

1 including but not limited to certain interest rates, prepayment premiums, indemnification
2 standards, and, jury waivers, the Lessee desires to reapprove the documents in substantially
3 the form on file with the City Clerk, with such changes as may be permitted herein; and

4 **WHEREAS**, the financing pursuant to the Lease Agreement shall be in a principal
5 amount form not exceed \$6,150,000 and a Service O&M Contract ("Service Contract") with
6 Alliance in an amount not to exceed \$750,000, which Service Contract may include the
7 purchase of certain hardware and software; and

8 **WHEREAS**, except as amended hereby, all provisions of the Original Resolution
9 relating to findings and savings remain in full force and effect; and

10 **WHEREAS**, the Lessee desires to approve the forms of the following documents
11 presented at this meeting and on file with the City Clerk, including all exhibits, schedules and
12 items attached to said documents (collectively, the "City Documents"), to wit:

- 13 a) Lease Agreement with Lessor;
- 14 a. Lease Agreement Exhibit B - Escrow Agreement, with the Bank;
- 15 b) Assignment Agreement between the Bank and Lessor;
- 16 c) Service Agreement with Alliance; and
- 17 d) Commitment Agreement, with the Bank and Lessor;

18 **WHEREAS**, Government Code sections 4217.10 through 4217.18 authorize the
19 Lessee to enter into one or more energy service contracts with any person or entity, pursuant
20 to which that person or entity will provide electrical or thermal energy or conservation
21 services to the Lessee, which may comprise or include an energy conservation facility, if the
22 anticipated cost to the Lessee for thermal or electrical energy or conservation services
23 provided under the contract(s) is less than the anticipated marginal cost to the Lessee of
24 thermal, electrical, or other energy that would have been consumed by the Lessee in the
25 absence of those energy service contracts (the "Savings");

26 **WHEREAS**, Government Code sections 4217.10 through 4217.18 authorize the
27 Lessee to enter into one or more facility financing contracts if funds for the repayment thereof
28 are projected to be available from the Savings, representing funds that otherwise would have

1 been used for purchase of electrical, thermal, or other energy required by the Lessee in the
2 absence of the energy conservation services and facilities financed by proceeds available
3 through the facility financing contracts;

4 **WHEREAS**, Government Code sections 4217.10 through 4217.18 require that a
5 public hearing be held, and public comment be taken, at a regularly scheduled meeting of
6 the Lessee at which meeting the Lessee may consider and adopt findings regarding Savings
7 and award energy services contracts and facility financing contracts based thereon, and that
8 notice thereof be must have been given at least two weeks prior to the meeting;

9 **WHEREAS**, a public hearing was held on May 9, 2017 following the publication of
10 appropriate notices and an analysis was provided by Alliance showing energy conservation
11 savings as provided by law ("Analysis"); and

12 **WHEREAS**, the approval herein is consistent with said findings and savings and the
13 Lessee desires to approve the City Documents; and;

14 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF**
15 **RIALTO AS FOLLOWS:**

16 **Section 1. *Recitals.*** The Recitals hereto are true and correct and incorporated herein by
17 this reference.

18 **Section 2. *City Energy Conservation Services Contract Findings.*** The Lessee finds that, as
19 demonstrated in the Analysis, the Lessee hereby confirms the findings related to savings as
20 provided in the Original Resolution.

21 **Section 3. *City Documents.*** The forms of the City Documents, presented herewith and on
22 file with the City Clerk are hereby approved, subject to final approval by the Mayor, City
23 Manager, Finance Director and or Treasurer of the Lessee, and such other persons as
24 he/she/they may delegate in writing (the "Designated Officer") and Lessee's counsel, the
25 execution thereof by a Designated Officer to be conclusive approval of said changes. The
26 Designated Officer is hereby authorized and directed, for and in the name of and on behalf of
27 the Lessee, to execute and deliver to City Documents and related documents and certificates
28 as necessary to carry out the City Documents, subject to such changes as the Designated

1 Officer may require and approve to best implement the energy conservation measures under
2 the Installation Agreement (the "Project"), with the approval of Lessee's counsel.

3 **Section 4. *Lease Agreements Findings.*** The Lessee finds that funds for the repayment of
4 the Lease Agreement are projected to be available from the Savings, representing funds that
5 otherwise would have been used for purchase of electrical, thermal, or other energy required
6 by the Lessee in the absence of the energy conservation services provided under the
7 Installation Agreement.

