

CITY OF RIALTO
CHIEF OF POLICE EMPLOYMENT AGREEMENT

This CHIEF OF POLICE EMPLOYMENT AGREEMENT (hereinafter referred to as the “AGREEMENT”) is entered into on December 11, 2018 and made effective the 23rd day of December 2018, by and between the CITY OF RIALTO, a general law city and municipal corporation (hereinafter referred to as the “CITY”) and MARK KLING, an individual (hereinafter referred to as “EMPLOYEE”). For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, pursuant to California Government Code §34856 and the Rialto Municipal Code (“RMC”) §2.04.100, the City Administrator has the authority to appoint the Chief of Police under the supervision and control of the City Council of the CITY; and

WHEREAS, on July 11, 2017, the City Council adopted Ordinance No. 1591, amending RMC §2.50.060, which ordinance provides that department heads/ directors are exempt from the CITY’s competitive service and that employees not included in the competitive service shall serve at the will and pleasure of their appointment authority and may be terminated from employment at any time without cause and without right of appeal or hearing; and

WHEREAS, the designation of department heads as at-will employees made by Ordinance No. 1591 applies to those department heads hired after the effective date of the ordinance on August 24, 2017; and

WHEREAS, the CITY’s former Chief of Police retired on December 28, 2017; and

WHEREAS, during the CITY’s recruitment for a permanent Chief of Police, the CITY hired EMPLOYEE, who is a CalPERS retired annuitant, to be interim Chief of Police for the CITY effective December 29, 2017; and

WHEREAS, during the course of its recruitment for the permanent Chief of Police position, the CITY was not able to retain a Chief of Police suitable for the CITY’s needs; and

WHEREAS, EMPLOYEE formerly served as the CITY’s Chief of Police, between August 20, 2006 and his retirement from the CITY on December 30, 2011; and

WHEREAS, the CITY has been satisfied with EMPLOYEE’s performance as Chief of Police, both during his tenure as permanent Chief of Police between August 20, 2006 and December 30, 2011 and again as interim Chief of Police between December 29, 2017 and the present; and

WHEREAS, at the time of EMPLOYEE’s retirement from the CITY in 2011, EMPLOYEE’s base salary was \$191,268, and additionally the CITY paid the employer share of

his CalPERS retirement contribution of 9% as well as the employee share of 9% as “Employer-Paid Member Contributions (EPMC)[;]” and

WHEREAS, as material inducement for EMPLOYEE’s reinstatement from retirement to serve as the CITY’s Chief of Police, the CITY desires to compensate EMPLOYEE at a base salary level commensurate with his prior experience of Chief of Police at the CITY and to account for the current requirement that EMPLOYEE must pay twelve percent (12%) of his salary towards the employer’s share of his CalPERS contributions; and

WHEREAS, as additional material inducement for EMPLOYEE’s reinstatement from retirement to serve as the Chief of Police for the CITY, the CITY desires to guarantee to EMPLOYEE a minimum term of employment of one (1) year, notwithstanding the general requirement in the RMC that department heads hired after the effective date of Ordinance No. 1591 are at-will employees; and

WHEREAS, concurrent with the adoption of this AGREEMENT, the CITY has amended its publicly available pay schedule to update the compensation for the Chief of Police position, consistent with the requirements of 2 C.C.R. §570.5(a) [CalPERS requirement of publicly available pay schedule] and RMC §2.12.070, which provides that “[a]ll city officers and employees receive such compensation as may be fixed from time to time by resolution of the city council unless otherwise provided for. . . . [;] and

WHEREAS, the interim City Administrator and City Council desire to appoint EMPLOYEE to serve in the position of Chief of Police for the CITY, the duties of which position are generally set forth in Government Code §§41601-41612, and in the Chief of Police Classification Specifications adopted by the CITY and attached hereto as Exhibit “A”; and

WHEREAS, EMPLOYEE desires to perform and assume responsibility for the provision of Chief of Police professional services to the CITY and to reinstate from retirement in order to provide such services; and

WHEREAS, the Parties agree that EMPLOYEE has the necessary qualifications and experience to perform as CITY’s Chief of Police; and

WHEREAS, the Parties wish to establish the terms and conditions of EMPLOYEE’s provision of Chief of Police professional services to the CITY through this AGREEMENT.

