

## **EMPLOYMENT AGREEMENT**

### **For the Position of**

### **CITY MANAGER**

This Employment Agreement for the Position of City Manager ("Agreement") is made and entered into this 23rd day of January, 2024, by and between the CITY OF RIALTO ("CITY"), a California municipal corporation and general law city, and DAVID CARMANY ("CARMANY"), an individual, on the following terms and conditions set forth below. Both CITY and CARMANY may individually be described as a "Party" or jointly described as the "Parties."

### **RECITALS**

A. CITY desires to employ the services of CARMANY as its City Manager, to carry out the duties and responsibilities of City Manager as defined herein and in Rialto Municipal Code ("RMC").

B. CARMANY desires to accept employment as City Manager in consideration of, and subject to, the terms, conditions, and benefits set forth in this Agreement.

C. CITY has selected CARMANY after an extensive competitive recruitment process, including review of resumes and related materials from numerous potential candidates, interview with a Council ad hoc committee, and interview with the full City Council.

### **OPERATIVE PROVISIONS**

In consideration of the terms, conditions, promises and agreements herein, the Parties agree as follows:

#### **1. Position and Duties.**

1.1 Position. CARMANY accepts employment with CITY as its City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. CARMANY shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that the City Manager shall keep the City Council fully informed of all significant ongoing operations of CITY. Toward that end, CARMANY 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. CARMANY shall not be absent for more than two (2) working days without prior written notice to the City Council and reasonable justification. CARMANY shall provide the City Council with reasonable advance written notice of absences due to vacation or use of administrative leave, and shall obtain prior approval from Council for planned absences due to vacation or administrative leave of more than fourteen (14) consecutive working days. Absences that are not in compliance

with these provisions shall be considered unauthorized absences or leaves for the purpose of Section 3.2.

1.2 Commencement Date / Period of Employment. The Parties agree that this Agreement shall commence and will be effective as of January 24, 2024, provided that and subject to, approval of the Agreement by CITY's City Council, execution of the Agreement by CARMANY and CITY's Mayor, and CARMANY's completion of CITY required background check and physical examination by no later than January 17, 2024, and CITY's acceptance of CARMANY's background check. CARMANY shall serve as City Manager for a nominal term of five (5) years subject to either of the parties terminating the Agreement as provided in Section 3 [Termination] of this Agreement. In the event that none of the foregoing has occurred within the five (5) year term, then this Agreement shall automatically expire unless the parties mutually agree, by written amendment of this Agreement approved by the City Council and executed by CARMANY and CITY's Mayor, to extend the term for a further stated period of time. Prior to commencement of the fifth (5<sup>th</sup>) year of this Agreement, the City Council shall provide notice to CARMANY of its intention to extend the term of this Agreement by a subsequent term of five (5) years, or such other term as mutually agreeable to the Parties.

1.3 At-Will. CARMANY acknowledges that he is an at-will employee of CITY who shall, at all times, serve at the pleasure of the City Council during the period of his service hereunder. The terms of CITY's competitive service program (RMC § 2.50.060 and Ordinance No 1591), CITY's personnel rules, policies, procedures, ordinances, resolutions, memorandums of understanding, or collective bargaining agreements (collectively "Personnel Policies"), except as otherwise specifically provided in this Agreement to the contrary, shall not apply to CARMANY, and nothing in this Agreement is intended to, or does, confer upon CARMANY 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 as City Manager, except as is expressly provided in Section 3 [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 CARMANY as City Manager as provided in Section 3 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of CARMANY to resign at any time from the position of City Manager with CITY, subject only to the provisions set forth in Section 3 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and CARMANY, as set forth in Section 3 [Termination] below.

1.4 Duties. CARMANY shall serve as CITY's City Manager and shall be vested with the powers, duties and responsibilities of the City Manager set forth in Chapter 2.04 of the RMC, as may be amended from time to time, the terms of which are incorporated herein by reference, and as set forth in the Job Description for the position of City Manager (formerly city administrator) attached hereto and incorporated hereby by reference as Exhibit "A". Any conflict between rights, obligations, duties or terms this Agreement and Chapter 2.04 of the RMC shall be resolved in favor of this Agreement. It is the intent of the City Council that CARMANY act as City Manager of CITY's organization. Without additional compensation, CARMANY shall provide such other services as are customary

and appropriate to the position of City Manager, including serving as the Executive Director of the Successor Agency to the Rialto Redevelopment Agency and Rialto Housing Authority, together with such additional services assigned from time to time by the City Council as may be consistent with California law and the RMC. CARMANY shall devote his best efforts and full-time attention to the performance of these duties.

1.5 Hours of Work. CARMANY shall devote the time necessary to adequately perform his duties as City Manager. The Parties expect that a minimum of forty (40) hours per week during regular business hours, as well as additional time outside of the normal business hours, will be required to satisfy this requirement. Toward that end, CARMANY shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours delivers adequate availability to the City Council, CITY staff, and members of the community during normal CITY business hours and for the performance of his duties and of CITY business. The position of City Manager shall be deemed an exempt position under California wage and hour law and under the federal Fair Labor Standards Act. CARMANY's compensation (whether salary or benefits or other allowances) is not based on hours worked and CARMANY shall not be entitled to any compensation for overtime.

