

**CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF INDIO AND BRYAN MONTGOMERY**

This Employment Agreement ("Agreement") is made as of and entered into as of May 13, 2021, by and between the City of Indio, a California municipal corporation ("City"), and Bryan H. Montgomery, an individual ("Employee").

RECITALS

- A. City has conducted a formal recruitment and selection process for a City Manager.
- B. Employee represents that he has the necessary education, experience, skills and expertise and is otherwise qualified to serve as City Manager and desires to serve in such capacity.
- C. City and Employee desire to enter into an employment agreement that sets forth the terms and conditions of employment of Employee as City Manager, including the duties, salary and benefits of employment.
- D. Employee desires to accept employment as City Manager under the terms set forth herein.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the City and Employee hereby agree as provided in this Agreement.

1. **Appointment of City Manager.** City does hereby appoint and employ Employee in the capacity of City Manager as of May 13, 2021.

2. **Term.** Unless sooner terminated, the term of this Agreement shall be from May 13, 2021 ("Effective Date") to May 12, 2026.

3. **City Manager Duties and Authority.**

A. Employer agrees to employ Employee as City Manager and as Executive Director of any authority or agency created or staffed by City. Employee shall be responsible to the City Council for the proper administration of all affairs of the City.

B. Employee shall exercise the full powers and perform the duties of the position of City Manager as set forth in the Indio Municipal Code, any human resources rules, any departmental and other rules, regulations and procedures, the City Manager job description (if any) and any provisions under state law, as each of them currently or may in the future exist. Employee shall also exercise such other powers and authority and perform such other functions and duties, not inconsistent with this Agreement, as may legally be assigned by the City Council.

C. Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote City's interests. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law and as such is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager position.

D. In the event Employee becomes mentally or physically incapable of performing the City Manager's functions and duties with or without reasonable accommodation and it reasonably appears such incapacity will last for more than six months, he will be deemed to have resigned from his position.

E. The parties acknowledge that Employee is a member of the International City/County Management Association ("ICMA"). As a member, Employee commits to comply with the ICMA Code of Ethics and in compliance with all applicable ethical standards having the force of state law.

4. Other Activities.

A. Employee shall devote his entire professional time, ability, attention to the business of the City during the term of this Agreement.

B. Employee shall not engage in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or for profit, without the prior written consent of the City Council of the City.

C. Notwithstanding the foregoing, Employee shall be permitted to conduct or engage in limited teaching and other formal classroom and/or instructional programs for compensation, including teaching and providing instructional programs for related professional organizations such as ICMA, so long as such activities do not interfere with Employee's primary duty as City Manager or constitute a conflict of interest under applicable law ("Outside Activities"). Written notice of the Outside Activities shall be provided to the Mayor, which shall include the precise nature of the Outside Activities and the approximate time required by the Employee to engage in the Outside Activities. If the Employee is required to be out-of-town, Employee shall obtain written approval from the Mayor. In no event, shall the time devoted by the Employee to the Outside Activities exceed more than 10 hours a week over any six month period during a calendar year. At any time, Employee agrees that the City Council may request that Employee disengage from the Outside Activities and the Employee shall cease engaging in the Outside Activities. Review of Employee's Outside Activities shall be part of Employee's annual performance evaluation.

5. City Council Commitments.

A. The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

B. 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 Employee or the Employee's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Employee, either publicly or privately.

C. 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 Employee. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. Employee shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

6. Salary and Benefits.

A. Base Salary. From the Effective Date of this Agreement, City shall pay Employee an annual salary of \$257,000, subject to legally permissible or required deductions and withholding, prorated and paid on City's normal paydays. Employee's compensation is for all hours worked and for all services under this Agreement, including those as an Executive Director or involving any other position, office or appointment associated with the City. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. Benefits.

(1) Medical, Dental and Health Benefit Plans. Employee may participate in the City's medical program (vision, dental and comprehensive medical insurance) in an amount equal and on the same basis to that which is provided to other employees in the City Executive Group in the amount set forth in the most current Resolution of the City setting forth the employer contribution for employees under the Public Employees' Medical and Hospital Care Act. Eligibility and benefits will be as determined by the applicable laws, regulations and plan documents. In the event of a conflict between this Agreement and the applicable laws, regulations and plan documents, the latter shall prevail. The City reserves the right to change or discontinue its benefits programs at any time, to the maximum extent permitted by law. As a matter of public information, as of the Effective Date of this Agreement, employees in the City's Executive Group receive a "cafeteria plan" benefit contribution from the City in the amount of One Thousand Six Hundred Dollars (\$1,600) and this contribution represents the City's entire contribution to each Executive Group employee's vision, dental and comprehensive medical insurance premium.

(2) Life Insurance. City shall provide Employee with a \$50,000 life insurance policy under the program of the City's choosing. The full premium for such policy shall be paid for by the City. Employee shall have the option to purchase additional life, if available, at Employee's expense.

(3) Disability Insurance. City shall provide Employee with a long-term disability insurance policy under the program of its choosing. The full premium for such policy shall be paid for by the City.

