

**CITY OF RIALTO**

**RETIRED ANNUITANT EMPLOYMENT AGREEMENT  
FOR THE POSITION OF INTERIM COMMUNITY DEVELOPMENT DIRECTOR**

This RETIRED ANNUITANT EMPLOYMENT AGREEMENT FOR THE POSITION OF INTERIM COMMUNITY DEVELOPMENT DIRECTOR ("Agreement") is entered into and made by and between the CITY OF RIALTO, a municipal corporation ("City") and Alexander Hamilton, an individual ("Hamilton").

**RECITALS**

WHEREAS,

- A. The City's Community Development Director position has been vacant since October 9, 2019.
- B. Beginning on August 31, 2020, the City commenced and open recruitment for the position of Community Development Director, and is currently open after an initial review of applicants and testing process did not result in a job offer. The recruitment remains open and is anticipated to attract a broader pool of candidates in 2021;
- C. The City needs an individual to serve in the capacity of an Interim Community Development Director while the City continues to recruit to permanently fill the vacant position;
- D. Hamilton has over 31 years of government experience, including as a Community Development Director with the cities of Montebello and Commerce. Hamilton retired in the position of City Manager from the City of El Monte and is uniquely qualified and has the requisite specialized skills, training and experience to serve as Interim Community Development Director for the City;
- E. Hamilton represents that he is a retired annuitant of the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code § 21221(h) as of the effective date of this Agreement. Hamilton represents that he retired from the CalPERS system at least 180 days prior to the effective date of this agreement. Hamilton acknowledges that he is restricted to working no more than a combined 960 hours for the City, a state agency, or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2020-2021 fiscal year, or any subsequent fiscal year, and that his compensation is statutorily limited as provided in Government Code § 21221(h). Hamilton represents that he has not received any unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement, that he has not received a retirement incentive upon retirement within the meaning of Government Code § 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code § 21220.5;
- F. The City desires to employ the specialized services of Hamilton as Interim Community Development Director for the City in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement and State Law;

- G. Hamilton desires to accept retired annuitant employment as Interim Community Development Director in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement and State Law; and
- H. The parties wish to establish the terms and conditions of Hamilton's services as the Interim Community Development Director to the City and its related agencies through this Agreement.

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

## **OPERATIVE PROVISIONS**

### **1.0 EMPLOYMENT & DUTIES**

1.1 Duties. City hereby employs Hamilton as the Interim Director of Community Development for the City to perform the functions and duties of the Director of Community Development 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 Manager shall, from time-to-time, direct or assign. Hamilton shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote his best efforts and full-time attention thereto.

1.2 Work Schedule. Hamilton shall devote the time necessary to adequately perform his duties as Interim Director of Community Development. The parties anticipate that Hamilton will work up to 35-40 hours per week during normal City business hours (currently 7:00 a.m. to 6:00 p.m., Monday through Thursday), as well as outside of the normal business hours as appropriate. However, in no event shall Hamilton be required or permitted to work in excess of 960 hours during City's 2020-2021 fiscal year, or during subsequent fiscal years. Hamilton shall not be permitted to work in excess of 40 hours in any workweek without prior approval from the City Manager.

1.3 Other Activities. Hamilton shall focus his professional time, ability, and attention to City business during the term of this Agreement. Hamilton shall not engage, without the express prior written consent of the City Manager, 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 the Interim Director of Public Works position.

1.4 At-Will. Hamilton acknowledges that he is an at-will employee of City who shall serve at the will and pleasure of the City Manager at all times during the period of his service hereunder and that his employment may be terminated at any time, for any or no reason, with or without cause as provided in Section 3 of this Agreement and/or by operation of California or federal law. Nothing in this Agreement is intended to, or does, confer upon Hamilton any right to any property interest in continued employment, or any due process right to a hearing before or

after a decision by City to terminate his employment, except as is expressly provided in Section 3 of this Agreement and/or by operation of California or federal law. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of City to terminate the services of Hamilton as provided in Section 3. Nothing in the Agreement shall prevent, limit or otherwise interfere with the right of Hamilton to resign at any time from the position with City, subject only to the provisions set forth in Section 3 of this Agreement. The terms of the City's personnel rules, policies, procedures, ordinances, resolutions, or Municipal Code shall not apply to Hamilton (collectively, "Personnel Policies") shall not apply to the extent such Personnel Policies conflict with this Agreement.

1.5 City Documents. All data, studies, reports and other documents prepared by Hamilton while performing his 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 Hamilton in connection with the performance of this Agreement shall be held confidential by Hamilton 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 Hamilton, without the prior written consent of the City Manager, for any purposes other than the performance of his 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. Hamilton understands, acknowledges and agrees that he is exempt from the City's competitive service system pursuant to Rialto Municipal Code §2.50.060.

## **2.0 COMPENSATION AND REIMBURSEMENT**

2.1 **Rate of Pay.** For the services rendered pursuant to this Agreement, City shall pay Hamilton compensation at the rate of eighty-eight dollars and zero cents (\$88.00) per hour. Such compensation shall be payable at the same time as other employees of the City are paid, and shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 **Compliance with CalPERS Requirements.** It is the intent of the parties to compensate Hamilton only to the extent permitted under Government Code § 21221(h) and corresponding CalPERS regulations and policy statements. The Rate of Pay set forth above is based on the salary limitations established by CalPERS. The monthly base salary for the position of Community Development Director as listed on a publicly available pay schedule is a minimum of \$73.97 and a maximum of \$99.12. The Rate of Pay is calculated by taking a annual base salary of \$183,040 and dividing it by 2080 to equal an hourly rate of \$88.00.

