

**CITY OF INDIAN WELLS**  
**THIRD AMENDMENT TO EMPLOYMENT AGREEMENT**

This Third Amendment to the Employment Agreement – City Manager (this “Third Amendment”) between the City of Indian Wells (the “City”) and Chris Freeland (the “Employee” or “Manager”) is entered into this 16 day of December 2021.

Except as modified in this Third Amendment and the preceding First and Second Amendments, the Employment Agreement originally dated May 2, 2019 (“Agreement”) between the City and the Employee shall remain in full force and effect.

The parties to this Third Amendment agree to the following changes:

1. Section 4 entitled “Term” is hereby amended to renew the Agreement and extend its term by an additional one year and seven months as follows:

**“4. Term:**

The term of this Agreement will commence on May 13, 2019, and shall continue until **December 31, 2028**, or the date of earlier termination in accordance with provisions in this Agreement. In the event that the City Council determines that the Manager is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the City Council at least one hundred and twenty (120) days in advance of the final year of this Agreement. Failure to provide timely written notice provided for in this Section shall result in the Agreement being extended on the same terms for additional periods of one (1) year on each occasion. This renewal clause and its notice provision shall apply to all subsequent terms under this Agreement.”

2. Section 7 entitled “Compensation and Annual Evaluation” is hereby amended at subsection A to increase the Manager’s annual Base Salary by \$10,000.00:

**“7. Compensation and Annual Evaluation:**

A. Effective July 1, 2021, Manager’s initial annual Base Salary shall be Two Hundred and Fifty Thousand Dollars (\$250,000.00). Said amount shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid. Increases in Manager’s Base Salary may be effective at any time in the sole discretion of the City Council.”

3. Section 3 entitled “Benefits” is hereby amended at subsection A to provide a one-time addition of 120 hours to the Manager’s accrued vacation time bank:

**“8. Benefits:**

A. Vacation. Manager will be provided one hundred twenty (120) hours of banked vacation time upon the commencement of this Third Amendment. Manager shall also be entitled to and accrue paid vacation consistent with the City Resolution and policies applicable to executive level employees with fifteen (15) years of service. Currently employees with such seniority are provided twenty-five (25) vacation days per year. Accrual rates, caps and limits, application, and usage are governed by the City’s policies and practices.”

The City and the Employee have duly executed this Third Amendment as of the date first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 16 day of December 2021.

CITY OF INDIAN WELLS

CHRIS FREELAND

E-SIGNED by Dana Reed  
on 2021-12-17 08:03:14 PST

E-SIGNED by Christopher Freeland  
on 2021-12-16 15:44:50 PST

By: Dana Reed, Mayor

By: Chris Freeland

ATTEST:

E-SIGNED by Angelica Avila  
on 2021-12-17 08:05:02 PST

Angelica Avila, City Clerk

APPROVED AS TO FORM:

E-SIGNED by Todd Leishman  
on 2021-12-17 05:50:19 PST

Todd R. Leishman, City Attorney

**CITY OF INDIAN WELLS  
SECOND AMENDMENT TO EMPLOYMENT AGREEMENT**

This Second Amendment to the Employment Agreement – City Manager (this “Second Amendment”) between the City of Indian Wells (the “City”) and Christopher J. Freeland (the “Employee” or “Manager”) is entered into this 17th day of December 2020.

Except as modified in this Second Amendment and the preceding First Amendment, the Employment Agreement originally dated May 2, 2019 (“Agreement”) between the City and the Employee shall remain in full force and effect.

The parties to this Second Amendment agree to the following changes:

1. Section 4 entitled “Term” is hereby amended to renew the Agreement and extend its terms an additional two years as follows:

**“4. Term:**

The term of this Agreement will commence on May 13, 2019, and shall continue until May 13, 2027, or the date of earlier termination in accordance with provisions in this Agreement. In the event that the City Council determines that the Manager is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the City Council at least one hundred and twenty (120) days in advance of the final year of this Agreement. Failure to provide timely written notice provided for in this Section shall result in the Agreement being extended on the same terms for additional periods of one (1) year on each occasion. This renewal clause and its notice provision shall apply to all subsequent terms under this Agreement.”

2. Section 7 entitled “Compensation and Annual Evaluation” is hereby amended at subsection B to indicate ineligibility for salary increase if there is no revenue generated from the March 2021 *BNP Paribas Open* tennis tournament:

**“7. Compensation and Annual Evaluation:**

...  
B. The City, by the City Council, and Manager shall set mutually agreed-upon objectives for each year under this Agreement. The City Council shall evaluate the Manager’s performance at least once a year. Following the annual evaluation, the Council may consider whether increased compensation is warranted. For Manager’s evaluation period of May 2020 to May 2021, the Parties agree that the 2021 BNP Paribas Open tennis tournament is a critical source of revenue for the City; as

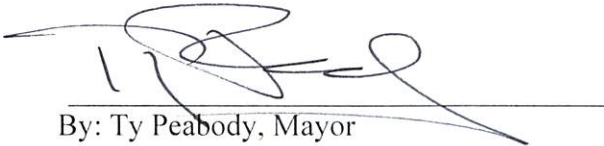
such, Manager is voluntarily waiving any additional salary increase relating to the 2020-2021 evaluation period if the 2021 BNP Paribas Open tennis tournament does not generate income to the City similar to past years, excepting the 2020 cancelled year. Any increase to salary will be memorialized in a written amendment to this Agreement.”

The City and the Employee have duly executed this Second Amendment as of the date first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 17th day of December 2020.