1.6 Regional and Professional Activity. The City Council desires CARMANY to be reasonably active in national, statewide, regional and professional organizations that will contribute to City Manager's professional development and standing and that will contribute to the advancement of CITY's interests and standing. Toward that end, CARMANY may, upon advance approval by the City Council, undertake such activities as are directly related to his professional development and that advance the interests and standing of CITY. These activities may include, without limitation, participation in the California League of Cities, the International City/County Management Association, or other similar national, statewide, regional or professional organizations, and periodic teaching assignments of limited duration at institutions of higher learning or professional instruction located in Southern California, provided that such activities do not in any way interfere with or adversely affect his employment as City Manager or the performance of his duties as provided herein and have been approved in advance by the City Council. CITY agrees to budget and pay for the dues and subscriptions of the City Manager necessary for his participation in national, statewide, regional and professional organizations that have been approved by the City Council. CITY agrees to reimburse, as provided in Section 1.8 [Reimbursement] of this Agreement, CARMANY's reasonable and necessary travel, business and subsistence expenses for the activities described herein, except for the periodic teaching assignments described above which shall be undertaken at CARMANY's own expense.

1.7 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, CARMANY 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 (except as permitted under Section 1.6 [Regional and 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 CARMANY's duties as City Manager.

1.8 Reimbursement. CITY shall reimburse CARMANY for reasonable and necessary travel, subsistence and other business expenses incurred by CARMANY in the performance of his duties. All reimbursements shall be subject to and in accordance with California law and CITY's adopted Employee Reimbursement Policy.

## **2. Compensation.**

2.1 Base Salary. CARMANY shall receive an annual base salary of three hundred fifty four thousand and nine hundred eighty seven dollars and sixty cents (\$354,987.60) paid on a pro-rated basis according to the bi-weekly payroll schedule in place for City employees. Such base salary shall be subject to normal and proper withholdings as determined by state and federal law and as determined appropriate by the City and shall be subject to payroll taxes, workers' compensation and other payroll-related liability costs.

2.2 Salary Separation. City agrees that CARMANY's base salary shall maintain a separation of at least ten percent (10%) from the base salary of the next most highly compensated exempt employee of the City, provided that the City shall have sixty (60) days from the date of written notice by CARMANY to the City Council in order to implement any necessary adjustments to CARMANY's base salary.

2.3 Adjustments to Compensation. Any adjustment in compensation, including base salary, COLA, merit increases, adjustment in benefits or other compensation shall be solely at the discretion of the City Council. Adjustments to CARMANY's compensation are not governed by or subject to CITY's Personnel Policies. All adjustments in compensation are subject to approval by the affirmative vote of at least three (3) members of the City Council voting on the item at a duly noticed and agendized public meeting. Adjustments to compensation, other than a COLA, are also subject to CARMANY satisfactorily completing, in the determination of the City Council, an annual performance evaluation, to be conducted and completed by the last regular Council meeting in August of each year.

2.4 Educational Reimbursement. The City agrees to reimburse CARMANY up to two thousand five hundred dollars (\$2,500) per fiscal year for expenses for tuition and books for career-related courses at an accredited college or university after normal work hours for which CARMANY achieves a passing grade. Reimbursement shall be payable only after successful completion of course(s) and upon submittal of a written request for reimbursement being forwarded to the Human Resources Department within ninety (90) days of completion of course requirements.

2.5 Educational Incentive. CARMANY will be eligible to receive educational incentive pay, at such time as he meets the necessary requirements, as detailed in the CITY's Executive Employees' Benefits Profile as adopted and approved by CITY on May 10, 2022, and subject to amendments from time to time at CITY's sole discretion. If CARMANY receives any such incentive pay, the educational incentive shall be reported to CalPERS as special compensation in accordance with Government Code Section 20636(c)(2) and Title 2, California Code of Regulations Section 571(a)(2).

### 3. Benefits.3.

3.1 Benefit Group. CITY intends to provide CARMANY benefits generally consistent with those provided to members of the CITY's Executive Team Management employees in accordance with the Executive Benefits Profile adopted by the City Council on May 10, 2022, by Resolution No. 7880, except as expressly stated herein to the contrary. The benefits to be provided to CARMANY are as provided below.

#### 3.2 Health Insurance.

(a) Active Employment. CARMANY shall be provided with a Cafeteria Plan, which will be administered by the CITY pursuant to Section 125 of the Internal Revenue Code. CITY's contribution to the Cafeteria Plan will be one hundred percent (100%) of the Health and Dental insurance premiums for CARMANY and eligible dependents, consistent with the health insurance benefits provided to the CITY's Executive Team Management employees.

