

AGREEMENT
FOR THE SALE OF RECYCLED WATER FROM THE CITY OF RIALTO TO
INLAND EMPIRE UTILITIES AGENCY

April 23, 2024

The effective date of THIS AGREEMENT is made this _____ day of April 2024 between the Inland Empire Utilities Agency, herein referred to as “IEUA” and the City of Rialto or the City of Rialto acting in its capacity as the Rialto Utility Authority, herein referred to as “Rialto”. IEUA and Rialto may be referred to individually as “Party” or collectively as “Parties.”

I. Background

- a. IEUA intends to fund the design and construction of an Advanced Water Purification Facility (AWPF) and groundwater injection facilities to beneficially use recycled water to meet water quality objectives in the Chino Basin and provide water supply augmentation benefits associated with its Recycled Water Expansion Program.
- b. IEUA is interested in securing local supplies of tertiary treated recycled water from Rialto and others, along with its recycled water supplies, for treatment at its AWPF located at the RP-4 treatment plant.
- c. Rialto currently produces approximately 6.2 million gallons per day (MGD) of recycled water produced at its wastewater treatment plant that is discharged to the Santa Ana River. As Rialto grows, it anticipates receiving additional flows up to its maximum treatment plant capacity of 11.7 MGD. Rialto desires to sell a portion of its recycled water to IEUA.
- d. This agreement defines the terms and conditions for the sale and procurement of recycled water and related infrastructure and operations.
- e. It is the intent of the Parties to facilitate the sustainable use of recycled water supplies for the mutual benefit of the Chino Basin and Rialto.

II. TERMS

- a. This Agreement shall become effective upon execution by the Parties and shall terminate 50 years from the effective date.
- b. Recycled Water Purchase Amount and Compensation – Base Supply
 - i. IEUA shall purchase from Rialto 3,500 acre-feet of tertiary-treated recycled water at a constant flow rate of 6.2 MGD over a six-month period from May 1 through October 31 of each year (“Base Supply”).

- ii. The purchase of Base Supply shall be on a take-or-pay basis, whereby IEUA shall pay Rialto for all Base Supply offered regardless of IEUA taking delivery of the recycled water. The take-or-pay obligation begins with the initial delivery of recycled water supplies. Exceptions to IEUA's take-or-pay obligation include either of the following circumstances:
 - 1. Rialto is unable to meet the 3,500 acre-feet Base Supply obligation required for the operation of IEUA's recycled water AWPF; OR
 - 2. Rialto is unable to meet recycled water quality requirements as described in Section II.(h)(iii), below.

For each day in which either of these circumstances occurs, an amount of 19.0 acre-feet shall be deducted from the Base Supply amount to determine IEUA's payment obligation for the Base Supply.

- iii. The initial purchase price for the Base Supply shall be \$275/acre-foot. The purchase price for the Base Supply shall be adjusted annually commencing one year after the effective date of this agreement by an amount of 2% (two percent), or the year-over-year percentage increase in the CPI-U All Urban Consumers Riverside-San Bernardino-Ontario Index published by the United States Bureau of Labor Statistics (CPI), whichever is greater.
- iv. In the circumstances of a Force Majeure Event, as defined in Section II.(k)(i), that renders Rialto unable to provide the Base Supply or any material portion thereof, Rialto's and IEUA's obligation shall be excused (or excused as to that material portion) for the duration of the Force Majeure Event, provided however that Rialto shall not sell or otherwise convey any portion of the Base Supply to any other entity during such period unless otherwise mutually agreed to by the parties.