CITY OF INDIAN WELLS

CHRISTOPHER J. FREELAND



By: Ty Peabody, Mayor



By: Christopher J. Freeland

ATTEST:



Angelica Avila, Acting City Clerk

APPROVED AS TO FORM:



Jeffrey S. Ballinger, City Attorney

## EXHIBIT A

### CONFIDENTIAL SEPARATION AGREEMENT AND RELEASE

This Agreement is entered into on [\_\_\_\_\_], by and between CHRIS FREELAND (hereinafter "Employee") and the CITY OF INDIAN WELLS (hereinafter "Employer"). Said parties shall be collectively referred to as the "Parties." Employee is currently employed as an CITY MANAGER for Employer. During the course of Employee's employment issues arose concerning Employee's continued employment. The Parties mutually desire to settle all of their present and possible future differences, disputes, or claims relating to and arising out of the employment and, therefore, the Parties agree as follows:

1. CONSIDERATION & REVOCATION PERIOD. This Agreement was presented to Employee for consideration on [\_\_\_\_\_]. From that date, Employee has twenty one days to consider the Agreement, though he is free to execute the Agreement prior to the end of that period if he so chooses. Following the execution of the Agreement, Employee has seven days in which to revoke. Such revocation must be made in writing and be personally delivered to the City Attorney. The effective date of this Agreement ("Effective Date") will be at 5:01 p.m. on the eighth day following Employer's receipt of Employee's signed Agreement.

2. SEPARATION TERMS. Employee agrees not to contest his separation from employment as of [\_\_\_\_\_] ("Separation Date"). Employee agrees that, as of the Separation Date, he will have already returned any and all equipment or other property belonging to Employer. In return, Employer agrees to pay Employee severance pay in the total amount equal to nine (9) months' of his current monthly base salary ("Severance Pay"), subject to all lawful deductions and taxes applicable to wages. This amount is in addition to compensation provided as final wages owed. The severance pay will be paid on Employer's first regular payday following the Effective Date of this Agreement and shall be subject to all regular withholdings and legally required taxes. **In addition, Employer shall provide Employee continuation of his health, dental, vision, and life insurance benefits for nine (9) months following the Separation Date or until he finds other employment that provides such benefits, whichever occurs first ("Benefit Continuation"). The Severance Pay and Benefit Continuation shall constitute consideration for this Agreement and shall be referred to collectively as Employee's "Severance."**

3. GENERAL RELEASE. Employee voluntarily and irrevocably releases and discharges Employer and its shareholders, directors, officers, elected or appointed officials, employees,

fiduciaries, insurers, agents, successors, and assigns (collectively, "Released Parties") from and against any and all individual relief claims, obligations, debts, demands, judgments, or causes of action of any kind whatsoever, known or unknown, actual or contingent, whether brought at law, in equity or otherwise, based on tort, contract, statute, or on any other basis, which Employee has or may have against any of them or liability they may have to Employee (collectively, "Claims"), which arise from or are related to Employee's employment or relationship with the Employer or any other Released Party, Employee's separation from employment from any of them, or any other matter, cause or thing whatsoever which may have occurred involving Employee and any Released Party prior to the date of Employee's acceptance of this Agreement. This release also includes all Claims for equitable relief, actual, compensatory, consequential, punitive, special, multiple, or other damages, expenses (including without limitation attorneys' fees and court costs). This release includes, without limitation, any and all Claims Employee has or may have against the Employer or any other Released Party arising under any federal, state, local, or foreign statute, common or other law, including without limitation those relating to the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Civil Rights Acts of 1866, 1871, 1964 and 1991, the Equal Pay Act of 1963, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, the Fair Labor Standards Act of 1938, the Family and Medical Leave Act of 1993, the Labor Management Relations Act of 1947, the National Labor Relations Act, the Rehabilitation Act of 1973, the California Labor Code, the California Fair Employment and Housing Act.

4. CIVIL CODE SECTION 1542 WAIVER. Employee agrees that the Released Claims include not only claims presently known to Employee but also include all unknown or unanticipated claims. Employee understands that he may later discover facts different from what they now believe to be true, which if known, could have materially affected this Agreement, but he nevertheless waives any claims or rights based on different or additional facts. Employee 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 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**

**HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Notwithstanding the provisions of Section 1542, this Agreement is also intended to include all claims which Employee does not know or suspect to exist at the time this Agreement's execution.

5. NO ACTIONS. Employee affirms that he currently has no action, charge, or administrative claim pending before any court of law, governmental body, or administrative agency, either on the federal or state level. Employee agrees he will not at any time in the future pursue any employment personnel appeal or internal grievance or file any claim for individual relief with any governmental agency or any court arising out of or in any way related to his employment. Employee affirms that he is unaware of any issue relating to Employer's non-compliance with regulatory obligations.

6. RELEASE CARVE OUT. Notwithstanding the provisions of paragraphs 3-5, Employee's released claims shall not include any claims based on obligations created by or reaffirmed in this Agreement, nor shall Employee's released claims include claims which expressly cannot be waived according to California Labor Code Section 2804. Nor shall anything in this Agreement be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the Public Employment Relations Board (PERB), U.S. Equal Employment Opportunity Commission (EEOC), California Department of Fair Employment and Housing (DFEH), or any other governmental agency. Notwithstanding the foregoing, Employee hereby agrees to, and does, waive his right to recover monetary damages in any charge or lawsuit filed by Employee or anyone else on his behalf.

7. RE-EMPLOYMENT. As of the date of this Agreement, Employee has not applied for, sought, or accepted re-employment with Employer. Despite the confidential nature of this Agreement, Employer may review prior performance history in determining whether to consider any future application for re-employment. Nothing about this section shall be interpreted to allow Employer to refuse consideration or rehire on the basis of prior allegations of unlawful conduct.

8. NO DEFAMATION. The Employee may not disparage customers, suppliers, vendors nor may Employee defame Employer, its management, its employees, agents, officers, elected or appointed officials, shareholders, or affiliates. Employee agrees to refrain from making public statements regarding his subjective opinion regarding Employer or his employment actions. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 6.