(b) Opt-out provision. CARMANY may opt to not receive (or otherwise purchase) the Active Employment health insurance, or any portion or benefit thereof, as stated in paragraph 2.5.1(a) above, and instead receive an in-lieu payment of up to one thousand one hundred dollars (\$1,100) per month deposited into CARMANY's 401(a) deferred compensation account. Documentation is required to verify that the employee is receiving group insurance outside of the City before EMPLOYEE may opt out of the Cafeteria Plan. Then, EMPLOYEE shall receive up to \$1,100 per month.

(c) Retirement. CARMANY expressly agrees, despite language in the Executive Management Benefits Profile to the contrary, that his right to receive the Retiree Medical Benefits shall become vested only after completion of three full and continuous calendar years of service as City's City Manager. The CARMANY will receive benefit coverage for CARMANY and his dependent(s), the same as during active employment as stated in the Executive Management Benefits Profile, except for the vesting period required above. If CARMANY retires from CITY employment prior to the three year vesting period the CARMANY shall reimburse CITY for CITY's contributions, less the PEMHCA required minimum amount CITY contribution amount. If CARMANY retires after the vesting period required above CITY shall pay CARMANY's and dependent(s)' health benefits coverage or CARMANY and his dependent(s), the same as during active employment, consistent with the retiree health benefits provided to the CITY's Executive Team Management employees.

3.3 Income Protection Insurance. CITY shall pay for income protection insurance coverage consistent with the coverage provided to the CITY's Executive Team Management employees.

#### 3.4 Life Insurance.

(a) Active Employment. CITY will pay one hundred percent (100%) of the premium for CARMANY and dependent General Universal life insurance coverage contracted by CITY. The current benefit coverage under such program is as follows:

Employee	\$300,000
Spouse	\$25,000
Children	\$ 5,000

CARMANY shall control the designation of any and all beneficiaries.

(b) Retirement. CARMANY expressly agrees, despite language in the Executive Management Benefits Profile to the contrary, that his right to receive the Retiree Medical Benefits shall become vested only after completion of three full and continuous calendar years of service as City's City Manager. CARMANY will receive benefit coverage for CARMANY and his dependent(s), the same as during active employment as stated in the Executive Management Benefits Profile, except for the vesting period required above. If CARMANY retires from CITY employment prior to the three year vesting period the CARMANY shall reimburse CITY for CITY's contributions, less the PEMHCA required minimum amount CITY contribution amount. If CARMANY retires after the vesting period required above CITY shall pay CARMANY's and dependent(s)' health benefits coverage or CARMANY and his dependent(s), the same as during active employment, consistent with the retiree health benefits provided to the CITY's Executive Team Management employees.

3.5 Long-Term Disability Insurance. CITY will pay one hundred percent (100%) of the premium for long-term disability insurance for CARMANY consistent with the coverage provided to the CITY's Executive Team Management employees.

3.6 Eye Care. CITY shall pay up to three hundred dollars (\$300) per fiscal year for an eye examination and/or prescription eyeglasses or contact lenses for CARMANY only. This benefit will be on a reimbursement basis. CARMANY shall have the option of applying the three hundred dollars (\$300) per fiscal year towards payment of the premium for a vision policy.

3.7 Workers' Compensation Insurance and Sick Leave. CARMANY may use accumulated but unused sick leave while on an absence due to an industrial injury in addition to any worker's compensation payment; the combination of the two shall not exceed one hundred percent (100%) of CARMANY's base salary. Additionally, because CARMANY will be considered a public safety employee upon retirement, he may also be eligible for Labor Code Section 4850 benefits as provided for under the law.

#### **4. Retirement Benefits.**

4.1 Benefit Formula and Employee Contribution. CITY intends to maintain its current retirement plan with the State of California's Public Employees Retirement System ("CalPERS"). Pursuant to California Public Employees' Retirement Law ("PERL"), the Public Employees' Reform Act ("PEPRA"), and in accordance with the CITY's contract with

CalPERS, CARMANY will immediately become a new miscellaneous member under the PEPRA tier at the retirement formula of 2% @ 62. CARMANY will receive the same CalPERS optional contract benefits and employer pick up of employee share of contributions as the most generous of those collectively bargained, or otherwise implemented consistent with PEPRA, for union-represented miscellaneous employees in this category. Pursuant to current law, the employee contribution for new miscellaneous members shall be not less than one-half of the total normal cost rate, as determined annually by CalPERS, and shall be paid by the employee.

4.2 CalPERS COLA. The CITY contracts with CalPERS to provide (up to) a two percent (2%) COLA for miscellaneous member retirees.

4.3 Deferred Compensation. CARMANY will have access to the 401A, Money Purchase Pension Plan and Trust, subject to City Council modification of the plan as authorized by federal and state laws. Once CARMANY has completed three full and continues years of employment with CITY as its City Manager, CITY shall contribute seven hundred fifty dollars (\$750) per month towards CARMANY's deferred compensation plan.

