obtained prior to advertising the **PROJECT** for construction bids. **RIALTO** shall provide the **COUNTY** with copies of all railroad permits and approvals within five (5) business days of receipt.

- 1.6 Provide reasonable timely notification to the **COUNTY** of any meetings related to the **PROJECT** and schedule Project Development Team meetings periodically before and during construction to ensure that **COUNTY** have the opportunity to be represented.
- 1.7 Provide the **COUNTY** with copies of all reports and other technical documents related to the **PROJECT** and allow the **COUNTY** to comment prior to accepting such report or document.
- 1.8 Arrange for relocation of any utilities that may interfere with construction of the **PROJECT** within the **PROJECT** sites.
- 1.9 Obtain a no-cost encroachment permit from the **COUNTY** for the portion of the **PROJECT** constructed within **COUNTY** and/or **FLOOD CONTROL DISTRICT**-owned land and right-of-way. **RIALTO** acknowledges that this **COUNTY** encroachment permit does not cover any work within or affecting railroad right-of-way, and **RIALTO** shall be solely responsible for obtaining all separate railroad permits pursuant to Section 1.5.
- 1.10 Ensure **PROJECT** is constructed in accordance with the plans and specifications approved by the **COUNTY**.
- 1.11 Enter into construction contract(s) with contractor(s) for the **PROJECT**.
- 1.12 Advertise, award, administer, and fund construction of the **PROJECT** in accordance with all applicable laws, including but not limited to, the Public Contract Code, the Civil Code, the Labor Code, and the Business and Professions Code.
- 1.13 Perform inspections of all items of work performed under the construction contract(s) with **RIALTO**' contractors or subcontractors for the **PROJECT** and maintain adequate records of inspection and materials testing made available for review to the **COUNTY**. **RIALTO** shall provide copies of all records of inspection including inspection notes and materials testing to the **COUNTY** within ten (10) business days of **RIALTO**' receipt of written request from the **COUNTY** for such records.
- 1.14 Provide the **COUNTY** the opportunity to inspect the **PROJECT** during all phases of construction in accordance with the provisions of the encroachment permit, obtained per Section 1.9 above.
- 1.15 Pay all costs for the **PROJECT** including the **COUNTY**'s share as set forth in Section 2.3. **RIALTO**, at its sole discretion, may advance the **COUNTY**'s share of the cost of the **PROJECT**, which shall be reimbursed by the **COUNTY** as set forth in Section 2.1.
- 1.16 Submit progress reports on a regular and consistent basis to meet the **COUNTY**'s requirement for reimbursement of funds. The reporting period shall not exceed one quarter of the year in length. The progress reports may be sent via email; however, an official hardcopy shall be sent to the **COUNTY**'s Project Manager. The progress reports shall provide a brief description of the work performed during the reporting period including activities, milestones achieved, major accomplishments and any problems encountered in the performance of the **PROJECT**.
- 1.17 Provide the **COUNTY** invoices on a quarterly basis for costs incurred on the **PROJECT** and shall include at minimum the following information:
 - a. Cost incurred for work performed in implementing the **PROJECT** during the period identified in the particular invoice.
 - b. Cost incurred for any interest in real property (land or easement) that have been necessarily acquired for the **PROJECT** during the period identified in the particular invoice for the implementation of the **PROJECT**.
 - c. Invoices submitted shall meet the following format requirements:
 1. Cover letter with signature from the responsible **RIALTO** official.
 2. Invoice must contain date of invoice, time period covered by the invoice, and the total amount due.

3. A cost breakdown in table format with Vendor (Contractor, Invoices and Staff Time), description of costs, total costs for each line item.
 4. Invoices must be itemized.
 5. Sufficient backup documentation (e.g. receipts, copies of checks, time sheets, labor reports, cost accounting reports,) as reasonably determined by the **COUNTY** must be provided to support all charges and all costs included in the invoice. Additional cost share shall be accounted for separately in the progress reports.
- d. Cost incurred for the relocation of any utility associated with **PROJECT** before or during construction.
 - e. Submit the original, signed, invoice to the following address:

Noel Castillo, P.E.
 Director, Department of Public Works
 825 East Third Street,
 San Bernardino, CA 92415-0835

