

## **EMPLOYMENT CONTRACT BETWEEN THE TOWN OF COLMA AND CHIEF OF POLICE KIRK STRATTON**

This contract is made and entered into by and between the Town of Colma, State of California, a municipal corporation, hereinafter called Employer and Kirk Stratton, Employee.

### **RECITALS**

#### **1. Purpose.**

This contract is made because:

- (a) Employer desires to secure and retain the services of Employee as Chief of Police, as provided by the Municipal Code of the Town of Colma and by the laws of the State of California, to provide inducement for Employee to remain in such employment; and to assure Employee's morale and peace of mind with respect to future security;
- (b) Employee desires to serve as Chief of Police of the Town of Colma; and
- (c) Employee will become an at-will employee and the parties desire to provide a just means for terminating Employee's services.

#### **2. Duties**

- (a) The Town shall employ Employee on a full-time basis, on a work schedule determined by the City Manager. Employee's duties shall be those generally found in the job description for this position, state law, the Town's Municipal Code and policies, and other duties as assigned by the City Manager. These duties may be modified in the future by the Town Manager (or designee) or Town Council.
- (b) Employee shall faithfully, diligently, and to the best of Employee's abilities perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the Town. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the Town's business and affairs. Absent prior written consent from the Town, so long as Employee is employed with the Town, Employee shall not engage in activities that would unreasonably interfere with the performance of Employee's duties or compete with the Town's business.
- (c) Employee shall not engage in any employment, activity, service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or interferes with the performance of the duties required under this Agreement.
- (d) Employee is expected to devote necessary time outside normal office hours to the business of the Town and, to that end, Employee shall be allowed flexibility in setting his own office hours when reasonably necessary to accommodate such activities.

### **3. Salary**

(a) Beginning with the first pay period following execution of this contract, Employer shall pay Employee a salary of \$170,000.00 per year, or such greater salary or benefits as may be hereinafter authorized by the City Council. The salary shall be paid at the same time and manner as salaries are paid for police officers of the Town of Colma.

(b) Employee understands and acknowledges that Employee is obligated to pay, out of his salary, the Employee's share of contributions to CalPERS and the Employee's share of contributions due under the Federal Insurance Contributions Act (FICA), Federal Unemployment Act (FUTA) and State Unemployment Insurance Act (SUI). Employee authorizes Employer to withhold from Employee's salary the amount of these contributions.

(d) Employer shall not, at any time during this Contract, reduce the salary, compensation or other financial benefits of Employee except to the degree of such reduction across the board for most employees of Employer.

### **4. Benefits**

Employee shall receive the benefits as are provided for peace officers by the Colma Municipal Code, the Colma Administrative Code, and the Memorandum of Understanding between the Town of Colma and the Colma Peace Officers' Association, except that:

(a) *Vacation.* Employee shall accrue five weeks per year, accrued monthly beginning upon commencement of employment. Only two weeks of accrued vacation may be carried forward to the next year.

(b) *Management Leave.* Management leave shall be credited to Employee in advance in a prorated amount as of the effective date of this contract and in the full amount on January 1 of each calendar year hereafter. Employer shall grant Employee ten (10) days management leave per year, less the Employee's management leave balance at close of business on December 31, if any. Management leave shall be earned and accrued on January 1 of each year only. If Employee has a management leave balance at close of business on December 31, that balance shall be carried over to January 1, and the number of days of management leave that will be granted to Employee will be fifteen days less the balance carried over from December 31 to January 1.

(c) *Use of Police Car.* Employer shall provide a police car to Employee for his sole and exclusive use for travel while on duty, travel between his residence and the Town, and for any work-related travel. Employee is permitted and encouraged to take the police car home so that Employee can travel to and from the Town in the event of an emergency. The Town police car shall be fueled, insured and maintained at the Town's expense.

(d) *Bond.* Employer shall pay the cost of any employment bonds required for Employee by Employer.

(e) *Uniform Allowance.* If Employee wears a police uniform on a regular basis, Employee shall receive the same uniform allowance as is given to police sergeants.

## **5. Expenses**

The Employer shall pay all reasonable and necessary business expenses of the Employee, including subscriptions, dues and membership fees and similar expenses to local, state and national professional associations. Payment or reimbursement of reasonable travel, lodging and meals incurred in connection with such participation is subject to approval by the City Manager either through approval of the expense as a budget item or specific approval of a particular event.

## **6. Term**

(a) The term of the employment under this Contract shall continue until either party gives written notice of termination as provided below. Employer has delegated the power to terminate this Contract to the City Manager, and Employee understands and acknowledges the same.

(b) No one other than the City Council can enter into a Contract for employment for a specified period of time or make any contract contrary to the policy of at-will employment. Further, any such contract must be in writing and approved by the City Council at a public meeting duly held in accordance with law.

(c) Employee agrees to remain in the exclusive employ of Employer until termination of employment upon written notice thereof as hereinafter provided. Notwithstanding the foregoing, nothing herein shall prohibit Employee from engaging in consulting for government agencies, occasional teaching or writing on Employee's time off.

(d) On reasonable notice to the City Manager, Employee may, and is encouraged, to attend conferences and professional development meetings and conventions, as a part of his duties, provided that the subject matter is related to Employee's duties and that attendance does not unduly interfere with performance of his regular duties.