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

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. The CITY hereby appoints EMPLOYEE as Chief of Police for the CITY to perform the functions and duties of said position, including those essential duties specified in the Classification Specifications for the Chief of Police as described in Exhibit “A” and those functions and duties set forth in §§41601-41612 of the

Government Code of the State of California and RMC §2.40.040. Additionally, EMPLOYEE shall perform such other legally permissible and proper functions and duties as the City Administrator shall, from time-to-time, direct or assign as appropriate to the position of Chief of Police. EMPLOYEE shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote EMPLOYEE's best efforts and full-time attention thereto.

1.2 Work Schedule. It is recognized that the Chief of Police 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 Chief of Police will require EMPLOYEE to generally observe normal business hours, Monday through Thursday, and will also often require the performance of necessary services outside of normal business hours. EMPLOYEE's compensation (whether salary or benefits) is not based on hours worked. 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.

1.3 Fair Labor Standards Act ("FLSA") Exempt Status. EMPLOYEE acknowledges and agrees that the Chief of Police position is that of an exempt employee for the purposes of the FLSA.

1.4 Employment Status. The CITY agrees to employ EMPLOYEE as its Chief of Police from the Effective Date of this AGREEMENT until December 30, 2019. Nothing in this section shall preclude the CITY and EMPLOYEE from extending the term of this Agreement beyond its termination date under mutually agreed upon terms and conditions which must be reduced to writing and signed by the CITY and EMPLOYEE.

(a) The CITY acknowledge that it shall not terminate this Agreement without cause prior to December 30, 2019.

(b) In the event that CITY terminates the Agreement for cause during the initial term of the contract the EMPLOYEE shall be afforded California Government Code Section 3300, et. seq. Peace Officer Procedural Bill of Rights (POBOR). See section 3.5 of this AGREEMENT. For cause, for the purposes of this section shall mean conviction of a felony or conviction of a crime involving moral turpitude. Allegations involving cause entitle EMPLOYEE to the protections provided by California Government Code Section 3300, et. seq. EMPLOYEE shall be entitled to appeal any such discharge by requesting an evidentiary hearing before an independent hearing body selected by mutual agreement of the parties or, if the parties are unable to agree, a professional hearing officer selected by mutual agreement from a list provided by the State Mediation and Conciliation Service. The City shall bear the burden of establishing by a preponderance of the evidence that EMPLOYEE has been terminated for cause within the meaning of this Agreement. Costs of the hearing shall be covered by the City. If the hearing officer determines that the City did not have cause for termination within the meaning of this Agreement,

EMPLOYEE will be entitled to reinstatement as police chief and CITY agrees to report to CalPERS regarding no break in employment, including reportable salary and benefits.

(c) Effective December 31, 2019, by mutual agreement between the parties this AGREEMENT may be extended. Future agreement of continued employment consists of EMPLOYEE serving at the will and pleasure of the City Administrator, subject to consultation with City Council, and understands that he shall then be an “at-will” employee.

1.5 Other Activities. EMPLOYEE shall focus his professional time, ability, and attention to the CITY’s 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 the Chief of Police. Notwithstanding the foregoing, 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 teaching and 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 Chief of Police; (2) EMPLOYEE’s other services shall not involve projects within or that affect the CITY; (3) the services shall not otherwise conflict with the interests of the CITY or violate any conflict of interest laws or regulations.

1.6 Exclusion from Personnel System. EMPLOYEE understands, acknowledges and agrees that EMPLOYEE is exempt from the CITY’s competitive service pursuant to RMC §2.50.060 (Ordinance No. 1591).

1.7 CITY Documents. All data, studies, reports and other documents prepared 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 production and/or development of memoranda, 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. 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 (i) law, (ii) any governmental agency, (iii) subpoena, or (iv) an order issued by a court of competent jurisdiction.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Base Salary. For the services rendered pursuant to this AGREEMENT, EMPLOYEE’s initial annual base salary shall be Two Hundred and Thirty

One Thousand and Three Hundred and Sixty Seven Dollars (\$231,367.00) ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid, effective the first full pay period after December 23, 2018. Such base salary shall be subject to normal and proper withholdings as determined by state and federal law and as determined appropriate by the CITY and shall be subject to payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Business Expense Reimbursements. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence, and other CITY related business expenses incurred by EMPLOYEE in the performance of his duties. All reimbursements shall be subject to and in accordance with California law, the CITY's adopted travel & meeting/mileage reimbursement policy, and IRS rules for reporting compensation through payroll or reimbursement through accounts payable.

