

**CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF COACHELLA AND DR. GABRIEL MARTIN**

This AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into between Dr. Gabriel Martin (hereinafter referred to as “City Manager”) and the CITY OF COACHELLA, a municipal corporation of the State of California (hereinafter referred to as “City”), in order to provide, in writing, the terms and conditions for management services by the City Manager of City. City and City Manager are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

(1) The City requires the services of a City Manager, and the City Council of the City (“City Council”) desires to employ the City Manager in that position.

(2) The City Manager has the necessary education, experience, skills, and expertise to serve as the City’s City Manager.

(3) The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260, *et seq.*

(4) In consideration of these recitals and the performance by the by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

TERMS

NOW, THEREFORE, the Parties hereto agree as follows:

1. Employment

The City hereby agrees to employ the City Manager, and the City Manager agrees and does accept employment upon the terms and conditions set forth herein.

2. Duties and Obligations of City Manager

A. The City Manager hereby agrees to perform the functions and duties of City Manager, as specified in the City’s ordinances, the City’s municipal code (“Municipal Code”), City policies and procedures approved by the City Council, and in state law, and to perform such other duties and functions as the City Council shall from time to time assign. Specifically, the City Manager is obligated to know and execute the duties and responsibilities of the City Manager as set forth in section 2.12, and perform his duties consistent with the Code of Ethics set forth in section 2.64 of the Municipal Code. The City Manager further agrees to perform all such functions and duties to the best of his ability and in an efficient and competent manner.

B. The City Council shall also designate the City Manager as the executive director, general manager or similar title of other City-related legal entities. Such other legal entities include

the City's financing authorities and utility agencies and could include certain joint powers authorities when applicable.

C. The City Manager is a full-time exempt employee, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work, as the City Manager is expected to be available at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

D. The Parties mutually desire that the City Manager be subject to and comply with the International City Management Association ("ICMA") Code of Ethics, attached hereto as Exhibit "A" and incorporated herein by reference. The City Manager commits to comply with the ICMA Code of Ethics.

E. The City Manager shall administer and enforce policies established by the City Council, and promulgate rules and regulations as necessary to implement City Council policies.

F. The City Manager shall attend all meetings of the City Council, unless excused. The Mayor shall have the authority on behalf of the City Council to excuse the City Manager from meetings. The City Manager shall also take part in the discussion of all matters before the City Council during meetings he attends, and the City Manager shall receive notice of all regular and special meetings of the City Council.

G. Consistent with the Municipal Code, state law and the City Council Manual of Procedures, the City Manager shall review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.

H. The City Manager shall direct the work of all elective and appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council.

I. The City Manager will focus his professional time, ability, and attention to City business during the term of this Agreement. The City Manager 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 otherwise, without the prior consent of Council, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent.

(2) This Agreement shall not be interpreted to prohibit the City Manager from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.

J. All data, studies, reports and other documents prepared by the City Manager while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

K. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to the City Manager in connection with the performance of this Agreement shall be held confidential by the City Manager. Such materials shall not, without the prior written consent of the Council, be used by the City Manager for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

3. General Obligations of the City

A. The City shall, as outlined within this Agreement, provide the City Manager with staff, office equipment, supplies, automobile allowance, and all other facilities and services reasonably determined by the City Council to be necessary for the performance of the City Manager's duties and within the City's budget constraints.

B. The City Council recognizes that to meet the challenges facing the City they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits within the City's budget constraints to spend time each year outside of regular City Council meetings to work with the City Manager and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals.

C. The City Council agrees that any criticism of a City staff member shall be done privately through the City Manager.

4. Salary

The City Manager's base salary shall be Two Hundred Thirty Thousand Dollars (\$230,000) per fiscal year, subject to any all legally necessary taxes and holdings. The City Manager's salary shall be payable in installments at the same time as other employees of the City are paid. Any increase in salary must be expressly memorialized by written amendment.

