

INSTALLATION AGREEMENT
FOR
City of Rialto

TERMS AND CONDITIONS

ATTACHMENTS:

- Attachment A – Scope of Work
- Attachment B – Lighting Submittal
- Attachment C – HVAC Submittal
- Attachment D – Controls and Monitoring Submittal
- Attachment E – Self Generation Submittal

ALLIANCE INSTALLATION AGREEMENT

This Installation Agreement (“Agreement”) dated ____/____/____ “Effective Date”) is made by and between:

City of Rialto (“Purchaser”) with its principal place of business at:

City of Rialto
 (“Purchaser or City”) with its principal place of business at
 150 S. Palm Avenue Rialto, CA 92376

and

Alliance Building Solutions, Inc.
 (“ABS or Contractor”) with its principal place of business at
 12526 High Bluff Drive Ste 270 San Diego, CA 92130

City of Rialto and “ABS” agree as follows:

- 1. SCOPE OF WORK.** “ABS” shall provide “Purchaser” with and Energy Efficiency Program, as identified in the following Attachment’s and incorporated herein by reference (hereinafter referred to as the “Work”) at the total fixed price of **\$9,266,488.00** including required taxes and Performance Bond (the “Contract Amount”).

“ABS” is responsible for the design, engineering, permits, fees, approvals, project management, installation, startup, training, checkout, warranty, and insurance specifically associated with the Work to be performed. “ABS” is not responsible for any balancing, duct cleaning, equipment, systems, controls, comfort problems, etc. not specifically included in the Agreement. “ABS” will provide submittals and engineering drawings (if required), for “Purchaser’s” technical review and written approval, prior to initiating construction. All construction and associated cleanup shall be performed and scheduled so as to minimize any disruption with any ongoing “Purchaser” activities. “ABS” requires all underground conduits between building to be clear of obstruction, of sufficient size to accommodate new wire and cable, and easily accessible. The “Purchaser” is responsible for Ethernet drops and WiFi access at each location for Energy Management Systems communication. This agreement is contingent on the CEC’s (California Energy Commission) approval of a Prop 39 application submitted by the Purchaser and upon successful financings related to the Work, as provided in 2. The proposal offer is valid for 90 days from the date of this agreement.

. This agreement is based upon the use of straight time labor only unless stated otherwise in this agreement. “Purchaser” agrees to provide “ABS” with required field utilities (electricity, toilets, drinking water, etc.) without charge. “ABS” agrees to keep the jobsite clean of debris arising out of its own operations. “Purchaser” shall not back charge “ABS” for any cost or expenses without written consent from “ABS”. Unless specifically noted in the statement of the scope of the work or services undertaken by “ABS” under this agreement, “ABS” obligations under this agreement expressly exclude any work or service of any nature associated or connected with the identification, abatement, cleanup, control, removal or disposal of environment hazards or dangerous substances, to include not to be limited to asbestos, PCBs, or mold discovered in or on the premises. Any language or provision of the agreement elsewhere contained which may authorize or empower the “Purchaser” to change, modify or alter the scope of work or services to be performed by “ABS” shall not operate to compel “ABS” to perform any work related to hazards without “ABS”

express written consent. "ABS" will commence work upon receipt of a Notice to Proceed from the City with respect to each project or portion thereof.

2. **INVOICING AND PAYMENTS.** "ABS" understands and agrees that this Agreement is subject to and conditioned upon "Purchaser" entering into a:

FINANCE OPTION: dated _____ (this "Lease") is by and between **HOLMAN CAPITAL**, a corporation duly organized and existing under the laws of the State of California ("Corporation") as lessor and **City of Rialto**, the City duly organized and existing under the laws of the State of California ("Lessee") as lessee Agreement. The following will be the process for the funding to "ABS". All payments are processed through an Escrow account via wire transfer through Community of Santa Maria Bank and Mohave State Bank. Alliance Building Solutions will submit an invoice to the City of Rialto. The City of Rialto will inspect the work completed and approve it by completing and signing the Certificate of Acceptance and Payment Request. The City emails the signed Certificate of Acceptance and Payment Request form along with the invoice from ABS to The Bank/Escrow Agent and copies Holman Capital. The Bank/Escrow Agent disburses the requested amount from the escrow account to pay the invoice to "ABS". Once funds have been transferred the Bank/Escrow Agent provides the City of Rialto a statement accounting for deposits and withdrawals in the escrow account.

