

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release ("Agreement") is entered into and effective this 19<sup>th</sup> day of December, 2018, by and between CITY OF PALM SPRINGS, a California charter city and municipal corporation, and its officials and employees (collectively, the "CITY"), and the SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT, a national non-profit organization ("SVREP"). CITY and SVREP are collectively referenced below as the "Parties," or individually as a "Party" with reference to the following.

### **RECITALS**

- A. SVREP, founded in 1974, is the largest and oldest non-partisan Latino voter participation and advocacy organization in the United States. SVREP transmitted a demand letter to CITY, dated February 21, 2018 and received by the City on March 5, 2018 (the "Letter"). The Letter, attached to this Agreement and incorporated by this reference herein as **EXHIBIT A**, *(i)* alleged racially polarized "at-large" voting in the City of Palm Springs, that has resulted in minority vote dilution and a violation by CITY of the California Voting Rights Act of 2001 (the "CVRA"), and *(ii)* demanded that the CITY voluntarily change its at-large election system, in favor of a district based election system.
- B. On April 19, 2018, the CITY adopted Resolution No. 24406, declaring the CITY's intention to transition from at-large elections to district-based elections pursuant to California Elections Code Section 10010.
- C. On April 16, 2018 and again on May 7, 2018, SVREP confirmed that it would allow the CITY until December 31, 2018 to adopt a district-based elections ordinance.
- D. Pursuant to and consistent with California Government Code Section 34886, on December 10, 2018, the CITY introduced, and on December 19, 2018 the CITY adopted Ordinance No. 1971, attached to this Agreement and incorporated by this reference herein as **EXHIBIT B**. Ordinance No. 1971 concluded a process that incorporated *(i)* more than thirty (30) public meetings, including without limitation public hearings timed, noticed and conducted in accordance with the CVRA, *(ii)* the submission by CITY's professional demographer and CITY residents of forty-one (41) maps, and *(iii)* the City Council's adoption of a single map establishing district boundaries that contained no at-large elements.

- E. The CITY adopted Ordinance No. 1971 and is entering this Agreement based upon material findings enumerated in Ordinance No. 1971, and because it wishes to avoid litigation, including the exposure to pay not only its own attorneys' fees, but also those of SVREP as expressly authorized by the CVRA.
- F. The Parties intend this Agreement to be a full, complete and final settlement between the Parties of all claims and issues arising from and related to any alleged violation of the CVRA by the CITY, and shall serve as the final resolution of this matter.

NOW THEREFORE, and in consideration for the promises contained herein, and other good and valuable consideration, receipt of which is acknowledged by the execution of this Agreement, and to avoid unnecessary litigation, it is agreed by and between the Parties as follows:

**I. NO ADMISSION OF LIABILITY AND RELEASES**

- A. **No Admission of Liability.** Neither this Agreement nor compliance with this Agreement shall in any way be construed as an admission by either Party of the truth or falsity of any allegation in the Letter related to the CITY's non-compliance with the CVRA, or as an admission of any unlawful act, omission, or any other liability whatsoever on the part of either Party. Each of the Parties specifically disclaims any liability to or against the other, or against any other person or entity.
- B. **SVREP Release of Claims.** SVREP hereby and forever releases and discharges CITY, as well as CITY's past and present council members, commissioners, directors, officials, employees, contractors, agents, volunteers, attorneys, divisions, departments, representatives, insurers, successors in interest and assigns, and all persons acting by, through, under or in concert with any of them (in the aggregate, and each one of "CITY's Related Parties") from any and all causes of action, rights, claims, judgments, liens, indebtedness, damages, losses, liabilities, and demands of whatsoever kind or character, known or unknown, suspected to exist or not suspected to exist, anticipated or not anticipated, whether or not it has been brought before any state or federal court, or before any state or federal agency or other governmental entity (in the aggregate and each "Claim(s)"), which Claim(s) arise from or relate to any allegation in the Letter through the date of this Agreement's execution by the Parties, any and all CITY actions related to CITY's adoption of Ordinance No. 1971, including without limitation the CITY's process of complying with the CVRA, the drawing of electoral district map boundaries, and/or the negotiation and execution of this Agreement (in the aggregate and each "Released Claim(s)"). SVREP understands and agrees that this Agreement extends to all Released Claims of every nature and kind,