## **5. Vacation and Leave.**

5.1 Vacation. Upon the Commencement Date, CARMANY shall accrue vacation leave consistent with the accrual rate provided to the CITY's Executive Team Management employees up to 240 hours of vacation leave per calendar year on a per pay period basis (9.23 hours per pay period). CARMANY may accrue a maximum of six hundred (600) hours as of June 30th, of any fiscal year. CARMANY shall cease to accrue vacation leave at such time the maximum vacation leave is reached, until he either cashes out on leave or uses leave below the maximum leave amount.

5.2 Sick Leave. CARMANY shall accumulate sick leave at the rate of ten (10) hours per month or one hundred and twenty (120) hours per fiscal year. Upon commencement of employment, CARMANY shall receive an initial bank of one hundred twenty (120) hours of sick leave. Should CARMANY separate from CITY service due to retirement, resignation, layoff or death, he shall be paid one hundred percent (100%) of his accumulated and unused sick leave at his then-current hourly rate at separation, less one hundred twenty (120) hours.

5.3 Administrative Leave. Upon the commencement date, CARMANY will be credited with one hundred forty (140) hours Administrative Leave per fiscal year credited on July 1st of each fiscal year. Accrual of Administrative Leave hours is capped at one hundred forty (140) hours total. For the basis of recording usage of administrative leave, CARMANY shall be considered being on a forty (40) hour work week.

5.4 Cash Out of Vacation and Sick Leave. CARMANY shall be eligible to cash out up to two hundred (200) hours of Vacation and/or Sick Leave, combined each fiscal year. The cash-out may be taken in any increment amount up to the either the above-stated maximum cash out amount or the then accrued and unused amount, whichever is

the lesser, at any time during the fiscal year. The cash-out of leave will be at CARMANY's then current base salary rate at the time of cash out, including any special compensation.

5.5 Bereavement Leave. In the event CARMANY is absent from work by reason of a death in the immediate family, he may be allowed a leave of absence with pay. CARMANY may be allowed up to three (3) cumulative working days, thirty (30) hours, per occurrence for in-state services and up to five (5) cumulative working days, fifty (50) hours, per occurrence for out-of-state services. Such leave will not be deducted from CARMANY's sick leave. Bereavement leave is not eligible to be cashed out.

5.6 Holidays. EMPLOYEE shall be entitled to those holidays granted to CITY employees, which consist of the following:

New Year's Day  
Martin Luther King Day  
President's Day  
Cesar Chavez Day  
Memorial Day  
Juneteenth  
Independence Day  
Labor Day  
Veterans Day  
Thanksgiving Day  
Day after Thanksgiving Day  
Christmas Eve Day  
Christmas Day

5.7 Holiday Closure. During the week of Christmas Eve through New Year, CITY offices will be closed. CARMANY may utilize accrued administrative leave, or vacation, in addition to the actual holidays, in order to receive full pay for the week. Holidays that fall on a Friday or Saturday will be observed on the preceding Thursday; holidays that fall on a Sunday will be observed the following Monday.

## **6. Miscellaneous Benefits.**

6.1 Assigned City Take-Home Vehicle. During the period of employment, CITY will provide CARMANY a CITY-owned vehicle assigned to him for his business use, including travel to and from his residence to work, but not including personal use, except for incidental personal use during work hours or during commute times. CITY shall pay for all eligible fuel costs, premiums for a policy of auto liability coverage, and regular maintenance and repair and shall otherwise keep the vehicle in good working condition. CARMANY shall obey all traffic laws relating to operation of motor vehicles and shall use due care and caution in its operation and report any damage to the Take-Home Vehicle or accident involving the Take-Home Vehicle promptly to CITY risk management. CARMANY shall be responsible for damage, including costs of repair, to the Take Home Vehicle caused by negligence or violation of state law.

6.2 Rialto Fitness Center. CARMANY and his spouse shall be allowed free use of the Rialto Fitness Center during normal operating hours as long as CITY has managerial



control of the facility. CARMANY and his spouse shall adhere to the same regulations regarding reservations and the use and care of the facilities as the general public.

6.3 Jury Duty. CARMANY may be absent with pay for jury duty subject to CITY's miscellaneous Leave with Pay Policy. CARMANY shall not be required to remit to City jury fee, per diem, or mileage expenses received from the County, State, or Federal Court systems.

6.4 Related Business Equipment. CITY shall supply CARMANY with a cell phone, and such personal data device as is currently in use within the city (e.g. cell phone, PDA or similar device), and if requested by CARMANY, a portable computer (inclusive of office docking station) for CARMANY's exclusive business use. In addition, at CARMANY's option, and in recognition of the fact CARMANY may be required to perform job-related duties outside the office and/or his home, City agrees that it will provide either a CITY-owned computer for CITY business conducted at his home or such upgrades as are necessary to his personal computer system in order to maintain compatibility with CITY-owned and operated technology and systems.