PURCHASE OPTION: ABS" may invoice the "Purchaser" for mobilization upon signing the contract for 30% of the contract value due within 15 days. "ABS" will submit an SOV for review and approval within 45 days of contract signing for remaining scheduled payments. "Purchaser" agrees to pay "ABS" amounts invoiced 30 days after invoice received per agreed schedule of values (SOV). Waivers of lien will be furnished upon request, as the work progresses; to the extent payments are received. If "ABS" invoices are not paid within 30 days of its issuance, it is delinquent and "ABS" may add 1% interest per month, onto delinquent amounts.

3. **INDEPENDENT CONTRACT.** It is agreed between "Purchaser" and "ABS" that "ABS" shall perform the work as an independent contractor. "ABS" may use subcontractors to perform work hereunder, provided "ABS" shall fully pay said subcontractors and in all instances remain fully responsible for (a) the proper completion of this agreement and (b) supervising such subcontractor's work and for the quality of the work they produce.
4. **MATERIALS.** All materials shall be new, in compliance with all applicable laws and codes, and shall be covered by a manufacturer's warranty, if appropriate. If the materials or equipment included in this agreement become temporarily or permanently unavailable, the time for performance of the work shall be extended to the extent thereof, and case of permanent unavailability, "ABS" shall (a) be excused from furnishing said materials or equipment, and (b) be reimbursed for the difference between the cost of the materials or equipment permanently unavailable and the cost of a reasonable substitute therefore. All equipment installed shall meet or exceed the performance of the proposed equipment shown in the attachments.
5. **PREVAILING WAGE.** In accordance with the provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, ABS and any subcontractor under ABS is required to pay not less than the general prevailing rate of per diem wages to all workmen employed in the performance of this Contract, for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, pursuant to the California Labor Code, the Director of the Department of Industrial Relations of the State of California has determined such general prevailing rates of per diem wages. Copies of such prevailing rates of per diem wages are on file in the office of the Engineering Division, _____, Rialto, California, and are available to any interested party upon request; or may be obtained online from the Department of Industrial Relations website at <http://www.dir.ca.gov>. ABS shall cause a copy of such determinations to be posted at the job site. ABS shall comply with all applicable prevailing wage laws and regulations.
- ABS and any subcontractor under ABS is subject to forfeiture of penalties to City, as provided under the provision of Section 1775 of the California Labor Code for each worker employed, for each calendar day or portion thereof, if such

worker is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of the California Labor Code. Penalties shall be in addition to civil penalties, restitution of wages, liquidated damages to the employee, and any other applicable penalties imposed by the Labor Commissioner pursuant to the California Labor Code, or court of law.

By entering into this Contract, ABS certifies that neither it nor any person or firm that has an interest in ABS's firm is a person or firm that is barred from being awarded Public Works contracts by virtue of Section 1777.1 of the California Labor Code.

Contact and any subcontractor under it shall submit, not less than monthly to the City and to the Labor Commissioner, certified copies of the payroll records for all said workers for the preceding month's pay periods, and shall comply with all statutory requirements relating to certified copies of payroll records or other requirements, including the maintenance of the records, their certification, and their availability for inspection as required by Labor Code Section 1776, applicable law and this contract. ABS and any subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement) in a format prescribed by the Labor Commissioner not less than monthly.

6. **COMPLETION.** The work specified in Section 1 shall be considered completed upon approval by the "Purchaser", provided that the "Purchaser's" approval shall not be unreasonably withheld.
7. **WARRANTY.** "ABS" warrants that the equipment manufactured by it shall be free from defects in material and workmanship arising from normal usage for a minimum period of one (1) year from delivery of said equipment, or if installed by "ABS", for a period of two (2) years from the installation date. "ABS" warrants that for equipment furnished and/or install but NOT manufactured by "ABS", "ABS" will extend the same warranty and terms and conditions, which "ABS" received from manufacturer of said equipment. Within the warranty period, for equipment installed by "ABS", if Purchaser provides written notice to "ABS" of any such defects within thirty (30) days after the appearance or discovery of such defect, "ABS" shall, at its option, repair or replace the defective equipment to "Purchaser". All transportation charges incurred in connection with the warranty for equipment not installed by "ABS" shall be borne by "Purchaser". These warranties do not extend to any equipment which has been repaired by others, abused, altered or misused, or which has not been properly and reasonable maintained. These warranties are in lieu of all other warranties, expressed or implied, including but not limited to those of merchantability and fitness for a specific purpose.
8. **LIABILITY.** Except as provided in Section 17, "ABS" shall not be liable for any special, indirect, or consequential damages arising in any manner from the equipment or material furnished or the work performed pursuant to this agreement.
9. **TAXES.** The price of this agreement does include duties, sale, use, excise or other similar taxes required by federal, state or local laws in effect at the time of agreement execution.
10. **DELAYS.** "ABS" shall not be liable for any delay in the performance of the work resulting from or attributed to acts of circumstances beyond "ABS" control, including but not limited to acts of God, riots, labor disputes, conditions of the premises, acts or omissions of the "Purchaser", or other contractors or delays caused by suppliers, or subcontractors of "ABS", etc. If "Purchaser" delays project for greater than 60 days, "ABS" can recover any cost inflation on unbilled materials that were either stored or yet to be purchased.
11. **REBATES, UTILITY INCENTIVES, AND GRANTS.** Unless otherwise stated in the project scope-of-work, or cash flow analysis, any and all rebates, incentives, grants that are earned through the course of this project from public or private utilities, municipalities, development districts or state funding are 100% the property of "ABS" or their designee. The paperwork, inspections and verification required to collect these monies are the sole responsibility of "ABS". The customer agrees to assist "ABS" where required by the jurisdiction in the form of data required for the application and authorizing signatures. In the event the Customer incurs expenses related to the processing of the applications, "ABS" shall reimburse these direct costs.
12. **CHANGE ORDER (Mid-Performance Amendments).** "ABS" and the "Purchaser" recognize that:

