

CITY OF PALM SPRINGS
FIRST AMENDMENT TO
CITY MANAGER EMPLOYMENT AGREEMENT

This First Amendment to City Manager Employment Agreement (“Amendment”) is entered into as of the 13th day of January, 2022, between the City of Palm Springs (hereinafter referred to as the “City”) and Justin Clifton (hereinafter referred to as the “City Manager” or “Employee”).

RECITALS

WHEREAS, the City and City Manager have previously entered into that certain City Manager Employment Agreement, dated as of February 11, 2021 (the “Agreement”); and

WHEREAS, it is the desire of the Parties to amend the Agreement to bring into alignment the City Manager’s paid time off accumulated leave/maximum accrual with those provided to other City executives.

NOW, THEREFORE, the Parties hereby mutually agree and promise as follows:

1. Amendment of Section 3.7 (Paid Time Off). Section 3.7 (Paid Time Off) of the Agreement is hereby amended to read as follow:

“In lieu of any other sick leave, bereavement, vacation leave, family illness leave, or any other leave, City Manager shall be entitled to seven (7) weeks of paid time off (PTO), per year. Such PTO shall accrue as of January 1 of each year of employment. Except as set forth in the preceding sentences, the City Manager’s maximum accrual, annual cash-in, eligibility to use, and disposition upon separation shall be the same as that of provided to members of the Palm Springs Management Association (MAPS), as such provisions may be amended from time to time.”

2. Effective Date. This Amendment shall be effective as of December 1, 2021.

3. Remaining Terms. Except as specifically amended by this First Amendment, all other terms of the Agreement shall remain as set forth in the Agreement.

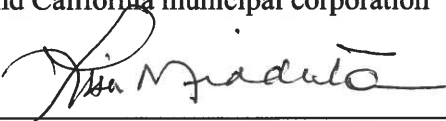
[SIGNATURES CONTAINED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment to City Manager Employment Agreement effective as of the date first written above.

EMPLOYEE/CITY MANAGER

CITY OF PALM SPRINGS, a Charter City and California municipal corporation


Justin Clifton


Lisa Middleton
Mayor

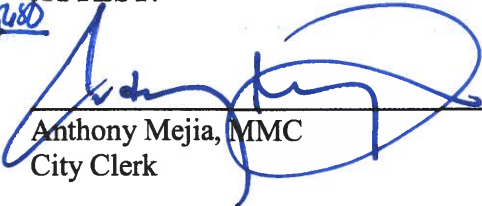
Date: 2/24/22

Date: 02/28/22


APPROVED BY CITY COUNCIL

01/13/2022 Item 1T APPROVED

ATTEST:


Anthony Mejia, MMC
City Clerk

APPROVED AS TO LEGAL FORM:


Jeffrey S. Ballinger
City Attorney

CITY OF PALM SPRINGS

CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement ("Agreement") is entered into as of the 11th day of February, 2021 (the "Effective Date"), between the City of Palm Springs (hereinafter referred to as the "City") and Justin Clifton (hereinafter referred to as the "City Manager" or "Employee"). City and City Manager/Employee are sometimes referred to in this Agreement as "Party" and collectively as "Parties."

RECITALS

WHEREAS, it is the desire of the City Council of the City to retain the services of Employee as City Manager pursuant to Sections 400 through 406 of the City of Palm Springs Charter and Chapter 2.08 of the City of Palm Springs Municipal Code, and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and to set certain working conditions of the City Manager.

NOW, THEREFORE, the Parties hereby mutually agree and promise as follows:

1. Duties, Acceptance of Appointment, Hours of Work.

1.1 Duties.

The City Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City's Municipal Code and Charter. City Manager shall perform such other legally permissible and proper duties and functions consistent with the Office of the City Manager, as the City Council shall from time to time assign. It is expected that City Manager shall abide by the ICMA Code of Ethics. City Manager is encouraged to participate in community and civic affairs.

1.2 Acceptance of Appointment.

City Manager hereby accepts the appointment as City Manager of the City of Palm Springs subject to all terms and conditions set forth in this Agreement.

