

STAFF REPORT
CITY OF PALM DESERT
CITY ATTORNEY'S OFFICE

MEETING DATE: January 28, 2021

PREPARED BY: Robert Hargreaves, City Attorney

REQUEST: Orally Report Compensation and Approve City Manager
Employment Agreement

Recommendation

Orally Report a Summary of Compensation and Approve Employment
Agreement Appointing Todd Hileman as City Manager, effective March 1,
2021, and Setting Compensation and Other Terms of Employment.

Background and Synopsis

With the assistance of Dave Morgan of Ralph Andersen & Associates, the City conducted a national search for qualified candidates to fill the City Manager position. After extensive outreach the City Council reviewed 70 applications. These were then narrowed to the 12 most qualified and then the top 6 were invited for interviews.

After the first round of interviews 3 were selected for a second round of interviews. This vigorous and diligent process resulted in the selection of Todd Hileman as the next Palm Desert City Manager.

Mr. Hileman has been the City Manager of Denton, Texas since 2017. Denton has a population of approximately 140,000 and is located in the Fort Worth area. It is known as a college town and has a very engaged and vibrant community. He previously served as Village Manager of Glenview, IL, a north Chicago suburban community with a population of nearly 50,000, from 2004 to 2017. He served as City Manager and Assistant City Manager of Avondale, AZ, from 2000 to 2004 and as City Administrator for the cities of Delavan, WI and Vandalia, MO. He has led a transformation of business practices, emphasizing efficiency, customer service, innovation and delivery of City goals in each of his assignments.. His local government experience spans 28 years.

Discussion

Under the direction of the City Council, a subcommittee negotiated a compensation package with Mr. Hileman that is reflected in the attached City Manager Employment Agreement. Government Code Sec 54953(c)(3) requires that there be an oral report of proposed compensation for the City Manager in open session before the City Council takes final action approving that compensation.

The principal terms of the proposed compensation, as reflected in the attached Employment Agreement are:

Term	Commence March 1, 2021; Open Ended, At Will
Salary	\$265,000 annually
Auto Allowance	\$600/month
Retirement	Per PERS contract: 2%@62 -
Health Benefits	Fully paid consistent with management staff
Vacation	4 Weeks –Initial balance of 160 hours
Sick Leave	12 days –Initial balance of 120 hours
457 Plan	\$1,500/month
Severance	9 months for first 3 years; then 6 months
Moving Expenses	Cap \$15,000, includes travel reimbursement
Temp Housing Assist	\$2,000/month for up to 6 months

ATTACHMENTS: City Manager Employment Agreement

CITY OF PALM DESERT

CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement (“Agreement”) is entered into as of the 1st day of March 2021 (the “Effective Date”), between the City of Palm Desert (hereinafter referred to as the “City”) and Todd Hileman (hereinafter referred to as the “City Manager” or the “Employee”). City and City Manager/Employee are sometimes referred to in this Agreement as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, it is the desire of the City Council of the City to retain the services of Employee as City Manager pursuant to the provisions of the City of Palm Desert Municipal Code (“City Code”), and

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

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

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

1.1 Duties.

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

1.2 Acceptance of Appointment.

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

1.3 Hours of Work.

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



replacement for vacation time which should be used as appropriate. This time is also not to be considered as compensatory time for time spent by City Manager in carrying out the City Manager duties outside normal office hours, as the parties agree that City Manager must devote the amount of time necessary to fulfill those duties. The Council will consider City Manager's use of personal time-off during the performance evaluation.

1.4 Devotion to City Business.

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

2. Term & Renewal.

This Agreement shall be deemed effective beginning on March 1, 2021 and continuing indefinitely, except that services of the City Manager may be terminated as set forth in Section 10.

3. Compensation.

3.1 Salary.

City agrees to pay City Manager, and City Manager agrees to accept from City, as compensation for services rendered by City Manager pursuant to this Agreement, an annual base salary, commencing on March 1, 2021, in the amount of Two Hundred Sixty-Five Thousand Dollars (\$265,000.00) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

Commencing March 1, 2022 and each year thereafter, said Annual Base Salary shall be eligible for adjustments subject to the same procedures by which the salaries of other executive managers of City are adjusted for meritorious performance, except that any such adjustments shall be at the sole discretion of the City Council.

