

EMPLOYMENT AGREEMENT
For position of
INTERIM CITY MANAGER

This Employment Agreement ("Agreement") is made and entered into this 25th day of July 2023 ("Effective Date"), by and between the CITY OF RIALTO, a municipal corporation authorized and existing under the laws of the State of California (hereinafter referred to as "CITY") and HENRY GARCIA ("GARCIA"), an individual, on the following terms and conditions. CITY and GARCIA may be collectively referred to herein as the "Parties." This Agreement is made in consideration of the following facts, among others.

RECITALS

A. CITY desires to employ the services of GARCIA as its Interim CITY Manager, temporarily, to carry out the duties and responsibilities of City Manager as provided for by the Rialto Municipal Code, in consideration of and subject to the terms, conditions, and compensation set forth in this Agreement.

B. CITY has an immediate need for an Interim City Manager position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the CITY due the Acting City Manager returning to his prior employment with the City effective July 25, 2023.

C. GARCIA represents that he is a retired annuitant and person receiving a benefit from and enrolled in the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code Sections 7522.56 and 21221(h). GARCIA acknowledges that he is restricted to working no more than a combined 960 hours for CITY, a state agency, or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2023-2024 fiscal year, or any subsequent fiscal year, and that his compensation is statutorily limited as provided in Government Code Section 7522.56(d). GARCIA represents, and by execution of this Agreement, certifies that he has not received any unemployment compensation based on prior retired annuitant employment with any CalPERS Agencies during the twelve (12) month period preceding the effective date of this Agreement. GARCIA further represents his CalPERS retirement date became effective prior to the one hundred eighty (180) day period preceding the effective date of this Agreement; that he has not received a retirement incentive upon retirement within the meaning of Government Code Section 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code Section 21220.5. GARCIA further represents that he has not been previously appointed as an interim employee by the CITY to a vacant position during the recruitment for a permanent replacement.

D. GARCIA desires to accept employment as Interim City Manager in consideration of and subject to the terms, conditions, and compensation set forth in this Agreement.

E. CITY has determined that it is necessary to hire GARCIA by virtue of his significant experience as a City Manager.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. Position and Duties.

1.1 Position. GARCIA accepts employment with CITY as its Interim City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. GARCIA shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that GARCIA, as the Interim City Manager, shall keep the City Council fully apprised of all significant ongoing operations of City. Toward that end, GARCIA shall report directly to the City Council and will periodically, or as may be otherwise specifically requested by the City Council, provide status reports to the City Council on his activities and those of CITY.

1.2 Term. GARCIA shall commence the performance of his duties as the Interim City Manager on July 26, 2023 ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) upon the hiring of a permanent City Manager; (ii) upon GARCIA working his 960th hour (for CITY or any other CalPERS Agencies) during CITY's 2023-2024 fiscal year, or any subsequent fiscal year, as a retired annuitant; or (iii) upon termination of the Agreement by either GARCIA or CITY as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. GARCIA acknowledges that he is an at-will, temporary employee of CITY who shall serve at the pleasure of the City Council at all times during the period of his service hereunder. The terms of CITY's personnel rules, policies, regulations, procedures, ordinances, and resolutions (collectively "Personnel Policies"), as they may be amended or supplemented from time to time, shall not apply to GARCIA, and nothing in this Agreement is intended to, or does, confer upon GARCIA any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of GARCIA, as provided in Section 1.2 [Term] or Section 4 [Termination]. GARCIA waives and agrees not to assert any rights or privileges conferred under paragraph C of Section 2.04.050 of the Rialto Municipal Code providing that a city manager may not be removed without cause for a period of 120 days prior to and following either a general municipal election held in the CITY at which a member of the City Council is elected, or the appointment of a member of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of GARCIA to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will Employment Agreement shall

be expressly subject to the rights and obligations of CITY and GARCIA, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Duties. GARCIA shall serve as the Interim City Manager and shall be for the term of this Agreement vested with the powers, duties and responsibilities of the City Manager as set forth in ordinances and resolutions of the CITY, including without limitation, those set forth in the Rialto Municipal Code and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign. It is the intent of the City Council for the Interim City Manager to function as the chief executive officer of CITY's organization. GARCIA shall provide such other services as are customary and appropriate to the position of Interim City Manager. GARCIA shall devote his best efforts and attention to the performance of these duties.

1.5 Hours of Work. GARCIA shall devote the time necessary to adequately perform his duties as Interim City Manager. The parties anticipate that GARCIA will work approximately forty (40) hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings, attendance at such community events and CITY functions as the Council may direct. Toward that end, GARCIA shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides reasonable availability to the City Council, City staff, and members of the community during regular CITY business hours and for the performance of his duties and of CITY business.

1.6 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, GARCIA shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of GARCIA's duties as Interim City Manager. Notwithstanding the foregoing, the City Council acknowledges that at the time of the execution of this Agreement GARCIA has existing business commitments that GARCIA intends to fulfill and City Council agrees that fulfilling these commitments does not violate this Section 1.6. GARCIA will ensure that his existing business commitments do not interfere with his ability to perform his duties as Interim City Manager.

2. Compensation.

2.1 Rate of Pay. For all services performed by GARCIA as the Interim City Manager under this Agreement, CITY shall pay GARCIA compensation at the rate of One Hundred Seventy dollars and sixty-seven cents (\$170.67) per hour according to the payroll schedule in place for CITY employees subject to the limitations provided below.

2.2 Compliance with CalPERS Requirements. It is the intent of the parties to compensate GARCIA only to the extent permitted under Government Code Sections 21221(h) and 7522.56(d) and corresponding CalPERS regulations and policy statements.

