

**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