

**CITY MANAGER/EXECUTIVE DIRECTOR
EMPLOYMENT AGREEMENT
By and Between
City of Desert Hot Springs
Desert Hot Springs Housing Authority
Successor Agency to the Former Desert Hot Springs Redevelopment Agency
and
Martin Magana**

This Employment Agreement (“Agreement”) is entered into as of May 7, 2014, by and between the City of Desert Hot Springs, California, a municipal corporation (the “City”), Desert Hot Springs Housing Authority (“Housing Authority”) and Successor Agency to the former Desert Hot Springs Redevelopment Agency (“Successor Agency”) on the one hand, and Martin Magana, an individual (“Employee”), on the other hand, with respect to Employee’s employment as City Manager for the City and Executive Director of the Housing Authority and Successor Agency, with all hereinafter referred to collectively as the “Parties.”

RECITALS

WHEREAS, for purposes of convenience, the governing bodies of the City, Housing Authority and Successor Agency shall be collectively referred to as the “City Council,” and the City, Housing Authority and Successor Agency together shall be referred to collectively as the “City” in this Agreement; and

WHEREAS, the City operates under the City Manager form of government pursuant to Government Code section 34851 *et seq.*; and,

WHEREAS, Employee shall hold office at the pleasure of the City Council; and

WHEREAS, the City requires the services of Employee to serve as City Manager/Executive Director; and

WHEREAS, Employee has the necessary education, experience, skills and expertise to serve as the City Manager/Executive Director; and

WHEREAS, the Parties acknowledge that under both California law and the Desert Hot Springs Municipal Code, the City Manager is the Chief Executive Officer of the City and is solely responsible for the operations and personnel of the City; and

WHEREAS, it is agreed that City Council will deal with administrative services of the City through Employee.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows regarding the terms and conditions of employment between the City and Employee:

TERMS AND CONDITIONS

1. **Term of Employment.**

The term of this Agreement (“Term”) shall be “**at-will**” subject to the termination and severance provisions of this Agreement.

2. **Obligations of the City.**

The City shall provide Employee with the compensation and benefits specified in this Agreement.

3. **Duties and Obligations of Employee.**

The duties and obligations of Employee shall be as follows:

A. **Duties.** Employee shall perform all duties of the City Manager/Executive Director as described in Chapter 2.08 “City Manager” of the Desert Hot Springs Municipal Code and any other related duties as may be prescribed by the City Council.

B. **Hiring.** During the first six months of this Agreement, Employee shall meet and confer with the City Council before hiring any Department Head, including but not limited to the Police Chief, Community Development Director or Public Works Director.

C. **Interests.** Employee shall act in the best interests of the City at all times and shall perform all of his duties in a competent and professional manner.

D. **Time and Attention.** Employee agrees to devote all necessary time and attention to the City’s business during the term of this Agreement, consistent with the terms of this Agreement. Employee shall not engage in any other employment, whether for compensation or otherwise, without the prior written consent of the City Council. Under no circumstances shall such outside activities create a conflict of interest with the duties of Employee and the City.

4. **Employee Compensation and Benefits.**

The City shall provide Employee the following salary and benefits:

A. **Salary.** Employee shall be paid an annual base salary of **ONE HUNDRED FIFTY TWO THOUSAND DOLLARS (\$152,000.00)** and shall receive the same benefits and in the same manner as he received as of May 6, 2014, in his capacity as Acting City Manager.

B. **Salary Adjustments.** There shall be no automatic salary adjustments. Employee’s salary may be adjusted at the sole discretion of the City Council. Any increase or decrease is not effective until the Parties draft and sign an amendment to this Agreement that states the new annual base salary and the effective date of that new salary which is adopted by the City Council at a duly noticed public meeting.

C. **Technology Allowances.** Employee will be provided with a City-paid cell phone and iPad/Tablet or its equivalent.

D. **Car Allowance.** Employee shall be paid a car allowance of \$600.00 per month and will be entitled to reimbursement for permitted travel expenses in accordance with the City's car allowance policy. Employee is required to provide proof of vehicle insurance prior to being paid the car allowance and shall maintain appropriate vehicle insurance during the entire term of the Agreement in order to be eligible to continue receiving the car allowance.

D. **Taxes.** Employee shall be responsible for any and all federal, state, local or other taxes resulting from any compensation or benefits provided to him by the City. The City shall withhold from any compensation or benefits provided under this Agreement all federal, state, local or other taxes as may be required pursuant to law or governmental regulation or ruling.

