

ACCESS, MAINTENANCE, AND EQUIPMENT REMOVAL AGREEMENT

BY & BETWEEN CITY OF RIALTO AND

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (SCAQMD)

(for Aeroqual AQY)

THIS ACCESS, MAINTENANCE, AND EQUIPMENT REMOVAL AGREEMENT (herein “**Agreement**”) is made and entered into as of the date executed by authorized representatives of both parties (“**Effective Date**”) by and between the CITY OF RIALTO, a municipal corporation (herein “**City**”) and South Coast Air Quality Management District, a public body, corporate and politic (herein “**SCAQMD**”).

RECITALS

A. SCAQMD is the regional regulatory agency with jurisdiction over air quality in the South Coast Air Basin and has an interest in the monitoring and measurement of air quality within the region.

B. The City also has an interest improving the air quality within the region and desires to cooperate with SCAQMD.

C. SCAQMD has requested to install certain low-cost, low-power air quality monitoring equipment called Aeroqual AQY, and nay related appurtenances (“**Equipment**”) to collect real time data and information regarding air quality within the immediate region of the City, which will be provided to SCAQMD to measure air quality within the City and surrounding communities (“**Project**”).

D. The City and SCAQMD desire to enter into this Agreement to outline the Parties’ mutual rights and obligations regarding the Equipment and the Project.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. License

1.1 Grant of License

The City hereby grants to SCAQMD a license revocable or relocatable with or without cause at any time by the City (“**License**”) to install and maintain the Equipment, including any and all appurtenances, subject to all terms and conditions contained this Agreement. The term of the License shall be eighteen (18) months from the date of this Agreement (“**Term**”), unless extended

by the parties in writing. The locations where the Equipment are to be installed (individually, “Site”) shall be decided and agreed upon in writing by the parties prior to installation.

1.2 Termination of License

The License is terminable with or without cause by the City at any time prior to the expiration of the Term. SCAQMD shall remove the Equipment and related appurtenances and restore the Site to its former condition, at SCAQMD’s sole cost and expense, within sixty (60) days of written notice from the City. In the event SCAQMD fails to remove the Equipment and restore the Site within said time period, the City shall have the right to do so without notice. SCAQMD shall immediately reimburse the City for all out of pocket expenses expended to remove the Equipment and restore the Site.

2. Responsibilities of SCAQMD

2.1 Installation; Maintenance

Upon receiving a written “Notice to Proceed” and obtaining a no-cost permit from the City, SCAQMD shall install, operate, and maintain the Equipment at the Site in such a commercially reasonable manner as to minimize the amount of noise and disruption caused to nearby properties. To that end, SCAQMD agrees that (a) any outdoor noise-producing construction activities shall only take place on weekdays (Monday through Friday, non-holiday) between the hours of 8 a.m. and 7 p.m.; except for maintenance activities for unplanned or emergency service issues.

In compliance with all of the terms and conditions of this Agreement, SCAQMD, at its sole cost and expense, agrees to operate, maintain, and repair the Equipment in compliance with all applicable provisions of the Rialto Municipal Code, as amended from time-to-time, and any applicable State or federal law. SCAQMD shall maintain the Equipment in a clean and sanitary condition, free of rubbish, debris and any hazards to persons, in such a manner as to avoid the reasonable determination of a duly authorized official at the City that a public nuisance has been created by the absence of adequate maintenance.

2.2 Equipment Removal

Upon termination of this Agreement, pursuant to the provisions of this Agreement, the Rialto Municipal Code, and any applicable State or federal law, SCAQMD agrees to remove the Equipment at the Site within sixty (60) days of the termination.

2.3 Costs

Except as provided in Section 3.2, SCAQMD shall pay all actual and reasonable costs for maintenance, repair, and replacement of the Equipment, as well as monitoring compliance with, and enforcement of, this Agreement and shall reimburse the City for all actual and reasonable costs incurred by it to perform any work required of SCAQMD by this Agreement that SCAQMD fails to perform after notice provided by the City under Section 5.2 herein.

2.4 Insurance, Indemnification and Bonds

SCAQMD is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability, and Worker's Compensation insurance. SCAQMD warrants that through its programs of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of performance of the terms, conditions or obligations of this Agreement.

