

**CITY MANAGER EMPLOYMENT AGREEMENT  
BETWEEN  
THE CITY OF INDIAN WELLS  
AND  
WADE G. MCKINNEY**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of the 3<sup>rd</sup> day of March, 2016, between the City Council of and on behalf of the City of Indian Wells (the "City" or the "City Council") and Wade G. McKinney (the "City Manager" or the "Employee"). The above-named parties hereby mutually agree and promise as follows:

**I. TERM.**

The City hereby employs Employee as City Manager for a term of sixty-six (66) months commencing on July 1, 2013 ("Commencement Date"), and continuing through the end of business on December 31, 2018, or until terminated pursuant to Section VIII of this Agreement ("Term").

**II. SALARY.**

**A. Base Salary.** City Manager's current Base Salary shall be two hundred sixteen thousand eight hundred twenty-one dollars and fifty-nine cents (\$216,821.59) per year, which sum shall be paid pursuant to the same procedures established for management employees, and as they may be amended by the City in its sole discretion.

**B. Performance Pay.** The City Manager will be eligible for an annual incentive award not to exceed ten percent (10%) of Base Salary based on the results of his annual performance evaluation. The incentive may be based, in part, on the accomplishment of specific goals set by the City Council that are achieved by the City Manager. Any performance incentive awarded under this Section shall be in a lump sum payment. Notwithstanding the above, the issuance of any incentive award is at the sole discretion of the City Council. Further, any performance pay awarded under this Section shall not become a part of the City Manager's Base Salary.

**C. Salary Adjustment.** City Council may adopt adjustments to City Manager's Base Salary annually through an openly adopted resolution during a regular public meeting of the City Council. Further, whenever a cost of living adjustment or other non-merit based pay increase is provided to other City employees, the City Council shall meet to determine whether it is reasonable and appropriate to provide a similar adjustment or increase to City Manager's Base Salary. In the event such a cost of living adjustment or other non-merit based pay increase is provided to other City employees, it shall be the City Manager's responsibility to coordinate with the Mayor and the Mayor Pro Tem, as the Personnel Committee, to place the consideration of a similar adjustment or increase on the agenda of a regular City Council meeting.

### **III. DUTIES.**

Employee shall perform the duties of the City Manager as prescribed by the City's Municipal Code and in the City Council Policy Manual. In addition to the powers and duties set forth in the Municipal Code and the City Council Policy Manual, the City Manager shall have such powers and duties which are delegated to him by the City Council. The City Manager shall execute all powers and duties in accordance with the policies adopted by the City Council and the California Government Code.

During the Term of this Agreement or any subsequent Extended Term, the City Council will not change any provisions in the City Council Policy Manual relating to City Council, City Manager, and staff relations without meeting and conferring with the City Manager at least once in an attempt to agree on the changes proposed. After one meeting with the City Manager over potential changes to the City Council Policy Manual provisions relating to City Council, City Manager, and staff relations, the City Council is free to make its proposed changes, regardless of whether it reached any agreement on those changes with the City Manager. It is understood that all other provisions of the City Council Policy Manual can be changed by the City Council at its discretion.

The City Manager shall regulate his own work schedule provided he accommodates a normal business schedule and remains accessible, recognizing the City Manager's need for flexibility. It is understood that the City Manager shall be available 24 hours a day and 7 days a week and is required to meet all the needs of the City regardless of City operating hours or any regular or normal work schedule. The City Manager shall give the City Council and appropriate staff notice when absent from the Coachella Valley overnight or longer.

### **IV. CITY MANAGER AND COUNCIL RESPONSIBILITIES.**

The City Manager shall be the chief executive officer of the City. As such, the City Manager shall have the responsibility for implementing City Council policy, whereas the City Council shall retain the responsibility for formulating and adopting said policy.