1.3 Hours of Work.

It is recognized that City Manager devotes a great deal of time outside the normal office hours-schedule, and to that end, he shall be allowed to establish an appropriate work schedule recognizing that the City Manager should endeavor to be available during regular City Hall hours. It is also recognized by the Parties that City Manager is required to devote the amount of time and energy necessary to carry out those duties with the highest amount of professionalism possible. That being the case, the Parties recognizes that City Manager may choose to take personal time off for a portion of regular business hours when it is appropriate and when City Manager's duties allow. This personal time off should not be considered a replacement for paid time off, which should be used as appropriate. This time is also not to be

considered as compensatory time for time spent by City Manager in carrying out the City Manager duties outside normal office hours, as the parties agree that City Manager must devote the amount of time necessary to fulfill those duties.

1.4 Devotion to City Business.

The City Manager's position is full-time. City Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his City Manager duties, except as may be specifically authorized by the City Council.

2. Term & Renewal.

City Manager shall commence his services on April 5, 2021 ("Commencement Date"). The term of this Agreement shall be for two (2) years following the Commencement Date, through April 4, 2023, unless sooner terminated or extended by the Parties as set forth in this Agreement. The term of this Agreement may be extended by the mutual, written agreement of the Parties. In the event the City does not wish to extend the term of this Agreement, the City shall inform the City Manager, in writing, no less than one hundred eighty (180) days prior to the end of the final year of the term.

3. Compensation.

3.1 Salary.

City agrees to pay City Manager, and City Manager agrees to accept from City, as compensation for services rendered by City Manager pursuant to this Agreement, an annual base salary, commencing on the Commencement Date, in the amount of Two Hundred Seventy Five Thousand Dollars (\$275,000) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

On the first anniversary of the Commencement Date and each year thereafter, as part of the City Manager's annual performance evaluation, the Annual Base Salary shall be eligible for a discretionary increase, as determined by the City Council, as part of the performance evaluation process described in Section 4, below.

3.2 Health and Medical Benefits.

Except as provided for otherwise in this Agreement, City Manager shall be entitled to receive all benefits, including opt-out provisions, provided to other City executive management employees.

3.3 Pension.

The City agrees to enroll the City Manager as a new member of the California Public Employees Retirement System (CalPERS) at the 2% at 62 formula in accordance with CalPERS regulations. Employee shall pay the employee contribution. The City will also

provide City Manager with a 457 retirement plan, or such other benefit as chosen by City Manager, and the City shall make contributions to the plan at a rate of Six Hundred Twenty Five dollars (\$625.00) per month.

3.4 Retiree Medical.

The City Manager shall participate in the established Retiree Health Savings Plan (RHSP) for the reimbursement of medical premiums and IRS approved medical expenses in retirement, at the same level and under the same regulations as other management employees hired after December 31, 2014.

3.5 Life and Long Term Disability Insurance.

City Manager shall also be entitled to participate in any group life or disability insurance programs approved by the City for all employees.

3.6 Technology.

The City shall provide the City Manager with a City cellular phone, cellular calling/data plan, laptop and such other technology hardware and software reasonably necessary for the City Manager's performance of his duties under this Agreement, for exclusive use in City-related business. Upon termination of City Manger's employment, the equipment described herein shall be returned to the City.

3.7 Paid Time Off.

In lieu of any other sick leave, bereavement, vacation leave, family illness leave, or any other leave, City Manager shall be entitled to seven (7) weeks of paid time off (PTO), per year. City Manager shall not be eligible to cash out accrued PTO at any time during the term of this Agreement, nor afterward, including at separation.

3.8 Moving Expenses.

The City shall pay City Manager Ten Thousand Dollars (\$10,000), to be used by City Manager, in his sole discretion, for any moving, housing, relocation, or similar expenses. Said payment shall be made at any time following the Effective Date, and may be paid in one or more tranches. In the event of a separation of employment, at any time during the twelve (12) months following the Effective Date, City Manager shall be obligated to re-pay to the City an amount equal to fifty percent (50%) of the amount paid by City to City Manager pursuant to this Section 3.8. In the event of a separation of employment, at any time during the second twelve (12) months of the term of this Agreement, City Manager shall be obligated to re-pay to the City an amount equal to a percentage, which percentage shall be calculated by dividing the number of months of service (or any portion thereof) by twenty four (24) months, of the amount paid by City to City Manager pursuant to this Section 3.8.

