

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereafter referred to as "Agreement") is made and entered into this 12<sup>th</sup> day of April, 2017, by and between the City of Palm Springs, a California charter city and municipal corporation, (herein "City"), and Edward Z. Kotkin, an individual, on the following terms and conditions:

### RECITALS

A. CITY, by and through the City Council, desires to employ the services of EMPLOYEE as City Attorney of the CITY; and

B. EMPLOYEE desires to accept employment as City Attorney in consideration of and subject to the terms and conditions set forth in this Agreement.

### OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

#### 1. POSITION AND DUTIES

**1.1 Position.** EMPLOYEE accepts employment with CITY as its City Attorney and shall perform all functions, duties and services as set forth in this Agreement. EMPLOYEE shall provide services at the direction and under the supervision of the City Council of CITY.

**1.2 Duties.** The duties of EMPLOYEE shall be determined by the State Law, Municipal Code and City Council, generally in conformance with the job description attached hereto and incorporated herein as though set forth in full as Attachment A to this Agreement. EMPLOYEE shall devote his best efforts and full-time attention to the performance of these duties.

**1.3 Hours of Work.** EMPLOYEE shall devote the time necessary to adequately perform his assigned duties. The work schedule shall be the same as the schedule in place for all other CITY personnel in "management, supervisory or professional" positions as referenced in the CITY'S Personnel Rules, which positions are subject to the CITY's salary and classification schedule for "EXECUTIVE" employees ("Executive Managers"), provided the schedule of such hours provides adequate availability during normal business hours and for the performance of his duties in conducting CITY business. The position of City Attorney shall be deemed an exempt position under applicable wage and hour law. EMPLOYEE hereby acknowledges that he shall not be entitled to any compensation for overtime.

**1.4 Professional Activity.** The City Council desires EMPLOYEE to be reasonably active in national, statewide, regional and professional organizations that will contribute to his professional development and standing and that will contribute to the advancement of the CITY's interests and standing. Toward that end, EMPLOYEE may, upon advance notice to the City Manager, undertake such activities as are directly

related to his professional development and that advance the interests and standing of the CITY, provided that such activities do not in any way interfere with or adversely affect his employment as City Attorney or the performance of his duties as provided herein. CITY specifically agrees to pay EMPLOYEE's annual membership dues to the State Bar of California, including the "Public Law Section," and to the Riverside County Bar Association. CITY further specifically agrees to pay reasonable and necessary costs and expenses arising from and related to EMPLOYEE's compliance with State Bar requirements for mandatory continuing legal education. CITY agrees to reimburse EMPLOYEE'S reasonable and necessary travel, business and subsistence expenses for his Professional Activity hereunder.

**1.5 Other Activity.** In accordance with Government Code Section 1126, during the period of his employment, EMPLOYEE shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity (except as permitted under Section 1.4 [Professional Activity]), regardless of whether for pecuniary advantage, 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 EMPLOYEE'S duties.

**1.6 Performance Evaluation.** Council will hold EMPLOYEE'S initial evaluation session within the first six (6) months of employment. This initial evaluation, and the first evaluation undertaken immediately after any election wherein two (2) or more new members of the City Council are elected, shall incorporate the establishment of common goals and objectives by City Council and EMPLOYEE, with respect to EMPLOYEE's performance of duties hereunder, and otherwise. After the initial evaluation session, City Council shall annually review the performance of the EMPLOYEE subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the City Council and EMPLOYEE. Nothing in this section prevents the City Council from holding more frequent evaluations of the EMPLOYEE if desired.

## **2. TERM**

**2.1 Term.** The term of this Agreement shall commence on May 8, 2017, upon being executed by EMPLOYEE and approved by the City Council. This Agreement shall remain in effect until such time as this Agreement is terminated pursuant to Section 4, below.

**2.2 At-Will Employment, Benefits, Rights.** EMPLOYEE acknowledges that he is an at-will employee of CITY who shall serve at the pleasure of the City Council at all times during the period of his service under this Agreement. The terms and provisions of CITY'S personnel rules, policies, procedures, ordinances and resolutions applicable to at-will employees shall also apply to EMPLOYEE, and he shall be entitled to all benefits and rights afforded to other Executive Managers, except to the extent provided by this Agreement, and, in the case of any conflict between this Agreement, and the Personnel Rules, policies, procedures, ordinances and resolution, the terms of this Agreement shall prevail. Nothing in this Agreement is intended to, or does, confer upon EMPLOYEE any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate

his employment, except as is expressly provided in Section 4 (Termination) of this Agreement. Nothing in this Agreement shall limit any rights afforded EMPLOYEE related to constitutional protections under either federal or state law in continued employment or termination in accordance with the terms of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of EMPLOYEE as provide in Section 4 (Termination). Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from this position with the CITY, subject only to the provisions set forth in Section 4 (Termination) of this Agreement. This at-will Employment Agreement shall be expressly subject to the rights and obligations of CITY and EMPLOYEE, as set forth in this Agreement.