8 **Section 5. *Lease Agreements as New Clean Renewable Energy Bonds.*** The Lessee has
9 received allocation for a new clean renewable energy bonds and hereby designates the Lease
10 Agreement as new clean renewable energy bonds and will use all or a portion of the
11 allocation. Lessee acknowledges it is permitted to use no more than two percent of the
12 proceeds for costs of issuance.

13 The Lessee authorizes the Designated Officers or their designees to take such
14 actions as are necessary or appropriate to comply with 26 U.S.C. 54(A) and 54(C), and to
15 enable payment from the United States Treasury of the applicable federal credit payments in
16 respect of the Lease Agreements including but not limited to the timely filing with the Internal
17 Revenue Service of Form 8038-CP or any other required form in the manner prescribed by
18 the Internal Revenue Service or entering into calculation agency agreement, if any, relating
19 to such payments.

20 **Section 6.** The Designated Officer is hereby authorized to execute the City Documents,
21 including the Commitment Agreement, provided that the total principal component of the
22 Lessee's Rental Payments under the Lease Agreement and or payments under the Service
23 Contract shall not exceed \$6,900,000.00 and interest with respect thereto shall accrue at an
24 annual rate not exceeding 4.50% (which is an amendment to the Original Resolution), and
25 except as may be provided in the Lease Agreement and the Service Agreement. The
26 execution of the foregoing by the Designated Officer shall constitute conclusive evidence of
27 such officer's and the Lessee's approval of any such changes, insertions, revisions,
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1 corrections, or amendments to the respective forms of agreements presented to this
2 meeting.

3 **Section 7. *Other Actions Authorized.*** The officers and employees of the Lessee shall take
4 all action necessary or reasonably required by the parties to the Transaction Documents to
5 carry out, give effect to, and consummate the transactions contemplated thereby (including
6 the execution and delivery of Certificates of Acceptance and Disbursement/Payment
7 Requests, Notice and Acknowledgements of Assignments, and any tax certificate and
8 agreement, each with respect to and as contemplated in the Agreement and/or Escrow
9 Agreement) and to take all action necessary in conformity therewith, including, without
10 limitation, the execution and delivery of any closing and other documents required to be
11 delivered in connection with the Transaction Documents, and providing for deposit accounts
12 at the Bank. The Designated Officers and all other officers and employees of the Lessee are
13 hereby directed and authorized to take and shall take all action necessary or reasonably
14 required in order to select, purchase, and take delivery of the Equipment. All actions
15 heretofore taken by officers, employees, and agents of the Lessee that are in conformity with
16 the purposes and intent of this resolution are hereby approved, confirmed, and ratified.

17 **Section 8. *No General Liability.*** Nothing contained in this Resolution No. [REDACTED], the
18 Transaction Documents, nor any other instrument shall be construed with respect to the
19 Lessee as incurring a pecuniary liability or charge upon the general credit of the Lessee or
20 against its taxing power, nor shall the breach of any agreement contained in this Resolution
21 No. [REDACTED], the Transaction Documents, or any other instrument or document executed in
22 connection therewith impose any pecuniary liability upon the Lessee or any charge upon its
23 general credit or against its taxing power, except to the extent that the rental payments
24 payable under the Transaction Documents are special limited obligations of the Lessee as
25 provided therein.

26 **Section 9. *Appointment of Authorized Lessee Representatives.*** The Designated Officers
27 are each hereby designated to act as authorized representatives of the Lessee for purposes
28 of the City Documents.

1 **Section 10.** Declaration of Official Intent. The Lessee hereby officially declares its intent
2 under Treas. Regs. Section 1.150.2 to reimburse Equipment expenditures with proceeds of
3 the Lease Agreement.

4 **Section 11.** *Severability.* If any section, paragraph, clause, or provision of this Resolution
5 shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability
6 of such section, paragraph, clause, or provision shall not affect any of the remaining
7 provisions of this Resolution No. [REDACTED].

8 **Section 12.** *Repealer.* All bylaws, orders, and resolutions or parts thereof, inconsistent
9 herewith, are hereby repealed to the extent only of such inconsistency. This repealer shall
10 not be construed as reviving any bylaw, order, resolution, or ordinance or part thereof.

11 **Section 13.** *Effective Date.* This Resolution [REDACTED] shall be effective immediately upon its
12 approval and adoption.

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24 The foregoing Resolution was duly passed and adopted at a meeting of the governing
25 body of the City of Rialto held on October 24, 2017, by the following vote:

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DEBORAH ROBERTSON, Mayor

ATTEST:

BARBARA A. McGEE, City Clerk

APPROVED AS TO FORM:

FRED GALANTE, Esq., City Attorney

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