c. Recycled Water Purchase Amount and Compensation – Optional Supply

- i. IEUA shall have the option and right of first refusal to purchase from Rialto an additional supply of up to 3,500 acre-feet of tertiary treated recycled water available during the six months from November 1 to April 30 of each year, or any amount of tertiary treated recycled water supply offered by Rialto over 7,000 acre-feet on an annual basis ("Optional Supply").
- ii. The initial purchase price for the Optional Supply shall be \$400/acre-foot. The purchase price for the Optional Supply shall be adjusted annually commencing one year after the effective date of this agreement by an amount of 2% (two percent), or the year-over-year percentage increase in the CPI or based on the percentage increase of the Metropolitan Water District of Southern California Full Service Untreated Rate, whichever is greater. The purchase of the Optional Supply shall be at the sole discretion of IEUA.
- iii. Should Rialto offer IEUA the Optional Supply, and IEUA elects not to purchase, Rialto may offer the Optional Supply to other third-party buyers. If such an

offer to a third-party buyer is made, IEUA will have a first right of refusal to purchase the recycled water included in the offer at the identical price and terms under which Rialto is offering the recycled water to the third-party buyer. Such an offer between Rialto and a third-party buyer shall be in writing. Under no circumstances shall the sale of Optional Supply to a third-party buyer adversely affect IEUA's remaining Option and Right of First Refusal in subsequent years.

iv. In the circumstances of a Force Majeure Event, as defined in Section II.(k)(i), that renders Rialto unable to make available the Optional Supply or any material portion of thereof, Rialto's and IEUA's obligation shall be excused (or excused as to that material portion) for the duration of the Force Majeure Event, provided however that Rialto shall not sell or otherwise convey any portion of the Option Supply to any other entity during such period unless otherwise mutually agreed to by the Parties.

d. Additional Compensation Terms

- i. All payments for Base Supply and Optional Supply purchases shall be made by IEUA to Rialto on a quarterly basis within 60 days of receipt of invoice from Rialto. Base Supply payments shall be on a take-or-pay basis, as described in Section II.(b)(ii). Optional Supply payments shall be based upon metered flow deliveries of recycled water to IEUA.
- ii. It is understood the Base Supply purchase price of \$275/acre-foot and Optional Supply purchase price of \$400/acre-foot are discounted in recognition of IEUA's capital investment for conveyance improvements needed to deliver water to IEUA'S RP-4 facility. IEUA and Rialto acknowledge that conveyance and point of delivery alternatives are being evaluated that may materially reduce construction, permitting, or operations and maintenance costs for recycled water conveyance to IEUA. Should a mutually agreeable alternative that provides material cost savings relative to the currently proposed RP-4 delivery infrastructure be identified and implemented, the Parties shall negotiate in good faith an increase in price for the Base Supply and Optional Supply or other consideration that reflects a shared benefit of the conveyance cost savings.
- iii. IEUA will provide Rialto an amount of up to \$1,000,000 (one million dollars) for the construction of the facilities necessary to satisfy Rialto's obligation for discharge into the Santa Ana River ("HCP supply project"). The selection of a HCP supply project shall be at the sole discretion of Rialto. Upon the completion of the HCP supply project, Rialto shall present a full cost accounting to IEUA for review and approval to determine the final amount of compensation. Rialto will comply with the public contracting code.
- iv. A Supply Deposit fee shall be paid by IEUA to Rialto until commencement of delivery of recycled water from Rialto to IEUA and payable within 60 days of receipt of invoice from Rialto. The Supply Deposit fee shall be in recognition

of the time that may elapse between the effective date of the term sheet executed on October 26, 2022, and the commencement of recycled water deliveries from Rialto to IEUA. Payment of the Supply Deposit fee is not conditioned upon Rialto's prior satisfaction of its obligation to obtain water diversion permits under Section II.(f)(vii). Rialto may enter into one-time or short-term recycled water sales or other conveyances to third parties during the period it is receiving the Supply Deposit provided no such sale or conveyance will prevent or materially impair Rialto's ability to provide the Base Supply to IEUA upon the date IEUA begins to take recycled water under the agreement. The fee payment made by IEUA to Rialto will be based upon 20% of the 3,500 AF Base Supply volume (700 AF) at a price of \$275/AF escalated annually in accordance Section II.(b)(iii). Such payments shall be made to Rialto on an annual basis and escalated annually on the anniversary of the effective date of the term sheet (October 26, 2022). The first such payment of \$128,333 covered the period from November 2022 through June 2023 and was made on June 30, 2023. IEUA shall provide Rialto quarterly notice of the anticipated schedule for taking the Base and Optional Supply. Rialto shall provide IEUA annual notice of any anticipated short-term recycled water sales to others.