9. CONFIDENTIALITY. The Parties acknowledge that they have not discussed or disclosed any of the terms of this Agreement to anyone, except for their attorneys. Except as such disclosure may occur to Employee's attorneys or accountants or as otherwise may be required by law, or in response to any subpoena, Employee agrees the terms of this Agreement and all negotiations between the Parties shall be kept strictly confidential and neither the details of the negotiations, the terms of this Agreement, or Employee's subjective opinion relating to the negotiations, the Agreement, or his prior employment may be disclosed to anyone, including without limitation, any person, corporation, or other business entity for any purpose. Should any inquiry be made, the Employee may respond only by indicating that the separation was amicable.

If Employee becomes legally compelled by deposition, subpoena, interrogatory, request for documents, or similar legal process, he shall immediately notify the Employer telephonically and confirmed in writing, so that the Employer will have the opportunity to intervene. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 6.

10. NO ASSIGNMENT. The Parties hereto each warrant that they have made no assignment and will make no assignment of any claim, right of action, or any right of any kind whatsoever embodied in any of the Released Claims and that no other person or entity of any kind had or has any interest in the same.

11. NO ADMISSION OF LIABILITY. This Agreement is solely for the purpose of compromising on the issue of separation of employment. It does not constitute, nor shall it be construed, as an admission of the truth or validity of any claims asserted. All communications made in conjunction with this Agreement shall be governed and protected in accordance with the Federal Rule of Evidence 408 and California Evidence Code sections 1150, et seq.

12. ENTIRE AGREEMENT. This is the entire Agreement between the Parties pertaining to the separation of employment or any disputes or claims arising during the course of employment, and it supersedes all prior or contemporaneous agreements, negotiations, or discussions, whether oral or written, express or implied. No supplements, modifications, or waivers of this Agreement shall be binding unless executed by written amendment.

13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, including those executed by facsimile, each of which shall be deemed an original but all of which taken together shall constitute one Agreement.



14. **ATTORNEYS' FEES.** In the event of legal proceedings to enforce the terms of this Agreement, necessary to declare rights hereunder, or as the result of the breach of this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the losing party reasonable costs and attorneys' fees, including but not limited to the out-of-pocket expenses of attorneys and out-of-pocket expenses of experts.

15. **NEGOTIATED AGREEMENT.** Employee acknowledges and agrees that Employer has recommended use of independent counsel or labor representation, if relevant, throughout all negotiations that preceded the execution of this Agreement. Any choice to forgo such use is of the Employee's own will. This Agreement is the result of arms-length negotiations and expresses the complete, actual, and intended agreement of the Parties.

16. **WAIVER & SEVERABILITY.** Failure to insist on compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of the same. If any provision is held to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

**THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT AND ARE SIGNING VOLUNTARILY.**

**CITY OF INDIAN WELLS:**

**EMPLOYEE:**

By: \_\_\_\_\_  
Ted Mertens, Mayor

By: \_\_\_\_\_  
Chris Feeland

**CITY OF INDIAN WELLS  
FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This First Amendment to the Employment Agreement – City Manager (this “First Amendment”) between the City of Indian Wells (the “City”) and Chris Freeland (the “Employee” or “Manager”) is entered into this 4th day of June, 2020.

Except as modified in this First Amendment, the Employment Agreement originally dated May 2, 2019 (“Agreement”) between the City and the Employee shall remain in full force and effect.

The parties to this First Amendment agree to the following changes:

1. Section 4 entitled “Term” is hereby amended to renew the Agreement and extend its terms an additional year as follows:

“4. **Term:**

The term of this Agreement will commence on May 13, 2019, and shall continue until **May 13, 2025**, or the date of earlier termination in accordance with provisions in this Agreement. In the event that the City Council determines that the Manager is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the City Council at least one hundred and twenty (120) days in advance of the final year of this Agreement. Failure to provide timely written notice provided for in this Section shall result in the Agreement being extended on the same terms for additional periods of one (1) year on each occasion. This renewal clause and its notice provision shall apply to all subsequent terms under this Agreement.”

2. Section 7 entitled “Compensation and Annual Evaluation” is hereby amended at subsection A to increase salary by an additional \$10,000 per year:

“7. **Compensation and Annual Evaluation:**

A. Manager’s annual Base Salary shall be **Two Hundred and Forty Thousand Dollars (\$240,000.00)**. Said amount shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid. Increases in Manager’s Base Salary may be effective at any time in the sole discretion of the City Council.”

3. Section 8 entitled “Benefits” is hereby amended at subsection D to increase deferred compensation by \$12,000 per year:

“8. **Benefits:**

...

D. **Deferred Compensation.** The City will adopt and establish a qualified deferred compensation plan pursuant to Section 401a of the Internal Revenue Code for the benefit of Manager and will annually contribute into the qualified 401a account, in the Manager’s name, the amount of **Nineteen Thousand and Five Hundred Dollars (\$19,500.00).** Such contributions will be made in January of each year of this Agreement in addition to the current 2.5% 401a benefit provided to all fulltime employees. The City shall be responsible for all expenses associated with the 401a account during the remaining term of this Agreement, including but not limited to administrative services fees and commissions.”

4. Section 8 entitled “Benefits” is hereby amended at subsection I to clarify that Employee is afforded the same level of leave cash out and retiree medical benefits afforded to other City employees:

“8. **Benefits:**

...