6.5 Relocation Reimbursement. If within six (6) months following the effective date of this Agreement, CARMANY relocates his primary residence to a location that is within a 25 mile radius of CITY's City Hall, then in order to compensate CARMANY in part for eligible expenses incurred in his relocation, CITY agrees to pay CARMANY, on a reimbursement basis, an amount not to exceed twenty thousand dollars (\$20,000). Expenses eligible for reimbursement include: cost of professional movers, cost of rental moving vehicles, equipment and supplies, rent, security or cleaning deposits, real estate location services (not including real estate brokers' commissions), utility hook-up and deposit charges, and incidental costs. CARMANY shall provide City with a reimbursement request, including receipts for costs incurred, within thirty (30) days after incurring the eligible cost. City will promptly process and pay within thirty (30) days following receipt of the request and receipts.

## **7. Termination.**

7.1 By Employee Not-for-Cause. CARMANY may terminate this Agreement for any reason, and at any time, with or without cause, by providing CITY with thirty (30) days prior written notice thereof, notwithstanding anything to the contrary contained in or arising from any Personnel Policies or past CITY practices relating to the employment, discipline, or termination of its employees.

7.2 By CITY Not-for-Cause. Subject to RMC Section 2.04.050, and an affirmative vote of at least three (3) members of the City Council, the CITY may terminate this Agreement for any reason, and at any time, without cause, by providing CARMANY with thirty (30) days prior written notice thereof, notwithstanding anything to the contrary contained in or arising from any Personnel Policies or past CITY practices relating to the employment, discipline, or termination of its employees. CARMANY expressly waives any rights provided under the City Personnel Policies, Municipal Code or under any state or federal law, to the extent legally allowable, to any form of pre- or post- termination hearing,

appeal or other administrative process. CITY has the right to immediately place CARMANY on paid administrative leave and such leave time shall count toward the thirty (30) day notice period. In the event CITY terminates the Agreement not-for-cause, and provided that (i) CARMANY does not challenge the termination, including but not limited to by means of appeal or civil or administrative action, and (ii) timely and fully executes the Separation Agreement attached hereto as "Exhibit B", then CITY shall pay CARMANY a lump sum equal to the lesser of either one (1) year of CARMANY's then base salary amount, or the number of full months remaining in the term of the Agreement multiplied by his then base salary amount. Severance does not include any accrued but unpaid salary, less applicable deductions, deferred compensation, benefits or any accrued compensable leave to which CARMANY may otherwise be entitled to under the law. Pursuant to Government Code Section 53260 the maximum cash settlement for the termination of the Agreement may not exceed the base salary multiplied by the number of months (not to exceed 18) remaining on the Agreement. For the purpose of this Agreement, the Parties have agreed that the maximum number of months to be used for calculation of the Severance payment shall be twelve (12) months.

**7.3 By CITY for Cause.** CITY may immediately terminate this Agreement at any time by providing CARMANY written notice of his termination for cause. No Severance or any further salary shall be paid in the event CARMANY's employment is terminated for cause except for any accrued but unpaid salary, less applicable deductions, deferred compensation, benefits or any accrued compensable leave to which CARMANY may otherwise be entitled to receive under the law. For purposes of this Agreement, cause for termination shall be deemed to exist where: (1) CARMANY is formally charged by the appropriate prosecuting agency with any of the following criminal conduct: theft or attempted theft from the City; fraud or other type of criminal dishonesty; misuse or misappropriation of public funds; assault, battery or other criminal physical injury to another person; any felony; solicitation, prostitution, or other sexually oriented crime; or for violating Government Code Sections 1090 et seq. and/or Section 53243.4; (2) CARMANY is fined by the Fair Political Practices Commission for a violation of the Political Reform Act or FPPC Regulation in an amount in excess of one thousand five hundred dollars (\$1,000); (3) an independent investigation sustains that CARMANY engaged in discrimination or harassment of an official, officer, employee or agent of CITY or a third party while conducting City business; (4) violation of the City's Municipal Code; (5) unauthorized absence or leave in violation of section 1.1; (6) use or possession of illegal drugs; (7) material breach of this Agreement; (8) material acts of dishonesty; (9) material failure to disclose information regarding the business or operation of the City that hinders or impairs the City Council's ability to make informed decisions on projects, policies or legislative actions; or (10) material failure to follow clear and legal directives of a majority of the City Council provided in a duly noticed public meeting, including closed session. CARMANY expressly waives any rights provided for Administrative Personnel under CITY's Personnel Policies, any rights provided for the City Manager or Administrative Personnel under the RMC or under State or Federal law to any form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, except when CARMANY has a California or federal constitutional right to a name-clearing hearing.

7.4 Termination Obligations. CARMANY agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined in Section 8), 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 CARMANY's employment. CARMANY's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

7.5 Benefits Upon Termination. All benefits to which CARMANY is entitled under this Agreement shall cease upon CARMANY's termination in accordance with this Section 3, unless expressly continued either under this Agreement, under any specific written policy or benefit plan applicable to CARMANY, or unless otherwise required by law.