3. Responsibilities of the City

3.1 Notice to Proceed; Permits

Upon written agreement of a Site location for the Equipment, the City shall issue a "Notice to Proceed" and a no-cost permit to SCAQMD for its work for the installation of the Equipment at the Site. The "Notice to Proceed" shall include the location the work shall take place on, the scope of the work, the requested schedule, the level of service required (if necessary), and other pertinent terms and details for the project within the scope of this Agreement.

3.2 Electrical Costs

The City shall, at its sole cost and expense, pay for all electricity costs related to the operation of the Equipment.

3.3 Access to the Site

Upon written request of at least 24 hours prior notice, the City shall provide access to SCAQMD to the Site for any work in furtherance of this Agreement.

4. Indemnification

In the event SCAQMD and/or the City is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, SCAQMD and/or the City shall indemnify the other to the extent of its comparative fault.

4.1 Indemnification of City

Neither the City nor any officer or employee of the City shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of SCAQMD under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of SCAQMD under this Agreement. It is also understood and agreed that, pursuant to Government Code, Section 895.4, SCAQMD shall fully indemnify, defend and hold the City harmless from any liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of any acts or omissions on the part of SCAQMD under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of SCAQMD under this Agreement.

4.2 Indemnification of SCAQMD

Neither SCAQMD nor any officer or employee of SCAQMD shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of the City under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of the City under this Agreement. It is also understood and agreed that, pursuant to Government Code, Section 895.4, the City shall fully indemnify, defend and hold SCAQMD harmless from any liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of any acts or omissions on the part of the City under or in connection with any work, authority or jurisdiction delegated to or determined to be the responsibility of the City under this Agreement.

5. Default; Notice of Termination

5.1 Default; Termination

In the event SCAQMD materially defaults in the performance or observance of any obligation set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after receipt of written notice given by the City, or, in the event said default cannot be cured within said time period, SCAQMD has failed to commence to cure such default within said thirty (30) days and diligently prosecute said cure to completion, then the City shall declare an event of default to have occurred hereunder. The City may then terminate this Agreement by notice to SCAQMD given in accordance with Section 5.2 below.

5.2 Notices

Formal notices, demands, and communications between City and SCAQMD shall be sufficiently given if personally delivered, delivered by a reputable document delivery service that provides a receipt showing date and time of delivery, or dispatched by registered or certified mail, postage prepaid, return receipt requested. Notices personally delivered or delivered by document delivery service shall be effective upon receipt. Mailed notices shall be deemed to be received as of the earlier of actual receipt by the addressee thereof or the expiration of forty-eight (48) hours after depositing in the United States Postal System in the manner described in this Section. A party hereto may change its address for receipt of notices by delivering notice to the other party in accordance with this section.

City: City Hall
Attn: City Administrator
150 S. Palm Ave.
Rialto, CA 92376

SCAQMD: NAME
ADDRESS

6. Miscellaneous.

6.1 Governing Law

The laws of the State of California shall govern the interpretation and enforcement of this Agreement. The Municipal and Superior Court of the County of San Bernardino, or such other appropriate court in such County, shall have exclusive jurisdiction of any litigation between the parties to this Agreement, and each party agrees to submit to the personal jurisdiction of such courts.

6.2 Non-liability of City Officials or Employees

No official, officer, employee, agent, representative, or consultant of City shall be personally liable to SCAQMD, or any successor in interest of SCAQMD, in the event of any default or breach by City or for any amount which may become due to SCAQMD or its successor, or on any obligations under the terms of this Agreement.

6.3 Modifications

Any alteration, change, or modification of or to this Agreement, shall be made by written instrument signed by each party hereto.

6.4 Waiver

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

6.5 Entire Agreement

This Agreement and all documents incorporated herein contain the entire understanding among the parties hereto relating to the transactions contemplated herein and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein and shall be of no further force or effect.

6.6 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

6.7 Severability

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the

extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6.8 Qualification; Authority

Each individual executing this Agreement on behalf of a partnership or corporation represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership or corporation in accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms.

[END – SIGNATURE PAGE FOLLOWS]

CITY:

CITY OF RIALTO,
a municipal corporation

Ahmad R. Ansari, Interim City Administrator

Date: _____

ATTEST:

Barbara McGee, City Clerk

APPROVED AS TO FORM:

Fred Galante, City Attorney

SCAQMD:
a public body, corporate and politic

By: _____

Name:

Title:

Date: _____

[END OF SIGNATURES]