2.3 **Recordation and Reporting of Hours Worked.** Hamilton will comply with all applicable CalPERS rules and regulations governing employment after retirement, including the recordation and reporting of all hours worked for City to CalPERS as may be

required. City shall assist in any such reporting obligation to CalPERS. Additionally, Hamilton shall keep City continually informed of any hours worked by Hamilton for other CalPERS Agencies during the term of this Agreement.

2.4 **Benefits.** Pursuant to Government Code § 21221(h) and related CalPERS regulations and policy statements, Hamilton shall not receive from City any benefits City commonly provides to its employees including, without limitation, medical, dental, vision, long term disability, life insurance, deferred compensation, or any paid personal time off such as vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

2.5 **Reimbursement.** City shall reimburse Hamilton for reasonable and necessary travel, subsistence and other business expenses incurred by Hamilton in the performance of his duties. All reimbursements shall be subject to and in accordance with California and federal law and City policies regarding reimbursement.

### **3.0 TERM**

3.1 Commencement & Effective Date. Hamilton shall commence his appointment as Interim Community Development Director on January 13, 2021, following the approval of this Agreement by the City Council and signed execution by the parties, and such date will be deemed the effective date of this Agreement (“Effective Date”).

3.2 Term. This Agreement shall expire as of the first of the following to occur: (i) 6:00 p.m. on August 30, 2021 or (ii) upon termination of the Agreement by either Hamilton or City as provided in this Section..

3.3 Termination by Hamilton. Hamilton may terminate this Agreement at any time, provided Hamilton provides the City Manager with at least thirty (30) days’ advance written notice, unless the parties agree to an alternative timeframe or agree to waive the timeframe requirement. City shall have the option, in its complete discretion, to make Hamilton’s termination effective at any time prior to the end of such period, provided City pays Hamilton all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day of Hamilton’s notice. Hamilton shall not be entitled to any other severance under the Agreement. It is understood and agreed that any notice of termination should be given as soon as practicable and in the best interest of the City.

3.4 Termination by City. The City Manager or someone acting in the capacity as City Manager may terminate Hamilton for any reason, and at any time, with or without cause, during the term of the Agreement by providing written notice to Hamilton. The City’s only obligation in the event of such termination will be payment to MILLER of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. The City’s right to terminate Hamilton 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. Hamilton 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, except when Hamilton has a California or federal

constitutional right to a name clearing hearing. Nothing herein, however, shall be construed to create a property interest, where one does not exist by rule of law, in the position of the Interim Director of Community Development. Notwithstanding this Section 3.4, Hamilton remains an at-will employee serving at the pleasure of the City.

3.5 No Notice for Expiration. Nothing in this Section 3 shall be construed to require either Hamilton or City to give advance written notice in order for the Agreement to expire on July 30, 2021 as set forth in Section 3.2 [Term].

3.6 Termination Obligations. Hamilton agrees that all property, all equipment, and other City property, City Proprietary Information (as described here) City records, and contracts shall be returned promptly to City upon termination of Hamilton's employment. Hamilton's obligations under this subsection shall survive the termination of his employment and/or the expiration of this Agreement. "Proprietary Information" is all non-public information 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 employment or otherwise produced or acquired by or on behalf of City. Proprietary Information shall include, without limitation, trade secrets, confidential financial data and formulae, attorney client-privileged information, confidential licensing information, software and other computer programs, copyrightable material, and other information exempt from production under the California Public Records Act and or the Federal Freedom of Information Act. 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, Hamilton 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, Hamilton shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of City. A disclosure of Proprietary Information or Confidential Information by Hamilton in response to an order by a court of competent jurisdiction or in response to a subpoena by a Grand Jury or any state, federal or local law enforcement agency shall not be deemed a breach of this Agreement.

#### **4.0 PROFESSIONAL DEVELOPMENT**

4.1 Membership. The City encourages Hamilton'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 Manager.

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

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

4.4 Incidental Expenses. The City agrees to reimburse Hamilton the actual cost of those incidental expenses necessarily incurred by Hamilton 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.

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

## **5.0 BONDS AND INDEMNIFICATION**

5.1 Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Hamilton 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 Hamilton's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Hamilton, to any action outside the course and scope of the services provided by Hamilton under this Agreement, or any other intentional or malicious conduct or gross negligence of Hamilton.

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

## **6.0 GENERAL PROVISIONS**

6.1 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 Hamilton'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.

6.2 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 Manager approval is expressly authorized herein.

6.3 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:

To Hamilton:

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

Alexander Hamilton  
[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.

6.4 Conflicts Prohibited. During the term of this Agreement, Hamilton 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 Hamilton's duties under this Agreement. Hamilton 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. Hamilton represents and warrants to City that, to the best of his knowledge, 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.

6.5 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.

6.6 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.

6.7 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.

6.8 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 his 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.

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

6.9 Independent Legal Advice. The City and Hamilton 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, or had the opportunity to do so, and the City and Hamilton 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 Manager, and duly attested by its officers thereunto duly authorized, and Hamilton has signed and executed this Agreement.

HAMILTON

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Alexander Hamilton

CITY OF RIALTO

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Sean Grayson, Acting City Manager

ATTEST:

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Barbara McGee, City Clerk

APPROVED AS TO FORM:

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Eric S. Vail, Interim City Attorney

## **EXHIBIT A**

[Director of Community Development 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.