

**CITY OF RIALTO**  
**FINANCE DIRECTOR**  
**EMPLOYMENT AGREEMENT**

This FINANCE DIRECTOR EMPLOYMENT AGREEMENT (“Agreement”) is entered into and made effective the 27th day of November, 2018, by and between the CITY OF RIALTO, a municipal corporation (“City”) and JESSICA BROWN, an individual (“Employee”).

**RECITALS**

WHEREAS, pursuant to Rialto Municipal Code Section 2.04.100, the City Administrator has the authority, upon consultation and concurrence by the City Council, to appoint all department heads or to combine or change the positions of any department heads; and

WHEREAS, pursuant to Rialto Municipal Code Section 2.50.060(E), as amended or concurrently amended herewith, all department heads are or shall be at-will and not covered by the City’s Personnel System; and

WHEREAS, the City Administrator, upon consultation and concurrence by the City Council, desires to hire Employee as the Director of Finance, which position shall be at-will at the pleasure of the City Administrator; and

WHEREAS, the Employee desires to perform and assume responsibility for the provision of services as the Director of Finance to the City and its related agencies; and

WHEREAS, the parties wish to establish the terms and conditions of the Employee’s services as the Director of Finance to the City and its related agencies through this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and the Employee hereby agree as follows:

**AGREEMENT**

**1.0 EMPLOYMENT & DUTIES**

1.1 Duties. City hereby employs Jessica Brown as the Director of Finance for the City to perform the functions and duties of Director of Finance, as specified in the job description for this position attached hereto as Exhibit A, and to perform such other legally permissible and proper functions and duties as the City Administrator shall, from time-to-time, direct or assign. Employee shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote her best efforts and full-time attention thereto.

1.2 Work Schedule. It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City. Employee acknowledges that proper performance of the duties of the Director of Finance will require Employee to generally observe normal business hours, as set by the City and

may be duly revised from time-to-time (currently 7:00 a.m. to 6:00 p.m., Monday through Thursday), and will also often require the performance of necessary services outside of normal business hours. Notwithstanding the foregoing, the City will permit Employee such reasonable “time off” as is customary for exempt employees of the City, so long as the time off does not interfere with normal business. Employee’s compensation (whether salary or benefits or other allowances) is not based on hours worked, and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities. Employee shall focus her professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the City Administrator, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of Director of Finance.

1.4 Employment Status. Upon appointment to the Director of Finance Management position, Employee shall continue to serve at the will and pleasure of the City Administrator and understands that she shall be an “at-will” employee without recourse to bumping or other demotion rights and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary *Skelly* hearing, except as expressly provided in this Agreement. The City may terminate Employee at any time in accordance with Section 3.4 below.

1.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by Employee, without the prior written consent of the City Administrator, for any purposes other than the performance of her duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.6 Exclusion from Competitive Service. Employee understands, acknowledges and agrees that she is exempt from the City’s competitive service system.

1.7 FLSA Exempt Status. Employee agrees that her position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

## **2.0 COMPENSATION AND REIMBURSEMENT**

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee's initial base compensation shall be One Hundred Fifty-Seven Thousand One Hundred and Seventy Six Dollars and No Cents (\$157,176) per year (\$13,098 per month) ("Salary"), to be paid on a pro-rated basis bi-weekly at the same time as other employees of the City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Annual Salary Review. The City Administrator and Employee agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 5.2. Upon conclusion of such review, the City Administrator may, within his discretion, increase Employee's Salary as s/he deems appropriate.

2.3 Cost of Living Adjustment. Employee shall not be entitled to any cost of living adjustment ("COLA"), except to the extent the employees within the City Government Management Association ("CGMA") receive a COLA, as memorialized in a successor memorandum of understanding between the City and the CGMA ("CGMA MOU").

### **3.0 TERM**

3.1 Commencement & Effective Date. Employee shall commence her services hereunder at 12:01 a.m. Pacific daylight savings time on December 9, 2018 or such earlier date upon which the City Administrator and Employee may mutually agree, in either event such date will also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. The City hereby employs Employee until her services are terminated as provided for herein.

3.3 Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the City Administrator with at least thirty (30) days' advance written notice, unless the parties agree to an alternative timeframe. In the event Employee terminates this Agreement, Employee expressly agrees that she shall not be entitled to any severance pay.