I. **All Other Benefits.** With the exception of such benefits as outlined specifically in this Section, the City shall provide the Manager with other benefits, including but not limited to health, disability, and retirement benefits, consistent with those benefits provided to the City’s other executive-level employees. **The provision of such benefits shall include, but are not limited to, the same level of entitlement to cash out leave accruals and Tier B employee retiree medical benefits.**”

5. Section 6 entitled “Termination of Employment and this Agreement; Severance” is hereby amended at subsection A, along with its referenced attachment, to clarify that Employee would be entitled to the continuation of health benefits:

“6. **Termination of Employment and this Agreement; Severance:**

A. If City terminates this Agreement (thereby terminating Manager’s employment) without cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, and if Manager signs, delivers to the City Council, and does not revoke, the General Release Agreement (“Release Agreement”) in the form attached hereto as **Exhibit A (as attached to the First Amendment to Employment Agreement)**, City shall pay Manager a lump sum benefit equal to (1) payment equal to nine (9) months of Manager’s

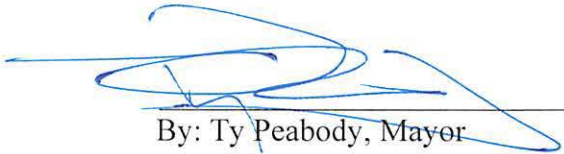
Base Salary; or (2) payment equal to the unexpired Term of this Agreement, as described in Section 4 above, **whichever amount is less**. In addition to the Severance pay, Manager shall receive continuation of health benefits, **as well as dental, vision, and life insurance benefits**, for nine (9) months or until he finds other employment that provides **such** benefits, whichever occurs first. (the foregoing salary and health benefits shall be referred to collectively as “Severance.”)”

The City and the Employee have duly executed this First Amendment as of the date first written above.

IN WITNESS WHEREOF, the parties have executed this Agreement on the 4th day of June 2020.

CITY OF INDIAN WELLS

CHRISTOPHER J. FREELAND



By: Ty Peabody, Mayor



By: Christopher J. Freeland

ATTEST:



Ana Grandys, City Clerk

APPROVED AS TO FORM:



Jeffrey S. Ballinger, City Attorney

## EXHIBIT A

### CONFIDENTIAL SEPARATION AGREEMENT AND RELEASE

This Agreement is entered into on [ \_\_\_\_\_ ], by and between CHRISTOPHER J. FREELAND (hereinafter "Employee") and the CITY OF INDIAN WELLS (hereinafter "Employer"). Said parties shall be collectively referred to as the "Parties." Employee is currently employed as an CITY MANAGER for Employer. During the course of Employee's employment issues arose concerning Employee's continued employment. The Parties mutually desire to settle all of their present and possible future differences, disputes, or claims relating to and arising out of the employment and, therefore, the Parties agree as follows:

1. CONSIDERATION & REVOCATION PERIOD. This Agreement was presented to Employee for consideration on [ \_\_\_\_\_ ]. From that date, Employee has twenty one days to consider the Agreement, though he is free to execute the Agreement prior to the end of that period if he so chooses. Following the execution of the Agreement, Employee has seven days in which to revoke. Such revocation must be made in writing and be personally delivered to the City Attorney. The effective date of this Agreement ("Effective Date") will be at 5:01 p.m. on the eighth day following Employer's receipt of Employee's signed Agreement.

2. SEPARATION TERMS. Employee agrees not to contest his separation from employment as of [ \_\_\_\_\_ ] ("Separation Date"). Employee agrees that, as of the Separation Date, he will have already returned any and all equipment or other property belonging to Employer. In return, Employer agrees to pay Employee severance pay in the total amount equal to nine (9) months' of his current monthly base salary ("Severance Pay"), subject to all lawful deductions and taxes applicable to wages. This amount is in addition to compensation provided as final wages owed. The severance pay will be paid on Employer's first regular payday following the Effective Date of this Agreement and shall be subject to all regular withholdings and legally required taxes.

**In addition, Employer shall provide Employee continuation of his health, dental, vision, and life insurance benefits for nine (9) months following the Separation Date or until he finds other employment that provides such benefits, whichever occurs first ("Benefit Continuation"). The Severance Pay and Benefit Continuation shall constitute consideration for this Agreement and shall be referred to collectively as Employee's "Severance."**

3. GENERAL RELEASE. Employee voluntarily and irrevocably releases and discharges Employer and its shareholders, directors, officers, elected or appointed officials, employees,

fiduciaries, insurers, agents, successors, and assigns (collectively, “Released Parties”) from and against any and all individual relief claims, obligations, debts, demands, judgments, or causes of action of any kind whatsoever, known or unknown, actual or contingent, whether brought at law, in equity or otherwise, based on tort, contract, statute, or on any other basis, which Employee has or may have against any of them or liability they may have to Employee (collectively, “Claims”), which arise from or are related to Employee’s employment or relationship with the Employer or any other Released Party, Employee’s separation from employment from any of them, or any other matter, cause or thing whatsoever which may have occurred involving Employee and any Released Party prior to the date of Employee’s acceptance of this Agreement. This release also includes all Claims for equitable relief, actual, compensatory, consequential, punitive, special, multiple, or other damages, expenses (including without limitation attorneys’ fees and court costs). This release includes, without limitation, any and all Claims Employee has or may have against the Employer or any other Released Party arising under any federal, state, local, or foreign statute, common or other law, including without limitation those relating to the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Civil Rights Acts of 1866, 1871, 1964 and 1991, the Equal Pay Act of 1963, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, the Fair Labor Standards Act of 1938, the Family and Medical Leave Act of 1993, the Labor Management Relations Act of 1947, the National Labor Relations Act, the Rehabilitation Act of 1973, the California Labor Code, the California Fair Employment and Housing Act.

4. CIVIL CODE SECTION 1542 WAIVER. Employee agrees that the Released Claims include not only claims presently known to Employee but also include all unknown or unanticipated claims. Employee understands that he may later discover facts different from what they now believe to be true, which if known, could have materially affected this Agreement, but he nevertheless waives any claims or rights based on different or additional facts. Employee 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 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**

**HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Notwithstanding the provisions of Section 1542, this Agreement is also intended to include all claims which Employee does not know or suspect to exist at the time this Agreement's execution.