- 1.18 Operate, and maintain the **PROJECT**, upon completion of the **PROJECT** and acceptance of the **PROJECT** work by **COUNTY**, pursuant to Section 3.5.
- 1.19 Require all contractors and vendors working on the **PROJECT** to:
 - 1.19.1 Have appropriate and adequate insurance coverage for the mutual protection and benefit of the **PARTIES**. **COUNTY** shall be added as an additional insured on all contracts awarded by **RIALTO**. The limits of liability in the Public Liability and Property Damage policy or policies shall not be less than \$1,000,000 combined single limit;
 - 1.19.2 Add **COUNTY** as an obligee, to the Payment and Performance Bonds provided for the **PROJECT** and name **COUNTY** as express third-party beneficiaries to the **PROJECT** contract documents; and
 - 1.19.3 Indemnify, defend, and hold the **PARTIES** and **COUNTY** harmless from all claims and liabilities resulting in whole or in part from the acts or omissions of the contractor or vendor, to the full extent permitted by law.
- 1.20 Provide status reports regarding the **PROJECT** to the **COUNTY** within fourteen (14) calendar days of **RIALTO**' receipt of written request from the **COUNTY** for such reports.
- 1.21 Provide to the **COUNTY**, upon completion of **PROJECT**, one (1) set of Mylar drawings, and one (1) electronic set of "Record Drawings" of the **PROJECT**.
- 1.22 Retain or cause to be retained for audit by the **COUNTY**, or other government auditors for a period of three (3) years from the date of the final payment, all records and accounts relating to the **PROJECT**.

SECTION II

2.0 COUNTY AGREES TO:

- 2.1 Pay to **RIALTO** the amounts within the given Fiscal Year upon availability of funds starting in **COUNTY**'s Fiscal Year 2025/2026 for **COUNTY**'s share of costs set forth herein. **COUNTY**'s total funding participation under this **AGREEMENT** shall not exceed \$859,100. **COUNTY**'s reimbursement payments will be made no more frequently than quarterly, pursuant to Section 1.17. The **COUNTY** shall be responsible for and pay its respective share for the **PROJECT**. **COUNTY**'s financial obligations for payments are subject to and limited by the **COUNTY**'s Board of Supervisors budgetary and appropriation process.
- 2.2 Pay for additional work, including, but not limited to, all costs relating to such additional work as required by Section 3.11, that is beyond the scope of the original **PROJECT** and performed

pursuant to approved plans and specifications only if the **COUNTY** that first requested that work in writing, as required by Section 3.11, and only after receiving a payment request from **RIALTO** that includes all necessary supporting documentation in accordance with Section 1.17.

- 2.3 The **COUNTY's** funding for the **PROJECT** shall not exceed the amount set forth in Section 2.1, unless costs in excess of the total **PROJECT** costs are agreed upon by both **PARTIES in writing**.
- 2.4 Promptly review and comment on the **CONTRACT PLANS** prepared and submitted by **RIALTO** or by its representatives pursuant to Section 2.1, and upon **RIALTO** satisfactorily addressing all of **COUNTY's** comments, approve the **CONTRACT PLANS** and issue all necessary encroachment permits. **COUNTY** shall not unreasonably withhold **COUNTY's** approval of the **CONTRACT PLANS** as described in Section 1.2. **COUNTY** shall provide its written approval, disapproval, and/or comments to **RIALTO** within 15 business days of **COUNTY's** receipt of the **CONTRACT PLANS** from **RIALTO** pursuant to Section 1.2. In the event that **COUNTY** does not provide any written approval, disapproval, or comments within 15 business days of **COUNTY's** receipt of the **CONTRACT PLANS**, then the **CONTRACT PLANS** shall be deemed to have been approved by **COUNTY** without comment and **COUNTY** shall issue all necessary encroachment permits. In the event that **COUNTY** does not approve of the **CONTRACT PLANS**, **COUNTY's** written notice thereof to **RIALTO** shall include a detailed description and explanation of the reasons for **COUNTY's** disapproval and the **PARTIES** shall thereafter meet and confer in good faith to resolve thereof.
- 2.5 Issue no fee encroachment permit(s), after review of construction plans, when necessary, to **RIALTO** for work within **COUNTY** and/or **FLOOD CONTROL DISTRICT** right-of-way.

SECTION III

3.0 IT IS FURTHER UNDERSTOOD AND AGREED:

- 3.1 The Effective Date of the **AGREEMENT** shall be the first date upon which all the following has occurred: (1) **RIALTO'** Council and **COUNTY's** Board have approved the **AGREEMENT**; and (2) the authorized representative of each **PARTY** has signed the **AGREEMENT**.
- 3.3 All payments shall be made via electronic funds transfer (EFT) directly deposited into the **PARTIES'** designated checking or other bank account. **PARTIES** shall promptly comply with directions and accurately complete forms provided to process EFT payments.
- 3.4 Indemnification and Insurance.
 - 3.4.1 Indemnification
 - a. Pursuant to Government Code Section 895.4, each **PARTY** ("Indemnitor") shall indemnify, defend (with counsel reasonably approved by Indemnitee), and hold harmless each of the other **PARTIES**, the **COUNTY**, and each of their respective officers, employees, agents and volunteers (each an "Indemnitee," collectively, "Indemnitees") from and against any and all claims, actions, losses, damages, and/or liability arising out of the acts or omissions of Indemnitor, or its authorized officers, employees, agents and volunteers, under this Agreement.
 - 3.4.2 Insurance
 - a. Waiver of Subrogation Rights – If not self-insured **RIALTO** shall require the carriers of required coverage to waive all rights of subrogation against the **COUNTY** and its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit **RIALTO** and their employees or agents from waiving the right of subrogation prior to a loss or claim. **RIALTO** hereby waive all rights of subrogation against the **COUNTY**, except for the gross negligence of **COUNTY** and its officers, employees, agents, volunteers, contractors, and subcontractors.