The term "Annual Base Salary" as used in this Agreement shall also include any cost of living adjustments approved by the City Council for other management employees provided that such cost of living adjustment does not exceed the California Consumer Price Index for All Urban Consumers as calculated by the Department of Industrial Relations ("CPI") pursuant to Government Code 3511.2, on a March to March annual basis. Any cost of living adjustment exceeding CPI may be approved by a vote of the City Council.

3.2 Health and Medical Benefits.

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



3.3 Pension.

The City agrees to enroll the City Manager as a new member of the California Public Employees Retirement System (CalPERS) at the 2% at 62 formula in accordance with CalPERS regulations, which includes a requirement for a 7% “employee share” contribution. The City will also provide City Manager with a 457 retirement plan and the City shall make contributions to the plan at a rate of One Thousand Five Hundred dollars (\$1,500.00)per month.

3.4 Retiree Medical.

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

3.5 Life and Long Term Disability Insurance.

City Manager shall also be entitled to participate in any group life or disability insurance programs approved by the City for all employees; however such coverage shall be limited to the first \$200,000.00 of salary.

3.6 Technology Allowance.

The City shall pay the City Manager Forty Dollars (\$40) per month for usage of his personal cell phone, computer and computer-related equipment for City business; or at City Manager’s option, City shall provide City Manager with a city cell phone for exclusive use in city-related business . City shall also provide City Manger a laptop computer or similar device with necessary software for business use of City Manager to perform his duties and to maintain communication with City’s staff and officials as well as other individuals doing business with the City. Upon termination of City Manger’s employment, the equipment described herein, except City Manager’s personal cell phone, shall be returned to the City.

3.7 Other Benefits.

In addition, and except as otherwise specified herein, City Manager shall receive all such other benefits and compensation that are generally applicable to executive managers of the City hired on the date of this Agreement, as the same may be modified from time to time after the date of this Agreement, including but not limited to CalPERS retirement benefits, long term disability insurance, holidays, bereavement and family illness leave.

3.8 Sick Leave Benefits

Upon commencement of employment, the City Manager shall have access to an accrued balance of one hundred twenty (120) sick leave hours. Additionally, the City Manager shall accrue ninety-six (96) hours which amounts to twelve (12) days of paid sick leave annually and use of such leave shall be in accordance with City policy; however he shall not be eligible to cash out accrued sick leave at separation.



3.9 Vacation Leave Benefits

Upon commencement of employment, the City Manager shall have access to an accrued balance of one hundred sixty (160) hours of vacation. Additionally, City Manager shall accrue one hundred sixty (160) hours of vacation each year, accrued at the rate of 6.15 hours per pay period, subject to a maximum accrual balance of 320 hours. Once the limit of 320 hours has been reached accrual shall cease until such time as the balance falls below the maximum.

3.10 Moving Expenses

The City authorizes up to fifteen thousand dollars (\$15,000) reimbursement for actual moving and other relocation expenses including necessary travel for relocation purposes. All requests for reimbursement shall be in writing and shall include receipts. The City will also provide temporary housing assistance.

3.11 Temporary Housing Assistance

The City authorizes up to two thousand dollars (\$2,000) per month for temporary housing assistance for a period of six months beginning March 1, 2021. All requests for reimbursement shall be in writing and shall include documentation.

3.12 IRS 401a

The City will offer an IRS 401a Defined Contribution plan, allowing up to 10% salary deferral with up to 2% matching contribution by City.

4. Performance Evaluation.

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

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

5. Bonds.

City shall bear the full cost of any fidelity or other bonds required of City Manager under any law or ordinance.

6. Auto Allowance.



City Manager shall be entitled to an automobile allowance for a personal vehicle required for City business. The automobile allowance shall be \$600 per month. City Manager shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for such personal vehicle.