3.0 TERM

3.1 Commencement & Effective Date. EMPLOYEE shall commence service at a time upon which the City Administrator and EMPLOYEE may mutually agree. In the event EMPLOYEE commences services on a date other than December 23, 2018, such date shall be deemed the effective date of this AGREEMENT ("Effective Date").

3.2 Term. This AGREEMENT shall commence as of the Effective Date specified in Section 3.1 and shall automatically terminate on December 30, 2019, provided, however, that prior to such date, the parties may mutually agree to extend the term of this AGREEMENT for a mutually desired period of time in accordance with Section 7.2. Additionally, this AGREEMENT may be terminated prior to this date by either Party pursuant to Section 3.4 or 3.5 ("Term").

3.3 Termination of Interim Police Chief Employment Agreement. The Parties agree that the Interim Police Chief Employment Agreement between the CITY and EMPLOYEE effective December 28, 2017 shall terminate automatically upon the Effective Date of this AGREEMENT.

3.4 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. If EMPLOYEE terminates this AGREEMENT, he shall not be entitled to any severance.

3.5 Termination by CITY for Cause.

(a) The CITY may only terminate this AGREEMENT for sustained cause during the initial contract term by providing EMPLOYEE with thirty (30) business days' written notice of the termination for sustained cause and the facts and grounds constituting such sustained cause. The term "sustained cause" shall be defined to include any investigated sustained misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) Deliberate breach of this AGREEMENT, 2) Conviction of a misdemeanor involving moral turpitude (i.e., offenses

contrary to justice, honesty, or morality), conviction of a felony under California law,) 3) Engaging in conduct tending to bring embarrassment or disrepute to the CITY,4) “Abuse of office or position” as defined in Government Code §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 administrative leave involving a suspected misdemeanor violation, or on unpaid leave involving an allegation of a felony offense until resolution. In order to comply with the requirements of California Government Code §3304(c), a termination by the City Administrator for sustained cause shall be conducted in accordance with California Government Code 3300 et. seq. (POBOR).

4.0 BENEFITS AND OTHER COMPENSATION

CITY intends to provide EMPLOYEE benefits generally consistent with those provided to members of the CITY’s City Government Management Association (“CGMA”) pursuant to the memorandum of understanding between the CITY and the CGMA then in effect. Exceptions include that EMPLOYEE is to be credited with one hundred twenty (120) hours of sick leave upon his appointment and will accrue sick leave at the rate of ten (10) hours per month. The benefits to be provided to EMPLOYEE are as follows:

4.1 Insurance Programs

(a) Health Insurance

(1) Active Employment. EMPLOYEE shall be provided with a Cafeteria Plan, which will be administered by the CITY pursuant to Section 125 of the Internal Revenue Code. (The Cafeteria Plan is designed to give employees the flexibility to choose various medical and dental insurance benefits provided through CITY plans.) EMPLOYEE may also choose the opt-out provision of the Cafeteria Plan as outlined in the paragraph below. CITY’s contribution to the Cafeteria Plan will be one hundred percent (100%) of the Health and Dental insurance premiums for EMPLOYEE and eligible dependents.

(2) Opt-out provision. EMPLOYEE may opt to receive an in-lieu payment of up to one thousand one hundred dollars (\$1,100) per month of CITY’s contribution if he does not purchase any of the benefits provided by the CITY. EMPLOYEE must provide the CITY with written notice/waiver of paid health 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.

(3) Retiree Health. EMPLOYEE shall retain all current CalPERS health benefits upon retirement from the CITY. CITY shall pay EMPLOYEE’s and eligible dependent’s health care benefits upon retirement from the CITY consistent with the retiree health benefits paid to CGMA employees that was in effect at time of EMPLOYEE’s initial retirement date of December 29, 2011, pursuant to the existing MOU between the CITY and CGMA.

(b) Income Protection Insurance. CITY shall pay for income protection insurance coverage.

(c) Life Insurance. CITY will pay one hundred percent (100%) of the premium for EMPLOYEE and dependent term life insurance coverage contracted by 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

(d) Long-Term Disability Insurance. CITY will pay one-hundred percent (100%) of the premium for long-term disability insurance for EMPLOYEE.