1. Upon the commencement of delivery of recycled water from Rialto to IEUA, the Supply Deposit payment shall cease and IEUA shall pay Rialto the full amount for deliveries pursuant to Section II.(b), less a 20% credit for the Supply Deposit. IEUA's quarterly payments to Rialto shall be reduced by 20% until the total Supply Deposit amount previously paid by IEUA to Rialto is fully credited.
2. Should IEUA's AWPF not be constructed or if the agreement is terminated in accordance with Section II.(j)(ii), Supply Deposit payments made to Rialto shall not be refundable to IEUA. The exception to this provision would be a Force Majeure as provided in Section II.(k)(i). Under such circumstances, IEUA would be eligible to be refunded 50% of Supply Deposit payments received by Rialto subject to a repayment plan mutually agreed-to by the Parties.

e. Facilities and Ownership

- i. The proposed facilities to be constructed and operated by IEUA generally consist of an approximately 550 HP pump station and associated site piping and appurtenances located at the Rialto Wastewater Treatment Plant (RWWTP) in Rialto (hereinafter referred to as "Pump Station") and eleven (11) miles of 24-inch conveyance piping through the cities of Rialto, Fontana, and Rancho Cucamonga to convey the tertiary recycled water from RWWTP to the IEUA's RP4 wastewater treatment facility (hereinafter referred to as "Conveyance").
- ii. IEUA will have full ownership of the Pump Station and Conveyance facilities.

- iii. The Pump Station will be cited within the property of the RWWTP at a location mutually agreed to by the parties, with the Point of Connection (POC) established at the current RWWTP tertiary effluent discharge.
- iv. The parties will work in good faith to execute the necessary easements to accommodate the pump station, conveyance, and supporting facilities located within the RWWTP.

f. Design, Permitting, and Construction

- i. IEUA shall be responsible for design, permitting (including environmental) and construction of the Pump Station and Conveyance facilities and all associated costs shall be the responsibility of IEUA.
- ii. The Pump Station shall be designed and constructed to engineering standards determined by IEUA and shall not materially interfere with the operations of the RWWTP. Some telemetry information from the RWWTP may be necessary for the operations of the IEUA pump station. Rialto may wish to obtain pump station flow data from IEUA. Rialto and IEUA will coordinate the telemetry needs and such access shall not be unreasonably withheld. At no time will IEUA's needed telemetry information have direct control nor impact the operation of the RWWTP.
- iii. IEUA shall prepare and submit to Rialto a preliminary engineering report, final design plans and specifications and bid documents for the Pump Station for review and approval. Rialto shall review these submittals and provide timely comments to IEUA for incorporation, as appropriate, into final documents.
- iv. Upon approval of the preliminary engineering report, Rialto shall convey to IEUA the following at no cost:
 1. Such agreements (inclusive of leases, licenses, or easements as Rialto shall determine are most appropriate) for the Pump Station site and for the portion of the Conveyance within the RWWTP, including full ingress and egress rights for long-term operation and maintenance during the term of the agreement.
 2. A temporary construction easement and materials storage area to be utilized by IEUA during construction.

Costs for design, construction, and establishment of electrical service for the Pump Station and all electrical utility fixed service and commodity charges shall be the sole responsibility of IEUA.

- v. Upon execution of the construction contract, IEUA shall be responsible for the management of the contractor and inspection of all facilities under construction. IEUA shall coordinate with Rialto during the construction of the Pump Station, on-site Conveyance piping and interconnection with RWWTP facilities. IEUA shall include Rialto's designated representatives in contractor coordination

meetings, as requested. Rialto may also provide separate construction inspection at its expense.