### **V. OTHER DUTIES.**

The City Manager (or designee) shall: (1) review all policies proposed to the City Council and make appropriate recommendations to the Council; (2) periodically evaluate employees as provided for by California law and City policy; (3) advise the Council of possible sources of funds that might be available to implement present or contemplated City programs or services; (4) maintain and improve his professional competence by available means, including subscription to and reading of appropriate periodicals, and joining and participating in appropriate professional associations and their activities; (5) establish and maintain an appropriate community relations program; and (6) serve as liaison between the Council and as its designated representative with respect to all employer-employee matters. Notwithstanding that a designee of the City Manager may perform said duties, the City Manager shall be the person ultimately responsible to the Council for the proper implementation of the duties and responsibilities described in this Agreement.

## **VI. OUTSIDE ACTIVITIES.**

Upon prior approval of the City Council, City Manager may undertake outside professional activities for compensation, as agreed to by the parties, which may include consulting, teaching, training, speaking and writing, of up to 15 hours per month, provided they do not otherwise interfere with City Manager's normal duties and are done only during non-business hours, personal leave or holiday time and are not done with any existing vendors or contractors of the City. Under no circumstances shall any outside activities, whether or not for compensation, create a conflict of interest with the duties of the City Manager and the interests of the City.

## **VII. EVALUATION.**

City Manager shall meet with the City Council in closed session annually, on or around each anniversary date of the Agreement, to formally review the City Manager's performance and to discuss the City Council's evaluation of said performance. As part of the formal evaluation process, the City Council and City Manager shall meet to discuss the evaluation procedure and format, with the final determination of such procedure and format at the City Council's discretion. City Manager shall remind the City Council of its obligations under this Section each year, or semi-annually if so directed by City Council, and shall work with the City Council in finding an appropriate time to place his annual evaluation on the agenda.

In addition, the City Council will meet with City Manager on or around each anniversary date of this Agreement to discuss and create goals and other metrics that can provide the basis for the City Council determining the following year's performance incentive.

Additional closed sessions may be scheduled throughout the year to discuss the Employee's performance as deemed necessary by the City Council.

## **VIII. TERMINATION.**

City Manager shall serve at the will and pleasure of the City Council and may be removed from office (terminated) at any time for any reason or no reason upon a majority vote of the City Council. Nothing in this Agreement shall prevent the City Council from terminating this Agreement and the services of City Manager at its sole discretion.

**A. Notice of Termination.** In the event City Manager is terminated without cause by the City during the Term or any subsequent Extended Term of this Agreement, during which time the City Manager is willing and able to perform his duties under this Agreement, the City Council agrees to provide City Manager with written notice of termination.

**B. Severance Payment.** In the event City Manager is terminated without cause, City Manager shall be entitled to a severance payment in the amount of (1) nine months' Base Salary, (2) the cash value of all accrued and unused sick leave, (3) the cash value of unused administrative leave, and (4) continuation of all existing health benefits for nine months or until City Manager finds other employment that provides, and he qualifies to begin receiving, health benefits, whichever occurs first. (The foregoing salary and health benefits shall be referred to collectively as "Severance Pay.") Notwithstanding the above, in no event shall the total cash value of the nine

months' Base Salary and accrued vacation, sick leave and administrative leave exceed the lesser of the value of eighteen months' Base Salary or the value of Base Salary for the remaining unexpired Term of this Agreement. Further, the continuation of any existing health benefits shall not be for any time in excess of the remaining unexpired Term of this Agreement. City shall have no obligation to continue to provide existing health benefits as a part of Severance Pay to the extent that City Manager is otherwise eligible for retiree medical coverage.

In exchange for the Severance Pay, the City Manager hereby expressly waives any right he may have under any applicable law, City policy, or otherwise to appeal or grieve his termination and the terms of this Agreement.

The above severance provisions are intended to comply with the provisions of Government Code section 53260, et seq. Any severance payment under this Agreement is also subject to the forfeiture or repayment provisions of Government Code section 53243, et seq.

**C. Termination for Cause.** In the event that it is determined that City Manager has been terminated for cause, he shall not be entitled to any Severance Pay. Termination shall be for "cause" only if City Manager: (i) is convicted of a felony that adversely affects his reputation or the reputation of the City; (ii) engages in uncorrected drug or alcohol abuse; (iii) has repeated and protracted unapproved absences; or (iv) engages in the willful or insubordinate refusal to carry out a lawful directive of the City Council, provided that such directive was made in an open session meeting of the City Council and repeated in at least one subsequent open session meeting.