(4) Administrative Leave. Employee shall be provided eighty (80) hours per year of administrative leave to be credited Employee on July 1 of each year. Administrative leave shall be prorated if employment commences after July 1. No more than sixteen (16) hours of administrative leave time may be carried over into the next fiscal year. Unused administrative leave may not be converted to cash nor shall Employee be compensated for administrative leave time accrued at the time of Employee's separation from the City.

(5) Vacation. Employee shall commence employment with eighty (80) hours of vacation. Thereafter (starting on the Effective Date), vacation leave accrues at a rate 7.69 hours per pay period (200 hours annually). Employee shall have the option of selling back to the City up to 80 hours of vacation each calendar year. Employee may accrue up to three times that of Employee's annual accrual. Upon reaching this maximum, Employee will receive no additional vacation accumulation until his accumulation is below the limit.

(6) Sick Leave. Employee shall commence employment with forty (40) hours of sick leave. Thereafter (starting on the Effective Date), sick leave accrues at a rate of one day per month, 3.692 hours per bi-weekly pay period. Employee may accrue an unlimited amount of sick leave from year-to-year but may not sell the City any hours of sick leave at any time. Pursuant to the City's contract with the California Public Employees' Retirement System, Employee may purchase additional service credit with unused accumulated sick leave upon retirement on the same terms and basis as this is provided to other management employees.

(7) Retirement. Employee shall be enrolled in City's retirement plan with the California Public Employees' Retirement System (PERS), subject to the applicable benefit formula, terms and conditions provided in the contract between City and PERS and also subject to applicable state law and regulations. It is the understanding of the parties that Employee is a "Classic Employee" under the Public Employees' Pension Reform Act of 2013 and will be covered by City's first tier formula of 2.7% @ 55. Employee shall make all member contributions and there shall be no employer paid member contributions. In the event of any conflict between this Agreement and the City's PERS contract or the applicable laws and regulations, the latter shall prevail.

(8) Holidays. Employee shall be entitled to the same paid holidays as provided to other Management Employees of the City. The holidays are subject to change by the City Council.

(9) Technological tools. Employee may be provided with tools such as a lap top computer and/or cell phone for purposes of communications with the City Council and employees. In lieu of any or all such technological tools, Employee may participate in any stipend program for such technology tools on the same terms and conditions as other employees as referenced in Administrative Policy A-9, as the same may be amended from time to time. Employee shall return all technological tools provided upon separation of his employment with City.

(10) Automobile. Any rules, policies or practices to the contrary notwithstanding, Employee shall be provided a monthly auto allowance of five hundred dollars (\$500.00) in exchange for making a vehicle available for the Employee's use for City-related business and/or functions during, before and after normal work hours. Employee shall comply with all city policies related to the use of his own vehicle, which includes providing the City with proof of current automobile insurance with liability limits in the amount set by the Director of Risk Management.

(11) Additional Benefits. Employee may participate in any other benefit plans based exclusively on Employee contributions and according to the terms and conditions of the applicable plan documents.

(12) Bonding. City shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance.

(13) Deferred Compensation. Commencing on the Effective Date, the City will take all actions necessary to establish a qualified Section 401(a) Plan with an acceptable trustee of the City's choosing, for the benefit of Employee, including any administrative or set-up fees. The City will make in equal proportionate amounts each pay period an annual contribution that is equal to \$24,000 into a qualified Section 401(a) Plan. All provisions of this paragraph are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this paragraph shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations.

7. Moving Expenses/Housing Stipend. To assist Employee in relocating to Southern California, City shall provide Employee a one-time lump sum amount of \$15,000 payable within one year of the Effective Date within 30 days of a request made by the Employee to the Finance Department.

8. Annual Performance Evaluations. Annual performance evaluations are an important way for the City Council and Employee to ensure effective communications regarding expectations and performance. Accordingly, the City Council shall review and evaluate the performance of Employee on an annual basis or more frequently if the City Council so desires at its discretion. Employee will request and schedule the evaluation as appropriate under City Council procedures, or as otherwise directed by the City Council. Nothing in this paragraph is intended to limit additional interim evaluations or to limit the normal communications process between the City Council and Employee. Failure of the City Council to provide a performance evaluation shall not limit the City's ability to terminate this Agreement pursuant to the terms set forth herein. The City Council may, but is not required to, consider or approve cost of living increases, market adjustments, merit increases, bonuses, performance pay or other compensation enhancements in conjunction with the review under this paragraph.

9. At-Will Employment Relationship.

A. Consistent with Government Code Section 36506, Employee is appointed by and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City to terminate this Agreement and the employment of Employee, with or without cause. City shall pay Employee for all services through the effective date of termination and Employee shall have no right to any additional compensation or payment, except as provided under the Section 9 below. Employee shall return any electronic equipment provided (i.e. laptop computer, etc.) upon separation of her employment with the City.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from her employment with City, subject only to Employee providing 60 calendar days prior written notice to City.