- vi. IEUA shall coordinate with Rialto to ensure the construction contractor carries appropriate forms of insurance and implements safety program measures and other provisions to adequately protect and indemnify Rialto against any and all claims associated with the construction of the Pump Station not caused by Rialto's negligence.
- vii. Prior to the commencement of construction, Rialto shall secure any needed water diversion permits from the State Water Resources Control Board (SWRCB) for the delivery of recycled water to IEUA. Rialto's recycled water flow requirements imposed by the SWRCB for compliance with the Upper Santa Ana River HCP shall be the responsibility of Rialto.
 - 1. The Parties shall meet and confer 36 months after execution of this agreement to assess the status and likelihood of obtaining the necessary water diversion permits within the following 24 months. Should the parties mutually agree that the permits are unlikely to be approved, the parties may suspend the Supply Deposit payment until such time as the parties mutually agree that sufficient progress in obtaining the permits has been made.
 - 2. The Parties will support the change of use process.
 - 3. Should the City be unable to secure water diversion permits the Supply Deposit fee shall be refundable to IEUA.
- viii. It is understood that construction of facilities will occur in Rialto rights-of-way, streets, easements and on Rialto fee owned properties. Rialto will cooperate with IEUA to ensure other future Rialto construction projects will not interfere with IEUA's construction schedule. This includes Rialto's street paving projects, and potential paving moratoriums.

g. Reimbursement

- i. Rialto will design and construct the retaining wall including necessary grading in compliance with the State of California's public contracts code.
- ii. Rialto shall receive reimbursement for all labor, materials, equipment and/or services to be furnished by Rialto or others for the services related to IEUA's portion of the grading and the retaining wall. Reimbursement for material costs shall be submitted with receipts. IEUA's share of the estimated cost is \$400,000 (2024 dollars) per the 2024 Rialto Pipeline Interconnection Preliminary Design Report. IEUA will be included in the review/acceptance of those bids/estimates and the cost share shall be mutually agreeable.
- iii. The parties will negotiate mutually agreeable appropriate cost shares for site improvements not specified in this agreement that are mutually deemed necessary to support the Pump Station and Conveyance facilities within the RWWTP.

- iv. IEUA shall approve and pay Rialto's invoices submitted with appropriate support documentation invoicing, within sixty (60) days following receipt of the invoice for the documented costs.
- h. Operations and Water Quality
 - i. IEUA shall be responsible for all operations and maintenance of the Pump Station and Conveyance facilities, including conducting routine operations, maintenance, and repairs of IEUA owned facilities on the RWWTP site and remote operations through telemetry systems. IEUA operations staff shall routinely coordinate and communicate with RWWTP staff on Pump Station operations.
 - ii. All costs associated with operations and maintenance of the Pump Station and Conveyance facilities shall be the sole responsibility of IEUA.
 - iii. All flows of recycled water delivered to IEUA shall be treated to tertiary standards and compliant with all National Pollutant Discharge Elimination System (NPDES) discharge permit requirements in effect for the RWWTP. Rialto shall immediately inform IEUA of any process upsets or other conditions at the RWWTP resulting in, or that may result in, recycled water quality that is not compliant with the RWWTP NPDES discharge permit requirements ("non-compliant water").
 - iv. Upon such notification, IEUA may discontinue taking flows into the Pump Station and shall have no obligation to purchase non-compliant water.
 - v. The parties acknowledge that failure of Rialto to promptly notify IEUA of non-compliant water may result in damage to or permit violation for IEUA's recycled water facilities. Under such circumstances, Rialto's liability would be limited to fines imposed upon IEUA directly related to the non-compliant water and the reasonable cost incurred by IEUA of such additional water treatment mandated by a governmental entity of competent jurisdiction, but not exceeding payments already received by Rialto from IEUA.
 - vi. IEUA, with the concurrence of Rialto, may elect to contract with Rialto or its RWWTP operator to provide certain operations and maintenance services. Such services would be the subject of a separate agreement.
 - vii. Rialto shall allow access of IEUA staff to adjacent restroom/breakroom facilities during normal wastewater treatment plant business hours. Such access shall not impose an unreasonable operational or financial impact on Rialto.
 - viii. The Parties shall make every effort to inform one another as soon as possible if there is a planned or emergency shutdown at the Rialto plant or AWPF, a reduction in flow due to any unforeseen non-compliance period, or loss of power.