5. NO ACTIONS. Employee affirms that he currently has no action, charge, or administrative claim pending before any court of law, governmental body, or administrative agency, either on the federal or state level. Employee agrees he will not at any time in the future pursue any employment personnel appeal or internal grievance or file any claim for individual relief with any governmental agency or any court arising out of or in any way related to his employment. Employee affirms that he is unaware of any issue relating to Employer's non-compliance with regulatory obligations.

6. RELEASE CARVE OUT. Notwithstanding the provisions of paragraphs 3-5, Employee's released claims shall not include any claims based on obligations created by or reaffirmed in this Agreement, nor shall Employee's released claims include claims which expressly cannot be waived according to California Labor Code Section 2804. Nor shall anything in this Agreement be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the Public Employment Relations Board (PERB), U.S. Equal Employment Opportunity Commission (EEOC), California Department of Fair Employment and Housing (DFEH), or any other governmental agency. Notwithstanding the foregoing, Employee hereby agrees to, and does, waive his right to recover monetary damages in any charge or lawsuit filed by Employee or anyone else on his behalf.

7. RE-EMPLOYMENT. As of the date of this Agreement, Employee has not applied for, sought, or accepted re-employment with Employer. Despite the confidential nature of this Agreement, Employer may review prior performance history in determining whether to consider any future application for re-employment. Nothing about this section shall be interpreted to allow Employer to refuse consideration or rehire on the basis of prior allegations of unlawful conduct.

8. NO DEFAMATION. The Employee may not disparage customers, suppliers, vendors nor may Employee defame Employer, its management, its employees, agents, officers, elected or appointed officials, shareholders, or affiliates. Employee agrees to refrain from making public statements regarding his subjective opinion regarding Employer or his employment actions. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 6.

9. CONFIDENTIALITY. The Parties acknowledge that they have not discussed or disclosed any of the terms of this Agreement to anyone, except for their attorneys. Except as such disclosure may occur to Employee's attorneys or accountants or as otherwise may be required by law, or in response to any subpoena, Employee agrees the terms of this Agreement and all negotiations between the Parties shall be kept strictly confidential and neither the details of the negotiations, the terms of this Agreement, or Employee's subjective opinion relating to the negotiations, the Agreement, or his prior employment may be disclosed to anyone, including without limitation, any person, corporation, or other business entity for any purpose. Should any inquiry be made, the Employee may respond only by indicating that the separation was amicable.

If Employee becomes legally compelled by deposition, subpoena, interrogatory, request for documents, or similar legal process, he shall immediately notify the Employer telephonically and confirmed in writing, so that the Employer will have the opportunity to intervene. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 6.

10. NO ASSIGNMENT. The Parties hereto each warrant that they have made no assignment and will make no assignment of any claim, right of action, or any right of any kind whatsoever embodied in any of the Released Claims and that no other person or entity of any kind had or has any interest in the same.

11. NO ADMISSION OF LIABILITY. This Agreement is solely for the purpose of compromising on the issue of separation of employment. It does not constitute, nor shall it be construed, as an admission of the truth or validity of any claims asserted. All communications made in conjunction with this Agreement shall be governed and protected in accordance with the Federal Rule of Evidence 408 and California Evidence Code sections 1150, et seq.

12. ENTIRE AGREEMENT. This is the entire Agreement between the Parties pertaining to the separation of employment or any disputes or claims arising during the course of employment, and it supersedes all prior or contemporaneous agreements, negotiations, or discussions, whether oral or written, express or implied. No supplements, modifications, or waivers of this Agreement shall be binding unless executed by written amendment.

13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, including those executed by facsimile, each of which shall be deemed an original but all of which taken together shall constitute one Agreement.



14. **ATTORNEYS' FEES.** In the event of legal proceedings to enforce the terms of this Agreement, necessary to declare rights hereunder, or as the result of the breach of this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the losing party reasonable costs and attorneys' fees, including but not limited to the out-of-pocket expenses of attorneys and out-of-pocket expenses of experts.

15. **NEGOTIATED AGREEMENT.** Employee acknowledges and agrees that Employer has recommended use of independent counsel or labor representation, if relevant, throughout all negotiations that preceded the execution of this Agreement. Any choice to forgo such use is of the Employee's own will. This Agreement is the result of arms-length negotiations and expresses the complete, actual, and intended agreement of the Parties.

16. **WAIVER & SEVERABILITY.** Failure to insist on compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of the same. If any provision is held to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

**THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT AND ARE SIGNING VOLUNTARILY.**

**CITY OF INDIAN WELLS:**

**EMPLOYEE:**

By: \_\_\_\_\_  
Ty Peabody, Mayor

By: \_\_\_\_\_  
Christopher J. Freeland



**EMPLOYMENT AGREEMENT**

**CITY MANAGER**

May 2, 2019

**EMPLOYMENT AGREEMENT BETWEEN  
THE CITY OF INDIAN WELLS  
AND CHRIS FREELAND**

**1. Employment:**

This City Manager Employment Agreement (Agreement) is entered into by and between the CITY OF INDIAN WELLS (City) and CHRIS FREELAND(Manager). Under this Agreement, the City offers, and Manager accepts, employment as City Manager of City of Indian Wells. Manager, in his capacity as City Manager, is a contracted employee serving at the will and pleasure of the City Council, subject to termination pursuant to the terms of this Agreement, and with no right to any hearing or appeal, including any so-called *Skelly* conference, other than the rights expressly provided in this Agreement.

**2. Duties:**

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 Charter or Municipal Code at sections 2.04.080 and 2.040.090. Manager represents that he has the requisite education, experience, skills and expertise to serve as city manager. Manager shall perform such other legally permissible and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign.

