

CITY OF RIALTO
AT-WILL INTERIM CHIEF OF POLICE
EMPLOYMENT AGREEMENT

This AT-WILL INTERIM CHIEF OF POLICE EMPLOYMENT AGREEMENT (“Agreement”) is made by and between the CITY OF RIALTO (the “City”) and MARK KLING (“Employee”). The City and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, Government Code subdivision 21221(h) permits retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position; and

WHEREAS, the current Chief of Police intends to retire effective December 28, 2017; and

WHEREAS, the City will begin conducting a recruitment for the permanent replacement of the Chief of Police by December 12, 2017 at the latest; and

WHEREAS, the City anticipates the Chief of Police position will be filled with a permanent replacement by June 30, 2018; and

WHEREAS, pursuant to Rialto Municipal Code Section 2.04.100, the City Administrator has the authority to appoint all department heads, provided that the City Council shall be consulted and must concur in changing any of the department heads of the City; and

WHEREAS, the position of Chief of Police serves as the department head for the City’s Police Department; and

WHEREAS, as a CalPERS retired annuitant under Government Code subdivision 21221(h), Employee possesses extensive experience in a Chief of Police capacity and the specialized skill set to perform the required duties of Interim Chief of Police, desires to perform the duties of and assume responsibility for the position of Interim Chief of Police, and acknowledges that such employment is at-will and of a limited duration for a definite period of time, as described below; and

WHEREAS, the City desires to hire Employee as an at-will, limited duration employee for the position of Interim Chief of Police, which is a position that requires specialized skills, for a definite period of time, effective December 29, 2017; and

WHEREAS, the Parties wish to establish the terms and conditions of Employee’s services to the City, as described in this Agreement.

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

AGREEMENT

Section 1: TERM

The term of this Agreement shall commence on December 29, 2017 and shall automatically terminate on December 28, 2018, unless terminated prior to this date by either Party (the "Term"). The City shall terminate this Agreement in accordance with Section 4 of this Agreement upon the City finding a permanent replacement for the position of Chief of Police. In no event shall the Term exceed the 960-hour per fiscal year limit under Government Code subdivision 21221(h); in the event Employee works 960 hours during the Term of this Agreement, then this Agreement shall terminate automatically. December 29, 2017 shall be Employee's "Hire Date" for purposes of this Agreement.

Section 2: DUTIES, RESPONSIBILITIES, AND WORK HOURS

A. Employee shall be appointed to the position of Interim Chief of Police for the City's police department, the duties of which are described generally in Government Code sections 41601-41612 and are set forth fully in Exhibit "A" to this AGREEMENT. Employee acknowledges the position of Interim Chief of Police requires specialized skills and expert professional services for a definite period of time, as described above in Section 1 of this Agreement.

B. It is recognized 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 may be required to devote a great deal of time outside the normal office hours to the business of the City. Employee acknowledges proper performance of the duties of Interim Chief of Police will require Employee to generally observe normal business hours (currently 7:00 a.m. to 6:00 p.m., Monday through Thursday, including a standard one hour lunch period), as set by the City. Employee shall generally not work more than 40 hours per week. 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, including City recognized holidays. Furthermore, the Chief of Police position remains an "exempt" classification under the overtime provisions of the federal Fair Labor Standards Act ("FLSA") and EMPLOYEE shall not be entitled to any compensation for overtime nor subject to such overtime provisions of the FLSA.

C. All data, studies, reports, and other documents prepared and/or reviewed by Employee 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 Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials, without the prior written consent of the City Administrator or his designee, shall not be used by Employee for any purpose other than the performance of his duties. Nor shall such materials be disclosed to any person or

entity not connected with the performance of services under this Agreement, except as required by law.

Section 3: COMPENSATION/ BENEFITS PROHIBITED

A. The City agrees to compensate Employee at the top step of the salary range for the Chief of Police position, which is currently Fifteen Thousand Nine Hundred and Forty Dollars (\$15,940.00) per month, to equal an hourly rate of Ninety One Dollars and Ninety Six Cents (\$91.96; \$15,940.00 divided by 173.333).

B. Employee shall not be eligible for any other benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate except for the above hourly rate and workers' compensation benefits.

C. Employee shall not be entitled to reimbursement for any costs or expenses incurred in the performance of Employee's duties under this Agreement, unless said costs and expenses have received prior approval by the City Administrator, and are supported by written documentation in accordance with the established policies and customary practices of the City.

D. The City recognizes that certain expenses of a non-personal and job affiliated nature may be incurred by Employee and hereby agrees to reimburse Employee said necessary and reasonable expenses as are submitted to the City based upon expense, receipts, statements, or personal affidavits, and audit thereof in like manner as other demands against the City. Any out-of-town travel for which expense reimbursement may be sought shall be subject to advance written approval by the City Administrator.

E. During the term of this Agreement, representing the City as its Interim Police Chief in any legal action shall be considered part of Employee's regular job duties under this Agreement. After the term of this Agreement, if Employee is requested or required to testify in court on behalf of the City as its former Interim Police Chief, Employee shall be fully compensated and reimbursed for time spent and costs incurred for such testimony.

F. Employee shall be provided the City vehicle assigned to the Chief of Police for use in providing the services hereunder including transportation to and from the worksite and any City-related travel. Employee understands that any applicable taxes are his responsibility to pay and not covered by the City. Additionally, Employee shall be provided any business equipment assigned by the City to the Chief of Police for business use.