3.4 Termination by City. The City Administrator or someone acting in the capacity as City Administrator may terminate this Agreement at any time with or without cause, by providing written notice of the reason(s). The City Administrator's right to terminate Employee pursuant to this Section 3.4 shall not be subject to or in any way limited by the City's Personnel Rules or past City practices related to the employment, discipline or termination of the City's employees. Employee expressly waives any rights provided for department heads under the City's Personnel Rules, Municipal Code, or under other state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination. Nothing herein, however, shall be construed to create a property interest, where one does not exist by rule of law, in the position of Director of Finance. Upon appointment to the Director of Finance position, Employee remains an at-will employee serving at the pleasure of the City Administrator.

(a) Termination by City for Cause. The City may terminate this Agreement for cause at any time by providing Employee with five (5) business days' written

notice of the termination for cause and the facts and grounds constituting such cause. The term “cause” shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) Breach of this Agreement, 2) Willful or persistent material breach of duties, 3) Résumé fraud or other acts of material dishonesty, 4) Unauthorized absence or leave, 5) Conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or conviction of a felony under California law, 6) Violation of the City’s anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a City official or employee or legally prohibited personal acts of discrimination against a City official or employee has occurred, 7) Violation of the Municipal Code, Ordinances, Rules, and Regulations, including but not limited to the City’s Personnel Rules, 8) Use or possession of illegal drugs, 9) Engaging in conduct tending to bring embarrassment or disrepute to the City, 10) Any illegal or unethical act involving personal gain, 11) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted direction of the City Administrator or the policy decisions of the City Council, 12) Gross misfeasance or gross malfeasance, and 13) “abuse of office or position” as defined in Government Code Section 53243.4 (i.e., waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and corruption). For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City terminates for cause this Agreement and the services of Employee hereunder, the City shall have no obligation to pay severance.

(b) Termination by City Administrator Without Cause. By providing Employee at least thirty (30) days’ prior written notice thereof, the City may terminate Employee without cause but rather based upon management reasons such as implementing the City’s goals or policies, including but not limited to: (i) change of administration, or (ii) incompatibility of management styles. In the event Employee is terminated without cause, Employee expressly agrees that she shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4.1 below.

#### **4.0     SEVERANCE**

4.1     Severance Pay. In the event Employee is terminated without cause and does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then City shall pay to Employee severance in an amount equal to her monthly base Salary (as defined in Section 2 above, calculated on a per diem basis) then in effect multiplied by three (3), less applicable deductions and excluding deferred compensation or the value of any other benefits. Employee shall also be entitled to any accrued compensable leave as the Employee may have accumulated.

Notwithstanding the foregoing, Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. Accordingly, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to Employee shall be reduced in the amount necessary to comply with such statute. (For example, if

termination occurs with two (2) months left in the term, severance would be equal to the monthly base salary multiplied by two (2) rather than the three (3) months provided in this Section.)

4.2 No Severance Pay if Termination for Cause or Initiated by Employee. As provided in Section 3.4(a), should Employee be terminated for cause, the City shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should Employee initiate termination of this Agreement, the City shall have no obligation to pay the severance provided for in Section 4.1 above.

4.3 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause. Employee expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit C.

## **5.0 PERFORMANCE EVALUATIONS**

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the Personnel Department and the City. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.3 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement, or the services of Employee hereunder.

5.2 Annual Evaluation. The City Administrator shall review and evaluate the performance of Employee annually within thirty (30) days after each anniversary of the Effective Date. In addition, Employee shall submit for the City Administrator's consideration at those times established by the City Administrator, but at least annually, Employee's proposed performance goals and objectives and incorporate the City Administrator's suggestions. Such review and evaluation shall be conducted concurrently with an annual salary review, and in accordance with the purpose noted in Section 5.1 above.

5.3 Written Summary. The City Administrator may, at his sole discretion, elect to provide a written summary of each performance evaluation to Employee within two (2) weeks following the conclusion of the review and evaluation process, and may, at his sole discretion, schedule at least one (1) closed personnel session with Employee to deliver and discuss the evaluation.

## **6.0 BENEFITS**

To the extent the benefits enumerated in this Section 6.0 are increased, decreased, modified, or eliminated in any successor CGMA MOU, said increase, decrease, modification or elimination of said benefits shall be applicable to Employee at the time it becomes effective in said CGMA MOU.