- i. "Purchaser" may desire a mid-job change in the specifications or scope that would add time and cost to the specified work or inconvenience "ABS".
- ii. Other provisions of the agreement may be difficult to carry out because of unforeseen events, such as material shortage or labor strikes. If these are other events beyond the control of the parties reasonably required adjustments to this agreement, the parties shall make a good faith attempt to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties and added to this agreement. Failure to reach agreement shall be deemed a dispute to be resolved as agreed in section 18 of this agreement.

13. TAX DEDUCTIONS. Unless otherwise stated in the contract, all eligible tax deductions associated with the work, that "Purchaser" is not eligible for, are agreed to be 100% the property of "ABS" or their designee. The paperwork, inspections and verification required to collect these incentives are the sole responsibility of "ABS". In the event the customer incurs expenses related to the processing of the applications, "ABS" shall reimburse these direct costs.

14. COMPLIANCE WITH LAWS. "ABS" shall comply with all applicable Federal, State and local laws and regulations. All licenses and permits required for the prosecution of the work shall be obtained and paid for by "ABS".

15. INSURANCE. "ABS" will maintain comprehensive liability and other insurance in the amount not less than those set forth below.

- a. General Liability Insurance. A policy of commercial general liability insurance, written on an "occurrence" basis, providing coverage with not less than \$1,000,000 per occurrence for bodily injury, personal injury & property damage and must include a separate endorsement naming the City, its elected officials, its officers, agents and employees as additional insurance ("General Liability Policy"). The General Liability Policy shall include coverage for the contractual liability assumed by the ABS pursuant to this Agreement.
- b. Vehicle Liability Insurance. A policy of business vehicle liability insurance, written on an "occurrence" basis, with a combined single limit of not less than \$1,000,000 per accident for bodily injury and property damage ("vehicle Liability Policy"). The vehicle Liability Policy shall include coverage for owned, hired, and non-owned automobiles.
- c. Worker's Compensation Insurance. Worker's compensation insurance as required by State law and employer's liability insurance with coverage in an amount not less than \$1,000,000. Notwithstanding the insurer rating standards set forth in this Agreement, coverage provided by the State Compensation Insurance Fund shall be deemed, with respect to the workers' compensation insurance, to satisfy such insurer rating standards.
- d. Professional Liability Insurance. Professional liability insurance with coverage in an amount of not less than \$1,000,000 (Professional Liability Policy"), which the City or Purchaser acknowledges shall be written on a "claims made" basis.
- e. Duration of Insurance. Except as provided in this Agreement with respect to insurance written on a "claims made" basis, the ABS shall maintain the insurance required pursuant to this Agreement in effect at least until the date that is one year following final payment to the ABS pursuant to this Agreement.
- f. Professional Liability Insurance. The Professional Liability Policy shall provide coverage for claims arising out of the performance of the Scope of Services pursuant to this Agreement. If an aggregate limit applies, such aggregate limit in the Professional Liability Policy shall not be less than \$2,000,000. Prior to commencing the Scope of Services, and, if applicable, upon replacing the original Professional Liability Policy, the ABS shall provide to the City or Purchaser a copy of any and all applicable claims-reporting requirements. Notwithstanding anything to the contrary; (i) the ABS shall have the Professional Liability Policy, as described herein, in full force and effect prior to commencing the Scope of Services; (ii) each renewal or replacement of the Professional Liability Policy shall have a retroactive date that is prior to the date the ABS commenced the Scope of Services; and (iii) as a condition to final payment to the ABS pursuant to this Agreement. If the claims reporting period applicable to the scope of Services, as specified in or determined