5. Benefits

A. Automobile Allowance. The City shall pay City Manager an automobile allowance in exchange for the City Manager securing a personal vehicle to be used for City business or functions during, before, and after normal work hours. The automobile allowance shall be \$500 per month. City Manager shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for such personal vehicle. By the City Manager making the City Manager's personal automobile available for use, the City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

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

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

D. Limitations on CalPERS Contributions/ Other Retirement/ Administrative Leave. City Manager expressly agrees that he shall pay the full employee share of his CalPERS pension contribution, regardless of any agreement or benefit level provided to other employees at the City. The City Manager also expressly agrees to pay 2% of the City's share of his CalPERS pension contribution, regardless of any agreement or benefit level provided to other employees at the City. Further, while the City Manager may, in his discretion, contribute to a 457 or other similar retirement saving account established by the City, the City is under no obligation to provide any contribution or match, regardless of any agreement or benefit level provided to other employees at the City.

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

6. Term

A. Initial Term. Subject to the termination provisions in Section 7 of this Agreement, the term of this Agreement shall commence on May 28, 2021 and shall continue for two years thereafter. ("Initial Term").

B. Succeeding Terms. At the conclusion of the Initial Term, this Agreement shall automatically renew for an additional one year term (the "First Succeeding Term"). If the City Council does not want a Succeeding Term, it must provide the City Manager written notice of its intent not to renew at least thirty (30) calendar days before the completion of the Initial Term. Without such notice, the First Succeeding Term will automatically begin upon the completion of the Initial Term.

At the conclusion of the First Succeeding Term, if applicable, this Agreement shall automatically renew for an additional one year term (the "Second Succeeding Term"). If the City Council does not want a Second Succeeding Term, it must provide the City Manager written notice of its intent not to renew at least thirty (30) calendar days before the completion of the First Succeeding Term. Without such notice, the Second Succeeding Term will automatically begin upon the completion of the First Succeeding Term.

Other than the two Succeeding Terms, no other automatic term renewal is available under this Agreement.

7. Termination of Agreement and Severance Pay

A. At-Will. Except as provided in Sections 7(C)(2) and 6(B), the Parties hereby expressly agree that the employment relationship established by this Agreement is at-will and that the City Manager shall serve at the will and pleasure of the City Council. Nothing in this Agreement, any statute, ordinance, or rule shall interfere with Council's right to terminate City Manager, without cause or right of appeal or grievance. City Manager agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment and that the provisions of Section 2.12. of the Coachella Municipal Code are not applicable to City Manager, and he hereby waives any rights he would otherwise have thereunder.

B. Automatic Termination. This Agreement, and City Manager's employment, shall automatically terminate, and the City Manager shall not be entitled to any Severance Payment, upon the happening of any of the following events:

(1) Upon mutual agreement in writing by both Parties to terminate this Agreement.

(2) Upon forty-five (45) days notice of resignation given to City by the City Manager.

(3) Upon retirement from full-time public service with the City pursuant to applicable PERS laws, rules and regulations. If the City Manager retires, the City Manager may provide six (6) months' advance notice. The City Manager's actual retirement date will be mutually established.

(4) Upon the death of the City Manager.

(5) When the City Manager has been unable to perform all or substantially all of the essential functions of his position, with or without reasonable accommodation, due to illness, disability, or unavailability for whatever reason for a period of three (3) months.

C. Termination With or Without Cause. This Agreement, and City Manager's employment, may be terminated without prior notice at any time, with or without cause, by the Council by motion carried by a simple majority of its members.

(1) Without Cause - Severance. The City Council may terminate City Manager at any time, regardless of his ability to perform his duties, upon payment of a severance

equal to the lesser of: (1) payment equal to two hundred and seventy (270) days **of City Manager's then applicable base salary**; or (2) payment equal to the unexpired Term of this Agreement as described in Section 6 above ("Severance Payment"). The Severance Payment is contingent upon the City Manager executing a release of liability similar to the exemplar attached as Exhibit "B". If the City Manager fails or refuses to provide the City with a release of liability, the Council may release the City Manager without cause without Severance Payment.

(2) With Cause. In the event City Manager is terminated for cause, he shall not be entitled to any severance pay or benefits. "Cause" shall include the following reasons:

(a) Conviction of a crime, whether misdemeanor or felony. For purposes of this section, a plea of nolo contendere shall also be considered a conviction.