6.1 Automobile Allowance. City shall provide Employee with the option of the use of a City vehicle.

6.2 Technology/Cell Phone Allowance. City shall provide Employee with a City cell phone for the conduct of City business only, paid by the City.

6.3 Education Incentive. The City agrees to reimburse Employee for education expenses as follows:

(a) Required Certification. The City shall reimburse Employee one hundred percent (100%) of classes for Employee to maintain State-required certification, if classes are attended after normal work hours.

(b) Tuition. The City shall reimburse Employee up to two thousand five hundred dollars (\$2,500) per fiscal year for expenses for tuition and books, provided that the Employee achieves a passing grade in the course. Courses must be taken at an accredited college or university after normal work hours and must be job related, with prior written approval of the City Administrator. 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.

(c) Educational Incentive. The City shall pay an additional seven and one-half (7-1/2) percent of the regular base pay for a Masters or Doctorate degree from an accredited college or university.

6.4 Bilingual Pay. The City shall pay fifty dollars (\$50) per pay period to Employee upon passage of the City examination for fluency in Spanish.

6.5 Medical, Dental, Vision and Other Insurance.

(a) Medical and Dental Insurance. The City shall provide Employee with a Cafeteria Plan, which will be administered by the City pursuant to Section 125 of the Internal Revenue Code. The City's contribution to the Cafeteria Plan will be one hundred percent (100%) of the Health and Dental insurance premiums for the Employee and eligible dependents.

Employee may opt to receive an in-lieu payment of up to One Thousand One Hundred Dollars (\$1,100) per month of the City's contribution if she does not purchase any of the Health or Dental benefits provided by the City. Employee must provide the City with written notice/waiver of paid insurance premiums for which Employee is eligible. Then, Employee shall receive up to \$1,100 per month, which may be taken as taxable compensation or be placed into a deferred compensation plan. As stated in Section 6.0, to the extent the in-lieu payment is modified in any successor CGMA MOU, Employee shall be entitled only to the modified payment, and to the extent it is eliminated, Employee shall not be entitled to any payment.

If Employee retires from City employment, Employee shall retain, as a retiree, all current CalPERS Health benefits. The City shall pay Employee's, as a retiree, and dependent(s)' Health insurance premiums. The City shall not reimburse Medicare premiums for Employee as a current employee or as a retiree. Employee, as a retiree, and dependents must meet the definition of "annuitants" as defined by CalPERS.

(b) Vision Insurance. The City shall pay up to three hundred dollars (\$300) per fiscal year for an eye examination and/or prescription eyeglasses or contact lenses for the Employee only. This benefit will be on a reimbursement basis. The Employee has the option of applying the \$300 per fiscal year towards payment of the premium for a vision policy.

(c) Long-Term Disability Insurance. The City will pay one hundred percent (100%) of the premium for long-term disability insurance for the Employee.

(d) Life Insurance. The City will pay one hundred percent (100%) of the premium for Employee and dependent term life insurance coverage contracted by the City. The benefit coverage under such program is as follows:

Employee	\$150,000
Spouse	\$10,000
Registered Domestic Partner(so long as required by California law)	\$10,000
Children	\$5,000

(e) Income Protection Insurance. The City shall pay for income protection insurance coverage.

6.6 PERS. Employee is a “classic” member of CalPERS and shall participate in the City’s two and seven-tenths percent (2.7%) at age 55 formula. The City shall pay the full employer CalPERS contribution. The Employee shall pay the employee contribution of eight percent (8%) of her salary. The payments will be reported as being those of Employee and credited to her individual account with CalPERS. Contributions shall be in accordance with IRS Code Section 414(h)(2) (or its successor) whereby employee contributions are tax deferred (not subject to taxation until time of constructive receipt) so long as allowed by applicable law. The City will contract with CalPERS provide a two percent (2%) COLA for Employee, as a retiree, during retirement.

6.7 Level 4 Survivor Benefit. The Employee shall pay her share of the monthly cost for this benefit for miscellaneous employees.

6.8 Deferred Compensation. The Employee 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. The City shall contribute seven hundred fifty dollars (\$750) per month towards the Employee’s deferred compensation plan.

6.9 Vacation Leave. The Employee shall accrue vacation leave in accordance with the formula below, with an accrual cap of six hundred (600) hours as of June 30 of any fiscal year.