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

4.2 Workers' Compensation Insurance And Sick Leave. EMPLOYEE may use accumulated but unused sick leave while on an absence due to an industrial injury in addition to any worker's compensation payment; the combination of the two shall not exceed one hundred percent (100%) of EMPLOYEE's base salary. Additionally, as a public safety employee, EMPLOYEE shall also be eligible for Labor Code §4850 benefits .

4.3 Retirement

(a) Employee Contribution. EMPLOYEE retired as a CalPERS "classic" member from the CITY in December 2011. Although CalPERS and not the CITY decides EMPLOYEE's CalPERS membership status, the Parties understanding is that because EMPLOYEE retired from the CITY as a CalPERS "classic" member, and will be reinstating to employment with the CITY, he is eligible to be reinstated as a CalPERS "classic" member pursuant to CalPERS Pub. 37, "A Guide to CalPERS Reinstatement from Retirement," p. 6. Accordingly, as a CalPERS "classic" member, EMPLOYEE must pay twelve percent (12%) of his salary towards the employer's share of CalPERS contributions.

Following any required contract amendments with CalPERS, contributions made by EMPLOYEE described above that are towards the employer's share shall be in accordance with IRS Code Section 414(h)(2) (or its successor) whereby employee contributions to the employer's share of PERS are tax deferred (not subject to taxation until time of constructive receipt) so long as allowed by applicable law.

(b) Benefit Formula. EMPLOYEE shall be in the CalPERS 3% at age 50 formula as a public safety member.

(c) Employer-Paid Member Contributions (EPMC). CITY will report as compensation for retirement purposes the employer paid member contribution of nine percent (9%) for safety members.

(d) PERS COLA. The CITY contracts with CalPERS to provide (up to) a four percent (4%) COLA for public safety retirees.

4.4 Deferred Compensation

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. CITY shall contribute seven hundred fifty dollars (\$750) per month towards EMPLOYEE's deferred compensation plan.

4.5 Educational Reimbursement

The City agrees to reimburse EMPLOYEE for education expenses as follows:

(a) One hundred percent (100%) of classes to maintain State-required certification, if classes attended after normal work hours.

(b) CITY agrees to 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.

(c) 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.

(d) 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.

4.6 Educational Incentive

The Parties acknowledge that EMPLOYEE has a doctoral degree from an accredited college or university. Accordingly, EMPLOYEE shall receive an additional seven and one-half percent (7.5%) of his regular base salary as an educational incentive. (The same educational incentive is available to all CITY department heads pursuant to the memorandum of understanding between the CITY and the CGMA in effect as of the date of this AGREEMENT.) The educational incentive shall be reported to CalPERS as special compensation in accordance with Government Code § 20636(c)(2) and Title 2, Cal. Code of Regs. § 571(a)(2).

4.7 Holidays.

(a) EMPLOYEE shall be entitled to those holidays granted to CITY employees, which consist of the following:

New Year's Day

Martin Luther King Day
Presidents' Day
Cesar Chavez Day
Memorial Day
Independence Day
Labor Day
Veterans Day
Thanksgiving Day
Christmas Eve
Christmas Day

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

4.8 Vacation Accrual Accounting.

(a) Maximum accrual. EMPLOYEE may accrue a maximum of six hundred (600) hours as of June 30, of any fiscal year.

(b) Accrual rate. EMPLOYEE shall accrue vacation leave at the rate of ten (10) hours per pay period or two hundred and sixty (260) hours per fiscal year. (EMPLOYEE accrued vacation at this rate prior to his retirement in 2011.)

(c) Cash out. 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 EMPLOYEE's then current base salary rate at the time of cash out, including any special compensation.

4.9 Administrative Leave. EMPLOYEE will be credited with administrative leave as follows:

(a) One hundred forty (140) hours administrative leave per fiscal year.

(b) Administrative leave hours will be credited on July 1 of each fiscal year.

(c) Accrual of administrative leave hours is capped at 140 hours total.

(d) For the basis of recording usage of administrative leave, EMPLOYEE shall be considered being on a forty (40) hour work week.

(e) Administrative leave will be prorated for the fiscal year.

4.10 Car Allowance. The CITY shall provide EMPLOYEE the use of a CITY emergency police vehicle.

4.11 Uniform. The CITY will provide EMPLOYEE two (2) complete uniforms. Additionally, subject to the prior written approval of the City Administrator, the CITY shall reimburse EMPLOYEE reasonable expenses incurred for uniform repair and/or replacement.

