

**COOPERATIVE AGREEMENT**  
**BETWEEN**  
**THE CITY OF FONTANA**  
**AND**  
**THE CITY OF RIALTO**  
**FOR THE**  
**COMPLETION OF CONSTRUCTION IMPROVEMENTS**  
**FOR THE MAPLE AVE (FROM BASELINE ROAD TO MILLER**  
**AVENUE/ETIWANDA AVENUE)**  
**STREET OVERLAY AND RECONSTRUCTION PROJECT**

This Cooperative Agreement (“AGREEMENT”) is made and entered into on the \_\_\_\_ day of \_\_\_\_\_ 2023, by and between City of Fontana and the City of Rialto, sometimes individually or collectively hereinafter referred to as “PARTY” or “PARTIES.” This agreement defines the roles and responsibilities of City of Fontana and City of Rialto for the construction improvements of the MAPLE AVENUE FROM BASELINE ROAD TO MILLER AVENUE/ETIWANDA AVENUE STREET OVERLAY AND RECONSTRUCTION PROJECT partially in the City of Fontana and partially within the City of Rialto, hereinafter referred to as the “PROJECT.”

**RECITALS**

WHEREAS, the PROJECT encompasses the construction of a new asphalt pavement section on Maple Avenue from Baseline Road to Etiwanda Avenue; and

WHEREAS, PROJECT is partially within each city, and will be of mutual benefit to the PARTIES and this AGREEMENT does not transfer ownership nor does it transfer any legal responsibilities associated with ownership, operation and maintenance of the existing and future improvements; and

WHEREAS, the City of Rialto has completed the engineering design, coordination with utilities, and procurement and management of a contractor; and

WHEREAS, City of Rialto and City of Fontana desire to cooperate in the construction of the PROJECT; and

WHEREAS the City of Rialto is the California Environmental Quality Act (CEQA) Lead Agency for the PROJECT and will complete and file the proper Categorical Exemption documentation to proceed with the PROJECT. The City of Fontana shall be identified as a Responsible Agency for purposes of CEQA compliance.

NOW, THEREFORE, City of Fontana and City of Rialto agree to the following:

## SECTION I

### CITY OF RIALTO RESPONSIBILITIES:

1. City of Rialto shall render project management services and provide engineering support services utilizing City of Rialto available staff which will be supplemented with consultants that are specifically tasked for completing the PROJECT.
2. Under CEQA, the City of Rialto, as the Lead Agency, is the decision-making body and shall make a CEQA Determination on the PROJECT and file the necessary environmental documents with the county clerk and complete all public notifications and hearings.
3. City of Rialto shall be the Lead Agency for addressing legal challenges to the environmental document.
4. City of Rialto will procure the necessary professional services to establish a project team to supplement the team as warranted for the PROJECT.
5. City of Rialto shall execute appropriate agreements to facilitate and coordinate the completion of the PROJECT.
6. City of Rialto shall procure and manage a qualified contractor to complete the construction of the PROJECT improvements.
7. City of Rialto shall designate a Project Manager to represent City of Rialto through whom all communications between the PARTIES shall be channeled.
8. City of Rialto shall provide the City of Fontana with a proposed project schedule to complete the PROJECT.
9. City of Rialto shall coordinate and conduct construction meetings on a monthly basis to provide the City of Fontana with a PROJECT update that includes schedule updates, PROJECT cost updates, scope updates, status of action items, and status of issues/concerns.
10. All work performed by City of Rialto or performed on City of Rialto's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that apply to the PROJECT.
11. City of Rialto shall make all PROJECT work performed by City of Rialto available for review and comment by the City of Fontana and City of Fontana and City of Rialto shall review all comments received by the PROJECT and mutually agree in writing to which comments shall be incorporated into the PROJECT.
12. City of Rialto and its consultants and contractors shall apply for encroachment permits, the issuance of which shall not be unreasonably withheld, authorizing entry onto City of Fontana right of way to perform construction activities, including surveying and geotechnical borings, required by the PROJECT.
13. Except as provided herein, City of Rialto agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements and/or approvals from appropriate agencies.

All mitigation, monitoring, and/or remedial action required by said permits and/or agreements shall constitute part of the PROJECT cost.

14. City of Rialto agrees to identify the utilities within the PROJECT area and coordinate with the utility companies to determine their location, and if necessary, their relocation.