10. Severance.

A. If City terminates this Agreement (thereby terminating Employee's employment) without cause, then City shall pay Employee a lump sum severance benefit equal to six months of Employee's then applicable base salary. City shall also provide reimbursement of the City's COBRA health insurance premiums for the Employee for six (6) months following termination or until Employee finds other employment, whichever occurs first. The monthly reimbursement amount shall not exceed the then cafeteria plan benefit contribution provided to employees in the City's Executive Group. Employee has an obligation to notify City immediately upon obtaining employment after separation from the City. Such severance shall be Employee's sole remedy for termination under this Agreement. The severance pay shall be paid only after Employee executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that set forth in Exhibit A to this Agreement.

B. If City terminates this Agreement (thereby terminating Employee's Employment) with cause, then Employee shall not be entitled to any severance. As used in this Agreement, "cause" shall mean termination due to any of the following: (i) Employee's breach of this Agreement; (ii) a conviction (including a plea of no contest) or a plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the Fair Political Practices Commission for any felony, intentional tort, crime of moral turpitude, or violation of any statute or law constituting forfeiture of office, misconduct in office, misuse of public funds, or conflict of interest; (iii) a conviction (including a plea of no contest) of a felony; (iv) a conviction (including a plea of no contest) of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law; (v) violation of the City's anti-harassment or discrimination policies; (vi) use or possession of illegal drugs; (vii) a continued willful abandonment of duties; (viii) a pattern of repeated, willful and intentional failure to carry

out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body, or persistent and willful violation of properly established rules and procedures; (ix) repeated unexcused absences from Employee's City Manager office and duties; (x) any other action or inaction by Employee that materially and substantially impedes or disrupts the performance of City or its organizational units, is detrimental to employee safety or public safety, violates properly established rules or procedures, adversely affects the reputation of City, its officers or employees, or has a substantial and adverse effect on the City's interests.

C. If Employee terminates this Agreement (thereby terminating Employee's employment), then Employee shall not be entitled to any severance.

D. Upon any separation from employment, Employee will be compensated for all accrued but unused vacation leave.

E. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 – 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse City for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 – 53243.4.

11. Official and Professional Development Expenses.

A. City recognizes that Employee may incur certain expenses of a non-personal and job related nature. Accordingly, the City agrees to reimburse or pay for such actual business expenses, subject to any budget and appropriations limitation. Such expenses shall be incurred and submitted accordingly to the City's normal expense reimbursement procedures. All expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City. The City shall provide the Employee a City credit card to charge appropriate and lawful business expenses.

B. The parties agree that Employee should actively participate in such state, regional and local professional organizations and subscribe to such professional publications as may be reasonably necessary for the good of the City and for Employee's continued professional participation and advancement. City agrees to pay the professional dues and subscriptions on behalf of Employee which are necessary for Employee's continuation and full participation in national, regional, state or local associations and organizations necessary and desirable for the good of the City and for Employee's continued professional participation and advancement, such as the League of California Cities, International City/County Management Association, California City Managers Foundation as well as one service organization (i.e. Rotary). In addition, the City shall pay or reimburse for Employee's attendance at the annual ICMA conference, the annual League of California Cities conference, the annual League of California Cities City Manager Department meeting, the annual California City Manager's Foundation meeting

and any meetings and conferences of governmental groups and committees upon which the Employee serves as a member subject to any budget and appropriations limitation. Such amount includes travel and subsistence expenses subject to the City's normal expense reimbursement procedures.

C. The City also agrees to pay for the travel and subsistence expenses of the Employee for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the Employee subject to any budget and appropriations limitation.

12. Indemnification.

A. Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

B. Any and all paid leave, defense payments or other benefits which may be provided to Employee under this Agreement upon termination or in the event of an investigation shall be subject to and interpreted to comply with the limitations set forth in Government Code Sections 53243 through 54244, including, without limitation, the obligation of Employee to reimburse the City for any funds paid should Employee be convicted of a crime involving an abuse of office or position as defined in Government Code Section 53243.4.

13. Confidential Information. Employee acknowledges and agrees that in the performance of his duties, the City discloses and entrusts him with certain confidential or proprietary information. Employee agrees not to directly or indirectly disclose or use at any time any such information, whether it be in the form of records, lists, data, personnel information, reports or otherwise, of a business or technical nature, which was acquired or viewed by Employee during Employee's relationship with the City unless such disclosure is authorized by the City in writing, required by law, or required in the performance of the duties of the City Manager. This provision shall survive the termination or expiration of this Agreement.

14. General Provisions.

A. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Employee's employment with the City.

B. Representations. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and

that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party. Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. Amendments. No amendments to this Agreement may be made except by a writing signed and dated by City and Employee.

D. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

E. Prevailing Party Attorneys' Fees. In any action to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof, the prevailing party shall be entitled to payment of reasonable attorneys' fees and costs.

F. Choice of Law and Venue. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions. The parties agree that venue shall be in Riverside County, California.

G. Drafting of Agreement. The parties hereto acknowledge and agree that although this Agreement has been drafted by City's legal counsel, Employee has reviewed, or had an opportunity to review the terms of this Agreement with his legal counsel. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.

H. Independent Review of Agreement. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or Employees other than those expressly set forth in this Agreement.