7.6 Reimbursement Under Certain Circumstances. CARMANY acknowledges that Government Code Sections 53243 through 53243.4, inclusive, may require CARMANY to reimburse CITY for certain payments made by CITY to CARMANY during the term of his employment with CITY should he be convicted of a crime within the meaning of Section 53243.4.

## **8. Proprietary Information.**

"Proprietary Information" is all information 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 of CITY in the course of his or her employment or otherwise produced or acquired by or on behalf of CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. 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, CARMANY 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, CARMANY shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. CARMANY's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

## **9. Conflict Of Interest.**

CARMANY 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.

## **10. General Provisions.**

10.1 Vehicle Operation. CARMANY shall operate any vehicle used in connection with the performance of his duties as 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 driver's license during the period of employment.

10.2 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand 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 CARMANY's personnel file. CARMANY 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.

City's Notice Address:

City of Rialto  
150 S. Palm Ave.  
Rialto, California 92376  
Attn: Mayor and City Council

City Manager's Address:

[Deliver to last updated address in  
personnel file.]

10.3 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 CARMANY harmless from and against any claim, 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 CARMANY's tenure as City Manager ("Matters"). This indemnification obligation shall survive expiration and termination of this Agreement only as to those Matters occurring during the term of the Agreement, but for which the corresponding claim, action, demand, suit, monetary judgment or other legal or administrative proceeding occurs or continues after the expiration or termination of this Agreement.

10.4 Bonding. The CITY shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

10.5 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of CARMANY'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 CARMANY, 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 CARMANY and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

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

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

10.8 Assignment. CARMANY shall not assign any rights or obligations under this Agreement.

10.9 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.

10.10 Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

10.11 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.

10.12 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.

10.13 Acknowledgment. CARMANY acknowledges that he has had the opportunity to consult legal counsel in 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.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and CARMANY has signed and executed this Agreement, as of the date first indicated above.

CITY MANAGER

CITY OF RIALTO

\_\_\_\_\_  
David Carmany

\_\_\_\_\_  
Deborah Robertson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Burke, Williams & Sorensen, LLP

\_\_\_\_\_  
Barbara McGee, City Clerk

\_\_\_\_\_  
Eric S. Vail

## **EXHIBIT “A”**

### **City Manager Job Description**

## **City Manager**

**Bargaining Unit: City Manager Contract**

**Class Code: 1001**

CITY OF RIALTO

Established Date: Jan 17, 2021

Revision Date: Jan 17, 2021

### **CLASSIFICATION DEFINITION/ DISTINGUISHING CHARACTERISTICS:**

#### **DEFINITION**

Under policy direction, serves as the Chief Administrative Officer of the City designated to plan, direct, manage and oversee the activities and operations of the City of Rialto; to administer City functions through departmental management staff; to oversee the City's expenditures and revenues to ensure fiscal soundness; to serve as Executive Director of the Redevelopment Agency; to coordinate City activities with outside agencies, civic groups, inter-governmental agencies, public and private organizations, and City residents; and to provide complex administrative support to the cities elected officials.

#### **DISTINGUISHING CHARACTERISTICS**

The City Manager is the highest administrative management level position in the City and has responsibility for the administrative operation of all City departments, which may include developing, recommending, and implementing policies, program planning, fiscal management, administration, and operations of all City functions and services. The incumbent is responsible for accomplishing the City's goals and objectives and for ensuring that the citizens are provided with desired and mandated services in an effective and cost-efficient manner.

#### **SUPERVISION RECEIVED AND EXERCISED**

- Receives policy direction from the Mayor and City Council.
- Exercises direct supervision over management, supervisory, professional and clerical staff.



## **ESSENTIAL FUNCTIONS & RESPONSIBILITIES:**

**ESSENTIAL FUNCTION STATEMENTS**--*Essential responsibilities and duties may include, but are not limited to, the following:*

1. Assume full management responsibility for all City operations; administer City functions through departmental management staff; serve as Executive Director of the Redevelopment Agency; recommend and administer policies and procedures.
2. Direct the development and implementation of the City's goals, objectives, policies and priorities; coordinate long- and short-term organizational studies on City issues.
3. Establish, within City policy, appropriate service and staffing levels; monitor and evaluate the efficiency and effectiveness of service delivery methods and procedures; allocate resources accordingly.
4. Plan, direct and coordinate, through department heads, the work plan for the City; assign projects and programmatic areas of responsibility; review and evaluate work methods and procedures; meet with management staff to identify and resolve problems.
5. Assess and monitor work load, administrative support systems and internal reporting relationships; identify opportunities for improvement.
6. Select, motivate and evaluate management personnel; resolve personnel concerns and issues; maintain the City's recruitment and classification program; meet with union representatives as necessary; coordinate, and encourage employee development and training.
7. Oversee the development and administration of the City budget; approve the forecast of funds needed for staffing, equipment, materials and supplies; oversee expenditures and revenues to ensure fiscal soundness; approve expenditures and implement budgetary adjustments as appropriate and necessary.
8. Explain, justify and defend City programs, policies and activities; negotiate and resolve sensitive and controversial issues.
9. Represent the City to all departments and outside agencies; coordinate City activities with those of other cities, counties, outside agencies and organizations.
10. Meet with business leaders in the community to coordinate and develop economic development strategies and programs.
11. Provide staff assistance to the City Council; prepare and present staff reports and other necessary correspondence.
12. Provide staff support to assigned boards and commissions.
13. Attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of municipal program management and administration.
14. Respond to and resolve difficult and sensitive citizen inquiries and complaints.
15. Perform related duties and responsibilities as required.