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

**3. Devotion to City Business:**

Manager's position is full-time. Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his Manager duties, except as may be specifically authorized by the City Council. City Council Authorization will not be unreasonably withheld. The Manager shall regulate his own work schedule provided he accommodates a normal business schedule and remains accessible, recognizing the Manager's need for flexibility. It is understood that the 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.

**4. Term:**

The term of this Agreement will commence on May 13, 2019, and shall continue until May 13, 2024, or the date of earlier termination in accordance with provisions in this Agreement. In the event that the City Council determines that the Manager is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the City Council at least one hundred and twenty (120) days in advance of the final year of this Agreement. Failure to provide timely written notice provided for in this Section shall result in the Agreement being extended on the same terms for additional periods of one (1) year on each occasion. This renewal clause and its notice provision shall apply to all subsequent terms under this Agreement.

**5. City Council Commitments:**

A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Manager or the Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately.

B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the City Charter, the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

**6. Termination of Employment and this Agreement; Severance:**

A. If City terminates this Agreement (thereby terminating Manager's employment) without cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, and if Manager signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit A, City shall pay Manager a lump sum benefit equal to (1) payment equal to nine (9) months of Manager's Base Salary; or (2) payment equal to the unexpired Term of this Agreement as described in Section 4 above. In addition to the Severance pay, Manager shall receive continuation of his health benefits for nine (9) months or until finds other employment that provides health benefits, whichever occurs first. (The foregoing salary and health benefits shall be referred to collectively as "Severance.")

B. If City terminates this Agreement (thereby terminating Manager's employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be

entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits"). As used in this Agreement, Cause shall only mean any of the following:

1. Conviction of, or no contest plea to, a felony;
2. Conviction of, or not contest plea to, any illegal act involving moral turpitude or personal gain;
3. Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties;
4. Any act constituting a knowing and intentional violation of the City's conflict of interest code;
5. Repeated and protracted unexcused absences from the City Manager's office and duties;
6. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4; or
7. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting.

C. In no event may Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council.

D. If, during the Term or any extended Term, Manager dies, Manager's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

E. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, or mental incapacity for a period of three consecutive months beyond any provided sick leave, the City may terminate Manager's employment and this Agreement.

F. Manager may resign from his employment at any time, upon giving forty-five (45) days written notice to the City Council.

**7. Compensation and Annual Evaluation:**

A. Manager's initial annual Base Salary shall be Two Hundred and Thirty Thousand Dollars (\$230,000.00). Said amount shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid. Increases in Manager's Base Salary may be effective at any time in the sole discretion of the City Council.

B. The City, by the City Council, and Manager shall set mutually agreed-upon objectives for each year under this Agreement. The City Council shall evaluate the Manager's performance at least once a year. Following the annual evaluation, the Council may consider whether increased compensation is warranted. Any increase to salary will be memorialized in a written amendment to this Agreement.

C. The City Council and the Manager shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and the Manager shall further establish a relative priority among those goals and performance objectives. Such goals, objectives and priorities are subject to adjustment by the Parties at any time. Within six months of hire, the Council shall review and evaluate the Manager in accordance with the specific criteria developed jointly by the Council and Manager.

**8. Benefits:**

A. Vacation. Manager will be provided forty (40) hours of banked vacation time upon the commencement of this Agreement. Manager shall also be entitled to and accrue paid vacation consistent with the City Resolution and policies applicable to executive level employees with fifteen (15) years of service. Currently employees with such seniority are provided twenty five (25) vacation days per year. Accrual

rates, caps and limits, application, and usage are governed by the City's policies and practices.

B. Sick Leave. Manager shall accrue ninety six (96) hours of paid sick leave per year, with sick leave accruing on a pro rata basis per pay period. To the extent permissible by state law, accrued sick leave may be used in the event of retirement as a credit towards PERS service. Accrual rates, caps and limits, application, and usage are governed by the City's policies and practices.

C. Administrative Leave. Manager will be provided forty (40) hours of banked administrative leave upon the commencement of this Agreement. Manager shall also be entitled to and accrue administrative leave consistent with City policies and practices on an annual basis. Accrual rates, caps and limits, application, and usage are governed by the City's policies and practices.

D. Deferred Compensation. The City will adopt and establish a qualified deferred compensation plan pursuant to Section 457 of the Internal Revenue Code for the benefit of the Manager and will annually contribute into the qualified 457 account, the Manager's name, the amount of Seven Thousand and Five Hundred Dollars (\$7,500). Such contributions will be made in January of each year of this Agreement, except that the initial payment shall be prorated for the 2019 calendar year and made as soon as practicable. The City shall be responsible for all expenses associated with the 457 account during the remaining term of this Agreement, including but not limited to administrative services fees and commissions.

E. Automobile Allowance. The City shall pay Manager an automobile allowance in exchange for the Manager securing a personal vehicle to be used for City business or functions during, before, and after normal work hours. The automobile allowance shall be \$500 per month. Manager shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for such personal vehicle. By the Manager making the Manager's personal



automobile available for use, the Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

F. ICMA/ CCMF Dues and Other Professional Development. The City agrees to budget and pay the Manager's annual dues for membership in ICMA and CCMF. In addition, the City agrees, subject to the City's budget constraints and advance approval of Council, to pay expenses and allow City time for the following: (1) conference and meeting attendance and selected training opportunities, including, but not limited to, those associated with ICMA, CCMF, the League of California Cities, and other national, state, regional and/or local associations and organizations necessary and desirable for the good of the City and for the Manager's continued professional development; (2) professional dues and subscriptions on behalf of the Manager which are necessary for the Manager's continuation and full participation in national, state, regional or local associations and organizations, including civic clubs or organization, necessary and desirable for the good of the City and for the Manager's continued professional development; and (3) travel and subsistence expenses of the Manager to pursue official and other functions for the City, including, but not limited to, national, state, regional and/or local associations and organizations necessary and desirable for the good of the City and for the Manager's continued professional development.