I. Notices. Any notice to City under this Agreement shall be given in writing to City, by personal service, by overnight delivery service providing confirmation of delivery, or by registered or certified mail, postage prepaid, addressed to the Director of Human Resources at the City's then principal place of business. Any such notice to Employee shall be given in a like manner and, if deposited with an overnight delivery service or mailed, shall be addressed to Employee at his home address then shown in City's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally

on the party to whom notice is to be given, (b) on the next delivery day following deposit with an overnight delivery service or (c) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this paragraph.

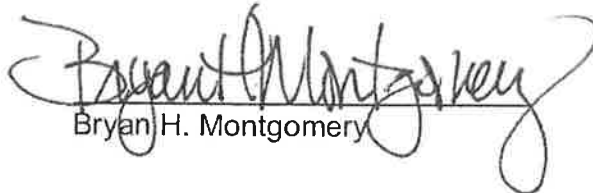
J. References. When a reference is made to benefits received by the City's "Management" employees, the parties agree that the Agreement is referring to the benefits received by employees under the current resolution entitled "A Resolution of the City of Indio Providing Salaries and Related Matters for Management, Confidential and Unrepresented Employees" as such resolution is adopted by the City Council.

K. Heirs and Beneficiaries. In the event Employee dies while employed by the City under this Agreement, the Employee's beneficiaries or those entitled to the Employee's estate shall be entitled to Employee's earned salary and any in-lieu payments for accrued benefits, including compensation for the value of accrued balances in accordance with this Agreement, city policy or as required by law.

15. Voluntary Agreement. Employee represents and warrants that he has read carefully and fully understands all the provisions of this Agreement, that he is free to enter into this Agreement and to render the services described in it, that he entering into and performance of this Agreement will not breach or violate or conflict with any other agreement (written or oral) to which he is a party, and that he has had an opportunity to consult with his legal counsel prior to entering into this Agreement and has either done so or voluntarily chosen not to do so. Employee is voluntarily entering into this Agreement. The City represents and warrants that it has the right and power to enter into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally as the date and year first written above.

EMPLOYEE:

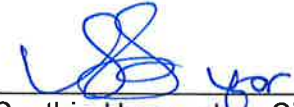

Bryan H. Montgomery

CITY OF INDIO:



Mayor Elaine Holmes

ATTEST:

 4/28/12 (SEAL)

Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:



Roxanne Diaz, City Attorney

EXHIBIT "A"

WAIVER AND GENERAL RELEASE AGREEMENT

This Waiver and General Release Agreement ("Release Agreement") is entered into by and between Bryan H. Montgomery ("Manager") and City of Indio ("City"), dated _____, in light of the following facts:

- A. City and Manager entered into an employment agreement dated May 17, 2021 ("Employment Agreement").
- B. Certain disputes have arisen between City and Manager.
- C. City and Manager each deny any liability whatsoever to the other.
- D. City and Manager wish to fully and finally resolve any and all disputes they may have with each other.
- E. Manager's employment with City concluded on _____, 2____ ("Separation Date").
- F. Manager is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Manager to consult with his legal counsel before signing this Agreement.
- G. Manager acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

Section 1. Facts of Release Agreement. The above facts are true and correct and incorporated into this Release Agreement as if set forth in full.

Section 2. Acknowledgement. Manager does hereby acknowledge and attests that he has read and understands Section 9 of the Employment Agreement with the City of Indio and hereby agrees that by accepting the severance payment pursuant to the terms of the Employment Agreement, Manager agrees to waive all rights to further claims, remedies or legal action against the City, its officers and employees

Section 3. Severance. Within five (5) business days following Manager's signing, delivering to the City, and not revoking this Agreement, City shall pay Manager the gross amount provided for in Section 9 of the attached Employment Agreement, less applicable deductions ("Severance") Manager acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

Section 4. General Release.

A. In consideration of the Severance to be paid and provided to Manager, all other salary and benefits owing and other good and valuable consideration, Manager hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents (collectively "Released Parties"), from all rights, claims, demands, obligations, liabilities, damages and causes of action of every kind and character, both known and unknown, in law or in equity, which Manager may have now or in the future, arising from any act or omission or condition occurring on or prior to the date this Release Agreement is signed, whether based on tort, contract (express or implied), or on any federal, state or local law or statute, or regulation including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy ("Released Claims"). Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

B. Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Councilmembers, employees, representatives and agents, Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

C. Manager further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

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

in any manner to the Released Claims.

Section 5. Written Modifications. This Release Agreement supersedes any prior written or verbal adjustment of this matter and constitutes a complete resolution of all claims or potential claims by Employee against the City. There shall be no modification of this Agreement except in writing signed by both parties.

Section 6. Attorney's Fees to Enforce Agreement. In the event suit is initiated by either party to enforce the terms of this Release Agreement, or for damages for breach of the terms of this Release Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Section 7. No Admission of Liability. It is understood and agreed that this Release Agreement shall not constitute or be construed as an admission of liability on the part of the parties herein released.

Section 8. Governing Law. This Release Agreement and the rights and obligations created by this Agreement shall be governed by the laws of the State of California, without reference to any law that may require application of the laws of another jurisdiction.