Section 4: RESIGNATION/TERMINATION

A. Employee may resign at any time; provided, however, Employee shall reasonably provide the City Administrator with at least two (2) weeks advance written notice.

B. Employee is an at-will employee and serves at the will and pleasure of the City Administrator and may be terminated at any time, with or without cause, and with or without notice, at any time by the City Administrator subject to consultation with and concurrence of the City Council (as required by Rialto Municipal Code Section 2.04.100), and subject to Section 4(C) below.

C. In accordance with the Public Safety Officers Bill of Rights, Government Code sections 3300 *et seq.*, including Section 3304(c), Employee shall not be terminated except by virtue of the expiration of this Agreement, exhaustion of his CalPERS 960 hour per fiscal year limit, or because of the City's appointment of a permanent Chief of Police, without written notice and the reason(s) therefor, as well as the opportunity for an administrative appeal. The removal of Employee by the City, for the purpose of implementing the goals or policies, or both, of the City, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute reason or reasons within the meaning of this Agreement and Government Code section 3304(c). Nothing in this Section shall be construed to create a property interest in Employee's job as Interim Chief of Police. In the event Employee is terminated by virtue of the expiration of this Agreement, CalPERS hours limitations, or the City's appointment of a permanent Chief of Police, he shall not be entitled to written notice or an administrative appeal of his termination.

D. In accordance with state law and the requirements of the California Public Employees Retirement Law, Employee may not be reappointed to this position following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

E. After notice of resignation or termination, Employee shall cooperate with the City, as requested by the City, to effect a transition of Employee's responsibilities and duties and to ensure that the City is aware of all matters being handled by Employee.

F. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

Section 5. NOTICES

Notices required to be served pursuant to this Agreement shall be served in person or by first-class U.S. mail addressed as follows:

City

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

Employee

Mark Kling
Address on file with the City

Section 6: GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of this Agreement are described as follows:

A. 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 Employee's employment, or any other intentional or malicious conduct or gross negligence of Employee.

B. Entire Agreement. The text of this Agreement shall constitute the entire and exclusive agreement between the Parties regarding the subject matter hereof. All prior oral or written communications, understandings, or agreements between the Parties not set forth herein shall be superseded in total by this Agreement. No amendment or modification to this Agreement may be made except by a written agreement signed by the Employee and the City Manager and approved as to form by the City Attorney.

C. Assignment. This Agreement is not assignable by either the City or Employee.

D. Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

E. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions in 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 time or times.

F. Governing Law and Jurisdiction. 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. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in San Bernardino County, California. Employee expressly waives any right to remove any such action from San Bernardino County.

G. Effective Date. This Agreement shall not become effective until the later of the following to occur: i) December 29, 2017 or ii) the date on which the Agreement has been executed by both Employee and the City Administrator.

H. Effect of Agreement on Employee's CalPERS Retirement Benefits. The City makes no representation on the impact, if any, this Agreement shall or may have upon his CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

I. No Unemployment Insurance Benefits Received By Employee. Employee expressly certifies and warrants to the City that he has not received any unemployment insurance

payments for retired annuitant work for any public employer within the 12 months prior to his appointment date.

J. Compliance With 960 Hours Per Fiscal Year Limit. Employee further certifies and warrants to the City his anticipated work schedule of 40 hours per week will not cause him to exceed the 960 hours per fiscal year limit pursuant to Government Code subdivision 21221(h), including work for any other CalPERS employer during the current fiscal year.

K. 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 1090, 1125, and 87100 *et seq.* of the Government Code, and all other similar statutory and administrative rules. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonable might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. The City understands and agrees that Employee is an associate professor of criminal justice, provides consulting and other services to private and public entities and Employee may continue to provide such consulting services, so long as the following requirements are met: (1) the services shall not be performed with City resources and shall not distract Employee from his functions and duties as Interim Police Chief; (2) Employee's functions and duties as Interim Chief of Police shall take priority over any such services; (3) Employee's other services shall not involve projects within or that affect the City; (4) the services shall not otherwise conflict with the interests of the City or violate any conflict of interest laws or regulations; and (5) Employee shall report sources of income for such services as required under applicable laws or regulations.

L. 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, that each has carefully reviewed this entire Agreement, 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.

M. Government Code §§ 53243 - 53243.4. Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require 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. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited 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 non-contractual payments upon conviction or crime involving office or position.

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

Employee represents 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.

IN WITNESS WHEREOF, the City of Rialto has caused this Agreement to be signed and executed on its behalf by its City Administrator, and approved as to form by the City Attorney, and executed by the Employee.

CITY OF RIALTO,

Dated: _____

Mike Story
City Administrator

Approved as to form:

Dated: _____

Fred Galante
City Attorney

EMPLOYEE,

In signing this Agreement, Employee understands and agrees he is an **at-will employee** and his rights to employment with the City are governed by the terms and conditions of this Agreement rather than the ordinances, resolutions, and policies of the City, which might otherwise apply to classified or other employees of the City. Employee further acknowledges he was given the opportunity to consult with an attorney prior to signing this Agreement.

Dated: _____

Signed: _____
Mark Kling
Employee

EXHIBIT A