- b. Self-Insurance –The **PARTIES** are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers’ Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions, or obligations of this **AGREEMENT**.

3.5 Default Provisions.

- A. **RIALTO** will be in default under this **AGREEMENT** if any of the following occur:
 - a. Material breaches of the **AGREEMENT**, or any supplement or amendment to it.
 - b. Making any false warranty, representation, or statement with respect to this **AGREEMENT**.
 - c. Failure to make any remittance required by this **AGREEMENT**.
 - d. Failure to submit timely progress reports.
 - e. Failure to routinely invoice the **COUNTY**.

Should an event of default occur, the **COUNTY** shall provide written notice of default to **RIALTO** and shall give **RIALTO** at least ninety (90) calendar days to cure the default from the date the notice is sent via first-class mail to **RIALTO**; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within a ninety (90) day period, **RIALTO** shall not be deemed in default if it diligently commences such cure within such period and thereafter diligently proceed to rectify and cure said default as soon as possible. If **RIALTO** fails to cure the default within the time prescribed by the **COUNTY**, the **COUNTY** may do any of the following:

- 1. Terminate any obligation to make future payments to **RIALTO**.
- 2. Terminate the **AGREEMENT**.
- 3. Take any other action that it deems necessary to protect its interest.

- B. The **COUNTY** will be in default under this **AGREEMENT** if any of the following occur:
 - a. Material breaches of the **AGREEMENT**, or any supplement or amendment to it.
 - b. Making any false warranty, representation, or statement with respect to this **AGREEMENT**.
 - c. Failure to make any undisputed payment required by this **AGREEMENT**.

Should an event of default occur, **RIALTO** shall provide written notice of default to the **COUNTY** and shall give the **COUNTY** at least ninety (90) calendar days to cure the default from the date the notice is sent via first-class mail to the **COUNTY**; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within a ninety (90) day period, **COUNTY** shall not be deemed in default if it diligently commences such cure within such period and thereafter diligently proceed to rectify and cure said default as soon as possible. If the **COUNTY** fails to cure the default within the time prescribed by **RIALTO**, **RIALTO** may do any of the following:

- 1. Terminate the **AGREEMENT**.
- 2. Take any other action that it deems necessary to protect its interest.

- 3.6 If, upon opening of bids for the **PROJECT** submitted, the bids indicate a cost overrun of no more than 25% of the estimated construction cost, **RIALTO** may award the contract(s), notwithstanding any provision herein to the contrary, after a written concurrence from **COUNTY**.
- 3.7 If, upon opening of bids for the **PROJECT**, bids indicate the actual cost of the **PROJECT** will exceed either 25% of the estimated cost of construction or the available funding, **PARTIES** shall endeavor to agree in writing upon an alternative course of action. If, after thirty (30) days, an alternative course of action is not mutually agreed upon in writing, this **AGREEMENT** shall be deemed to be terminated by mutual consent.