pursuant to the Professional Liability Policy for the Scope of Services, will Terminate prior to the end of the two-year period following final payment to the ABS pursuant to this Agreement, then the ABS, as its cost, shall obtain and provide satisfactory evidence to the City or Purchasers of: (i) an endorsement to extend the claims reporting period to include whatever will remain of such two-year period; or (ii) a supplemental extended reporting period (tail) applicable to the Professional Liability Policy as required to provide coverage until the end of such two-year period. Such tail coverage shall be required, for example; (i) if the ABS intends to switch insurance carriers and the prospective new carrier will not agree to cover claims arising from the Scope of Services submitted at any time prior to the end of the two-year period following final payment to the ABS pursuant to this Agreement; (ii) if the ABS's business is to be wound-up or otherwise terminated, whether voluntarily or Involuntarily; or (iii) when necessary for any other reason to ensure that professional liability insurance applicable to the Scope of Services is in effect at all times required by this Agreement.

- g.* Additional Insured's. The City, its elected officials, officers, employees, and agents shall all be named as additional insured, to the extent of the ABS's acts and omissions in connection with this Agreement, on all insurance that the consultant is to have in effect pursuant to this agreement, excepting the workers' compensation insurance and the Professional Liability Policy. For purposes of this Section, The City or Purchasers architect shall not be deemed or construed to be an agent of the City
- h.* Waiver of Subrogation. The ABS hereby waives, on behalf of its insurers, any and all rights to subrogation that any such insurer may acquire by virtue of the payment of any loss. Each of the General Liability Policy and The Vehicle Liability Policy shall be endorsed with a cross-liability endorsement and a waiver of the insurer's rights of subrogation against the City. The policy of worker's compensation insurance shall be endorsed with a waiver of the insurer's rights of subrogation against the City.
- i.* ABSs Insurance is Primary. To the extent permitted by law, insurance policies required by this Agreement to be maintained by the consultant shall be primary and non-contributing with respect to any insurance or self-insurance programs covering the City or Purchaser, City or Purchaser's Board members thereof, or the City or Purchasers other officers, employees or agents. The General Liability Policy and the Vehicle Liability Policy shall be endorsed to provide that they are so primary and non-contributory.
- j.* Evidence of Coverage. Prior to commencing the Scope of Services, the ABS shall provide to the City or Purchaser such duly-authorized and executed certificates of insurance evidencing that the insurance policies to be maintained by the ABS pursuant to this Agreement are in effect (each a "certificate of Insurance"), together with a copy of each endorsement to such insurance as is required pursuant to this Agreement. The delivery of such Certificates of Insurance and endorsements shall be a condition precedent to the ABS commencing any of the Scope of Services. As applicable, the Certificate of Insurance shall identify those who are additional insured's in accordance with this Agreement. Not less than Thirty days prior to the expiration of any insurance policy that the ABS is required to maintain pursuant to this Agreement, the ABS shall provide updated Certificates of Insurance to the City or Purchaser evidencing the renewal of such policy.
- k.* Notice of Changes in Policies. Each certificate of Insurance and corresponding policy of insurance required pursuant to this Agreement shall expressly require, or be endorsed to require, that the insurer notify the City or Purchaser not less than thirty days prior to any cancellation, termination, reduction in coverage, or expiration without renewal of any such insurance policy, except for cancellation due to non-payment of premium, in which case the insurer shall provide such notice not less than ten days prior to cancellation. Language in any Certificate of Insurance or policy of insurance to the effect that the insurer shall "endeavor" to provide such notice shall not be acceptable.

