



Contract Number

21-689

SAP Number

Public Works – Solid Waste Management Division

Department Contract Representative Darren J. Meeka, P.E., Deputy Director
Telephone Number (909) 386-8703

Contractor	<u>City of Rialto</u>
Contractor Representative	<u></u>
Telephone Number	<u></u>
Contract Term	<u>September 21, 2021 to December 31, 2022</u>
Original Contract Amount	<u>\$ 598,944</u>
Amendment Amount	<u></u>
Total Contract Amount	<u>\$ 598,944</u>
Cost Center	<u></u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the CITY OF RIALTO, ("Rialto") and the COUNTY OF SAN BERNARDINO ("County") previously entered into Contract No. 00-289, dated May 20, 2000, wherein the County agreed to pay Rialto in consideration for the grant of water rights by Rialto to Fontana Union Water Company to pump 1,600 acre feet of water in the Rialto/Colton Groundwater Basin necessary for the County to comply with Order No. 99-86 Revising Clean-up and Abatement Order No. 98-96 issued by the Regional Water Quality Control Board, Santa Ana Region ("Regional Board Order");

WHEREAS, Rialto entered into a Standby Water Lease with Fontana Union Water Company for the lease of 1,600 acre feet of water in the Rialto/Colton Groundwater Basin dated May 9, 2000;

WHEREAS, said Contract No. 00-289 between the County and Rialto expired on May 20, 2020;

WHEREAS, Rialto entered into an extension of the Standby Water Lease with Fontana Union Water Company for continued lease of the 1,600 acre feet in February, 2019;

WHEREAS, the County is engaged in good faith discussions with Fontana Union Water Company regarding whether the 1,600 acre feet per year is still necessary and the terms for such use, with the County's position being that it is no longer necessary;

WHEREAS, to the extent it may be necessary or desirable as determined by the County during its negotiations with Fontana Union Water Company, the County desires to be able to utilize up to 1,600 acre feet of water for

compliance with the Regional Board Order for the current water year, commencing October 1, 2020 through September 30, 2021, and the subsequent water year, commencing October 1, 2021, through September 30, 2022 and to reimburse Rialto for such use as set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual covenants and conditions, the parties hereto agree as follows:

1. Recitals. The Recitals stated above are incorporated herein by reference.
2. Effective Date. This Agreement shall be effective upon the date that the Agreement has been signed by authorized representatives of both Parties.
3. Term. This Agreement shall remain in effect through December 31, 2022.
4. County's Payment of Consideration for Water Rights Granted Under the Standby Water Lease. As consideration for the grant and/or exercise of the standby water rights granted to Fontana Union Water Company pursuant to the terms of the Standby Water Lease, the County shall make payment to Rialto the amount of \$53.08 per acre foot charged for making water rights available (\$84,928) and an additional payment of \$132.70 per acre foot for each acre foot of water drawn from or produced pursuant to such standby water rights (up to \$212,320) for a total of \$297,248 for the 2020/2021 Water Year. For the 2021/2022 Water Year, the County shall make payment to Rialto the amount of \$53.87 per acre foot charged for making water rights available (\$86,192) and an additional payment of \$134.69 per acre foot for each acre foot of water drawn from or produced pursuant to such standby water rights (up to \$215,504) for a total of \$301,696. The County will inform Rialto in writing within 30 days prior to the start of the water year the degree to which the County intends to utilize the standby water rights for that water year. The estimation provided by the County does not preclude the County from notifying Rialto during the water year that the County intends to utilize additional standby water rights, which Rialto agrees to accommodate to the extent such rights remain available to Rialto in that water year, up to the amounts allowed under this Agreement. For both water years, the County will pay the respective amount per acre foot charge for making water rights available regardless of whether it utilizes the 1,600 acre feet of standby water rights. The County shall make the required payments within sixty (60) days of receipt of an invoice from Rialto indicating the amount of water produced pursuant to the standby water rights. Such invoice shall not be issued until the close of the water year (September 30).
5. Existence of Water Rights. Rialto asserts that it owns water rights in the Rialto Basin adequate to allow it to grant the standby water rights this water year, in an amount sufficient to allow for the production during any Production Curtailment up to 1,600 acre feet of water pursuant to such rights. Rialto acknowledges that it understands that the existence of 1,600 acre feet of water rights in the Rialto Basin, the validity of its agreement to provide water rights in the Standby Water Lease and its intention to abide by the conditions of that Lease are critical to the County's decision to enter into this Agreement and that in the absence of same, the County would not enter into this Agreement.
6. Indemnification. The County and Rialto shall each indemnify, defend and hold harmless the other and their respective past, current and future officers, directors, employees, volunteers and/or agents from any and all claims, demands, costs or liability arising from or connected with any work done by the indemnifying party under this Agreement, except as otherwise provided by law.
7. Authorization by Rialto. Rialto represents that the terms and execution of this Agreement, including any exhibits, have been duly authorized by Rialto's City Council and that the persons signing this Agreement on its behalf have the necessary authority to do so.
8. Authorization by the County. The County represents that the terms and execution of this Agreement, including any exhibits, have been duly authorized by the County Board of Supervisors and that the persons signing this Agreement on its behalf have the necessary County authority to do so.
9. Headings. All paragraph headings throughout this Agreement are for convenience and reference only.