Section 9. Venue. Any action to enforce or interpret the terms of this Agreement shall be subject to the exclusive jurisdiction of the courts in the County of Riverside, State of California.

Section 10. Agreement Binding. This Release Agreement is binding upon, and shall inure to the benefit of, the heirs, executors, administrators, representatives, successors, and assigns of the respective parties hereto and each of them.

Section 11. Integration. This Release Agreement constitutes a single integrated written contract expressing the entire agreement of the parties hereto relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Release Agreement. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Release Agreement.

Section 12. Severability. In the event that any provision or partial provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof shall nevertheless remain in full force and effect.

Section 13. Facsimile Signatures and Counterparts. The parties agree that this Release Agreement will be considered signed by a party when the signature of that party is delivered by facsimile transmission. Such signature shall be treated in all respects as having the same effect as an original signature. This Release Agreement

may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this General Release.

"CITY"
CITY OF INDIO ("CITY")


"MANAGER"
BRYAN H. MONTGOMERY

By: 
Mayor

By: _____
Bryan H. Montgomery

Dated: _____

ATTEST:

By:  4/28/21
Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:

By: _____
Roxanne Diaz, City Attorney

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4. Other Activities.

A. Employee shall devote his entire professional time, ability, attention to the business of the City during the term of this Agreement.

B. Employee shall not engage in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or for profit, without the prior written consent of the City Council of the City.

C. Notwithstanding the foregoing, Employee shall be permitted to conduct or engage in limited teaching and other formal classroom and/or instructional programs for compensation, including teaching and providing instructional programs for related professional organizations such as ICMA, so long as such activities do not interfere with Employee's primary duty as City Manager or constitute a conflict of interest under applicable law ("Outside Activities"). Written notice of the Outside Activities shall be provided to the Mayor, which shall include the precise nature of the Outside Activities and the approximate time required by the Employee to engage in the Outside Activities. If the Employee is required to be out-of-town, Employee shall obtain written approval from the Mayor. In no event, shall the time devoted by the Employee to the Outside Activities exceed more than 10 hours a week over any six month period during a calendar year. At any time, Employee agrees that the City Council may request that Employee disengage from the Outside Activities and the Employee shall cease engaging in the Outside Activities. Review of Employee's Outside Activities shall be part of Employee's annual performance evaluation.

5. City Council Commitments.

A. The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

B. 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 Employee or the Employee's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Employee, either publicly or privately.

C. 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 Employee. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. Employee shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

6. Salary and Benefits.

A. Base Salary. From the Effective Date of this Agreement, City shall pay Employee an annual salary of \$257,000, subject to legally permissible or required deductions and withholding, prorated and paid on City's normal paydays. Employee's compensation is for all hours worked and for all services under this Agreement, including those as an Executive Director or involving any other position, office or appointment associated with the City. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. Benefits.

(1) Medical, Dental and Health Benefit Plans. Employee may participate in the City's medical program (vision, dental and comprehensive medical insurance) in an amount equal and on the same basis to that which is provided to other employees in the City Executive Group in the amount set forth in the most current Resolution of the City setting forth the employer contribution for employees under the Public Employees' Medical and Hospital Care Act. Eligibility and benefits will be as determined by the applicable laws, regulations and plan documents. In the event of a conflict between this Agreement and the applicable laws, regulations and plan documents, the latter shall prevail. The City reserves the right to change or discontinue its benefits programs at any time, to the maximum extent permitted by law. As a matter of public information, as of the Effective Date of this Agreement, employees in the City's Executive Group receive a "cafeteria plan" benefit contribution from the City in the amount of One Thousand Six Hundred Dollars (\$1,600) and this contribution represents the City's entire contribution to each Executive Group employee's vision, dental and comprehensive medical insurance premium.

(2) Life Insurance. City shall provide Employee with a \$50,000 life insurance policy under the program of the City's choosing. The full premium for such policy shall be paid for by the City. Employee shall have the option to purchase additional life, if available, at Employee's expense.

(3) Disability Insurance. City shall provide Employee with a long-term disability insurance policy under the program of its choosing. The full premium for such policy shall be paid for by the City.

(4) Administrative Leave. Employee shall be provided eighty (80) hours per year of administrative leave to be credited Employee on July 1 of each year. Administrative leave shall be prorated if employment commences after July 1. No more than sixteen (16) hours of administrative leave time may be carried over into the next fiscal year. Unused administrative leave may not be converted to cash nor shall Employee be compensated for administrative leave time accrued at the time of Employee's separation from the City.

(5) Vacation. Employee shall commence employment with eighty (80) hours of vacation. Thereafter (starting on the Effective Date), vacation leave accrues at a rate 7.69 hours per pay period (200 hours annually). Employee shall have the option of selling back to the City up to 80 hours of vacation each calendar year. Employee may accrue up to three times that of Employee's annual accrual. Upon reaching this maximum, Employee will receive no additional vacation accumulation until his accumulation is below the limit.