5. **Reimbursement of Expenses.**

Employee shall be entitled to reimbursement for transportation, business and travel (not covered by the car allowance) expenses incurred in the performance of his duties as City Manager/Executive Director, subject to the City's current policies pertaining reimbursement of expenses.

6. **Performance Evaluation.**

The City Council, in conjunction with Employee, may develop annual goals, objectives, and performance standards for Employee for the benefit of the City and in furtherance of the policy objectives of the City. **The City Council shall use its best efforts to review and evaluate Employee's performance on or before the November 7, 2014**, and thereafter at least on an annual basis or other more frequent basis at the City Council's sole discretion.

7. **Bonding.**

The City shall bear the full cost of any fidelity or other bonds required of Employee by law.

8. **Indemnification.**

The City shall defend and indemnify Employee against any claim(s) on the same terms and conditions, and in the same manner prescribed by the Government Claims Act, Government Code section 810 *et seq.* The City shall provide at its expense separate legal counsel to Employee if the City's legal counsel has a legal conflict of interest between the representation of the City's interest and the Employee's interest. This provision, including legal defense, shall extend indefinitely beyond Employee's employment with the City on any litigation matters that arose during said employment or as a result of said employment. If the Employee is required to testify or be a witness in any legal proceeding on behalf of the City or by subpoena by any plaintiff against the City, the City shall reimburse Employee for all reasonable expenses for travel to participate in the legal matter.

9. **Professional Associations, Memberships and Subscriptions.**

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 in carrying out his duties as City Manager/Executive Director and in order to maintain and enhance his professional skills. This provision includes the obligation of the City to specifically fund membership and attendance for the annual conferences for ICMA (International City/County Manager Association), League of California Cities, and League of California Cities City Manager Department. The City may budget and pay for such other dues, conferences, seminars and educational courses on behalf of the Employee, as may be deemed appropriate by the City Council.

10. **Termination of Employment.**

The City employs Employee to serve as City Manager/Executive Director, on an at-will basis, upon the terms and conditions set forth in this Agreement.

A. **Resignation.** Employee may resign from employment with the City by providing written notice to the City Council at least 30 calendar days prior to his final day of employment. If Employee provides fewer than 30 calendar days notice of his resignation, then he shall receive a reduced disbursement of sick pay accrued under this Agreement, or any other applicable City policies, equivalent to the number of work days below the 30 calendar day notice, and will be only entitled to receive compensation that is required by law to be paid to an employee upon termination of employment.

B. **Involuntary Termination.** Employee is an “at-will” employee who serves at the pleasure of the City Council and is subject to dismissal without any right of notice or hearing except that the City shall notify Employee in writing of his termination.

C. **City Council’s/Boards’ Right to Terminate.** The City Council may terminate Employee subject to the following:

i. *Termination without Cause.* The City Council may terminate Employee at any time without cause with 15 to 30 days notice. The City Council may place Employee on administrative leave during the 15 to 30 day notice to terminate without cause period. Following the date written notice of termination is received, Employee will not accrue any vacation, sick, floating time, or other leave and shall not be paid any other compensation under this Agreement, including but not limited to, any form of allowances. Employee will be reimbursed for any *bona fide* City business expenses incurred prior to receipt of the written notice of termination pursuant to the terms of this Agreement, but shall not incur nor be entitled to reimbursement for any expenses incurred following receipt of written notice of termination. In addition, if the City receives any inquiries by prospective employers during this period, then the City will affirm Employee’s continued employment with the City. Nothing in this Agreement shall limit the City Council’s authority to appoint a new City Manager on either an acting or permanent basis following written notice of termination to Employee.

1. **Severance.** If the City Council terminates Employee without cause, the City shall pay Employee within 30 days of termination a severance payment equivalent to **six months** of Employee's annual base salary of ONE HUNDRED FIFTY TWO THOUSAND DOLLARS (\$152,000.00).

ii. *Termination with Cause.* If Employee is terminated for any of the following reasons, then the City Council shall provide the Employee with written notice of termination that specifies the reason(s) for the termination and the City shall not be obligated to pay Employee any severance pay under this Agreement or any City policies, and Employee will only be entitled to that compensation that is required by law to be paid to an employee upon termination of employment:

1. Continued violation of adopted City Council policies and procedures after being warned and advised at least once at a public meeting of the City Council to cease and desist from said violation;