## SECTION II

### CITY OF FONTANA RESPONSIBILITIES:

1. City of Fontana shall designate a Project Manager to represent City of Fontana through whom all communications between the PARTIES shall be channeled.
2. City of Fontana's Project Manager shall be responsible for distributing PROJECT submittals for review and comment to the City of Fontana's departments that are responsible for streets, sewers, water, drainage, traffic, land development, and planning.
3. City of Fontana shall review and comment on all PROJECT work performed by City of Rialto. City of Fontana's Project Manager shall transmit all review comments to City of Rialto within 20 working days after the submittal is received by the City of Fontana. If comments are not provided by the 20th working day, the submittals will be deemed approved by City of Fontana and the City of Rialto shall notify the City of Fontana of its intention to move forward with PROJECT execution. The City of Fontana agrees the submittals may be in the form of plans, specifications, estimates, reports, studies, environmental documents or other PROJECT related submittals requiring City of Fontana review and comment. City of Fontana and City of Rialto shall review all comments received by the PROJECT and mutually agree in writing to which comments shall be incorporated into the PROJECT.
4. City of Fontana agrees its Project Manager shall be responsible for preparing City of Fontana staff reports for city council consideration and City of Rialto agrees to provide supporting documentation for the staff reports.
5. City of Fontana agrees to exempt City of Rialto of City of Fontana plan check fees for submittal reviews.
6. City of Fontana agrees it will issue zero fee encroachment, traffic control, and street cut permits or other permits required by the City of Rialto to perform investigative and construction activities required by the PROJECT.
7. City of Fontana agrees to provide at no cost to City of Rialto existing improvement plans, and standard plans and specifications.
8. City of Fontana agrees to provide City of Rialto copies of the franchise/utility agreements for the utilities in the PROJECT area for the purposes of determining prior rights and estimating utility relocation costs.
9. City of Fontana agrees it will invoke its franchise/utility agreements and have its prior rights imposed on utilities if it is determined utilities are in conflict with the PROJECT

and require relocation. The City of Fontana will formally inform the utilities of the City or Fontana's prior rights and request the relocation of utilities pursuant to the franchise/utility agreements.

10. City of Fontana agrees to enter into new maintenance agreements for the Maple Ave (from Baseline Road to Miller Avenue/Etiwanda Avenue) Street Overlay and Reconstruction, detailing the improvements associated with this PROJECT and the roles and responsibilities pertaining to ongoing maintenance of the crossings.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. The recitals set forth above are true and correct and are incorporated into this AGREEMENT as though fully set forth herein.
2. The PARTIES agree to mutually cooperate in order to help ensure that the PROJECT is successfully completed with minimum impact to both PARTIES, and the public.
3. The total estimated costs for City of Rialto's Construction are estimated at; Eighteen million and one hundred fifty-five thousand and six hundred five dollars and twenty-eight cents (\$18,155,605.28) as detailed in Attachment A. These PROJECT costs shall include: construction cost for pavement reconstruction of various streets
4. City of Fontana agrees to reimburse City of Rialto of PROJECT costs up to a total of \$233,399.00 using City of Fontana funds.
5. City of Rialto will request City of Fontana approval prior to executing a construction contract if PROJECT expenses are estimated to exceed the total estimated costs set forth in paragraph 1 above of this Section III and further delineated on Attachments A, based on construction bids received.
6. PARTIES agree the cost estimates included in Attachment A are "estimates" and are subject to change, and as a result, PARTIES agree that the stipulated costs are "estimates" to be used for budgetary and planning purposes and it is understood that there is a potential for cost increases or decreases. The City of Fontana agrees to reimburse City of Rialto for all reasonable and undisputed costs in accordance with this AGREEMENT.
7. If after opening bids for the PROJECT, it is found that a cost overrun of no more than 25% of the estimated PROJECT costs will occur, City of Rialto may award the necessary contracts for the completion of the PROJECT and notwithstanding any provision herein to the contrary, City of Fontana and City of Rialto shall pay for the PROJECT costs as provided by this Agreement.
8. If, upon opening bids, it is found that a cost overrun exceeding 25% of the estimated PROJECT costs will occur, City of Rialto shall not award any contracts for the

PROJECT. Rather, City of Fontana and City of Rialto shall endeavor to agree upon an alternative course of action, including rebidding of the PROJECT. If after 30 days, an alternative course of action is not mutually agreed upon in writing, this Agreement shall be deemed to be terminated by mutual consent.