**D. Resignation**

(i) **Resignation Resulting from City Breach of Agreement.** If Employee resigns over a material and uncorrected breach of this Agreement by the City, City Manager shall be entitled to Severance Pay. In such event, City Manager shall first notify the City in writing of his intention to resign within 30 calendar days of when he either knew or should have known with reasonable diligence of the acts or omissions underlying his potential resignation. City Manager shall be entitled to Severance Pay only if the City fails to correct said act or omission within 30 calendar days of its receipt of said notice and if City Manager subsequently follows through with his resignation. City Manager shall also be entitled to Severance Pay if the City Manager resigns as a result of a request to resign by a majority of the City Council. Any Severance Pay paid to City Manager under this Section shall be subject to all limitations on the payment of Severance Pay set forth in Section VIII.B above.

(ii) **Other Resignations.** In the event City Manager resigns for any reason other than those set forth in Section VIII.D(i) above, he shall not be entitled to any Severance Pay.

**E. Retirement.** In the event City Manager retires from employment, he agrees to provide City with written notice not less than one hundred eighty (180) days in advance of the effective date of his retirement. City Manager shall receive no Severance Pay upon retirement.

**F. Incapacity.** This Agreement shall terminate in the event City Manager becomes incapable of performing the essential functions of his position for a period of six months or longer, with or without reasonable accommodation. In such event, City Manager shall receive no Severance Pay.

**G. Expiration of Agreement.** City Manager's employment with City shall terminate upon expiration of this Agreement, and City Manager shall receive no Severance Pay upon expiration of this Agreement.

**IX. FRINGE BENEFITS.**

**A. Time Off.** City Manager shall be provided with paid time off as follows:

(i) **Vacation.** City Manager shall accrue 200 hours of paid vacation per year, with vacation accruing on a pro rata basis per pay period. Vacation may accrue up to a maximum of 300 hours, at which point any further accrual shall cease until City Manager has taken vacation to bring the total amount of accrued vacation below the 300-hour cap. City Manager must use at least 100 hours of vacation each year and, at least once annually, must use at least 40 hours consecutively. For purpose of using accrued vacation, and so long as miscellaneous employees work under a five day, forty hour workweek, a full day's absence from work will utilize eight hours of vacation. City Manager shall begin employment with an advance of 80 hours of vacation against his first year of accrual.

(ii) **Sick Leave.** City Manager shall accrue 96 hours of paid sick leave per year, with sick leave accruing on a pro rata basis per pay period. Sick leave may accrue up to a maximum of 480 hours, at which point any further accrual shall cease until City Manager has taken sick leave to bring the total amount below the 480-hour cap. There shall be no payout of accrued sick leave upon separation of employment, except as set forth in Section VIII.B of this Agreement. However, to the extent permissible by state law, accrued sick leave may be used in the event of retirement as a credit towards PERS service. For purpose of using accrued sick leave, and so long as miscellaneous employees work under a five day, forty hour workweek, a full day's absence from work will utilize eight hours of sick leave. City Manager shall begin employment with an advance of 80 hours of sick leave against his first year of accrual.

(iii) **Holidays.** City Manager shall be entitled to 11 paid holidays per calendar year, on dates fixed by the City Council. In addition, City Manager shall be entitled to one paid floating holiday per calendar year, to be taken on a date he selects. An unused floating holiday shall be forfeited at the end of the particular calendar year.

(iv) **Administrative Leave.** As recognition of the fact that City Manager is on duty 24 hours a day and seven days a week, the City shall provide City Manager with 80 hours of paid administrative leave each year. Unused administrative leave shall carry over to the following year and, accordingly, may accrue up to a maximum of 192 hours, at which point any further accrual shall cease until City Manager has used administrative leave to bring the total amount accrued below 192 hours. Except as set forth in Section VIII.B of this Agreement, there shall be no payout of accrued administrative leave upon separation from employment. For purposes of this provision, a "year" is determined by City Manager's anniversary date. Administrative leave shall

not accrue on a pro rata basis. Rather, City Manager shall be credited with 80 hours of administrative leave at the beginning of employment and on each anniversary date thereafter.