## **QUALIFICATIONS:**

### **Knowledge of:**

- Operations, services and activities of a large municipality.
- Advanced principles and practices of public administration and policy development.
- Laws of California governing municipal operations.
- Legal guidelines and standards which impact City operations.
- Funding sources for City programs.
- Principles and practices of governmental accounting and public finance.
- Principles and practices of economic development.
- Principles and practices of program development and administration.
- Methods of analyzing, evaluating and modifying administrative procedures.
- Principles and practices of municipal budget preparation and administration.
- Principles of supervision, training and performance evaluation.
- Pertinent Federal, State and local laws, codes and regulations.

### **Ability to:**

- Manage and direct the operations, services and activities of a major municipality.
- Plan, organize and direct the work of lower level staff.
- Select, supervise, train and evaluate staff.
- Delegate authority and responsibility.
- Identify and respond to community and City Council issues, concerns and needs.
- Develop and administer City-wide goals, objectives and procedures.
- Prepare clear and concise administrative and financial reports.
- Prepare and administer large and complex budgets.
- Analyze problems, identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals.
- Research, analyze and evaluate new service delivery methods and techniques.
- Interpret and apply Federal, State and local policies, laws and regulations.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain effective working relationships with those contacted in the course of work.
- Maintain mental capacity which allows for effective interaction and communication with others.
- Maintain physical condition appropriate to the performance of assigned duties and responsibilities.
- Maintain effective audio-visual discrimination and perception needed for making observations, communicating with others, reading, writing and operating assigned equipment.

## **Experience and Training Guidelines**

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

### **Experience:**

- Seven years of increasingly responsible experience in municipal government, including five years of management responsibility.

### **Training:**

- Equivalent to a Bachelor's degree from an accredited college or university with major course work in public administration, business administration or a related field.

## **SUPPLEMENTAL INFORMATION:**

### **Application Procedure:**

A City application form and supplemental questionnaire (if applicable) MUST be submitted and received by the closing date. Please apply online at [www.yourrialto.com](http://www.yourrialto.com). All other employment inquiries can be directed to The City of Rialto, Human Resources Department. 246 S. Willow, Rialto, CA 92376. Telephone: (909) 820-2540.

### **Selection Process:**

Candidates must clearly demonstrate through their application material that they meet the employment standards outlined above. All properly completed applications will be reviewed, and the most appropriately qualified individuals will be invited to continue in the selection process. Examinations for the positions may consist of any combination of written, performance, and oral exams to evaluate the applicant's skills, training, and experience for the position. Successful applicants will be placed on an eligibility list. The City may also merge lists. The selected candidate(s) must successfully complete pre-employment clearances which may include a physical, drug screen, and fingerprinting.

### **Veterans Preference Credit Eligibility:**

Veterans of the armed forces, who have been discharged or released from active duty under conditions other than dishonorable (Gov. Code § 18540.4), shall receive an additional five (5) points to their final examination score for ranking purposes only. This preference will apply only to the first appointment to any regular full-time City appointment.

A copy of your valid DD214 must be submitted on or before the final filing date in order to be eligible for Veterans Preference Credit. For more information, please see the City's Veteran's Preference Policy.

### **E-Verify:**

The City of Rialto is an E-Verify employer. E-Verify is an internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of newly hired employees in the United States.

### **PHYSICAL AND MENTAL DEMANDS:**

#### **Physical Demands**

While performing the duties of this job, the employee is regularly required to sit, walk, and stand; talk and hear; use hands to finger, handle, feel, or operate objects, tools or controls; reach with hands and arms; perform repetitive movements of hands or wrists; climb or balance on ladders or stairs; stoop, kneel, and bend at the waist; crouch or crawl; and smell. The employee is frequently required to lift up to 25 pounds unaided.

Specific vision abilities required for this job include close vision, distance vision, use of both eyes, depth perception, color vision, and the ability to adjust focus.

#### **Mental Demands**

While performing the duties of this class, an employee uses written and oral communication skills; reads and interprets data, information, and documents; analyzes and solves problems; uses math, and mathematical reasoning; observes and interprets people, and situations; learns and applies new information and skills; performs highly detailed work; deals with changing deadlines, constant interruptions, and multiple concurrent tasks; and interacts with others encountered in the course of work.