## **7. Termination by Employee**

(a) Subject to the limitation hereinafter set forth in this section, the Employee may resign at any time from the Employee's position with Employer upon giving the City Manager at least thirty (30) days' notice in writing of Employee's intention to resign, stating the reasons therefor.

(b) During the 30-day period after giving notice of termination, Employee may not take any time off for vacation, management leave, accumulated sick leave, or any other similar reduction of working time, without the express consent of the City Manager.

## **8. Termination by Employer**

(a) Employee may be terminated at any time on written notice by City Manager (or in his or her absence, the acting City Manager), with or without cause, subject to the restrictions set forth

in this section and subject to the requirements of Government Code 3304(c) as it may, from time to time, be amended.

(b) Within three calendar (3) days after delivery to Employee of notice of termination, Employee may, by written notification to the City Manager, request an administrative appeal meeting with the City Manager. Thereafter, the City Manager shall fix a time and place for the meeting, within thirty (30) days of such written request by Employee, at which Employee shall appear and be heard, with or without counsel. The meeting shall be informal, and shall not involve the taking of testimony. The Parties expressly agree that this meeting satisfies Government Code section 3304(c)), and that the purpose of the meeting is to allow Employee to present to the City Manager Employee's grounds of opposition to his removal and/or to present any "name-clearing" information he wishes to provide. . However, the City Manager shall have the sole and absolute discretion to terminate, and its action shall be final and shall not depend upon any particular showing or degree of proof at the hearing.

## **9. Severance Pay**

(a) If Employee's employment is terminated by Employer without cause, then the Employer shall pay Employee a lump sum cash payment equal to six months' salary. Monthly salary for the purpose of this paragraph shall be the average monthly salary of Employee paid by Employer during the twelve months prior to notice of termination excluding the value of any benefits.

(b) Notwithstanding any provision of this Contract to the contrary, in the event Employee is terminated for cause, or Employee voluntarily resigns or retires, then in that event Employer shall have no obligation to pay the severance pay designated in this paragraph. Termination for cause means that the termination of Employee is the result of Employee's gross mismanagement or Employee's commission of an act of moral turpitude. In such an instance, Employee's sole remedy shall be a judicial action in declaratory relief to determine whether there was substantial evidence of gross mismanagement and/or an act or acts of moral turpitude. If the court determines there was not substantial evidence, Employee shall receive the severance pay provided in this subsection, but no other damages.

(c) Eligibility for the severance payment described in this Agreement is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against the Town, its officers, directors, and employees, and (ii) a covenant not to sue the Town, its officers, directors, and employees. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. The Severance Payment and leave cash-out shall be paid by Town in one lump sum, less applicable deductions, within ten (10) business days of the effective date of Employee's waiver and release/covenant not to sue.

## **10. Reviews**

The City Manager shall will meet with Employee within ninety days of the start of Employee's employment, and annually thereafter, to evaluate his performance, discuss performance expectations and other objectives, and make a recommendation regarding a possible increase in

his compensation. This paragraph is directory, not mandatory, and failure to provide a performance evaluation shall not be considered a breach of this contract.

**11. Residence**

Employee must at all times maintain his residence within twenty-five miles of City Hall.

**12. Personnel Policies and Procedures Manual**

(a) Except as explicitly provided to the contrary in this Contract, all provisions of the Town of Colma Personnel Policies in effect from time to time will be applicable to the Chief of Police.

(b) Employer may take disciplinary action relating to Employee without following the procedures set forth in the Colma Personnel Policies for imposing discipline upon regular employees who are not at-will employees.

**13. Notice**

Any notice required or permitted to be given under this Contract shall be sufficient if in writing and if sent by registered mail or certified mail to Employee's residence in the case of the Employee, or to the City Attorney or to the City Manager in the case of the Employer.

**14. Waiver of Terms**

A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by Employer, and the Employer shall be free to reinstate such part or clause.

**15. Applicable Law**

This Contract shall be governed by and shall be construed in accordance with the laws of the State of California.

**16. Disputes**

In the event of a controversy or claim arising out of this Contract which cannot be settled by the parties herein or their legal representatives, it shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction. The prevailing party shall be entitled to its reasonable attorney's fees and costs.

**17. Entire Contract**

This instrument contains the entire contract of the parties. It may not be changed orally but only by a contract in writing signed by the party (and, with respect to Employer, approved by the City Council) against whom enforcement of any waiver, change, modification, extension or discharge is sought.

**18. Knowing and Voluntary Execution**

Employee acknowledges that Employee has not relied on the Town's legal counsel or the Town's officers or directors to provide counseling regarding the meaning or legal impact of the provisions of this Agreement. Employee acknowledges that the Employee has been given a reasonable opportunity to have this Agreement reviewed by an attorney of Employee's choice. Employee further acknowledges that the Employee's execution of this Agreement has not been obtained by any duress, undue influence, coercion or oppressive act(s) by the Town. Finally, the parties fully acknowledge that they each thoroughly and carefully read this Agreement, understand it, and willingly and voluntarily execute this Agreement.

IN WITNESS WHEREOF, the Town of Colma has caused this Contract to be signed and executed on its behalf by the City Manager, and Employee has signed and executed this Contract, both in duplicate, on the respective dates written below.

Dated 10/16/14

TOWN OF COLMA (Employer)

By Helen Fisicaro  
Helen Fisicaro, Mayor

Dated 10/20/14

Kirk Stratton  
Kirk Stratton (Employee)