**B. CalPERS Retirement.** The City agrees to enroll the City Manager in the Public Employees' Retirement System (CalPERS) under the same terms as other miscellaneous employees of the City who are considered "classic members" of CalPERS, with the City paying the full employer contributions and any amount of employee contributions as set by resolution of the City Council during a regular public meeting of the City Council. The City's current contract with CalPERS for classic members provides a retirement formula of 2.7% at 55, with the highest single year determining the benefit and the 1959 survivor benefit at level 2.

**C. Social Security/Medicare.** The City shall pay both the employer and employee share of Social Security Insurance and Medicare taxes, pursuant to the same procedures that it follows when paying for such taxes for other City employees. It is understood that the City's payment of the employee share of Social Security and Medicare will be included in wages for income tax purposes only.

**D. Deferred Compensation.**

(i) **Section 457 Plan.** On behalf of the City Manager, the City will make an annual contribution of \$22,500.00 into a qualified Section 457 plan. This contribution will be made in January of each year, beginning in January 2014. At City Manager's option, the \$22,500 contribution can be made to the 401(a) plan instead of the 457 plan.

(ii) **Section 401(a) Plan.** The City will make an annual contribution of 2.5% of the City Manager's Base Salary into a Section 401(a) plan. This contribution will be made in accordance with the plan agreement and documents.

**E. Health Benefits.** The City shall pay the full premium for CalPERS PPO medical coverage for City Manager and his eligible dependents. The City shall also pay the full premium for dental, and vision insurance for City Manager and his eligible dependents.

**F. Health Retirement Account.** In the event the City establishes a health retirement account plan for City employees, City Manager may participate in such plan to the extent permitted by applicable law.

**G. Life Insurance.** The City shall provide for a one hundred thousand dollar (\$100,000.00) term life insurance policy at no cost to City Manager. City Manager shall designate the beneficiaries of that policy. It is also understood that federal regulations may require that a portion of the cost of the City-provided life insurance be included in wages for income and payroll tax purposes.

**H. Disability.** The City shall provide employee with short term and long term disability coverage. The long term disability plan shall provide a benefit of 66.33% of Employee's base salary, up to a maximum of \$13,000 per month. The short term disability plan shall provide a benefit of 66.66% of Employee's base salary, up to a maximum of \$1,155 per month, in tandem with State Disability Insurance. At Employee's option, the City paid premiums for long term and

short term disability benefits may be considered wages subject to income tax withholdings. Further, to the extent City Manager is currently paying premiums for his own long term disability policy, he can elect to be reimbursed for those premiums, up to the amount the City pays for long term disability coverage for other employees, instead of receiving long term disability coverage under the City's plan.

**I. Retiree Medical.** The City shall provide City Manager with PERS retiree medical coverage in accordance with the terms of its contract with CalPERS. Under the vesting schedule in that contract, City Manager will be eligible for retiree medical coverage after five years of service with the City.

**J. Professional Membership.** The City shall pay the City Manager's dues for his membership in the International City/County Management Association (ICMA) and the California City Management Foundation ("CCMF").

**K. Professional Development.** The City shall pay or reimburse for attendance at the annual ICMA conference, the annual League of California Cities conference, the annual League of California Cities City Manager Department meeting, and the annual CCMF meeting. The City will also provide employee with release time and pay for travel and meeting expenses associated with participation in committee and officer meetings of these organizations. The City will also provide other training and development programs as approved by the City Council.

**L. Education.** Upon pre-approval of City Council, and contingent upon the City's finances, the City will pay one hundred percent (100%) of tuition expenses for the City Manager's enrollment in classes at a California State University.

**M. Civic Involvement.** The City shall pay for City Manager's membership in, and for all fines, dues and other costs associated with the Indian Wells Rotary Club and other civic organizations, as approved by the City Council.