3.9 Other Benefits.

In addition, and except as otherwise provided for herein, City Manager shall receive all such other benefits and compensation that are generally applicable to executive managers of the City employed as of the Effective Date of this Agreement, as the same may be modified from time to time after the Effective Date of this Agreement, including, but not limited to, CalPERS retirement benefits, long term disability insurance.

4. Performance Evaluation.

The Council shall review the City Manager's job performance at least once annually. The City Manager shall remind the Council of its obligations under this Section each year and shall work with the Council in finding an appropriate time to place his annual evaluation on the agenda. The Council shall, in writing and in accordance with criteria established by the Council in consultation with the City Manager, develop the annual performance reviews and evaluations. The Council shall provide the City Manager a reasonable and adequate opportunity to discuss the City Manager's evaluation with the Council.

The annual performance reviews and evaluations shall be reasonably related to the City Manager's written job description and shall be based, in whole or in part, on goals for the City Manager's performance that are jointly developed and adopted by the Council and the City Manager.

Separate and apart from the performance evaluation process described above, the City Council and City Manager agree to meet and check in with each other within six (6) months following the Commencement Date, in order to discuss any issues that the City Manager or the City Council may be experiencing relative to City business.

5. Bonds.

City shall bear the full cost of the corporate surety bond required under City Charter Section 402.

6. Auto Allowance.

City Manager shall be entitled to an automobile allowance for a personal vehicle required for City business. The automobile allowance shall be Five Hundred Dollars (\$500) per month. City Manager shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for such personal vehicle. By the City Manager making the City Manager's personal automobile available for use, the City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

7. General Business Expenses.

7.1 City agrees to budget and pay for professional dues and subscriptions for City Manager necessary for his continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations desirable for City

Manager's continued participation, professional growth, and advancement, and for the benefit of the City. At a minimum, such professional dues shall include participation in the International City/County Management Association (ICMA) and the California League of California Cities.

7.2 City agrees to budget and pay for travel expenses, in accordance with existing policy, of City Manager for professional and official travel, board and task-force meetings, conferences, and occasions to adequately continue the professional development of City Manager and to pursue necessary official functions for City.

7.3 City recognizes that the City Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to the City Manager's service to the City. The City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted in accordance with the City's normal expenditure reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting the City's normal requirements and must be submitted within time limits established by the City.

7.4 Notwithstanding the above, to the degree the City must make budget reductions, appropriate reductions in general business expenses commensurate with reductions in other citywide accounts may be made at the sole discretion of the City Council.

8. Abuse of Office or Position.

Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, if City Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

9. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served upon the other Party, or sent by United States Postal Service, postage prepaid and addressed to the other Party at the addresses below. Such addresses may be changed from time to time by written notice to the other Party. Notice 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.

If to City:

City of Palm Springs
Attn: Mayor
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

If to City Manager:

Justin Clifton
(Address to be provided and kept on file with City's
Human Resources Department)

10. Termination.

10.1 At-Will Employee.

City Manager shall serve at the will and pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to suspend from duty, remove from office or otherwise terminate the services of City Manager at any time, at the sole discretion of the City Council. This Agreement may be terminated as follows.

10.2 Termination - Council Vote.

The City Council may remove the City Manager Without Cause by motion adopted by three (3) members of the City Council. Notwithstanding such authority, the City Manager shall not be removed from office during or within a period of ninety days next succeeding any municipal election at which a member of the city council is elected.

10.3 Termination - Change in Form of Government.

If any of the governing policies pertaining to the role, power, duties, authority, or responsibilities of City Manager are amended to substantially change City's form of government, either by action of the City Council, a duly passed initiative measure or state legislation, City Manager shall have the right to terminate the Agreement and receive Severance Pay under Section 10.9.

10.4 Reduction of Salary or Benefits.

The City Council may reduce the Annual Base Salary or any other financial benefit of the City Manager, as provided by this Agreement or in the Municipal Code in a manner equivalent to reductions of all management employees.

10.5 Resignation.

City Manager may voluntarily resign his position as City Manager, after giving City at least sixty (60) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or part by the City Council. In the event the City Manager resigns from his employment with City, the City Manager shall not be entitled to any Severance Pay.