2. Proven theft of City property;

3. Willful insubordination of executing any lawful directive of the City Council after being warned and advised at least once at a public meeting of the City Council to cease and desist from said willful insubordination;

4. Conviction of a felony, malfeasance in office or of a misdemeanor relating to Employee's fitness to perform assigned duties;

5. Unauthorized or excessive absences from the City after the City Council has warned Employee in writing of such excessive absences. Excessive absences includes absence due to incarceration of longer than the Employee's available accrued vacation paid time off. Customary use of vacation and sick leave when ill or injured is not considered excessive absence;

6. Engaging in City business while under the undue influence of alcohol or illicit drugs after being warned in writing by the City Council of said occurrence and directed to cease and desist from said activity.

7. Violation of the ICMA Code of Ethics resulting in a public censure by ICMA. ICMA shall be the sole determining body of any violation of the ICMA Code of Ethics.

E. **Abuse of Office.** Any and all severance, 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 53244 and 53260, including without limitation, the obligation of Employee to reimburse City for any severance paid should Employee be convicted of a crime involving an abuse of office or position as defined in Government Code section 53243.4.

11. **Suspension/Administrative Leave.**

Except as otherwise provided by this Agreement, Employee may be suspended with full pay and benefits at any time and for any reason during the Term of this Agreement at the direction of a majority vote of the City Council.

12. **Confidential Information.**

Employee acknowledges and stipulates that in the performance of his duties, the City disclose and entrust 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, drawings, 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/Executive Director. This provision shall survive the termination or expiration of this Agreement.

13. **Notice.**

Any notices required hereunder shall be in writing and shall be given by personal delivery or overnight courier service to the Party to whom it is to be given at the address set forth below, or at such other address as each Party hereto may direct by notice given in accordance with the terms and conditions of this section. All notices shall be deemed effective upon personal delivery or upon three (3) business days following deposit with any overnight courier service in accordance with this section:

For the City:

For the City Manager/Executive Director:

City Clerk
City of Desert Hot Springs
65950 Pierson Boulevard, Suite A
Desert Hot Springs, CA 92240-3044

Any notice required to be given to Employee under this Agreement shall be addressed to him at his last known address as reflected in the City's personnel records. Any Party may change its address for the purpose of this section by giving written notice of such change to the other Party in the manner herein provided.

14. **General Provisions.**

The following general provisions shall apply to this Agreement.

A. **Governing Law and Severability.** This Agreement shall be governed by the laws of the State of California. If any clause, sentence, section or other provision of this Agreement is, for whatever reason, deemed void, unlawful or otherwise unenforceable, then such shall be severed and the balance of this Agreement construed as if the severed language was not a part hereof.

B. Modification, Amendment, Waiver. No modification or amendment of any provision of this Agreement shall be effective unless approved in writing and signed by the Parties. The failure of a Party to enforce any of the provisions of this Agreement shall in no way be construed as a waiver of such provisions and shall not affect the right of any Party thereafter to enforce each and every provision hereof in accordance with its terms.

C. Assignment. Neither the Agreement nor any of the rights or obligations created herein shall be assignable by Employee without the written approval of the City Council.

D. Counterparts. This Agreement may be executed in any one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The transmission of an executed signature page by any Party may also be accomplished via facsimile or via electronic transmission, and such copies of such documents may be treated as if they were originals.

E. Section Headings. The section headings used herein are not a substantive part of this Agreement and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this Agreement.

F. Incorporation. The Recitals are true and correct and are incorporated herein by this reference.

G. Venue. All judicial proceedings involving disputes over the terms of this Agreement shall be initiated and conducted in the applicable court in Riverside County, California.

H. Entire Agreement. This Agreement represents the entire and integrated contract between the City and Employee and supersedes all prior understandings, negotiations, representations, or agreements.

I. Effect of Waiver. The failure of any 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.

J. 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 they have the right and power to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Employment Agreement for the City Manager/Executive Director as of the date first written above.

CITY OF DESERT HOT SPRINGS
HOUSING AUTHORITY
SUCCESSOR AGENCY

By: _____
Adam Sanchez, Sr., Mayor/Chair

ATTEST:

By: _____
Jerryl Soriano, CMC, City Clerk

APPROVED AS TO FORM:

By: _____
Steven B. Quintanilla,
City Attorney/General Counsel

EMPLOYEE

By: _____