(6) Sick Leave. Employee shall commence employment with forty (40) hours of sick leave. Thereafter (starting on the Effective Date), sick leave accrues at a rate of one day per month, 3.692 hours per bi-weekly pay period. Employee may accrue an unlimited amount of sick leave from year-to-year but may not sell the City any hours of sick leave at any time. Pursuant to the City's contract with the California Public Employees' Retirement System, Employee may purchase additional service credit with unused accumulated sick leave upon retirement on the same terms and basis as this is provided to other management employees.

(7) Retirement. Employee shall be enrolled in City's retirement plan with the California Public Employees' Retirement System (PERS), subject to the applicable benefit formula, terms and conditions provided in the contract between City and PERS and also subject to applicable state law and regulations. It is the understanding of the parties that Employee is a "Classic Employee" under the Public Employees' Pension Reform Act of 2013 and will be covered by City's first tier formula of 2.7% @ 55. Employee shall make all member contributions and there shall be no employer paid member contributions. In the event of any conflict between this Agreement and the City's PERS contract or the applicable laws and regulations, the latter shall prevail.

(8) Holidays. Employee shall be entitled to the same paid holidays as provided to other Management Employees of the City. The holidays are subject to change by the City Council.

(9) Technological tools. Employee may be provided with tools such as a lap top computer and/or cell phone for purposes of communications with the City Council and employees. In lieu of any or all such technological tools, Employee may participate in any stipend program for such technology tools on the same terms and conditions as other employees as referenced in Administrative Policy A-9, as the same may be amended from time to time. Employee shall return all technological tools provided upon separation of his employment with City.

(10) Automobile. Any rules, policies or practices to the contrary notwithstanding, Employee shall be provided a monthly auto allowance of five hundred dollars (\$500.00) in exchange for making a vehicle available for the Employee's use for City-related business and/or functions during, before and after normal work hours. Employee shall comply with all city policies related to the use of his own vehicle, which includes providing the City with proof of current automobile insurance with liability limits in the amount set by the Director of Risk Management.

(11) Additional Benefits. Employee may participate in any other benefit plans based exclusively on Employee contributions and according to the terms and conditions of the applicable plan documents.

(12) Bonding. City shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance.

(13) Deferred Compensation. Commencing on the Effective Date, the City will take all actions necessary to establish a qualified Section 401(a) Plan with an acceptable trustee of the City's choosing, for the benefit of Employee, including any administrative or set-up fees. The City will make in equal proportionate amounts each pay period an annual contribution that is equal to \$24,000 into a qualified Section 401(a) Plan. All provisions of this paragraph are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this paragraph shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations.

7. Moving Expenses/Housing Stipend. To assist Employee in relocating to Southern California, City shall provide Employee a one-time lump sum amount of \$15,000 payable within one year of the Effective Date within 30 days of a request made by the Employee to the Finance Department.

8. Annual Performance Evaluations. Annual performance evaluations are an important way for the City Council and Employee to ensure effective communications regarding expectations and performance. Accordingly, the City Council shall review and evaluate the performance of Employee on an annual basis or more frequently if the City Council so desires at its discretion. Employee will request and schedule the evaluation as appropriate under City Council procedures, or as otherwise directed by the City Council. Nothing in this paragraph is intended to limit additional interim evaluations or to limit the normal communications process between the City Council and Employee. Failure of the City Council to provide a performance evaluation shall not limit the City's ability to terminate this Agreement pursuant to the terms set forth herein. The City Council may, but is not required to, consider or approve cost of living increases, market adjustments, merit increases, bonuses, performance pay or other compensation enhancements in conjunction with the review under this paragraph.

9. At-Will Employment Relationship.

A. Consistent with Government Code Section 36506, Employee is appointed by and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City to terminate this Agreement and the employment of Employee, with or without cause. City shall pay Employee for all services through the effective date of termination and Employee shall have no right to any additional compensation or payment, except as provided under the Section 9 below. Employee shall return any electronic equipment provided (i.e. laptop computer, etc.) upon separation of her employment with the City.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from her employment with City, subject only to Employee providing 60 calendar days prior written notice to City.

10. Severance.

A. If City terminates this Agreement (thereby terminating Employee's employment) without cause, then City shall pay Employee a lump sum severance benefit equal to six months of Employee's then applicable base salary. City shall also provide reimbursement of the City's COBRA health insurance premiums for the Employee for six (6) months following termination or until Employee finds other employment, whichever occurs first. The monthly reimbursement amount shall not exceed the then cafeteria plan benefit contribution provided to employees in the City's Executive Group. Employee has an obligation to notify City immediately upon obtaining employment after separation from the City. Such severance shall be Employee's sole remedy for termination under this Agreement. The severance pay shall be paid only after Employee executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that set forth in Exhibit A to this Agreement.