(b) Failure to follow a directive of the Council after written notice of said failure to City Manager approved by a simple majority of the City Council members.

(c) Failure to perform duties and responsibilities pursuant to the terms of this Agreement, the relevant City ordinances, municipal code, and other standards of professional conduct.

(d) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties.

(e) Repeated and protracted unexcused absences from the City Manager's office and duties

D. With Cause Procedure. In order to terminate for cause, the City Council must deliver to the City Manager a written statement of charges and its intent to terminate for cause. Following delivery, the City Manager shall then have ten (10) calendar days to challenge the termination by setting forth his request to challenge in writing. Within such ten (10) day period, the City Manager may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the ten (10) calendar day period constitutes a waiver of the right. If a hearing is demanded, the hearing will be conducted in closed session. The City Manager may produce evidence and argument to the Council. If a written response is submitted but no hearing is demanded, the Council shall review its decision based upon the response. The Council's decision following review of the written response and/or presentation at hearing shall be final and without right of appeal. The City Manager has no reinstatement rights.

E. Suspension. The Council may suspend the City Manager with full pay and benefits at any time, or without pay for a period of up to three weeks, at any time during the term of this Agreement, but only where a simple majority of the Council votes to suspend the City Manager.

F. Leave Balances. On separation from City employment, the City Manager shall be paid for all unused accrued leave balances that either must be paid upon separation under applicable law or under the applicable terms of this Agreement. In the alternative, the City Manager may apply some or all of such leave time to service credit for retirement purposes, if permitted by PERS under applicable laws, rules and regulations. Accumulated leave balances shall

be paid at the City Manager's hourly salary rate at the effective date of separation. In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances that either must be paid upon separation under applicable law or under the applicable terms of this Agreement.

8. Performance Reviews; Goals, Objectives and Priorities

A. The Council will conduct a review of the City Manager's performance and consider any necessary adjustments to this Agreement at least every six (6) months. The six-month review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Manager.

B. Within forty-five (45) days of the effective date of this Agreement, the City Council and City Manager shall develop the first set of goals, performance objectives and priorities by which to measure the City Manager's performance. The City Council and the City Manager shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and the City Manager shall further establish a relative priority among those goals and performance objectives. Such goals, objectives and priorities are subject to adjustment by the Parties at anytime.

9. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the City Manager, in the performance of his duties as City Manager.

10. Indemnification.

To the full extent of the law, as provided by the California Torts Claims Act (Government Code Section 810, et seq.), the City shall defend and indemnify the City Manager against all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties within the scope of his employment for the period of the City Manager's employment.

11. Modification

Any modification of this Agreement will be effective only if it is in writing and signed by both Parties.

12. Effect of Waiver

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

13. Assignment

Neither this Agreement, nor any right, privilege, or obligation of the City Manager hereunder shall be assigned or transferred by him without the prior written consent of the Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Council, be null and void and may be considered a material breach of this Agreement.

14. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the City and the City Manager. This Agreement contains all of the covenants and agreements between the Parties with respect to the City Manager's employment by the City in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, 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.

15. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

16. Law Governing Agreement

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

17. No Presumption of Drafter

The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof,

based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

18. Survival of Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City. Where so intended, these sections shall survive termination of employment and termination of this Agreement.

19. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover such amount as the court may award as reasonable attorneys' fees and costs.

20. Notices

A. Any notice to be given hereunder by either Party to the other shall be in writing and may be transmitted by personal delivery or mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the following respective addresses:

Mayor and City Council
City of Coachella
1616 6th Street
Coachella, CA 92236
ATTN: Mayor

Dr. Gabriel Martin

[On file at the City]

B. Notices delivered personally shall be deemed communicated as of the date of actual receipt. Mailed notices shall be deemed communicated as of the date of mailing, plus two (2) days.

21. Assistance of Counsel

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

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ____ day of May 2021.

CITY OF COACHELLA:

EMPLOYEE:

By: _____

Steven Hernandez, Mayor

By: _____

Dr. Gabriel Martin

ATTEST:

By: _____

Angel Zepeda, City Clerk

APPROVED AS TO FORM

By: _____

Carlos Campos, City Attorney