known or unknown, suspected, past, present or future, arising from or attributable to the elections in the CITY, or the history of elections in the CITY. SVREP understands and agrees that it is waiving any rights it has, may have had, or may have in the future, to pursue any and all remedies available to it, or to any of its predecessors, successors, affiliates or related entities or persons, members, managers, partners, employees, contractors, volunteers, agents, representatives, attorneys, and assigns (in the aggregate, and each one of "SVREP's Related Parties") in relation to any Released Claim against CITY or any of CITY's Related Parties. The Released Claims that SVREP releases hereunder include without limitation any "tort claim" or "government claim" under California Government Code § 910, *et seq.*, and all other claims arising in contract, tort or equity under any other statute, whether federal, state or local up to the date of execution of this Agreement.

**C. CITY's Release of Claims.** CITY hereby and forever releases and discharges SVREP, as well as SVREP's Related Parties, from any and all Released Claims, through the date of this Agreement's execution by the Parties. CITY understands and agrees that this Agreement extends to all Released Claims of every nature and kind, known or unknown, suspected, past, present or future, arising from or attributable to the elections in the CITY, or the history of elections in the CITY. CITY understands and agrees that it is waiving any rights it has, may have had, or may have in the future, to pursue any and all remedies available to it, or to any of CITY's Related Parties, in relation to any Released Claim against SVREP or any of SVREP's Related Parties.

**D. Civil Code Section 1542 Waiver.** Each of the Parties hereby certifies that it has read and now expressly waives any and all rights that it may have, now or at any time in the future, pursuant to California Civil Code section 1542, which reads as follows:

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

The Parties recognize and acknowledge that factors which have induced them and each of them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and they hereby expressly assume the risks of waiving the rights provided by California Civil Code section 1542.



SVREP  
Initials



CITY  
Initials

## II. TERMS OF AGREEMENT

- A. The true and correct recitals above are incorporated by this reference in this Agreement, including each of the two (2) exhibits referenced therein.
- B. Consistent with the CVRA "safe harbor" law codified in California Elections Code Section 10010(f)(3), CITY will pay SVREP's attorneys, Shenkman & Hughes PC, the "Settlement Proceeds," a lump sum of thirty thousand dollars (\$30,000), within no more than ten (10) business days of CITY's receipt of: (i) this Agreement, fully executed by SVREP, and (ii) an invoice, redacted as reasonably deemed necessary by SVREP's legal counsel in a manner consistent with attorney-client privilege, documenting the incursion by SVREP of legal fees in the amount or in excess of the Settlement Proceeds. The Settlement Proceeds shall be sent to Shenkman & Hughes PC at 28905 Wight Rd., Malibu, CA 90265.
- C. Each of the Parties accepts the releases of the other provided in Section II above, and the consideration, if any required by this Section III, as full and adequate consideration for the releases it provides and the consideration it tenders, if any, hereunder.

## III. GENERAL PROVISIONS

- A. **Each Party to Bear Own Fees and Costs.** Aside from what is specifically provided for in this Agreement, each Party shall bear their own costs, expenses and attorneys' fees incurred in connection with the proceedings and/or events resulting in and/or proceeding this Agreement, or in connection with any other claims made or investigated by either Party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each of the Parties hereto expressly waives any claim for recovery of any such costs, expenses or attorneys' fees from the other Party. Except as specified above in Section II.B., the attorneys for all Parties to this Agreement do likewise expressly waive any claim for recovery of costs, expenses and/or attorneys' fees from the opposing Party. Neither Party shall be deemed a "prevailing party" by virtue of executing this Agreement.