9. City of Rialto shall invoice the City of Fontana on a monthly basis for reimbursement on PROJECT expenditures and costs.
10. City of Fontana agrees to pay City of Rialto's undisputed invoices within 45 days of receipt of invoice.
11. In the event that change orders are required during the course of the PROJECT, copies of the change orders shall be delivered to City of Fontana within 2 business days of issuance by City of Rialto. City of Rialto shall not unreasonably withhold approval of change orders.
12. Neither City of Fontana nor any officer, director, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by City of Rialto under or in connection with any work, City of Rialto or jurisdiction delegated to City of Rialto under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, City of Rialto shall fully defend, indemnify and save harmless City of Fontana its officers, directors, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City of Rialto under or in connection with any obligation, work, authority or jurisdiction delegated to City of Rialto under this AGREEMENT except for instances of negligence or intentional misconduct on behalf of City of Fontana pursuant to Government Code Section 895.6.
13. Neither City of Rialto nor any officer, director, member, employee or agent thereof is responsible for any injury, damage or liability occurring or arising by reason of anything done or omitted to be done by City of Fontana under or in connection with any work, City of Fontana or jurisdiction delegated to City of Fontana under this AGREEMENT. It is understood and agreed that, pursuant to Government Code Section 895.4, City of Fontana shall fully defend, indemnify and save harmless City of Rialto its officers, directors, members, employees or agents from all claims, suits or actions of every name, kind and description brought for or on account of injury (as defined by Government Code Section 810.8) occurring by reason of anything done or omitted to be done by City of Fontana under or in connection with any obligation work, authority or jurisdiction delegated to City of Fontana under this AGREEMENT except for instances of negligence or intentional misconduct on behalf of City of Rialto pursuant to Government Code Section 895.6.
14. This Agreement shall continue in full force and effect through completion and closeout of the PROJECT. Should any claims arising out of PROJECT be asserted against one of the PARTIES, the PARTIES agree to extend the termination date of this Agreement, until such time as the claims are settled, dismissed or paid.

15. Each PARTY warrants that it shall make its best efforts to perform all obligations assigned to it related to the PROJECT in such a manner as to allow the PROJECT to progress as scheduled.
16. City of Fontana is an authorized self-insured public entity for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
17. City of Rialto is a public entity with Professional Liability, General Liability and Automobile Liability policies of \$10,000,000 each and Workers' Compensation insurance coverage in the statutory limits, to protect against liabilities arising out of the performance of the terms, conditions or obligations of this AGREEMENT.
18. All PARTIES hereto warrant that they are duly authorized to execute this AGREEMENT on behalf of said PARTIES and that, by so executing this AGREEMENT, the PARTIES hereto are formally bound to this AGREEMENT.
19. Except on subjects preempted by Federal law, this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. All PARTIES agree to follow all local, state, county and federal laws and ordinances with respect to performance under this AGREEMENT.
20. The PARTIES agree that each PARTY and any authorized representative, designated in writing to the PARTIES, and upon reasonable notice, shall have the right during normal business hours to examine all PARTIES' financial books and records with respect to this AGREEMENT. The PARTIES agree to retain their books and records for a period of 5 years from the later of; (a) the date on which this AGREEMENT terminates; or (b) the date on which such book or record was created.
21. If any clause or provision of this AGREEMENT is illegal, invalid or unenforceable under applicable present or future laws, then it is the intention of the PARTIES that the remainder of this AGREEMENT shall not be affected but shall remain in full force and effect.
22. This AGREEMENT can be amended with a written amendment when agreed upon and duly authorized to be executed by both PARTIES.
23. Unless otherwise specified herein, the PARTIES shall submit any unresolved dispute to their respective City Managers for negotiation. The PARTIES agree to undertake good faith attempts to resolve said dispute, claim, or controversy within 10 calendar days after the receipt of written notice from the PARTY alleging that a dispute, claim or controversy exists. The PARTIES additionally agree to cooperate with the other PARTY in scheduling negotiation sessions. However, if said matter is not resolved within 30 calendar days after conducting the first negotiating session, either PARTY may, but is not required to, request that the matter be submitted to further dispute resolution procedures, as may be agreed upon by the PARTIES.

