

Terms and Conditions for the Sale of Recycled Water
from the City of Rialto to the Inland Empire Utilities Agency

September 20, 2022

I. Background

- a. Inland Empire Utilities Agency (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 Chino Basin Program (CBP).
- b. Inland Empire Utilities Agency is interested in securing local supplies of tertiary treated recycled water from Rialto and others, along with its own recycled water supplies, for treatment at its AWPF located at the RP-4 treatment plant. IEUA may also choose to use recycled water from Rialto at IEUA's RP-3 spreading basins or in its 1158 Pressure Zone, in-lieu of sending it to RP-4.
- c. The City of Rialto, as agent for the Rialto Utility Authority (hereinafter "Rialto") currently has approximately 6.2 MGD of recycled water produced at its wastewater treatment plant that is discharged to the Santa Ana River. As the City of 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 the Inland Empire Utilities Agency.
- d. This agreement provides terms and conditions for the sale and procurement of recycled water and related infrastructure and operations and is entered into between the Rialto and the IEUA, collectively referred to herein as the "parties".

II. Proposed Terms

- a. 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 if IEUA takes delivery of the recycled water. Exceptions to IEUA's take-or-pay obligation include either the following circumstances:
 1. Rialto is unable to meet the 3,500 acre-feet flow 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.(f)(iv), below.

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

- 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.(i)(i), that renders Rialto unable to provide the Base Supply or any material portion thereof, Rialto'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 water purveyor during such period.

b. 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-month period from November 1 to April 1 of each year, or any amount of tertiary treated recycled water supply 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. Under no circumstances shall the sale of Optional Supply adversely affect IEUA's Option and Right of First Refusal in subsequent years.
- iv. If Rialto determines it has additional recycled water to sell above the Base Supply and Optional Supply amounts, IEUA would have a right of first refusal to purchase the water under the same pricing and terms as the Optional Supply.
- v. In the circumstances of a Force Majeure Event, as defined in Section II.(i)(i), that renders Rialto unable to make available the Optional Supply or any material portion of thereof, Rialto'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 water purveyor during such period.

c. Additional Compensation Terms

- i. All payments for Base Supply and Optional Supply purchases shall be made by IEUA to Rialto on a quarterly basis. Base Supply payments shall be on a take-or-pay basis, as described in Section II(a). 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, IEUA and Rialto 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 one groundwater well adjacent to the Santa Ana River, or the construction of a gravity pipeline from the bottom of the future Lake Rialto sufficient to satisfy Rialto's obligation for discharge into the Santa Ana River ("HCP supply project"). The selection of the 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.
- iv. Upon the effective date of this agreement until the commencement of delivery of recycled water from Rialto to IEUA, a Supply Deposit fee shall be paid by IEUA to Rialto. The Supply Deposit fee shall be in recognition of the time that may elapse between the effective date of this agreement 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.(e)(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 shall be based upon the Base Supply purchase price of \$275/acre-foot, escalated annually in accordance with Section II.(a)(iii), multiplied by twenty percent (20%) of the Base Supply amount, or 700 acre-feet. Payments shall be made to Rialto on a quarterly basis and escalated annually on the anniversary of the effective date of this agreement.
 - 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 Section II.(a), 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.(h)(i), 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.(i)(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.

d. 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.

e. Design, Permitting and Construction

- i. IEUA shall be responsible for design, permitting 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.
- 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.

In addition, Rialto shall provide IEUA the following:

1. A sub-metered electrical connection point suitable to provide power to the Pump Station.
2. A secured connection to the operating telemetry of the RWWTP.

Costs for electrical service sub-metering and telemetry connection hardware and software shall be the 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 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. Any recycled water flow requirements imposed by the SWRCB for compliance with the Upper Santa Ana River HCP shall be the responsibility of Rialto.
 - 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 Street paving projects, and potential paving moratoriums.
- f. 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 NPDES discharge permit requirements in effect for the RWWTP. RWWTP staff 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 RWWTP NPDES discharge permit requirements ("non-compliant water"). Upon such notification, IEUA may discontinue taking flows into the Pump Station and shall have no obligation to purchase non-compliant water.
 - iv. 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.

- v. 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.
- g. 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 beyond those needed and purchased by IEUA to third-parties. 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.
- h. 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, Rialto 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 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.
- i. 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, war, hostilities, invasion, rebellion, embargos, strikes, slow-downs and labor lockouts (other than those directly related to a party), pandemics, and acts or threats of terrorism.

This Term Sheet 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. Date
General Manager

Approved as to Legal Form:

Jean Cihigoyenette Date
Legal Counsel

CITY OF RIALTO:

Approved By:

Marcus Fuller Date
City Manager

Attested By:

Barbara McGee Date
City Clerk

Reviewed as to Legal Form:

Eric Vail Date
City Attorney