12.18.18

- B. **No Prior Assignments.** SVREP represents that it has not assigned or transferred, or purported to assign or transfer, to any person or entity, any Claim or any portion thereof or interest therein against CITY.
- C. **Enforcement.** This Agreement is made and entered into in the State of California and shall be governed, interpreted, and enforced under the laws of the State of California, and applicable Federal Law. To the extent that any Party brings an action to enforce the terms of this Agreement, such action shall be filed and prosecuted in the Riverside Superior Court of California. The Parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which either of the Parties allege a breach of this Agreement or seek to enforce the terms, conditions, provisions, or obligations. Should suit or a motion be brought to enforce or interpret any party of Agreement, or respecting any matter arising out of this Agreement, whether sounding in tort or contract, the prevailing party shall be entitled to recover as an element of costs of suit, and not as damages, reasonable attorneys' fees to be fixed by the Court.
- E. **Covenant to Effectuate Agreement.** Each Party hereto agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Parties to this Agreement.
- F. **Waiver of Terms of Agreement.** No waiver by any Party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of the same, or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the Party to be charged or held bound. It is further understood and agreed that if, at any time, a breach of any term of this Agreement is asserted by any Party hereto, that Party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including, but not limited to, damages.
- G. **No Duress or Undue Influence.** The Parties represent and agree that they have carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, without any duress or undue influence on the part of or on behalf of any Party, entering into this Agreement.
- I. **Entire Agreement.** This Agreement contains all of the terms and conditions agreed upon by the Parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, not expressly set forth in this Agreement, are of no force or effect.

- J. **Interpretation.** This Agreement has been jointly negotiated. The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties, regardless of the initial drafting of this Agreement by CITY.
- K. **Severability.** In the event that any one or more provisions of the Agreement shall be declared to be illegal, invalid, unenforceable, and/or void by a court of competent jurisdiction, such provision or portion of this Agreement shall be deemed to be severed and deleted from this Agreement but this Agreement shall in all other respects remain unmodified and continue in force and effect.
- L. **Authority.** Each of the persons executing this Agreement on behalf of a Party warrants that they are duly authorized to execute this Agreement on behalf of that Party, and that by so executing this Agreement the Party in question is formally bound to the provisions of this Agreement.
- M. **Execution of Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy, or a facsimile or digital transmission of this Agreement, including signatures, shall be deemed to constitute evidence of the Agreement having been executed.

*SIGNATURES FOLLOW*

IN WITNESS WHEREOF, the Parties hereto have executed the Settlement Agreement and General Release.

**SOUTHWEST VOTER REGISTRATION  
EDUCATION PROJECT**

Dated: 12/18/2018

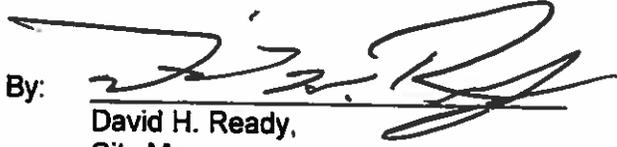
By:   
Lydia Camarillo  
President

**APPROVED AS TO FORM**

By:   
Kevin I. Shenkman,  
Shenkman & Hughes PC

**CITY OF PALM SPRINGS**

Dated: 19 Dec. 2018

By:   
David H. Ready,  
City Manager

**APPROVED AS TO FORM**

ATTEST:  
  
City Clerk

By:   
Edward Z. Kotkin,  
City Attorney

**APPROVED BY CITY COUNCIL**  
Closed Session 12/19/18 A7235

# **EXHIBIT A**

**SOUTHWEST VOTER REGISTRATION EDUCATION PROJECT LETTER  
(FOUR [4] PAGES)**



RECEIVED  
CITY OF PALM SPRINGS  
2018 MAR -5 AM 8:09  
OFFICE OF THE CLERK

28905 Wight Road  
Malibu, California 90265  
(310) 457-0970  
kshenkman@shenkmanhughes.com

VIA CERTIFIED MAIL

February 21, 2018

Anthony Mejia - Office of the City Clerk  
City of Palm Springs  
3200 E Tahquitz Canyon Way  
Palm Springs, CA 92262

Re: *Violation of California Voting Rights Act*

I write on behalf of our client, Southwest Voter Registration Education Project and its members residing in Palm Springs. The City of Palm Springs ("Palm Springs") relies upon an at-large election system for electing candidates to its City Council. Moreover, voting within Palm Springs is racially polarized, resulting in minority vote dilution, and therefore Palm Spring's at-large elections violate the California Voting Rights Act of 2001 ("CVRA").