G. Business Expenses. Within the City's budget constraints and subject to adopted City policies, the City shall pay for or provide the Manager reasonable reimbursement for all actual and necessary business expenses.

H. Relocation Reimbursement. As an incentive to relocating to a primary residence located within forty (40) miles of the City of Indian Wells City Hall, the City agrees to reimburse Manager up to Twelve Thousand Dollars (\$12,000) in moving expenses. For the purpose of this Agreement, "moving expenses" shall include travel and lodging for no more than two (2) trips for the purpose of searching for a personal residence; one or more moving van for personal and practice-related possessions;

packing of personal and practice-related possessions (including packaging materials); loading and unloading of personal and practice-related possessions; and relocation travel expenses for airfare or mileage.

I. All Other Benefits. With the exception of such benefits as outlined specifically in this Section, the City shall provide the Manager with other benefits, including but not limited to health, disability, and retirement benefits, consistent with those benefits provided to the City's other executive-level employees.

**9. Abuse of Office or Position:**

If Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (a) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Manager may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (x) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (y) a crime against public justice.

**10. Enforcement of this Agreement:**

The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his/her/its reasonable attorneys' fees and costs.

**11. Communications Upon Manager's Separation:**

In the event the City terminates the Manager for any reason or no reason, the City and the Manager agree that no member of the City Council, the City staff, nor the

Manager, shall make any written, oral or electronic statement to any member of the public, the press, or any city employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City and the Manager. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

**12. Indemnification:**

Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. Legal representation, provided by City for Manager, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, 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 Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and Manager such that independent counsel is required for Manager, Manager may engage his/her own legal counsel, in which event City shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

**13. Notices:**

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

**For the City:**

Mayor and City Council  
City of Indian Wells  
44-950 Eldorado Dr.  
Indian Wells, CA 92210  
ATTN: Mayor

**For the Manager:**

Chris Freeland

With copy to:

Jeff Ballinger, City Attorney  
Best Best & Krieger LLP  
74-760 Highway 111, Suite 200  
Indian Wells, CA 92210

**14. Conflict with City Charter or Municipal Code:**

The City personnel ordinances, resolutions, rules and policies shall apply to Manager in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the Municipal Code, the City Charter or the Municipal Code shall prevail over this Agreement.

**15. Entire Agreement:**

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

**16. Modifications:**

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

**17. Effect of Waiver:**

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

**18. Partial Invalidity:**

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 without being impaired or invalidated in any way.

**19. Governing Law:**

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

**20. Assistance of Counsel:**

Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain it.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the 2<sup>nd</sup> day of May, 2019.

**CITY OF INDIAN WELLS:**

**CHRIS FREELAND:**

By:   
\_\_\_\_\_  
Ted J. Mertens  
Mayor

By:   
\_\_\_\_\_  
Chris Freeland

Attest:

  
\_\_\_\_\_  
Anna Grandys, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Jeffrey S. Ballinger, City Attorney



**EXHIBIT "A"**

**CONFIDENTIAL SEPARATION AGREEMENT AND RELEASE**

This Agreement is entered into on [\_\_\_\_\_], by and between [\_\_\_\_\_] (hereinafter "Employee") and the CITY OF INDIAN WELLS (hereinafter "Employer"). Said parties shall be collectively referred to as the "Parties." Employee is currently employed as an [\_\_\_\_\_] for Employer. During the course of Employee's employment issues arose concerning Employee's continued employment. The Parties mutually desire to settle all of their present and possible future differences, disputes, or claims relating to and arising out of the employment and, therefore, the Parties agree as follows:

1. **CONSIDERATION & REVOCATION PERIOD.** This Agreement was presented to Employee for consideration on [\_\_\_\_\_]. From that date, Employee has twenty one days to consider the Agreement, though he is free to execute the Agreement prior to the end of that period if he so chooses. Following the execution of the Agreement, Employee has seven days in which to revoke. Such revocation must be made in writing and be personally delivered to the City Attorney. The effective date of this Agreement ("Effective Date") will be at 5:01 p.m. on the eighth day following Employer's receipt of Employee's signed Agreement.

2. **SEPARATION TERMS.** Employee agrees not to contest his separation from employment as of [\_\_\_\_\_] ("Separation Date"). Employee agrees that, as of the Separation Date, he will have already returned any and all equipment or other property belonging to Employer. In return, Employer agrees to pay Employee severance pay in the total amount equal to [\_\_\_\_\_] months of his current monthly base salary, subject to all lawful deductions and taxes applicable to wages. This amount is in addition to compensation provided as final wages owed. The severance pay will be paid on Employer's first regular payday following the Effective Date of this Agreement and shall be subject to all regular withholdings and legally required taxes.

3. **GENERAL RELEASE.** Employee voluntarily and irrevocably releases and discharges Employer and its shareholders, directors, officers, elected or appointed officials, employees, fiduciaries, insurers, agents, successors, and assigns (collectively, "Released Parties") from and against any and all individual relief claims, obligations, debts, demands, judgments, or causes of action of any kind whatsoever, known or unknown, actual or contingent, whether brought at law, in equity or otherwise, based on tort, contract, statute, or on any other basis, which Employee has

or may have against any of them or liability they may have to Employee (collectively, "Claims"), which arise from or are related to Employee's employment or relationship with the Employer or any other Released Party, Employee's separation from employment from any of them, or any other matter, cause or thing whatsoever which may have occurred involving Employee and any Released Party prior to the date of Employee's acceptance of this Agreement. This release also includes all Claims for equitable relief, actual, compensatory, consequential, punitive, special, multiple, or other damages, expenses (including without limitation attorneys' fees and court costs. This release includes, without limitation, any and all Claims Employee has or may have against the Employer or any other Released Party arising under any federal, state, local, or foreign statute, common or other law, including without limitation those relating to the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Civil Rights Acts of 1866, 1871, 1964 and 1991, the Equal Pay Act of 1963, the Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, the Fair Labor Standards Act of 1938, the Family and Medical Leave Act of 1993, the Labor Management Relations Act of 1947, the National Labor Relations Act, the Rehabilitation Act of 1973, the California Labor Code, the California Fair Employment and Housing Act.