10. Entire Agreement. This Agreement constitutes the sole and entire agreement between the parties hereto, and no modification, alteration, or amendment shall be binding unless expressed in writing signed by the Parties. No representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding, and this Agreement supersedes all prior negotiations, agreements, arrangements and undertakings among the Parties hereto with respect to the matters set forth in this Agreement. It is the intent of the Parties that this Agreement is an integrated Agreement and that no parole evidence may be introduced to vary in any manner its terms and conditions.

11. Accuracy of Representations. As of the Effective Date hereof, the representations herein of the County and Rialto are true and correct in all material respects.

12. Originals and Copies. 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 an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

13. Construction of Agreement.

(a) Equal Construction. This Agreement and any exhibits attached hereto shall not be construed in favor of or against a Party by reason of participation or lack of participation of that Party or its counsel in the drafting of this Agreement and any exhibits attached hereto. This Agreement and any attached exhibits shall be interpreted and construed as drafted by all Parties with equal participation in the drafting hereof.

(b) Internal Consistency. The Parties intend that the terms of this Agreement and of any exhibits are all internally consistent with each other and should be construed to that end. If any irreconcilable inconsistency shall be determined between the terms of this Agreement and the terms of any of the Exhibits attached hereto, the terms of this Agreement shall control over the terms of any of the Exhibits.

14. Notices. All notices and communications, including invoices, between the Parties to this Agreement shall be either personally delivered, sent by first-class mail, return receipt requested, sent by overnight express delivery service, postage or other charges fully prepaid or faxed, as follows:

To Rialto: City of Rialto
150 South Palm Avenue
Rialto, California 92376

Attention: City Manager
E-mail: mfuller@rialtoca.gov

To County: County of San Bernardino
Contract Administrator
Department of Public Works
Solid Waste Management Division
222 W. Hospitality Lane, 2nd Floor
San Bernardino, California 92415-0017

Attention: Contract Administrator
E-mail: Darren.Meeka@dpw.sbcounty.gov

15. No Third Party Beneficiaries. There are no third party beneficiaries to this Agreement. Other than the Parties, no person, political subdivision, agency, board, department, division or commission shall be entitled to bring an administrative or judicial proceeding to enforce or interpret its terms.

IN WITNESS WHEREOF, the County of San Bernardino and the City of Rialto have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

► *Curt Hagman*
Curt Hagman, Chairman, Board of Supervisors

Dated: SEP 21 2021
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

By *Lynnia Monell*
Lynnia Monell
Clerk of the Board of Supervisors
of the County of San Bernardino
Deputy



CITY OF RIALTO

(Print or type name of corporation, company, contractor, etc.)
By ► *Marcus Fuller*
(Authorized signature - sign in blue ink)

Name Marcus Fuller
(Print or type name of person signing contract)

Title City Manager
(Print or Type)

Dated: September 15, 2021

Address 150 S. Palm Ave.
Rialto, CA 92376

ATTEST:

Barbara A. McGee 9/15/2021
Barbara A. McGee Date
City Clerk

APPROVED AS TO FORM:

Eric Vail 09-15-2021
Eric Vail Date
City Attorney

FOR COUNTY USE ONLY

Approved as to Legal Form

Kristina M. Robb, Principal Assistant County Counsel
Date _____

Reviewed for Contract Compliance

Andy Silao, P.E.
Date _____

Reviewed/Approved by Department

Brendon Biggs, Director
Date _____

Handwritten scribbles and marks at the top of the page.

SEP 21 1988



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APPROVED FOR SIGNATURE

Signature line with a horizontal line and some faint text below it.