24. If a matter is not resolved within 30 calendar days after the first negotiating session between the PARTIES, unless otherwise agreed upon in writing by the PARTIES, either PARTY may proceed with any other remedy available in law or in equity.
25. In the event of any litigation or claims arising from this AGREEMENT and/or PROJECT, each PARTY to this AGREEMENT shall bear its own costs, including attorney(s) fees. This paragraph shall not apply to the costs or attorney(s) fees relative to paragraphs 10 and 11 of this Section.
26. This AGREEMENT may be signed in counterparts, each of which shall constitute an original.
27. Any notice required or authorized to be given hereunder or any other communications between the PARTIES provided for under the terms of this AGREEMENT shall be in writing or email, unless otherwise provided for herein, and shall be served personally or by reputable courier or by facsimile addressed to the relevant party at the address/fax number stated below.

28. Notice given under or regarding this AGREEMENT shall be deemed given (a) upon actual delivery, if delivery is personally made; or (b) upon delivery into the United States Mail if delivery is by postage paid certified mail (return receipt requested), fax, email or private courier including overnight delivery services. Notice shall be sent to the respective Party at the address indicated below or to any other address as a Party may designate from time to time by a notice given in accordance with this paragraph.

If to CITY:                      City of Fontana  
   8353 Sierra Avenue  
   Fontana, CA 92335  
   Attention:     Jeff Kim  
                        Engineering Manager

If to City of Rialto:            City of Rialto  
   150 S. Palm Avenue  
   Rialto, CA 92376  
   Attention:     Art Cervantes  
                        Engineering Manager

29. The failure of performance by either PARTY (except for payment obligations) hereunder shall not be deemed to be a default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor, railroad, or suppliers; acts of the other PARTY; acts or failure to act of any other public or governmental agency or entity (other than that acts or failure to act of the PARTIES); or any other causes beyond the control or without the fault of the PARTY claiming an extension of time to perform or relief from default. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the PARTY claiming such extension is sent to the other PARTY within 30 days of the commencement of the cause. Times of performance under this Cooperative Agreement may also be extended in writing by mutual agreement between the PARTIES.
30. No delay or omission in the exercise of any right or remedy of a non-defaulting PARTY on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of either PARTY shall be deemed to waive or render unnecessary such PARTY'S consent to or approval of any subsequent act of the other PARTY. Any waiver by either PARTY of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this AGREEMENT.
31. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this AGREEMENT, shall survive any such expiration or termination.



32. There are no third-party beneficiaries to this AGREEMENT.
33. This AGREEMENT contains the entire AGREEMENT of the PARTIES relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings. Attachment A is attached to and incorporated into this AGREEMENT.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be entered into as of the date set forth above.

**CITY OF FONTANA**

By: \_\_\_\_\_  
Matthew C. Ballantyne  
City Manager

*Attest:*

By: \_\_\_\_\_  
Germaine McClellan Key  
City Clerk

*Approved as to form:*

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

By: \_\_\_\_\_  
Phillip Burum, Deputy City Manager  
Development Services Organization

By: \_\_\_\_\_  
Gia Lam Kim  
Public Works Director/City Engineer

**CITY OF RIALTO**

By: \_\_\_\_\_  
Arron Brown  
Acting City Manager

*Attest:*

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

*Approved as to form and Procedure:*

\_\_\_\_\_  
Eric Vail  
Interim City Attorney

**IN COMPLIANCE WITH INSURANCE ADMINISTRATION POLICIES/PROCEDURES**

By: \_\_\_\_\_  
Rakesha Thomas, Director of  
Human Resources and Risk Management

**IN COMPLIANCE WITH PURCHASING AND CONTRACT ADMINISTRATION  
POLICIES/PROCEDURES**

\_\_\_\_\_  
Jessica Brown  
Chief Financial Officer

\_\_\_\_\_  
Purchasing



## Attachment "A"

### Estimated Project Cost

Description	Total	City of Fontana	City of Rialto
Construction	\$ 18,155,605.28	\$ 233,399.00	\$ 17,922,206.28
<b>Total</b>	<b>\$ 18,155,605.28</b>	<b>\$ 233,399.00</b>	<b>\$ 17,922,206.28</b>