10.6 Death.

If, during the term or any extended term, the City Manager dies, the employment and this Agreement is terminated. The City Manager's estate shall receive any accrued and owed salary and benefits, but shall not be entitled to any additional compensation or payment, including but not limited to Severance Pay.

10.7 Disability.

In the event the City Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, or mental incapacity for a period of six (6) consecutive months, the City may terminate the City Manager's employment and this Agreement. City Manager shall be entitled to Disability benefits as provided by CalPERS and the terms of any Long Term Disability insurance plan, but not any additional compensation or payment, including Severance Pay.

10.8 Cause.

The City Council may remove the City Manager for Cause without any need for Severance Pay by motion adopted by the affirmative votes of a majority of the City Council. Cause for purposes of this Agreement shall only mean the following:

(a) Acts in bad faith or gross misconduct to the detriment of the City or to the City Manager's reputation;

(b) Refusal or failure to act in accordance with any legal requirement or specific direction or order of the City Council;

(c) Unsatisfactory performance (as documented, in writing, with specificity, through the evaluation process described in section 4. Any allegation of unsatisfactory performance shall include a written description of the alleged performance deficiency as well as an opportunity for City Manager to correct such alleged deficiency within a reasonable time period, as determined by the City Council, which time period shall not be less than three months unless the City Council determines that there is an urgent need for correction, in which case a shorter time period shall be provided.), misconduct, dishonesty, habitual neglect, or incompetence;

(d) Involvement in crime involving dishonesty, breach of trust, or public conduct reflecting negatively on the City (no pending criminal prosecution need be in effect for termination due to fraud, embezzlement or public conduct reflecting on the City; rather the Council must only have a good faith belief based on a good faith investigation);

(e) Violation of any City Council adopted policies; or

(f) Breach of any material term of this Agreement, after thirty days' notice and opportunity to cure.

Pursuant to Palm Springs Municipal Code section 2.08.010(b), upon any allegation that the City Manager has engaged in conduct that would result in his termination "for cause" as defined above, the City Manager shall be furnished with a written notice stating the Council's intention to remove him and the reasons therefor at least thirty days before the effective date of his removal. Within seven days after the delivery to him of such notice, the City Manager may by written notification to the City Clerk request a public hearing before the Council. Thereafter the Council shall fix a time for the public hearing, which shall be held at its usual place of meeting before the expiration of the said thirty day period, and at which the City Manager shall appear and be heard. After furnishing the City Manager with written notice of intention to remove, the Council may suspend him from duty but his salary shall continue until his removal by resolution of the Council passed subsequent to the public hearing. The Council, in removing the City Manager, shall use its uncontrolled discretion and its action shall be final, and shall not depend upon any particular showing or degree of proof at the hearing, the purpose of which is to allow the City Manager publicly to present to the Council his grounds of opposition to removal prior to its action. In the event the Council, in its discretion, still finds merit to the allegations and terminates, the City Manager shall not be entitled to any severance and will be owed no further compensation.

10.9 Severance Pay.

In the event this Agreement is terminated pursuant to section 10.2 or 10.3 of this Agreement, the City Manager shall receive a severance payment in lump sum payment that is equal to six months of City Manager's then Annual Base Salary. Such severance payment shall be his sole remedy for termination under sections 10.2 or 10.3 of this Agreement. The Severance Pay shall be paid only after the City Manager executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that one set forth as Exhibit "A" to this Agreement.

Notwithstanding the foregoing, if the City Manager is terminated for Cause, pursuant to Section 10.8 of this Agreement, then City Manager shall not be eligible for Severance Pay.

11. General Provisions.

11.1 This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements on the subject matter hereof, which may have been entered into between the parties. No modification or revision to this Agreement shall be of any force or effect, unless the same is in writing and executed by the Parties hereto.

11.2 Each Party agrees and acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any Party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either Party.

11.3 If any provision, or portion thereof, contained in the Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

11.4 This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be in Riverside County.

11.5 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor 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.

11.6 City Manager acknowledges that he has had an 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.

11.7 In any dispute arising out of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs.

12. Other Terms and Conditions of Employment.

The City, only upon agreement with City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, Municipal Code, or any other law, ordinance or City Resolution.