B. If City terminates this Agreement (thereby terminating Employee's Employment) with cause, then Employee shall not be entitled to any severance. As used in this Agreement, "cause" shall mean termination due to any of the following: (i) Employee's breach of this Agreement; (ii) a conviction (including a plea of no contest) or a plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the Fair Political Practices Commission for any felony, intentional tort, crime of moral turpitude, or violation of any statute or law constituting forfeiture of office, misconduct in office, misuse of public funds, or conflict of interest; (iii) a conviction (including a plea of no contest) of a felony; (iv) a conviction (including a plea of no contest) of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law; (v) violation of the City's anti-harassment or discrimination policies; (vi) use or possession of illegal drugs; (vii) a continued willful abandonment of duties; (viii) a pattern of repeated, willful and intentional failure to carry

out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body, or persistent and willful violation of properly established rules and procedures; (ix) repeated unexcused absences from Employee's City Manager office and duties; (x) any other action or inaction by Employee that materially and substantially impedes or disrupts the performance of City or its organizational units, is detrimental to employee safety or public safety, violates properly established rules or procedures, adversely affects the reputation of City, its officers or employees, or has a substantial and adverse effect on the City's interests.

C. If Employee terminates this Agreement (thereby terminating Employee's employment), then Employee shall not be entitled to any severance.

D. Upon any separation from employment, Employee will be compensated for all accrued but unused vacation leave.

E. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 – 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse City for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 – 53243.4.

11. Official and Professional Development Expenses.

A. City recognizes that Employee may incur certain expenses of a non-personal and job related nature. Accordingly, the City agrees to reimburse or pay for such actual business expenses, subject to any budget and appropriations limitation. Such expenses shall be incurred and submitted accordingly to the City's normal expense reimbursement procedures. All expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City. The City shall provide the Employee a City credit card to charge appropriate and lawful business expenses.

B. The parties agree that Employee should actively participate in such state, regional and local professional organizations and subscribe to such professional publications as may be reasonably necessary for the good of the City and for Employee's continued professional participation and advancement. City agrees to pay the professional dues and subscriptions on behalf of Employee which are necessary for Employee's continuation and full participation in national, regional, state or local associations and organizations necessary and desirable for the good of the City and for Employee's continued professional participation and advancement, such as the League of California Cities, International City/County Management Association, California City Managers Foundation as well as one service organization (i.e. Rotary). In addition, the City shall pay or reimburse for Employee's attendance at the annual ICMA conference, the annual League of California Cities conference, the annual League of California Cities City Manager Department meeting, the annual California City Manager's Foundation meeting

and any meetings and conferences of governmental groups and committees upon which the Employee serves as a member subject to any budget and appropriations limitation. Such amount includes travel and subsistence expenses subject to the City's normal expense reimbursement procedures.

C. The City also agrees to pay for the travel and subsistence expenses of the Employee for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the Employee subject to any budget and appropriations limitation.

12. Indemnification.

A. Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

B. Any and all paid leave, defense payments or other benefits which may be provided to Employee under this Agreement upon termination or in the event of an investigation shall be subject to and interpreted to comply with the limitations set forth in Government Code Sections 53243 through 54244, including, without limitation, the obligation of Employee to reimburse the City for any funds paid should Employee be convicted of a crime involving an abuse of office or position as defined in Government Code Section 53243.4.

13. Confidential Information. Employee acknowledges and agrees that in the performance of his duties, the City discloses and entrusts him with certain confidential or proprietary information. Employee agrees not to directly or indirectly disclose or use at any time any such information, whether it be in the form of records, lists, data, personnel information, reports or otherwise, of a business or technical nature, which was acquired or viewed by Employee during Employee's relationship with the City unless such disclosure is authorized by the City in writing, required by law, or required in the performance of the duties of the City Manager. This provision shall survive the termination or expiration of this Agreement.

14. General Provisions.

A. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Employee's employment with the City.

B. Representations. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and

that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party. Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. Amendments. No amendments to this Agreement may be made except by a writing signed and dated by City and Employee.

D. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

E. Prevailing Party Attorneys' Fees. In any action to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof, the prevailing party shall be entitled to payment of reasonable attorneys' fees and costs.

F. Choice of Law and Venue. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions. The parties agree that venue shall be in Riverside County, California.

G. Drafting of Agreement. The parties hereto acknowledge and agree that although this Agreement has been drafted by City's legal counsel, Employee has reviewed, or had an opportunity to review the terms of this Agreement with his legal counsel. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.

H. Independent Review of Agreement. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or Employees other than those expressly set forth in this Agreement.

I. Notices. Any notice to City under this Agreement shall be given in writing to City, by personal service, by overnight delivery service providing confirmation of delivery, or by registered or certified mail, postage prepaid, addressed to the Director of Human Resources at the City's then principal place of business. Any such notice to Employee shall be given in a like manner and, if deposited with an overnight delivery service or mailed, shall be addressed to Employee at his home address then shown in City's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally

on the party to whom notice is to be given, (b) on the next delivery day following deposit with an overnight delivery service or (c) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this paragraph.

J. References. When a reference is made to benefits received by the City's "Management" employees, the parties agree that the Agreement is referring to the benefits received by employees under the current resolution entitled "A Resolution of the City of Indio Providing Salaries and Related Matters for Management, Confidential and Unrepresented Employees" as such resolution is adopted by the City Council.