### **3. COMPENSATION**

**3.1 Salary.** For all services performed by EMPLOYEE as the City Attorney under this Agreement, CITY shall pay EMPLOYEE compensation in accordance with the adopted salary schedule for the position, plus all other compensation benefits afforded by CITY to other full time Executive Managers. EMPLOYEE shall be entitled to all cost of living and other salary and benefit adjustments implemented by the CITY as applicable to other full time Executive Managers. The starting annual salary shall be Two Hundred Six Thousand Eighty-Eight Dollars (\$206,088.00), paid bi-weekly according to the payroll schedule in place for CITY employees. All compensation, benefits and leave policies applicable to Executive Managers as contained in CITY'S Personnel Rules and Regulations shall apply.

**3.2 Annual Leave.** All compensation and leave policies applicable to Executive Managers as contained in the CITY'S Personnel Rules and Regulations shall apply. EMPLOYEE shall annually accrue one hundred ninety-two (192) hours of Annual Leave. Annual Leave shall be subject to CITY'S Personnel Rules and Regulations as they apply to other Executive Managers.

**3.3 Automobile Allowance.** EMPLOYEE shall be entitled to an automobile allowance as compensation for the use of personal automobile(s) for CITY business as provided for in CITY policies. The monthly allowance shall be Five Hundred Fifty Dollars (\$550) per month. In addition, EMPLOYEE shall be entitled to excess mileage reimbursement according to adopted CITY policies for any qualifying trip in the course and scope of employment.

**3.4 Transition and Relocation Costs and Expenses.** As a one-time incentive to EMPLOYEE to accept employment hereunder, CITY shall disburse a lump-sum payment to EMPLOYEE in the amount of Twenty Thousand Dollars (\$20,000.00), paid to Employee within three (3) business days of execution of this Agreement; however, in the event that EMPLOYEE terminates this Agreement pursuant to Section 4.5 hereof within one year of the execution of this Agreement, EMPLOYEE shall repay such payment, as and to the extent that that the City Council may require, within ninety (90) days of such termination.

### **4. TERMINATION**

**4.1** The City Council may terminate EMPLOYEE'S employment, and this Agreement, with or without cause at any time upon written notice.

"For cause" is defined as any of the following: (i) an act in bad faith or acting in detriment of the CITY; (ii) refusal or failure to act, upon reasonable notice, in accordance with any specific lawful direction or order of the City Council, provided only that said direction or order shall pertain directly to EMPLOYEE's duties under this Agreement; (iii) unfitness or unavailability for service that exceeds thirty (30) consecutive calendar days and is not the result of any excused illness, approved leave or medical condition; (iv) commission of an act involving moral turpitude or other acts which harm the reputation of or interests of the CITY; (v) habitual neglect of responsibilities, or incompetence; (vi) a conviction of a felony (or entry of a plea of guilty or *nolo contendere* with respect to any such crime); (vii) use of or working while under the influence of alcoholic beverages or other non-prescribed controlled substances, or abuse/misuse of lawfully prescribed controlled substances during working hours; (viii) engaging in an actual conflict of interest; (ix) commission of acts of theft, embezzlement, or fraud; (x) acceptance of bribes or extortion; (xi) material breach of this Agreement by EMPLOYEE. If this Agreement is terminated by the City Council "for cause", EMPLOYEE'S employment shall be deemed immediately terminated and EMPLOYEE shall surrender all CITY keys, computer passwords, and other CITY property entrusted to EMPLOYEE for the purpose of the discharge of his duties. Upon termination for cause, EMPLOYEE shall have no administrative recourse under this Agreement or any administrative procedure for purposes of challenging the termination action.

**4.2** In the event EMPLOYEE is terminated "without cause" or asked to resign during such time that EMPLOYEE is willing and able to perform the Duties under this Agreement, the CITY agrees, upon receipt of a Comprehensive General Release and Settlement Agreement in the standard form sign by EMPLOYEE, to pay EMPLOYEE a lump sum cash payment equal to twelve (12) months of Salary and benefits (Section 3) as severance pay.

**4.3** EMPLOYEE shall receive a lump sum payout of any unpaid accruals of Annual Leave and Sick Leave upon termination of employment for any reason pursuant to CITY policies.

**4.4** EMPLOYEE shall not be entitled to any increases in Salary or benefits afforded by CITY to other Executive Managers following the date of termination.

**4.5** This Agreement may be terminated by EMPLOYEE at any time upon 45 days' written notice to the City Council. If such written notice is given, the CITY has the option to ask EMPLOYEE to leave his position sooner than the expiration of 45 days, but, if it does so, the CITY will continue to honor its obligations under this Agreement until expiration of the 45-day period.