- ix. The transmission main will occasionally require draining for operational purposes. During such draining operations Rialto will make best efforts to accommodate the gravity flow back to the RWWTP and discharge of this water to the treatment plant's storm box/storm water pump station or the RWWTP headworks. IEUA will closely coordinate such planned operations with Rialto. Where emergency operations require draining, IEUA will coordinate with Rialto senior utility representative or their designee.
- x. In order to prevent the mechanical equipment at the pump station and pipeline to become dry for an extended period, IEUA will need to pump a maintenance flow rate of approximately 20 gallons per minute (gpm) through the transmission main for approximately 6 hours duration once a week during the period of November 1 to April 30. IEUA will pay the Base Supply rate for such water use and such use will be coordinated between the Parties.
- xi. Rialto shall cooperate in good faith with IEUA to implement source control programs appropriate regulatory agencies may require of IEUA. Any costs for such source control programs that exceed the requirements of Rialto's RWWTP NPDES discharge permit shall be the sole responsibility of IEUA.

- i. Use of Facilities for Delivery to Third Parties
 - i. The parties acknowledge that the Pump Station and Conveyance facilities may, by mutual agreement, provide existing excess capacity or be upsized in the future to provide additional capacity to distribute and sell additional recycled supplies to third parties beyond the Base Supply and Optional Supply amounts purchased by IEUA. Any such arrangement to use or expand capacity would be subject to a separate agreement among the parties and would set forth terms including but not limited to the equitable allocation of Pump Station and Conveyance infrastructure expansion costs; use of infrastructure constructed by, owned, and operated by IEUA; and the sharing of water sales revenue resulting from third-party sales.
- j. Term and Termination
 - i. The term of the proposed agreement is fifty (50) years commencing with an effective date of (date) and ending date of (date). The parties may terminate the agreement at any time by mutual written consent.
 - ii. Should IEUA not commission the AWPF and commence taking full deliveries of recycled water from Rialto within ten (10) years of the effective date of this agreement (unless caused by Force Majeure events as defined in Section J), Rialto or IEUA may terminate the agreement at its sole discretion without further obligation. Under such circumstances, Supply Deposit payments made to Rialto by IEUA up to the date of termination shall not be refundable.
 - iii. Upon termination of the agreement, IEUA shall be responsible for the removal of all above-ground facilities associated with the Pump Station and shall restore

the site to its original condition. All below ground facilities within the RWWTP site shall remain in place and become the property of Rialto.

- iv. At its sole discretion, Rialto may elect not to have IEUA remove the Pump Station or restore the site. Under such circumstance, The Pump Station, on-site Conveyance piping and appurtenant facilities shall become the property of Rialto and IEUA shall have no further obligations.
- v. This agreement can be extended by mutual agreement.

k. Force Majeure Event

- i. For the purposes of the agreement a Force Majeure Event shall be defined as an event beyond the control of the effected party that prevents full or materially significant implementation of that party's obligation, including acts of God, (e.g. war, hostilities, invasion, rebellion, embargos, strikes, slow-downs, labor lockouts (other than those directly related to a party), pandemics, and acts or threats of terrorism).

l. Dispute Resolution

- i. Representatives from each Party shall meet and use reasonable efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement. To that end, the Parties' representatives shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first notice of the Dispute is received by the non-disputing Parties, then the Parties shall pursue non-binding mediation to be completed within one-hundred twenty (120) days after the notice of the Dispute is received by the non-disputing Parties. If the Parties do not settle the Dispute within the one-hundred twenty (120) day period, any Party may pursue any and all available legal and equitable remedies.

This Agreement contains the details for the water resources partnership of the Parties and there are no other promises or conditions in any other agreement oral or written.

NOW, THEREFORE, as evidenced by the signatures that follow, IEUA and Rialto mutually agree to the Term Sheet as of the date(s) shown below:

INLAND EMPIRE UTILITIES AGENCY:

Approved By:

Shivaji Deshmukh, P.E.
General Manager

Date

Approved as to Legal Form:

Jean Cihigoyenetche
Legal Counsel

Date

**CITY OF RIALTO/RIALTO UTILITY
AUTHORITY:**

Approved By:

Tanya Williams
Acting City Manager/Executive Director

Date

Attested By:

Barbara A. McGee
City Clerk/Board Secretary

Date

Reviewed as to Legal Form:

Eric Vail
City Attorney/Rialto Utility
Authority General Counsel

Date