The CVRA disfavors the use of so-called "at-large" voting – an election method that permits voters of an entire jurisdiction to elect candidates to each open seat. *See generally Sanchez v. City of Modesto* (2006) 145 Cal.App.4<sup>th</sup> 660, 667 ("*Sanchez*"). For example, if the U.S. Congress were elected through a nationwide at-large election, rather than through typical single-member districts, each voter could cast up to 435 votes and vote for any candidate in the country, not just the candidates in the voter's district, and the 435 candidates receiving the most nationwide votes would be elected. At-large elections thus allow a bare majority of voters to control every seat, not just the seats in a particular district or a proportional majority of seats.

Voting rights advocates have targeted "at-large" election schemes for decades, because they often result in "vote dilution," or the impairment of minority groups' ability to elect their preferred candidates or influence the outcome of elections, which occurs when the electorate votes in a racially polarized manner. *See Thornburg v. Gingles*, 478 U.S. 30, 46 (1986) ("*Gingles*"). The U.S. Supreme Court "has long recognized that multi-member districts and at-large voting schemes may operate to minimize or cancel out the voting strength" of minorities. *Id.* at 47; *see also id.* at 48, fn. 14 (at-large elections may also cause elected officials to "ignore [minority] interests without fear of political consequences"), citing *Rogers v. Lodge*, 458 U.S. 613, 623 (1982); *White v. Register*, 412 U.S. 755, 769 (1973). "[T]he majority, by virtue of its numerical superiority, will

regularly defeat the choices of minority voters.” *Gingles*, at 47. When racially polarized voting occurs, dividing the political unit into single-member districts, or some other appropriate remedy, may facilitate a minority group’s ability to elect its preferred representatives. *Rogers*, at 616.

Section 2 of the federal Voting Rights Act (“FVRA”), 42 U.S.C. § 1973, which Congress enacted in 1965 and amended in 1982, targets, among other things, at-large election schemes. *Gingles* at 37; see also Boyd & Markman, *The 1982 Amendments to the Voting Rights Act: A Legislative History* (1983) 40 Wash. & Lee L. Rev. 1347, 1402. Although enforcement of the FVRA was successful in many states, California was an exception. By enacting the CVRA, “[t]he Legislature intended to expand protections against vote dilution over those provided by the federal Voting Rights Act of 1965.” *Jauregui v. City of Palmdale* (2014) 226 Cal. App. 4<sup>th</sup> 781, 808. Thus, while the CVRA is similar to the FVRA in several respects, it is also different in several key respects, as the Legislature sought to remedy what it considered “restrictive interpretations given to the federal act.” Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 2.

The California Legislature dispensed with the requirement in *Gingles* that a minority group demonstrate that it is sufficiently large and geographically compact to constitute a “majority-minority district.” *Sanchez*, at 669. Rather, the CVRA requires only that a plaintiff show the existence of racially polarized voting to establish that an at-large method of election violates the CVRA, not the desirability of any particular remedy. See Cal. Elec. Code § 14028 (“A violation of Section 14027 is *established* if it is shown that racially polarized voting occurs ...”) (emphasis added); also see Assem. Com. on Judiciary, Analysis of Sen. Bill No. 976 (2001-2002 Reg. Sess.) as amended Apr. 9, 2002, p. 3 (“Thus, this bill puts the voting rights horse (the discrimination issue) back where it sensibly belongs in front of the cart (what type of remedy is appropriate once racially polarized voting has been shown).”)