- Review of Coverage.* The City or Purchaser may at any time request that the ABS provide a full and complete copy of any or all policies of insurance to be maintained by the contractor pursuant to this Agreement, and the ABS shall provide a copy of each requested policy to the City or Purchaser within ten days of the City or Purchaser's request. The City or Purchaser shall review the insurance policies, along with the Certificate of Insurance and endorsements also provided by the ABS, to determine whether the ABS's insurance companies with the insurance-related requirements of this Agreement. However, no failure by the City or Purchaser to conduct such review, to properly or completely conduct such review, or to identify any non-compliance with the requirements of this Part 3, shall be deemed or construed to relieve the ABS from any of its obligations in regard to such insurance-related requirements. Notwithstanding anything else in this Agreement, any failure by the contractor to comply with such insurance-related requirements shall be deemed a material breach by the ABS of its obligations pursuant to this Agreement and not as a waiver of any such insurance-related requirement.
- Subcontractor's Insurance.* The ABS shall require that each of its Subcontractor's independently comply with all requirements of this section relating to insurance covering their activities for the benefit of the City or Purchaser. The ABS shall require in its agreements with its subcontractors that each Subcontractor be subject to, and that it comply with, the requirements set forth in this section, except to the extent the City or Purchaser has approved any different standards or requirements applicable to any particular subcontractor
- 16. BONDING.** Bonds are subject to the procurement and installation portion of the contract. Payment and Performance Bonds are required 10 days prior to start of procurement or installation. Pursuant to provisions of the California Civil Code, the payment bond must be in an amount not less than one hundred percent (100%) of the contract price and, as the performance bond should be in a similar amount to insure completion of the project. All M&V Agreements and Energy Savings Guarantees are specifically excluded.
- 17. INDEMNITY.** City, its elected officials, officers, agents and employees, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either worker, employees of ABS or his subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the Work. ABS shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the active negligence or willful misconduct of City, its employees, servants, or independent contractors who are directly responsible to City during the progress of the Work, or at any time before its completion and final acceptance.

ABS will indemnify City, its elected officials, officers, agents and employees against and will hold and save them harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with this Contract, the Work, operation, or activities of ABS, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive negligence, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the active negligence or willful misconduct of City, its employees, servants, or independent contractors who are directly responsible to City, and in connection therewith:

ABS will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all cost and expenses, including attorney's fees incurred in connection therewith.

ABS will promptly pay any judgment rendered against ABS, or City, or its elected officials, agents or employees, covering such claims, damages, penalties, obligations and liabilities arising out of or in connection with such work, operations, or activities of ABS hereunder, and ABS agrees to save and hold the same harmless therefrom.

In the event City is made a party to any action or proceeding filed or prosecuted against ABS for damages or other claims arising out of or in connection with the work, operation, or activities of ABS hereunder, ABS agrees to pay to City any and all costs and expenses incurred by City in such action or proceeding together with reasonable attorney's fees.

18. Any payments due to ABS under this Contract may be retained by City until disposition has been made of actions or claims for damage described herein.
19. **DISPUTES.** Written notice of any dispute must be provided to the other party, describing specific details of the dispute relating to changes in work or claim for additional compensation, within seven (7) days of the occurrence of the conditions. This notice must be provided via certified mail. For a reasonable period commencing on the day written notice of dispute was provided, but not to exceed thirty (30) days, the parties shall in good faith attempt to resolve the dispute. If the parties are unable to resolve the dispute during this period, the parties shall proceed to binding arbitration. The arbitrator shall be neutral and mutually acceptable; the arbitrator shall determine all rights and obligations under this agreement and the award of the arbitrator shall be final, binding and enforceable. Any award issued pursuant to this provision may be enforced in a court of competent jurisdiction, and each party hereby consents to that jurisdiction. All venues for arbitration shall be in the locality in which the project is located.
20. **OCCUPATIONAL SAFETY AND HEALTH.** The parties hereto agree to notify each other immediately upon becoming aware of any alleged violation of, the Occupational Safety and Health Act (OSHA) relating in any way to the project or project site.
21. **ENTIRE AGREEMENT.** This agreement, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
22. **CHANGES.** No change or modification of any of the terms and conditions stated herein shall be binding upon "ABS" or City unless accepted by "ABS" and City in writing.
23. **SEVERABILITY.** If one or more of the provisions of this agreement are held to be unenforceable under laws, such provision(s) shall be excluded from these terms and conditions and the remaining terms and conditions shall be interpreted as if such provisions were so excluded and shall be enforced in accordance to their terms and conditions.
24. **COUNTERPARTS.** This agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this agreement received by either party by facsimile or portable document format (PDF) is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.
25. **ASSIGNMENT.** "ABS" retains the right to assign its rights and obligations of this agreement with written consent of "Purchaser".
26. **ACKNOWLEDGMENT.** Both "ABS" and the "Purchaser" acknowledge having read this agreement and all contract documents incorporated herein and have executed this agreement on the date written above.
27. **APPROVAL.** Each party represents that the person that has executed this agreement on its behalf is authorized to do so.

IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement effective as of the date first above written.



City of Rialto

Alliance Building Solutions, Inc.

Signature

Signature

Title

Title

Date

Date