4.12 Sick Leave.

(a) Accumulation. Upon the Effective Date, EMPLOYEE shall be credited with 120 hours of sick leave. Thereafter, sick leave shall be accumulated at the rate of ten (10) hours per month or one hundred and twenty (120) hours per fiscal year..

(b) Cash out. 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 EMPLOYEE's base salary rate at the time of cash out, including any special compensation.

(c) Pay on Termination. Should EMPLOYEE separate from CITY service due to retirement, resignation, layoff or death, he shall be paid one hundred percent (100%) of his accumulated and unused sick leave at his then-current hourly rate at separation less one hundred twenty (120) hours.

4.13 Bereavement Leave. In the event EMPLOYEE is absent from work by reason of a death in the immediate family, he may be allowed a leave of absence with pay. EMPLOYEE may be allowed up to three (3) cumulative working days (30 hours) per occurrence for in-state services and up to five (5) cumulative working days (50 hours) per occurrence for out-of-state services. Such leave will not be deducted from the EMPLOYEE's sick leave. This leave must be requested in writing, with the approval of the City Administrator or designee.

4.14 Rialto Fitness Center. EMPLOYEE and his spouse shall continue to be allowed free use of the Rialto Fitness Center during normal operating hours as long as the CITY has managerial control of the facility. EMPLOYEE and his spouse shall adhere to the same regulations regarding reservations and the use and care of the facilities as the general public.

4.15 Longevity Pay. Should EMPLOYEE accrue more than 10 years of cumulative service with the CITY, he shall receive longevity pay in the amount of 1.5% of his base salary. (The same longevity pay incentive is available to all CITY department heads pursuant to the memorandum of understanding between the CITY and the CGMA presently in effect.) Longevity pay, if applicable, shall be reported to CalPERS as special compensation in accordance with Gov't Code §20636(c)(2) and Title 2, Cal. Code of Regs. §571(a)(2).

4.16 City Administrator Amendment Authority. Pursuant to Section 7.2 of this AGREEMENT, the City Administrator shall have the authority to agree with EMPLOYEE to amend this AGREEMENT to provide employee benefits, as provided for in this Section 4.0, consistent with the procedures and benefit levels provided to CGMA members pursuant to the CGMA memoranda of understanding then in effect. During the initial 1-year term of this AGREEMENT, EMPLOYEE is not subject to any city/employee labor/benefit reopener.

5.0 PROFESSIONAL DEVELOPMENT

5.1 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.

5.2 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 his 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 his sole discretion, approve such unbudgeted expenditures if he deems it in the best interests of the CITY.

5.3 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 his employment with CITY in accordance with the CITY's policies for expense reimbursement.

5.4 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.

5.5 Approval by City Administrator. To be eligible to receive reimbursement for the memberships and travel and other expenses incurred pursuant to this Section 5.0, EMPLOYEE shall obtain advance approval of the City Administrator where practical to do so or, in the event such approval cannot be timely obtained, advance approval from the City Administrator's designee.

6.0 INDEMNIFICATION

6.1 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.

6.2 Bonds. The 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.

7.0 GENERAL PROVISIONS

7.1 Entire AGREEMENT. This AGREEMENT represents the entire AGREEMENT and understanding between the Parties and supersedes any and all other

agreements and understandings, 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. No ordinances or resolutions of CITY governing employment, including the City's Personnel System and any personnel rules, shall apply unless specified herein. 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.

7.2 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.

7.3 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.

7.4 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 S. Palm Ave.
Rialto, California 92376

To Chief of Police :

Mark Kling
[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.

7.5 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 1126 of the Government Code, and all other similar statutory and administrative rules.

7.6 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.

7.7 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.

7.8 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.

7.9 Government Code §§ 53243 - 53243.4. 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.

EMPLOYEE represents that 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 a 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 EMPLOYEE's office or position.

7.10 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, or had the opportunity to do so, 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.

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 officers thereunto duly authorized, and EMPLOYEE has signed and executed this AGREEMENT, all in triplicate.

CITY OF RIALTO

Deborah Robertson, Mayor

ATTEST:

Barbara A. McGee, City Clerk

APPROVED AS TO FORM:

Fred Galante, City Attorney

CHIEF OF POLICE

Mark Kling

EXHIBIT A