The parties acknowledge and agree that the rate of pay set forth above does not exceed the salary limitations established by CalPERS based on the salary as set forth in the CITY's publicly available salary schedule. The Rate of Pay set forth above is based on the salary limitations established by CalPERS. The annual base salary for the position of City Manager as listed on a publicly available pay schedule is Three Hundred Fifty-Four Thousand Nine Hundred Eighty Four dollars and no cents (\$354,984.00). The Rate of Pay is calculated by taking the monthly base salary of \$29,582.00 and dividing it by 173.333 to equal an hourly rate of \$170.67.

2.2.1 Recording and Reporting of Hours Worked. GARCIA will comply with all applicable CalPERS regulations governing employment after retirement including recording and reporting to CITY all hours worked for CITY. CITY shall be responsible for all reporting obligations to CalPERS of GARCIA'S hours worked. Additionally, GARCIA shall keep CITY continually apprised of any hours worked by GARCIA for other CalPERS Agencies during the term of this Agreement.

2.3 Benefits.

2.3.1 No Benefits. GARCIA shall not receive from CITY any benefits CITY commonly provides to its employees including, without limitation, health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits. The CITY will make no contribution on behalf of GARCIA to any tax-deferred retirement plans.

3. Vacation and Leave.

3.1 No Leave. GARCIA and CITY agree that GARCIA shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

4. Termination.

4.1 By CITY. This Agreement may be terminated by CITY for any reason. CITY's only obligation in the event of such termination will be payment to GARCIA of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By GARCIA. This Agreement may be terminated by GARCIA for any reason thirty (30) days after notice in writing to CITY of such termination. CITY shall have the option, in its complete discretion, to make GARCIA's termination effective at any time prior to the end of such period, provided CITY pays GARCIA all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. GARCIA agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of GARCIA's employment. GARCIA's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

4.5 No Benefits Upon Termination. GARCIA agrees that he shall be entitled to no benefits upon termination.

5. City Council Commitments. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate CITY employees, officers, contractors, and consultants solely through the Interim City Manager or the Interim City Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Interim City Manager, either publicly or privately. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Interim City Manager. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Interim City Manager, as specified in the Rialto Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

6. Proprietary Information. "Proprietary Information" is all information, including confidential attorney/client privileged communications, and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its employees, clients, consultants, or business associates, which was produced by any employee or consultant of CITY in the course of his/her employment or otherwise produced or acquired by or on behalf of CITY. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, GARCIA shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, GARCIA shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. GARCIA's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

7. Conflict Of Interest.

7.1 GARCIA represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

7.2 During the term of this Agreement, GARCIA shall comply with the CITY Conflict of Interest Code and shall comply with all requirements of law, including but not

limited to, Sections 87100 et seq., 1090 and 1125 of the Government Code, and all other similar statutory and administrative rules.

7.3. Notwithstanding the foregoing, the City Council acknowledges that at the time of the execution of this agreement, GARCIA's firm has a pre-existing business relationship and contracted Scope of Work via HR Dynamics & Performance Management, Inc. with the City for work to be performed with the Human Resources Department by GARCIA's business partner to which there is a financial interest. GARCIA and City agree to suspend and postpone the contracted work until after GARCIA's Interim City Manager employment is terminated.

8. General Provisions.

8.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

8.2 Vehicle Operation. GARCIA shall operate any City or personal vehicle used in connection with the performance of his duties as Interim City Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment.

8.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or email or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and/or at the last known address maintained in GARCIA's personnel file. GARCIA agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

As to CITY:

City Clerk
290 West Rialto Avenue
Rialto, CA 92376
cityclerk@rialtoca.gov

With Copy to:

Burke, Williams & Sorensen, LLP
Attn: Eric S. Vail
1770 Iowa Ave., Suite 240
Riverside, CA 92507
evail@bwslaw.com

Interim City Manager's Address:

[Address on file]

8.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Gov. Code § 810 et seq.] CITY will indemnify, defend,

and hold GARCIA harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during GARCIA's tenure as Interim City Manager.

8.5 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of GARCIA's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of GARCIA, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to GARCIA and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

8.6 Amendments. This Agreement may not be amended except in a written document signed by GARCIA, approved by the City Council and signed by CITY's Mayor.

8.7 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

8.8 Assignment. GARCIA shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to GARCIA, assign its rights and obligations hereunder.

8.9 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

8.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in San Bernardino County, State of California.

8.11 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

8.12 Acknowledgment. GARCIA acknowledges that he has had the opportunity to consult legal counsel with regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

8.13 AB 1344. Assembly Bill 1344, which was subsequently enacted as Government Code Sections 53243 - 53244, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes, generally require that certain contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency for the certain forms of payment, including but not limited to the following: (i) criminal defense costs; (ii) cash settlement payments; and (iii) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

Section 53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

Section 53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

Section 53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

Section 53243.4. "Abuse of office or position" defined.

8.14 Effect of Conviction on Termination. If GARCIA is convicted of a crime involving an abuse of his office or position, as defined in Government Code section 53243.4, the following restrictions will apply: (i) any paid leave given to GARCIA pending an investigation shall be fully reimbursed to City, (ii) any funds expended by City for the legal criminal defense of GARCIA shall be fully reimbursed to City, (iii) any cash settlement paid to GARCIA shall be fully reimbursed. Upon conviction of a covered felony under Government Code sections 7522.72 or 7522.74, GARCIA may forfeit the benefits in accordance with those sections.

8.15 Execution of Agreement. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be signed electronically in accordance with the City's policy regarding electronic signatures.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, CITY and GARCIA agree to the foregoing and have directed their authorized representative to execute this Agreement.

INTERIM CITY MANAGER

CITY OF RIALTO

Henry Garcia

Deborah Robertson, Mayor

ATTEST:

Barbara McGee, City Clerk

APPROVED AS TO FORM:

Eric S. Vail, City Attorney

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