7. General Business Expenses.

7.1 City agrees to budget and pay for professional dues and subscriptions for City Manager necessary for his continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations desirable for City Manager's continued participation, professional growth, and advancement, and for the benefit of the City. At a minimum, such professional dues shall include participation in the International City/County Management Association (ICMA) and the California City Managers Foundation.

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

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

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

8. Abuse of Office or Position.

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

9. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served upon the other Party, or sent by United States Postal Service, postage prepaid and addressed to the appropriate Party as follows:

If to City: ADDRESS
Attn: Mayor
City of Palm Desert
73510 Fred Waring Drive
Palm Desert, CA 92260

If to City Manager: Todd Hileman
City Manager
Address
Address

Notice shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

10. Termination.

10.1 At-Will Employee.

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

10.2 Termination - Council Vote.

The City Council may remove the City Manager Without Cause by motion adopted by the affirmative votes of a majority of the members of the City Council. Notwithstanding such authority, the City Manager may not be removed within ninety (90) days before or after the date of a municipal election, or recall of one or more of the members of the City Council.

10.3 Termination - Change in Form of Government.

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

10.4 Reduction of Salary or Benefits.



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

10.5 Resignation.

City Manager may voluntarily resign his position as City Manager, after giving City at least thirty (30) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or part by the City Council. In the event the City Manager resigns from his employment with City, the City Manager shall not be entitled to any Severance Pay.

10.6 Death.

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

10.7 Disability.

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

10.8 Cause.

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

- (a) Acts in bad faith or gross misconduct to the detriment of the City or to the City Manager's reputation;
- (b) Refusal or failure to act in accordance with any legal requirement or specific direction or order of the City Council;
- (c) Unsatisfactory performance (as documented through the evaluation process described in section 4), misconduct, dishonesty, habitual neglect, or incompetence;
- (d) Involvement in crime involving dishonesty, breach of trust, or public conduct reflecting negatively on the City (no pending criminal prosecution need be in



effect for termination due to fraud, embezzlement or public conduct reflecting on the City; rather the Council must only have a good faith belief based on a good faith investigation);

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

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

Upon any allegation that the City Manager has engaged in conduct that would result in his termination "for cause" as defined above, he is entitled to address and attempt to rebut those allegations before the Council in an open or closed session, at City Manager's option, prior to the Council making any final determination regarding the veracity of those allegations. In the event the Council, in its discretion, still finds merit to the allegations and terminates, the Employee shall not be entitled to any severance and will be owed no further compensation.

10.9 Severance Pay.

In the event this Agreement is terminated pursuant to section 10.2 or 10.3 of this Agreement, the City Manager shall receive a severance payment as follows:

(a) During the first three years of Agreement: in a lump sum, equal to nine (9) months of City Manager's then monthly Base Salary.

(b) During the fourth and all subsequent years of Agreement: in a lump sum, equal to six (6) months of City Manager's then monthly Base Salary.

Such severance payment shall be his sole remedy for termination under sections 10.2 or 10.3 of this Agreement. The Severance Pay shall be paid after the City Manager executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that one set forth as Exhibit "A" to this Agreement.

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

11. General Provisions.

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

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

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

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

11.5 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the Party responsible for any particular language in this Agreement.

11.6 City Manager acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

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

12. Other Terms and Conditions of Employment.

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

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

13. Indemnification.

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

expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by such City Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of City Manager's duties.

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

IN WITNESS WHEREOF, the parties have executed this City Manager Employment Agreement on the _____ day of _____, 2021.

EMPLOYEE/CITY MANAGER

Todd Hileman, City Manager

CITY OF PALM DESERT

Kathleen Kelly, Mayor

ATTEST:

Grace L. Rocha, Acting City Clerk

APPROVED AS TO FORM:

Robert W. Hargreaves, City Attorney

Exhibit "A"

GENERAL WAIVERS AND RELEASES

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

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

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

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

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

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

Approved and Agreed to By:

NAME

CITY OF PALM DESERT

Mayor

ATTEST:

City Clerk