To establish a violation of the CVRA, a plaintiff must generally show that “racially polarized voting occurs in elections for members of the governing body of the political subdivision or in elections incorporating other electoral choices by the voters of the political subdivision.” Elec. Code § 14028(a). The CVRA specifies the elections that are most probative: “elections in which at least one candidate is a member of a protected class or elections involving ballot measures, or other electoral choices that affect the rights and privileges of members of a protected class.” Elec. Code § 14028(a). The CVRA also makes clear that “[e]lections conducted prior to the filing of an action ... are more probative to establish the existence of racially polarized voting than elections conducted after the filing of the action.” *Id.*

Factors other than “racially polarized voting” that are required to make out a claim under the FVRA – under the “totality of the circumstances” test – “are probative, but not necessary factors to establish a violation of” the CVRA. Elec. Code § 14028(e). These “other factors” include “the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns.” *Id.*

Palm Spring’s at-large system dilutes the ability of Latinos (a “protected class”) – to elect candidates of their choice or otherwise influence the outcome of Palm Spring’s council elections.

The elections from 2000 through to 2015 are illustrative: a total of only three (3) Latino candidates competed in Council contests during that entire 15-year period and *not one* of them was successful in their respective bid for a seat on the Palm Springs City Council. Opponents of fair, district-based elections may attribute the lack of Latinos vying for City Council positions to a lack of Latino interest in local government. On the contrary, the alarming absence of Latino candidates seeking election to the Palm Springs City Council reveals vote dilution. *See Westwego Citizens for Better Government v. City of Westwego*, 872 F. 2d 1201, 1208-1209, n. 9 (5<sup>th</sup> Cir. 1989).

According to recent data, Latinos comprise approximately 26% of the population of Palm Springs. However, there are currently no Latino representatives on the Palm Springs City Council nor has there apparently ever been a Latino city council member in the city’s history dating back to its incorporation in 1938. Therefore, not only is the contrast between the significant Latino proportion of the electorate and the total absence of Latinos to be elected to the City Council outwardly disturbing, it is also fundamentally hostile towards Latino participation.

Palm Springs’ history is wrought with instances of overt discrimination. One of the most blatant examples of this sanctioned discrimination was the demolition and mass eviction of the low-income residents in Section 14. Thousands of working-class people, including a large number of Latinos, were forced from their homes near downtown Palm Springs in the 1950’s and 1960’s in what was described by the California Department of Justice as “a city engineered holocaust” noting that, by way of these evictions and house-burnings, local leaders “disregarded the residents of Section 14 as property-owners, taxpayers, and voters...(they) ignored that the residents of Section 14 were human beings.” With nowhere else to go, Latinos scattered to outlying areas, and, despite this glaringly

February 21, 2018

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discriminatory past, Palm Springs continues to utilize an electoral system that perpetuates the underrepresentation of its Latino residents.

Today it is estimated that Palm Spring's population is over 46,000 and approximately 12,000 (25.8%) of whom are Latino. Latinos currently comprise over 1/4<sup>th</sup> of the City's population, yet, apparently not one Latino resident has ever been elected to serve on the Palm Springs City Council.

This deficit of Latino representation is not without consequence, as on the critical issue of healthcare, Latinos in the Coachella Valley have not been afforded much-needed health services. The 70 year-old service boundaries for the Desert Healthcare District, which is governed by five non-Latino board members and healthcare for Palm Springs, have deepened the divide for Latinos in Coachella Valley. In analyzing the impact of the District's boundaries on service provision, a research associate at the Center for Healthy Communities at UC Riverside recently commented that "structural racism explains a lot about what happens in the Coachella Valley," citing a "deep legacy of racism that has created poverty".

More recently, in 2001, a group of 16 Palm Springs high school students participated in a hate motivated crime when they used white shoe polish to write "Nigger" on a school window, while strapping a dead, black cat from the clock tower and painting a swastika on the school's front door. Although officials labeled this incident as a "senior prank gone awry", this type of incident vividly reflects the deep-seeded racial animus still rampant in the City of Palm Springs.