Except as otherwise provided in this Agreement, City Manager shall be entitled to the highest level of benefits that would be enjoyed by other executive department heads of the City employed as of the date of this Agreement, as provided in the Municipal Code, Personnel Rules and regulations, or by practice.

13. Indemnification.

13.1 City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of City Manager's duties or resulting from the exercise of his judgment or discretion in connection with the performance of his duties, unless the act or omission involved unlawful conduct. City shall not unreasonably refuse to provide for legal representation at City's expense. Legal representation, provided by City for City Manager, shall extend until a final determination of the legal action including any and all losses, damages, judgment, interests, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by such City Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of City Manager's duties.

13.2 City agrees to pay all reasonable litigation expenses of City Manager throughout pendency of any City-related litigation to which City Manager is a party, witness or advisor to

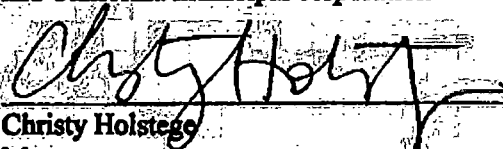
the City. Such expense payments shall continue beyond City Manager's employment with the City as long as litigation is pending. Post-employment, City agrees to pay City Manager for reasonable consulting fees, travel expenses and other costs, when City Manager serves as a witness, advisor or consultant to City regarding pending litigation.

IN WITNESS WHEREOF, the parties have executed this City Manager Employment Agreement effective as of the date first written above.

EMPLOYEE/CITY MANAGER

**CITY OF PALM SPRINGS, a Charter City
and California municipal corporation**


Justin Clifton



Christy Holsteg
Mayor

Date: 2/17/2021

Date: 2/16/2021

ATTEST:

APPROVED BY CITY COUNCIL
A8680 SD 2/11/21


Anthony Mejia, MMC
City Clerk

APPROVED AS TO LEGAL FORM:

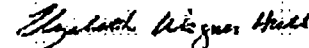

Elizabeth Wagner Hull
Acting City Attorney/Assistant City Attorney

Exhibit "A"

GENERAL WAIVERS AND RELEASES

I, the undersigned, do hereby acknowledge and attest that I have read and understood Section 10.9 of my Employment Agreement with the City of Palm Springs and hereby agree that by accepting Severance Pay pursuant to the terms of my Employment Agreement, I agree to waive all rights to further claims, remedies, or legal action against the City, its officers and employees.

In exchange for receipt of the Severance Pay, and all other salary and benefits owing, I and my representatives, heirs, successors, and assigns do hereby completely release and forever discharge the City of Palm Springs and its related entities and their present and former officers, directors, council members, agents, employees, attorneys, and successors (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which I may have now or in the future arising from any act or omission or condition occurring on or prior to the date this General Waivers and Releases is signed whether based on tort, contract (express or implied), or any federal, state, or local law, statute, or regulation (collectively, the "Released Claims"). Released Claims shall also include, but not be limited to, claims for wages or other compensation due, severance pay, bonuses, sick leave, vacation pay, life or health insurance, or any other fringe benefit.

City Manager knowingly and voluntarily waives any and all rights or benefits that he may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

City Manager acknowledges that he has read and understands this waiver and voluntarily and knowingly is waiving his right under Section 1542 to pursue unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of any kind.

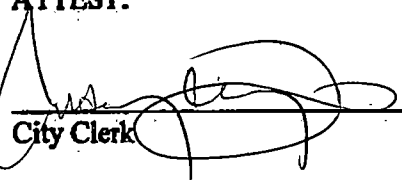
Unless otherwise required by law, City Manager shall not file any claim, sue or initiate an action against any Released Party or participate in any compliance review, action, or proceeding, individually or as a member of a class, under any contract (express or implied), or any federal, state, or local law, statute, or regulation pertaining in any manner to the Released Claims.

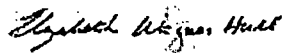
Approved and Agreed to By:


Justin Clifton

CITY OF PALM SPRINGS

Mayor

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

Acting City Attorney/Assistant City Attorney

APPROVED BY CITY COUNCIL