<u>Years of service</u>	<u>Hours earned on anniversary</u>
0 through 4	0.0576

5 or more	0.0769
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The Employee shall be eligible to cash out up to two hundred (200) hours of vacation and/or sick leave, combined, per fiscal year. The cash-out may be taken in any increment amount up to 200 hours and at any time during the fiscal year. The cash-out of leave will be at the Employee's salary rate at the time of cash out.

6.10 Sick Leave. Sick leave is accumulated at the rate of ten (10) hours per month, for a total of one hundred twenty (120) hours per fiscal year. Time is charged to the Employee on a monthly basis. The Employee shall be eligible to cash out up to two hundred (200) hours of vacation and/or sick leave, combined, per fiscal year. The cash-out may be taken in any increment amount up to 200 hours and at any time during the fiscal year. The cash-out of leave will be at the Employee's salary rate at the time of cash out.

Upon separation from City service due to retirement, resignation, layoff or death, the Employee shall be paid one hundred percent (100%) of her accumulated and unused sick leave at her current base salary at separation after a minimum of five (5) consecutive years of satisfactory service with the City.

The Employee may use accumulated but unused sick leave while on an absence due to an industrial injury in addition to any workers' compensation payment; the combination of the two shall not exceed one hundred percent (100%) of the Employee's base salary.

6.11 Holidays. The Employee shall be entitled to the holidays listed below. In the event the then-effective Memorandum of Understanding between the City of Rialto and the City Government Management Association ("CGMA MOU") is amended to include additional holidays, then the Employee shall be entitled to such additional holidays as provided to CGMA members.

New Year's Day	Labor Day
Martin Luther King Jr. Day	Veterans Day
Presidents' Day	Thanksgiving Day
Cesar Chavez Day	Day After Thanksgiving
Memorial Day	Christmas Eve
Independence Day	Christmas Day

Upon separation from City service due to retirement, resignation, layoff, or death, the Employee shall be paid one hundred percent (100%) of her accumulated and unused holiday leave at her



current base salary at separation after a minimum of five (5) consecutive years of satisfactory service with the City.

6.12 Bereavement Leave. The Employee's absence from work by reason of a death in the immediate family may be allowed a leave of absence with pay. The Employee may be allowed up to three (3) cumulative working days (30 hours) (per occurrence may be allowed for in-state services and up to five (5) cumulative working days (50 hours) per occurrence may be allowed for out-of-state services, which will not be deducted from the Employee's sick leave. This leave must be requested in writing, with the approval of the City Administrator. For purposes of this article, "immediate family" is defined as wife, husband, domestic partner, mother, father, grandparents, brother, sister, children or stepchildren, grandchildren, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or parents-in-law of the Employee.

6.13 Administrative Leave. Employee shall accrue administrative leave at the rate of one hundred forty (140) hours per fiscal year, which hours shall be credited to the Employee on July 1 of each fiscal year. Administrative leave hours shall be used prior to any accrued vacation leave hours available to the Employee. Administrative leave may not be carried over from year-to-year.

6.14 Jury Duty. Employee shall receive full pay and benefits while responding to a jury summons or serving on a jury, for up to ten (10) working days. Any compensation for such jury duty (except travel pay) shall be remitted to the City.

6.15 Fitness Center. The Employee and Employee's spouse or registered domestic partner shall be allowed free use of the Rialto Fitness Center during normal operating hours as long as the City has managerial control of the facility. The Employee and Employee's spouse or registered domestic partner shall adhere to the same regulations regarding reservations and the use and care of the facilities as the general public.

6.16 Longevity Pay. Employee shall receive longevity pay upon ten (10) or more years of service with the City as follows:

<u>Years of City service</u>	<u>Pay on anniversary</u>
0 through 9	0
10 through 14	1.5% of base salary
15 or more	2.25% of salary

## **7.0 PROFESSIONAL DEVELOPMENT**

7.1 Membership. The City encourages Employee's continued professional development and shall provide payment of appropriate related costs for such activities, including membership in relevant professional organizations, as approved by the City Administrator.