As you may be aware, in 2012, we sued the City of Palmdale for violating the CVRA. After an eight-day trial, we prevailed. After spending millions of dollars, a district-based remedy was ultimately imposed upon the Palmdale city council, with districts that combine all incumbents into one of the four districts.

Given the historical lack of Latino representation on the city council in the context of racially polarized elections, we urge Palm Springs to voluntarily change its at-large system of electing council members. Otherwise, on behalf of residents within the jurisdiction, we will be forced to seek judicial relief. Please advise us no later than April 12, 2018 as to whether you would like to discuss a voluntary change to your current at-large system.

We look forward to your response.

Very truly yours,



Kevin I. Shenkman

# **EXHIBIT B**

**ORDINANCE NO. 1971**

**(TWELVE [12] PAGES)**

ORDINANCE NO. 1971

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, TO SAFEGUARD PALM SPRINGS RESIDENTS' VOTING RIGHTS, COMPLY WITH THE CALIFORNIA VOTING RIGHTS ACT, AND PROTECT THE CITY AGAINST LITIGATION; ADDING SECTION 2.02.005 OF THE PALM SPRINGS MUNICIPAL CODE ESTABLISHING BY-DISTRICT ELECTIONS, DEFINING DISTRICT BOUNDARIES, AND SCHEDULING DISTRICT ELECTIONS.**

**City Attorney's Summary**

*This Ordinance adds Section 2.02.005 to Chapter 2.02 of the City's Municipal Code changing the method by which the City's voters elect all five City Councilmembers. Currently, the City elects all Councilmembers, in an "at-large" election. This Ordinance safeguards Palm Springs residents' voting rights, implements requirements of the California Voting Rights Act, and protects the City against litigation. Effective starting with the November 2019 general municipal election, the City will elect its Councilmembers "by-district" from five electoral districts. The Ordinance includes and approves the final Council-selected map establishing the boundaries of the five electoral districts that Councilmembers will represent. The Ordinance also provides that Councilmembers representing Districts 1, 2 and 3 will be elected in November of 2019, and every four years thereafter, and that Councilmembers representing Districts 4 and 5 will be elected in November of 2021, and every four years thereafter, subject to change as required or authorized by law. The Ordinance includes detailed and integrated findings that serve as the context and basis for its adoption, indicates that the City's transition to "by-district" elections implements the California Voting Rights Act, and addresses minority voter dilution and the probability of racially polarized voting, and is otherwise consistent with federal and state law.*

WHEREAS, pursuant to City Charter sections 301 and 302, the City of Palm Springs currently elects and is governed by five (5) co-equal City Councilmembers, one of whom serves as Mayor, using an at-large election system; and

WHEREAS, the California Voting Rights Act (CVRA), at California Elections Code section 14027, states: "An at-large method of election may not be imposed or applied in a manner that impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the

abridgment of the rights of voters who are members of a protected class. . . "; and

WHEREAS, the City engaged an expert demographic firm to analyze the City's population and election history, in order to determine if there was evidence of "racially polarized voting", indicating that a protected class within Palm Springs has had its ability to elect candidates of its choice or its ability to influence the outcome of an election impaired through minority voter dilution; and

WHEREAS, this analysis indicates that at large elections over the past several years show the possibility, and in some cases the probability, of racially polarized voting in those at-large elections; and

WHEREAS, on March 5, 2018, the City received a letter from the Southwest Voter Registration Project demanding that the City transition from an at-large electoral system to a by-district system in order to address alleged violations of the CVRA due to potential minority voter dilution, or face litigation on this issue; and

WHEREAS, legal counsel for the Southwest Voter Registration Project has agreed to extend the deadline for the City to make this transition until December 31, 2018, after which he may file legal action as described above; and

WHEREAS, no municipality has prevailed in Court in keeping at-large elections as the result of litigation initiated pursuant to the CVRA, including several California charter cities (e.g., Modesto, Palmdale, Santa Monica); and

