



SERVICE O&M AGREEMENT

This Agreement is entered into on November 30, 2017 ("Agreement") by and between The City of Rialto ("City") and Alliance Building Solutions, Inc. ("Contractor"), a California Corporation.

RECITALS

WHEREAS, Contractor has experience and expertise in energy planning, consulting and building operation and solar operation and is willing and able to perform services desired by City; and

WHEREAS, City desires energy management direction, consulting, and professional development services and has contracted for said services pursuant to the Installation Agreement, dated as of 05/09/2017 ("Installation Agreement") executed by City and Contractor in connection with the solar project, among other projects, referred to therein for a period of 10 years from the date the project is placed in service. This Agreement also provides for the payment of certain hardware and software contracted for pursuant to the Installation Agreement.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. Term of Agreement. The initial period of this Agreement shall be from November 30, 2017 or the date the solar project under the Installation Agreement is placed in service ("Commencement Date") to through ten years following the Commencement Date. This Agreement may be modified (including modification of the Description of Services and/or compensation) by the parties through mutual written agreement; provided however, that the City has leased the solar project and is entering into this agreement in reliance on the promises presented by Contractor to the City and the fact the costs under this Agreement shall remain as provided in this Agreement.

2. Description of Services. Contractor agrees to provide services to City as identified in Exhibit A, "Description of Services," attached to this Agreement and incorporated by reference.

As a material inducement to the City entering into this Agreement, Contractor represents and warrants that that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the Services and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the Services and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one

or more first-class firms performing similar Services under similar circumstances. To the extent Contractor uses any subcontractor, Contractor shall cause said subcontractor to perform any services at the highest professional standards.

Contractor shall keep itself informed concerning, and shall render all services hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

3. Compensation/ Equipment/ Ownership.

a. Compensation to Contractor shall be a total of \$750,000.00 ("Total Compensation") over five years, paid in five (5) installments of \$150,000.00 ("Annual Compensation") on January 1st of each year, commencing the 30 days following the Commencement Date. The amount will be paid without interest as long as each invoice is paid within 30 days of invoicing starting January 1, 2018. There will be a 3.5% interest charge annually for invoices paid late. Compensation is for services rendered during the year hereunder or as otherwise provided below.

b. A portion of the Compensation constituting \$380,466 may be for Services rendered in future years, and \$369,534.00 for equipment described in Exhibit B hereto ("Equipment") which will be delivered pursuant to the Contract and will be placed in service concurrently with the solar project. The sum of \$750,000 shall be appropriated and/or set aside by the City upon commencement of the Agreement in order to pay for said prepaid services and Equipment hereunder as provided herein. Compensation for the Equipment in the amount of \$369,534.00 shall be paid in annual payments as part of the five installments referred to above. Annual compensation for Services herein shall be \$73,906.80. Prepaid compensation for each of Year 6, 7, 8, 9 and 10 shall be paid respectively. Annual compensation for Equipment in the amount of \$76,093.20 for Years 6,7,8,9 and 10 respectively. All Equipment shall be delivered in accordance with the standards described in the Installation Agreement. The City shall have title to the Equipment as provided in the Installation Agreement.

4. Independent Contractor. The parties agree that Contractor is an independent contractor. This Agreement shall not be construed to create the relationship of agent, servant, employee,

partnership, joint venture, association or any other relationship except that of independent contractor.

5. Subcontracting.

The experience, knowledge, capability and reputation of Contractor, its principals and employees and Alliance Mechanical Systems, Inc, as its subcontractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, except for Alliance Mechanical Systems, Inc., Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

All subcontracts shall be subject to the City's insurance requirements to the same extent as Contractor.

6. Insurance.

The Contractor and any Subcontract shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City: [Insert Requirements]

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

7. Indemnification.

Contractor 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 Agreement, the Services, operation, or activities of Contractor, its subcontracts, its 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 gross negligence or willful misconduct of City, its employees, servants, or independent contractors who are directly responsible to City, and in connection therewith:

Contractor 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.

Contractor will promptly pay any judgment rendered against Contractor, 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 Services, operations, or activities of Contractor hereunder, and Contractor 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 Contractor for damages or other claims arising out of or in connection with the Services, operation, or activities of Contractor hereunder, Contractor 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.

8. Other Covenants.

Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, subcontractors and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, gender identity, national origin, ancestry or other protected class.

Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of Services and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such

liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

9. Notices to the Parties. All notices required or permitted under this Agreement shall be in writing and delivered by reliable and common methods as follows:

To Alliance Building Solutions, Inc:

Brad Chapman, President
12526 High Bluff Drive
Suite 345
San Diego, California 92130
858-900-5305

To The City of Rialto:

Mike Story – City Manager
150 S. Palm Avenue
Rialto, CA 92376
909-820-2527

10. **Waiver.** No failure to exercise and no delay in exercising any right, remedy, or power, under this Agreement or by law, shall operate as a waiver of such right, remedy or power.

11. **Legal Costs.** If any party to this Agreement shall take any action or proceeding to enforce this Agreement, the losing party shall pay to the prevailing party a reasonable sum for all reasonable fees, costs and expenses (including attorneys' fees) incurred in bringing such suit and/or enforcing any judgment granted.

12. **City Responsibility for Fair Political Practices Commission (FPPC) Reporting and Accounting Requirements.** City is responsible for complying with its own reporting and accounting requirements, and payment of applicable fees, as required by the FPPC (including FPPC Regulations 18615 and 18616).

13. **Governing Law.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **Entire Agreement.** The terms of this Agreement are intended by the parties to be in the final expression of their agreement and may not be contradicted by evidence of any prior or contemporaneous agreement. No change or waiver of any provision of this Agreement shall valid unless made in writing and executed in the same manner as this Agreement.

15. **Severability.** If any term or provision of this Agreement shall be found illegal or unenforceable, such term or provision shall be deemed stricken and the remaining elements of this Agreement shall remain in full force and effect.

This Agreement is duly executed as of the date written above:



Alliance Building Solutions, Inc

City of Rialto

EXHIBIT A
Description of Service

1. Provide consulting and representation on behalf of the City of Rialto including, but not limited to;
 - Building Management System Scheduling
 - Utility Monitoring
 - Infrastructure Optimization
 - Energy Services Consulting
 - Auditing and Reporting
 - Assist with Federal and State Energy Funding
 - Monthly reporting on Solar PV system
 - Bi-Weekly site visits
 - O & M relating to the Solar PV system
2. Provide strategic state energy consultation
3. Provide consultation and strategic assistance on environmental and utility issues
4. Participate in meetings to provide updates on regulatory energy developments
5. Develop and implement strategies for individual school sites to assist the City of Rialto in saving energy and reducing consumption
6. Prepare and submit reports for the Public Utility Commission & California Energy Commission.
7. Continually research new and improving technologies and share this research with staff to assure that the City of Rialto is continually recognized as a community steward and state leader in energy efficiency.
8. See Attached more specific explanation of certain services.