K. Heirs and Beneficiaries. In the event Employee dies while employed by the City under this Agreement, the Employee's beneficiaries or those entitled to the Employee's estate shall be entitled to Employee's earned salary and any in-lieu payments for accrued benefits, including compensation for the value of accrued balances in accordance with this Agreement, city policy or as required by law.

15. Voluntary Agreement. Employee represents and warrants that he has read carefully and fully understands all the provisions of this Agreement, that he is free to enter into this Agreement and to render the services described in it, that he entering into and performance of this Agreement will not breach or violate or conflict with any other agreement (written or oral) to which he is a party, and that he has had an opportunity to consult with his legal counsel prior to entering into this Agreement and has either done so or voluntarily chosen not to do so. Employee is voluntarily entering into this Agreement. The City represents and warrants that it has the right and power to enter into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally as the date and year first written above.

EMPLOYEE:



Bryan H. Montgomery

CITY OF INDIO:



Mayor Elaine Holmes

ATTEST:

 4/25/21 (SEAL)

Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:



Roxanne Diaz, City Attorney

EXHIBIT "A"

WAIVER AND GENERAL RELEASE AGREEMENT

This Waiver and General Release Agreement ("Release Agreement") is entered into by and between Bryan H. Montgomery ("Manager") and City of Indio ("City"), dated _____, in light of the following facts:

- A. City and Manager entered into an employment agreement dated May 17, 2021 ("Employment Agreement").
- B. Certain disputes have arisen between City and Manager.
- C. City and Manager each deny any liability whatsoever to the other.
- D. City and Manager wish to fully and finally resolve any and all disputes they may have with each other.
- E. Manager's employment with City concluded on _____, 2____ ("Separation Date").
- F. Manager is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Manager to consult with his legal counsel before signing this Agreement.
- G. Manager acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

Section 1. Facts of Release Agreement. The above facts are true and correct and incorporated into this Release Agreement as if set forth in full.

Section 2. Acknowledgement. Manager does hereby acknowledge and attests that he has read and understands Section 9 of the Employment Agreement with the City of Indio and hereby agrees that by accepting the severance payment pursuant to the terms of the Employment Agreement, Manager agrees to waive all rights to further claims, remedies or legal action against the City, its officers and employees

Section 3. Severance. Within five (5) business days following Manager's signing, delivering to the City, and not revoking this Agreement, City shall pay Manager the gross amount provided for in Section 9 of the attached Employment Agreement, less applicable deductions ("Severance") Manager acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

Section 4. General Release.

A. In consideration of the Severance to be paid and provided to Manager, all other salary and benefits owing and other good and valuable consideration, Manager hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents (collectively "Released Parties"), from all rights, claims, demands, obligations, liabilities, damages and causes of action of every kind and character, both known and unknown, in law or in equity, which Manager may have now or in the future, arising from any act or omission or condition occurring on or prior to the date this Release Agreement is signed, whether based on tort, contract (express or implied), or on any federal, state or local law or statute, or regulation including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy ("Released Claims"). Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

B. Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Councilmembers, employees, representatives and agents, Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

C. Manager further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

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

in any manner to the Released Claims.

Section 5. Written Modifications. This Release Agreement supersedes any prior written or verbal adjustment of this matter and constitutes a complete resolution of all claims or potential claims by Employee against the City. There shall be no modification of this Agreement except in writing signed by both parties.

Section 6. Attorney's Fees to Enforce Agreement. In the event suit is initiated by either party to enforce the terms of this Release Agreement, or for damages for breach of the terms of this Release Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Section 7. No Admission of Liability. It is understood and agreed that this Release Agreement shall not constitute or be construed as an admission of liability on the part of the parties herein released.

Section 8. Governing Law. This Release Agreement and the rights and obligations created by this Agreement shall be governed by the laws of the State of California, without reference to any law that may require application of the laws of another jurisdiction.

Section 9. Venue. Any action to enforce or interpret the terms of this Agreement shall be subject to the exclusive jurisdiction of the courts in the County of Riverside, State of California.

Section 10. Agreement Binding. This Release Agreement is binding upon, and shall inure to the benefit of, the heirs, executors, administrators, representatives, successors, and assigns of the respective parties hereto and each of them.

Section 11. Integration. This Release Agreement constitutes a single integrated written contract expressing the entire agreement of the parties hereto relative to the subject matter hereof. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Release Agreement. All prior discussions and negotiations have been and are merged and integrated into, and are superseded by, this Release Agreement.

Section 12. Severability. In the event that any provision or partial provision of this Agreement should be held to be void, voidable, or unenforceable, the remaining portions hereof shall nevertheless remain in full force and effect.

Section 13. Facsimile Signatures and Counterparts. The parties agree that this Release Agreement will be considered signed by a party when the signature of that party is delivered by facsimile transmission. Such signature shall be treated in all respects as having the same effect as an original signature. This Release Agreement

may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this General Release.

"CITY"
CITY OF INDIO ("CITY")

"MANAGER"
BRYAN H. MONTGOMERY

By: 
Mayor

By: _____
Bryan H. Montgomery

Dated: _____

ATTEST:

By:  4/28/21
Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:

By: _____
Roxanne Diaz, City Attorney