The physical and mental demands described here are representative of those that must be met by employees to successfully perform the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

### **WORK ENVIRONMENT:**

#### **Physical Conditions**

Essential functions may require maintaining physical condition necessary for sitting for prolonged periods of time.

The work environment characteristics described here are representative of those that must be met by employees to successfully perform the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The employee works under typical office conditions with exposure to computer screens, and the noise level is usually quiet.

## **COMPLIANCE STATEMENTS:**

### **Application Procedure:**

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## **Exhibit "B"**

### **SEPARATION AGREEMENT**

#### **1. PARTIES.**

This Separation Agreement (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Rialto, a municipal corporation (hereinafter referred to as "CITY"), and CARMANY, an individual (hereinafter referred to as "EMPLOYEE").

#### **2. RECITALS.**

- 2.1 EMPLOYEE was hired by CITY as its permanent City Manager, to serve at the pleasure of the City Council, pursuant to that Employment Agreement for the Position of City Manager, dated \_\_\_\_\_ ("EMPLOYMENT AGREEMENT").
- 2.2 CITY and EMPLOYEE desire that EMPLOYEE resign and enter into this AGREEMENT, whereby EMPLOYEE receives severance compensation in exchange for executing this AGREEMENT including a general release and waiver of any and all claims that EMPLOYEE may have against CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of CARMANY. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under EMPLOYMENT AGREEMENT.
- 2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's postemployment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

#### **3. CONSIDERATION.**

- 3.1 EMPLOYEE shall receive payment at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in the CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by law or the EMPLOYMENT AGREEMENT or any other agreement with CITY.
- 3.2 In exchange for the waivers and releases set forth herein, CITY shall also cause to be paid to EMPLOYEE an additional compensatory payment by

means of severance, settlement and release in the form of a lump sum amount of \_\_\_\_\_ and \_\_\_\_\_ cents (\$\_\_\_\_\_.00), as set forth in the EMPLOYMENT AGREEMENT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT.

- 3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at anytime from the beginning of time up to and including (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of the EMPLOYMENT AGREEMENT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code Sections 12900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

#### **4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA.**

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, unless the waiver is knowing and voluntary. By entering into this AGREEMENT, EMPLOYEE acknowledges that he knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) This waiver/release is written in a manner understood by EMPLOYEE;
- (b) EMPLOYEE is aware of, and/or has been advised of, his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- (c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights he may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;
- (d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the EFFECTIVE DATE of this AGREEMENT;
- (e) EMPLOYEE has been advised by this writing that he should consult with an attorney prior to executing this AGREEMENT;
- (f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, his counsel of choice, and that he does not need any additional time within which to review and consider this AGREEMENT;
- (g) EMPLOYEE has seven (7) days following his execution of this AGREEMENT to revoke the AGREEMENT;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.9 herein, and



must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release;" and

- (i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

## **5. UNKNOWN CLAIMS.**

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code Section 1542 reads as follows:

"General Release--Claims Extinguished"

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

EMPLOYEE hereby waives the protection of California Civil Code Section 1542.

## **6. WAIVER OF ADDITIONAL CLAIMS.**

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

## **7. REPRESENTATIONS AND WARRANTIES.**

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

- 7.1 Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.
- 7.2 No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise

of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

- 7.3 Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.
- 7.4 Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT.

This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

- 7.5 Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against CITY or CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.
- 7.6 Indemnification: EMPLOYEE agrees to indemnify and hold harmless CITY or CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that he shall be exclusively liable for the payment of all taxes for which he is responsible, if any, as a result of his receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

- 7.7 Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide CITY with consultation services (including deposition or trial testimony) in any litigation involving CITY which is reasonably related to acts or occurrences transpiring during his employment. Said services shall be provided as needed by CITY at a rate of \$100.00 per hour.
- 7.8 Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of his employment with CITY.
- 7.9 No Pending Claims and/or Actions: EMPLOYEE represents that he has not filed any complaints or charges against CITY or CITY PARTIES with any local, state or federal agency or court; that he will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against CITY or CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, he will request such agency or court to withdraw from the matter forthwith.
- 7.10 Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.
- 7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.
- 7.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

## **8. MISCELLANEOUS.**

- 8.1 No Admission: Nothing contained herein shall be construed as an admission by CITY of any liability of any kind. The CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.
- 8.2 Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.
- 8.3 Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.
- 8.4 Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.
- 8.5 Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.
- 8.6 Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.
- 8.7 Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.
- 8.8 Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.
- 8.9 Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at

the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

**As to EMPLOYEE:**

At EMPLOYEE's home address on file with THE CITY.

**As to THE CITY:**

City Clerk  
City of Rialto  
150 South Palm Avenue  
Rialto, California 92376

**IN WITNESS WHEREOF**, CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this Agreement, and the attorneys for CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

Dated: EMPLOYEE

\_\_\_\_\_  
David Carmany

Dated: CITY

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Barbara McGee, City Clerk

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP

\_\_\_\_\_  
Eric S. Vail, City Attorney