**4.6** EMPLOYEE'S employment and this Agreement shall terminate automatically upon EMPLOYEE'S death. In this event, the CITY shall pay the beneficiary designated by EMPLOYEE in writing, or in the absence of such designation, EMPLOYEE'S estate, his accrued and unpaid compensation, and all accrued but unused benefits, if any, through the date of EMPLOYEE'S death.

4.7 If EMPLOYEE becomes disabled and requires accommodation to permit him to perform the essential functions of the position, the CITY shall provide reasonable accommodation if possible and unless doing so creates undue hardship for the CITY.

4.8 The City Council may not terminate this Agreement without cause within forty-five (45) days of any newly elected City Council member being sworn into office.

**5. PROPRIETARY INFORMATION**

“Proprietary Information” is all information and any idea pertaining to any economic development engaged in or contemplated by the CITY (or any CITY affiliate), including marketing plans and development projects. Proprietary Information shall include, without limitation, trade secrets (as further defined in Uniform Trade Secrets Act, Civil Code §3426 et seq.), ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, and forecasts. During his employment with CITY, EMPLOYEE shall only use Proprietary Information for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, EMPLOYEE shall not use or disclose any Proprietary Information for the benefit of himself or any third party, except with the express written consent of CITY. EMPLOYEE’S obligations under this Section shall survive the termination of his employment and the termination of this Agreement.

**6. CONFLICT OF INTEREST**

EMPLOYEE represents and warrants to CITY that 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.

**7. RESIDENCY**

The Parties understand and acknowledge that Section 10 of Article 11 of the California State Constitution prohibits the CITY from requiring its employees to be residents of the City; nevertheless, EMPLOYEE understands and acknowledges that the Council expects EMPLOYEE, as a full time charter officer, to be an involved and active participant in the Palm Springs community and that such involvement and participation can best be fostered and achieved if EMPLOYEE is a resident of the City. Thus, to the maximum extent permitted under law, EMPLOYEE waives any rights or remedies he may have under the aforementioned provision of state law and agrees to reside within the boundaries of the City during the term of this Agreement. The City Council agrees to reasonably consider any request of EMPLOYEE for relief from the requirements of this Section for good cause as may be presented by EMPLOYEE and only if the City Council finds that the overall goals and expectations as generally provided herein will be sustained. EMPLOYEE shall establish residency pursuant to the provisions of this Section within six (6) months of the date of this Agreement.

**8. GENERAL PROVISIONS**

**8.1 Vehicle Operation.** EMPLOYEE shall operate any vehicle used in connection with the performance of his duties in a safe manner and otherwise in

reasonable observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment. In addition, EMPLOYEE shall maintain in full force and effect during the Term of this Agreement, valid automobile liability insurance providing coverage for collision, personal injury and medical reimbursement, in accordance with the CITY'S Administrative Policy.

**8.2 Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and at the last known address maintained in EMPLOYEE'S personnel file. EMPLOYEE agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

CITY'S Notice Address:  
City of Palm Springs, c/o City Council  
3200 E. Tahquitz Canyon Way  
P.O. Box 2743  
Palm Springs, CA 92263

**8.3 Indemnification.** Subject to, in accordance with, and to the extent provided by the California Tort Claims Act (Government Code Section 810 *et seq.*) the City will indemnify, defend, and hold EMPLOYEE harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission associated with EMPLOYEE'S performance of functions, duties and services set forth in this Agreement.

**8.4 Bonding.** The CITY shall bear the full cost of any fidelity or other bonds required of EMPLOYEE under any law or ordinance.

**8.5 Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of EMPLOYEE'S employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of EMPLOYEE, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to EMPLOYEE and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

**8.6 Amendments.** This Agreement may not be amended, altered or modified, except in a written document signed by EMPLOYEE, and signed by the City Manager with the authorization of the City Council.

**8.7 Waiver.** Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

**8.8 Assignment.** Neither CITY nor EMPLOYEE shall assign any rights or obligations under this Agreement.

**8.9 Severability.** If a court holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

**8.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Riverside County, State of California.

**8.11 Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

**8.12 Acknowledgment.** EMPLOYEE acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.


**IN WITNESS THEREOF**, the CITY COUNCIL has caused this Agreement to be signed and executed on its behalf by its City Manager, and EMPLOYEE has signed and executed this Agreement, as of the date first indicated above.

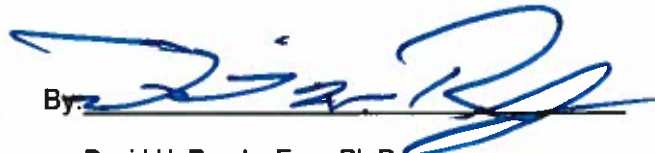
4.7.17  
Date

  
Employee

**"CITY"**

**CITY OF PALM SPRINGS**

**ATTEST:**  
By:   
Kathleen D. Hart, MMC  
Interim City Clerk

By:   
David H. Ready, Esq., Ph.D.,  
City Manager

**APPROVED BY CITY COUNCIL**  
4.5.17 SA AB963