4. CIVIL CODE SECTION 1542 WAIVER. Employee agrees that the Released Claims include not only claims presently known to Employee but also include all unknown or unanticipated claims. Employee understands that he may later discover facts different from what they now believe to be true, which if known, could have materially affected this Agreement, but he nevertheless waives any claims or rights based on different or additional facts. Employee 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 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Notwithstanding the provisions of Section 1542, this Agreement is also intended to include all claims which Employee does not know or suspect to exist at the time this Agreement's execution.



5. NO ACTIONS. Employee affirms that he currently has no action, charge, or administrative claim pending before any court of law, governmental body, or administrative agency, either on the federal or state level. Employee agrees he will not at any time in the future pursue any employment personnel appeal or internal grievance or file any claim for individual relief with any governmental agency or any court arising out of or in any way related to his employment. Employee affirms that he is unaware of any issue relating to Employer's non-compliance with regulatory obligations.

6. RELEASE CARVE OUT. Notwithstanding the provisions of paragraphs 3-5, Employee's released claims shall not include any claims based on obligations created by or reaffirmed in this Agreement, nor shall Employee's released claims include claims which expressly cannot be waived according to California Labor Code Section 2804. Nor shall anything in this Agreement be construed to prohibit Employee from filing a charge with or participating in any investigation or proceeding conducted by the Public Employment Relations Board (PERB), U.S. Equal Employment Opportunity Commission (EEOC), California Department of Fair Employment and Housing (DFEH), or any other governmental agency. Notwithstanding the foregoing, Employee hereby agrees to, and does, waive his right to recover monetary damages in any charge or lawsuit filed by Employee or anyone else on his behalf.

7. NO RE-EMPLOYMENT. As of the date of this Agreement, Employee has not applied for, sought, or accepted re-employment with Employer. Employee knowingly and voluntarily waives all rights he may have under federal or state law to reinstatement and acknowledges that Employer may, in its discretion, refuse to consider any application for re-employment.

8. NO DEFAMATION. The Employee may not disparage customers, suppliers, vendors nor may Employee defame Employer, its management, its employees, agents, officers, elected or appointed officials, shareholders, or affiliates. Employee agrees to refrain from making public statements regarding his subjective opinion regarding Employer or his employment actions. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 6.

9. CONFIDENTIALITY. The Parties acknowledge that they have not discussed or disclosed any of the terms of this Agreement to anyone, except for their attorneys. Except as such disclosure may occur to Employee's attorneys or accountants or as otherwise may be required by law, or in response to any subpoena, Employee agrees the terms of this Agreement and all negotiations between the Parties shall be kept strictly confidential and neither the details of the negotiations,

the terms of this Agreement, or Employee's subjective opinion relating to the negotiations, the Agreement, or his prior employment may be disclosed to anyone, including without limitation, any person, corporation, or other business entity for any purpose. Should any inquiry be made, the Employee may respond only by indicating that the separation was amicable.

If Employee becomes legally compelled by deposition, subpoena, interrogatory, request for documents, or similar legal process, he shall immediately notify the Employer telephonically and confirmed in writing, so that the Employer will have the opportunity to intervene. This obligation is not intended to prohibit lawful interactions with governmental agencies as referred to in paragraph 6.

10. NO ASSIGNMENT. The Parties hereto each warrant that they have made no assignment and will make no assignment of any claim, right of action, or any right of any kind whatsoever embodied in any of the Released Claims and that no other person or entity of any kind had or has any interest in the same.

11. NO ADMISSION OF LIABILITY. This Agreement is solely for the purpose of compromising on the issue of separation of employment. It does not constitute, nor shall it be construed, as an admission of the truth or validity of any claims asserted. All communications made in conjunction with this Agreement shall be governed and protected in accordance with the Federal Rule of Evidence 408 and California Evidence Code sections 1150, et seq.

12. ENTIRE AGREEMENT. This is the entire Agreement between the Parties pertaining to the separation of employment or any disputes or claims arising during the course of employment, and it supersedes all prior or contemporaneous agreements, negotiations, or discussions, whether oral or written, express or implied. No supplements, modifications, or waivers of this Agreement shall be binding unless executed by written amendment.

13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, including those executed by facsimile, each of which shall be deemed an original but all of which taken together shall constitute one Agreement.

14. ATTORNEYS' FEES. In the event of legal proceedings to enforce the terms of this Agreement, necessary to declare rights hereunder, or as the result of the breach of this Agreement, the prevailing party in any such proceeding shall be entitled to recover from the losing party reasonable costs and attorneys' fees, including but not limited to the out-of-pocket expenses of attorneys and out-of-pocket expenses of experts.

15. **NEGOTIATED AGREEMENT.** Employee acknowledges and agrees that Employer has recommended use of independent counsel or labor representation, if relevant, throughout all negotiations that preceded the execution of this Agreement. Any choice to forgo such use is of the Employer's own will. This Agreement is the result of arms-length negotiations and expresses the complete, actual, and intended agreement of the Parties.

16. **WAIVER & SEVERABILITY.** Failure to insist on compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of the same. If any provision is held to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

**THIS AGREEMENT INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT AND ARE SIGNING VOLUNTARILY.**

**CITY OF INDIAN WELLS:**

**EMPLOYEE:**

By: \_\_\_\_\_  
TED J. MERTENS  
MAYOR

By: \_\_\_\_\_  
CHRIS FREELAND  
EMPLOYEE