**N. Automobile Allowance.** The City shall provide City Manager with an automobile allowance of five hundred dollars (\$500.00) per month, to be used to purchase, lease, or own, and to operate and maintain, a vehicle. City Manager shall be solely responsible for obtaining and paying for adequate insurance coverage of such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. Upon request, City Manager shall provide City with proof of insurance.

**O. Wellness Program.** The City will provide Employee with use of the health fitness center at the Hyatt Hotel in Indian Wells. In addition, Employee shall be entitled to use and benefits at the Indian Wells Golf Resort under the same conditions and terms as other regular or management employees.

**P. Relocation Incentive.** As an incentive to relocating to a primary residence located within 40 driving miles of the City of Indian Wells City Hall, the City agrees to provide Employee with a loan of up to one hundred fifty thousand dollars (\$150,000.00) to be used for a down payment on or remodel of a primary residence located within 40 driving miles of the City of Indian Wells City Hall. Said loan shall accrue interest at a variable rate of 1.75% over the Local Agency

Interest Fund rate, with a cap rate at 5%. Employee shall make monthly payments of interest only, with the principal balance to be repaid upon the sale of the property or twelve months after Employee's separation from employment, whichever occurs first. The loan shall be subject to the execution of a promissory note by Employee setting forth the above terms and shall be secured by a deed of trust with the City as beneficiary and recorded against the property in the Riverside County Recorder's Office. The promissory note and deed of trust shall be subject to approval by the City Council prior to execution and recordation. Employee shall also personally guarantee said loan.

In addition to the above, the City shall reimburse employee in an amount not to exceed twelve thousand dollars (\$12,000.00) in moving expenses, following Employee's submission to the City of receipts of actual expenses therefor.

**Q. Exclusive Consideration.** All compensation, benefits and comparable payments to be provided to the City Manager under this Agreement shall be less withholdings required by law and shall be provided subject to any rules, regulations, agreements, or policies established by the City Council, as amended from time to time at its discretion. The City Manager shall be entitled to no benefits and compensation other than as set forth above.

**X. STRATEGIC PLANNING PROGRAM AND RETREAT.**

The City agrees to allow City Manager to hold and participate in an annual strategic planning program and to fund an annual two-day City Manager/Department Head retreat. In order to limit the costs of the annual retreat, it must take place in the Coachella Valley and shall not include any overnight hotel room stays unless approved by the City Council.

**XI. EXPENSES AND INDEMNIFICATION.**

**A. Expenses.** The City shall pay or reimburse for all normal and customary expenses for city business, travel, and meetings. When reimbursing for expenses incurred, the City requires the submission of adequate proof of the expenses, such as a receipt, and some expenses may require prior approval of the City Council. The reimbursement of expenses shall be subject to any City expense reimbursement policy. City Manager shall notify City Council when out of town on City business for more than one day.

**B. Indemnification.** The City shall indemnify Employee against all necessary expenditures and losses incurred by employee in direct consequence of the discharge of his duties as City Manager, in accordance with Labor Code section 2802. In addition, the City shall defend and indemnify employee against any civil action, proceeding, or claim, in accordance with Government Code section 995, et seq.

**XII. GENERAL PROVISIONS.**

A. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of the City Manager by the City and contains all of the covenants and agreements between the parties with respect to the employment of City Manager by the City.

B. 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.

C. Any modifications of this Agreement will be effective only if made in writing and signed by both the City Manager and the City.

D. If any provision of 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 and effect without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 6th day of June 2013.

CITY OF INDIAN WELLS

WADE G. MCKINNEY



By: Dana W. Reed, Mayor



By: Wade G. McKinney

ATTEST:

  
Anna Grandys, City Clerk

APPROVED AS TO FORM:

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Stephen P. Deitsch, City Attorney

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CITY OF INDIAN WELLS

WADE G. MCKINNEY

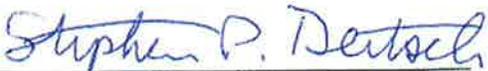
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By: Dana W. Reed, Mayor

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By: Wade G. McKinney

ATTEST:

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Anna Grandys, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Stephen P. Deitsch, City Attorney