7.2 Out-of-Town Meetings & Seminars. The City agrees to reimburse Employee the actual cost for registration, travel, lodging, meals, and other expenses incurred by Employee while attending overnight, out-of-town meetings or seminars related to her employment with the City, in accordance with the City's policies for expense reimbursement. Moreover, to be eligible Employee must have budgeted funds available for same; provided, however, that the City Administrator may, in her sole discretion, approve such unbudgeted expenditures if she deems it in the best interests of the City.

7.3 Local Meetings & Seminars. The City agrees to reimburse Employee the actual cost of registration, meals, and other expenses necessarily incurred while in attendance at local meetings or seminars related to her employment with City in accordance with the City's policies for expense reimbursement.

7.4 Incidental Expenses. The City agrees to reimburse Employee the actual cost of those incidental expenses necessarily incurred by Employee while engaged in the business of the City upon the presentation of an appropriate receipt therefor, in accordance with the City's policies for expense reimbursement.

7.5 Approval by City Administrator. To be eligible to receive reimbursement for the memberships and travel and other expenses incurred pursuant to this Section 7.0, Employee shall obtain advance approval of the City Administrator or her/her designee.

## **8.0 BONDS AND INDEMNIFICATION**

8.1 Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

8.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

## **9.0 GENERAL PROVISIONS**

9.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

9.2 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require City Council approval, except where City Administrator approval is expressly authorized herein.

9.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:  
City Administrator  
City of Rialto  
150 South Palm Avenue  
Rialto, California 92376

To Employee:  
Jessica Brown  
[On file with Human Resources Dept.]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

9.4 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

9.5 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

9.6 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each party hereto.

9.8 AB 1344. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of her office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) 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:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

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

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

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

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

Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement or severance related to the termination that Employee may receive from the City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of her or her office or position. The Government Code provisions referenced in this section are attached hereto in Exhibit B.

9.9 Independent Legal Advice. The City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, and the City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

[Signatures on following page]

IN WITNESS WHEREOF, the City of Rialto has caused this Agreement to be signed and executed on its behalf by its City Administrator, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement, all in triplicate.

CITY OF RIALTO

\_\_\_\_\_  
Ahmad Ansari, Interim City Administrator

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Fred Galante, City Attorney

EMPLOYEE

\_\_\_\_\_  
Jessica Brown

**EXHIBIT A**

[Director of Finance Job Description on following page]

## **EXHIBIT B**

### GOVERNMENT CODE SECTION 53243-53243.4 and 53260(a)

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

### GOVERNMENT CODE SECTION 3511.1-3511.2

3511.1. As used in this chapter, the following definitions apply:

(a) "Compensation" means annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.

(b) "Cost-of-living" means the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:

(1) The person is the chief executive officer of the local agency.

(2) The person is the head of a department of a local agency.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.



## **EXHIBIT "C"**

### **AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE**

#### **1. PARTIES**

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

#### **2. RECITALS**

2.1. EMPLOYEE was hired by THE CITY as an at-will Director of Finance effective \_\_\_\_\_ serving at the pleasure of the City Administrator of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT"). EMPLOYEE is currently \_\_\_\_ years old.

2.2. THE CITY and EMPLOYEE desire that EMPLOYEE resign and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE 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 THE CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of \_\_\_\_\_, \_\_\_\_\_. 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 THE CONTRACT.

2.3. In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment 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 to her at the time of her 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 CONTRACT or any other agreement with THE CITY.

3.2. In exchange for the waivers and releases set forth herein, THE 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 CONTRACT 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 THE 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 "THE 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 CONTRACT 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 §§12, 900 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 she knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights she may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that she 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, her rights under the ADEA and OWBPA, and of the legal significance of her waiver of any possible claims she 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 she may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of her 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 she 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, her counsel of choice, and that she does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has **seven (7) days following her 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

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 THE CITY or THE 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 THE CITY or THE 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 she shall be exclusively liable for the payment of all taxes for which she is responsible, if any, as a result of her 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 THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during her employment. Said services shall be provided as needed by THE 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 her employment with THE CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that she has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that she 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 THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, she 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 THE 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 Administrator  
City of Rialto  
150 South Palm Avenue  
Rialto, California 92376

**IN WITNESS WHEREOF**, THE 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 THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED: \_\_\_\_\_

EMPLOYEE

By: \_\_\_\_\_  
Jessica Brown

THE CITY

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
City Administrator

**ATTEST:**

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

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Fred Galante, City Attorney