

**AGREEMENT  
(CONSTRUCTION CONTRACT)**

**THIS AGREEMENT** made this 10<sup>th</sup> of September, 2019, by and between the City of Rialto, a municipal corporation, organized and existing in the County of San Bernardino, under and by virtue of the laws of the State of California, hereinafter designated as the City, and KDC Inc., dba Dynalectric, a California corporation, hereinafter designated as the Contractor.

The City and the Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 -- THE WORK**

For and in consideration of the payments and agreements to be made and performed by City, Contractor agrees to furnish all materials and perform all work required to complete the Work as specified in the Contract Documents, and as generally indicated under the Bid Schedule(s) for the Project entitled:

**CONSTRUCTION OF TRAFFIC SIGNAL AT PEPPER AVENUE AND WINCHESTER  
DRIVE/TERRACE ROAD  
CITY PROJECTs NO. 190802**

The installation of the signal is highly recommended to enhance the overall intersection safety and operation and to provide a safe crossing for the school children from Frisbie Middle School using the existing crosswalk on the north side of the intersection; which will be signalized as part of the new traffic signal installation. This stretch of Pepper Avenue carries a traffic volume in excess of 7,000 vehicles per day. Since the opening of the Pepper Avenue Ramp at the SR-210, traffic volumes have increased southbound and northbound on Pepper Avenue; therefore, the signal installation will mitigate the impacts of the increased traffic and will enhance the overall safety for the general public.

**ARTICLE 2 -- COMMENCEMENT AND COMPLETION**

The Work to be performed under this Contract shall commence on the date specified in the Notice to Proceed by the City, and the Work shall be fully completed within the time specified in the Notice to Proceed.

The City and the Contractor recognize that time is of the essence of this Agreement, and that the City will suffer financial loss if the Work is not completed within the time specified in Article 2, herein, plus any extensions thereof allowed in accordance with applicable provisions of the Standard Specifications, as modified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages or delay (but not as a penalty), the Contractor shall pay the City the sum specified in Section 6-9 of the Special Provisions for each calendar day that expires after the time specified in Article 2, herein. In executing the Agreement, the Contractor acknowledges it has reviewed the provisions of the Standard Specifications, as modified herein, related to liquidated damages, and has made itself aware of the actual loss

incurred by the City due to the inability to complete the Work within the time specified in the Notice to Proceed.

### **ARTICLE 3 -- CONTRACT PRICE**

The City shall pay the Contractor for the completion of the Work, in accordance with the Contract Documents, in current funds the Contract Price(s) named in the Contractor's Bid Proposal and Bid Schedule(s), and any duly authorized Construction Contract Change Orders approved by the City. The amount of the initial contract award in accordance with the Contractor's Bid Proposal is **Two Hundred Eighty-Five Thousand One Hundred Fifty Dollars and No cents. (\$285,150.00).**

Contractor agrees to receive and accept the prices set forth herein, as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of the Work during its progress or prior to its acceptance including those for well and faithfully completing the Work and the whole thereof in the manner and time specified in the Contract Documents; and, also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the Work, suspension of discontinuance of the Work, and all other unknowns or risks of any description connected with the Work.

### **ARTICLE 4 -- THE CONTRACT DOCUMENTS**

The Contract Documents consist of the Notice Inviting Bids, Instructions to Bidders, the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations, the accepted Bid and Bid Schedule(s), List of Subcontractors, Non-Discrimination Certification, Non-Collusion Affidavit, Bidder's General Information, Bid Security or Bid Bond, this Agreement, Worker's Compensation Certificate, Performance Bond, Payment Bond, Standard Specifications, Special Provisions, the Drawings, Addenda number 1, inclusive, and all Construction Contract Change Orders and Work Change Directives which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto.

### **ARTICLE 5 -- MUTUAL OBLIGATIONS**

For and in consideration of the payments and agreements to be made and performed by the City, the Contractor agrees to furnish all materials and perform all work required for the above stated project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

City hereby agrees to employ, and does hereby employ, Contractor to provide the materials, complete the Work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for the Contract Price herein identified, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the Contract Documents.

Contractor specifically acknowledges and agrees to be bound by the Wage Rates and Labor Code requirements specified in the Contract Documents, and shall pay the general prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations of the State of California.

## **ARTICLE 6 -- PAYMENT PROCEDURES**

The Contractor shall submit Applications for Payment in accordance with the Standard Specifications as amended by the Special Provisions. Applications for Payment will be processed by the City Engineer as provided in the Contract Documents.

## **ARTICLE 7 -- NOTICES**

Whenever any provision of the Contract Documents requires the giving of a written Notice, it shall be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the Notice.

## **ARTICLE 8 -- INDEMNIFICATION**

The Contractor agrees to indemnify and hold harmless the City, and all of its officers and agents from any claims, demands, or causes of action, including related expenses, attorney's fees, and costs, based on, arising out of, or in any way related to the Work undertaken by the Contractor hereunder.

## **ARTICLE 9 -- NON-DISCRIMINATION**

The Contractor represents and agrees that it does not and will not discriminate against any subcontractor, consultant, employee, or applicant for employment because of race, religion, color, sex, or national origin in any matter including without limitation employment upgrading, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

## **ARTICLE 10 -- MISCELLANEOUS**

Terms used in this Agreement which are defined in the Standard Specifications and the Special Provisions will have the meanings indicated in said Standard Specifications and the Special Provisions. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically, but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

The City and the Contractor each binds itself, its partners, successors, assigns, and legal representatives, to the other party hereto, its partners, successors, assigns, and legal representatives, in respect of all covenants, agreements, and obligations contained in the Contract Documents.

***[SIGNATURES ON FOLLOWING PAGE]***

**IN WITNESS WHEREOF**, the City and the Contractor have caused this Agreement to be executed the day and year first above written.

**CITY OF RIALTO, CALIFORNIA**

**CONTRACTOR**

By \_\_\_\_\_  
Deborah Robertson  
Mayor

\_\_\_\_\_  
**KDC Inc. dba Dynalectric**  
**a California corporation**

**ATTEST:**

By \_\_\_\_\_  
Signature

By \_\_\_\_\_  
Barbara A. McGee  
City Clerk

Name \_\_\_\_\_

Title \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President).

**APPROVED AS TO FORM:**

By \_\_\_\_\_  
Fred Galante, Esq.  
City Attorney

By \_\_\_\_\_  
Signature

Name \_\_\_\_\_

Title \_\_\_\_\_

(This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

**Two signatures are required if a corporation.**