- 3.8 This **AGREEMENT** shall inure to the benefit of and be binding upon the successors and assigns of the **PARTIES**.
- 3.9 If the performance by any **PARTY** of any part of this **AGREEMENT** is prevented, hindered or delayed by any reason beyond the control of the **PARTY** whose performance is so affected, and this effect cannot be overcome by due diligence, the **PARTY** affected is excused from performance to the extent that performance is necessarily prevented, hindered or delayed, during the continuance of the happening or event, and this **AGREEMENT** is suspended so long as and to the extent that the cause prevents or delays that **PARTY's** performance. The **PARTY** claiming to be affected shall give written notice to the other **PARTIES** within a reasonable time after the happening of the cause which they contend affects their performance. None of the **PARTIES** shall be liable for failure or delay of fulfilling their obligations if hindered or prevented by acts of God, fire, strikes, earthquakes, pandemic, and flooding.
- 3.10 The **PARTIES** acknowledge that final **PROJECT** costs may ultimately exceed current estimates of **PROJECT** costs. Any additional **PROJECT** costs resulting from increase bid prices or change orders (but not unforeseen conditions or requested additional work by a **PARTY** which are addressed in Section 3.11 below) over the estimated total **PROJECT** cost shall be borne by **RIALTO**. Notwithstanding the foregoing, the **COUNTY's** share of the **PROJECT** cost shall not exceed \$859,100 under any circumstances unless a written amendment to this **AGREEMENT** is approved by the **COUNTY's** Board.
- 3.11 If a **PARTY** requests additional work that is beyond the scope of the original **PROJECT**, all costs relating to said work (including, but not limited to, all costs relating to drafting related contract plans, specifications, and engineer's cost estimates) will be paid solely by the **PARTY** requesting the work.
- 3.12 In the event that change orders are required during the course of the **PROJECT**, said change orders must be in writing and approved by the **PARTIES** within two (2) working days of submittal. If working conditions do not allow two working days for a written approval, then **PARTIES** agree to work diligently to come up with a speedy resolution in the field.
- 3.13 Since the **PARTIES** or their agents have participated fully in the preparation of this **AGREEMENT**, the language of this **AGREEMENT** shall be construed simply, according to its fair meaning, and not strictly for any or against any **PARTY**. Any term referencing time, days or period for performance shall be deemed workdays, unless expressly stated otherwise. 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**.
- 3.14 No supplement, modification, or amendment of this **AGREEMENT** shall be binding unless executed in writing and signed by all **PARTIES**.
- 3.15 All notices, approvals, consents, or other documents required or permitted under this **AGREEMENT** shall be in writing and, except as otherwise provided herein, shall be effective upon personal delivery or three days after deposit in the United States mail, certified, with first class postage fully prepaid, addressed as follows:

CITY OF RIALTO
 Public Works Department
 150 South Palm Ave. RIALTO, CA
 92376
 Attn: Gerard Nepomuceno, P.E.

San Bernardino County
 Department of Public Works
 825 East Third Street
 San Bernardino, CA 92415
 Attn: Noel Castillo, P.E.

- 3.16 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 rights by custom, estoppel, or otherwise.

- 3.17 This **AGREEMENT** shall be governed by the laws of the State of California. If a court of competent jurisdiction declares any portion of this **AGREEMENT** invalid, illegal, or otherwise unenforceable, the remaining provisions shall continue in full force and effect, unless the purpose of this **AGREEMENT** is frustrated. Any dispute or action to enforce any obligation under this **AGREEMENT** shall be filed and resolved in the appropriate Superior Court in the County of San Bernardino, California. In the event of litigation arising from this **AGREEMENT**, each **PARTY** to the **AGREEMENT** shall bear its own costs, including attorney's fees, except as provided for in Section 3.4.1.
- 3.18 Except with respect to the **PARTIES'** operation, maintenance and indemnification obligations contained herein, this **AGREEMENT** shall terminate upon the completion of the **PROJECT** and final payment by the **COUNTY** to **RIALTO**.
- 3.19 This **AGREEMENT** contains the entire **AGREEMENT** of the **PARTIES** with respect to the subject matter hereof, and supersedes all other prior negotiations, understandings, or contracts. This **AGREEMENT** may only be modified in writing, signed by all **PARTIES**.
- 3.20 Time is of the essence for each and every provision of this **AGREEMENT**.
- 3.21 This **AGREEMENT** may be cancelled upon thirty (30) days written notice of any **PARTY**, provided however, that no **PARTY** may cancel this **AGREEMENT** without cause after **RIALTO** awards contract(s) to construct the **PROJECT**.
- 3.22 The Recitals preceding the terms of this **AGREEMENT** are incorporated into the terms hereof by this reference and constitute constructive terms of this **AGREEMENT**.
- 3.23 This **AGREEMENT** may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same agreement. The **PARTIES** shall be entitled to sign and transmit an electronic signature of this **AGREEMENT** (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each **PARTY** providing electronic signature agrees to promptly execute and deliver to the other party an original signed **AGREEMENT** upon request.

IN WITNESS WHEREOF, this **AGREEMENT** has been fully executed on behalf of the **COUNTY** and **RIALTO** by their duly authorized officers, effective as of the last date hereunder written.

SAN BERNARDINO COUNTY

CITY OF RIALTO

(Print or type name of corporation, company, contractor, etc.)

► _____
Dawn Rowe, Chair, Board of Supervisors

By ► _____
(Authorized signature - sign in blue ink)

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Name _____
(Print or type name of person signing contract)

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

Title _____
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

ATTEST:

Barbara McGee, City Clerk

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

FOR COUNTY USE ONLY

Approved as to Legal Form

Aaron Gest, Deputy County Counsel
Date _____

Reviewed for Contract Compliance

Andy Silao, P.E.
Date _____

Reviewed/Approved by Department

Noel Castillo, Director of Public Works
Date _____