WHEREAS, cities have spent millions of dollars in losing efforts to maintain at-large elections, paying both their own and the plaintiff's attorneys fees, which is authorized by the CVRA; and

WHEREAS, The California Court of Appeals has ruled that Charter Cities must comply with the CVRA's requirements regarding by-district elections (*Jauregui v. City of Palmdale*, (2014) 226 Cal.App.4th 781); and

WHEREAS, on November 8, 2018, the Superior Court of the State of California for the County of Los Angeles issued its tentative decision and order in the case of *Pico Neighborhood Association, et al. v. City of Santa Monica*, ruling that Santa Monica must transition to by-district elections and the court rejected all defenses, including the fact that Santa Monica voters have twice voted to retain at-large elections in their charter since 1946; and

WHEREAS, to date, 29 Charter Cities have transitioned from at-large to by-district elections without a public vote, 21 by ordinance and nine by court order; and

WHEREAS, in response to the threatened litigation regarding alleged non-compliance with the CVRA, and the desire to maximize the goals of the CVRA and the City's goals of equality, diversity and inclusion, the City Council has determined that it is in the best interest of the City to transition from its current at-large election system to a by-district election system; and

**WHEREAS, Native Americans have lived in what is now Palm Springs since time immemorial; and**

**WHEREAS, communities of color, excluding Native Americans – largely Latino, African American, and Filipino, – have lived and worked in Palm Springs since as early as 1910; and**

**WHEREAS, by the 1930s the City's population had increased dramatically and communities of color at that time worked mainly in the agricultural, service, and labor industries of the City; and**

**WHEREAS, since the 1930s, communities of color continuously populated Section 14 in central Palm Springs until the 1960s; and**

**WHEREAS, after World War II, there were mass evictions and the forced removal of residents of Section 14; and**

**WHEREAS, this systematic removal of communities of color from Section 14 led to the creation and settlement in what is now Desert Highlands Gateway, the Veterans Tract, Demuth Park, Lawrence Crossley, and the Golden Sands neighborhoods; and**

**WHEREAS, the City Council has further determined that transitioning from its current at-large election system to a by-district election system will improve minority voter representation by addressing minority voter dilution under the CVRA, particularly with respect to the neighborhoods identified above; and**

**WHEREAS, on April 19, 2018, the City Council adopted Resolution No. 24406, a resolution declaring the City's intention to transition from at-large to by-district elections pursuant to California Elections Code Section 10010; and**

**WHEREAS, the City Council created the Palm Springs CVRA Working Group made up of residents to conduct research, engage the public, and make recommendations relating to by-district elections and diversity in government; and**

**WHEREAS, on May 10, 2018, the Palm Springs CVRA Working Group developed a Statement of Principles identifying goals and processes to help guide the transition to by-district elections, which the City Council unanimously adopted on May 16, 2018; and**

**WHEREAS, the City's retained expert demographic firm assisted the City with developing draft electoral district maps and gathering input from residents on the electoral boundaries of possible maps; and**

**WHEREAS, over 30 public meetings were held throughout the City of Palm Springs to engage residents, obtain input, and provide training on how to draw district maps; and**

WHEREAS, two mailers were sent to every resident and business address in Palm Springs advising them of the plan to transition to by-district elections and inviting them to participate in the process; and

WHEREAS, in accordance with Elections Code section 10010, the City Council held two public hearings to obtain input on any proposed district boundaries on June 20 and July 11, 2018; and

WHEREAS, 41 maps were submitted by the professional demographer and residents; and

WHEREAS, on August 28, 2018, the City made 8 maps prepared by its demographer available on its website for public review; and

WHEREAS, from July 12, 2018 to September 24, 2018, the City made 33 maps prepared by and submitted by residents available on its website for public review in a timely manner as they were submitted; and

WHEREAS, some of the submitted maps proposed that the City Councilmember who would serve as Mayor be elected at-large while the other four City Councilmembers would be elected by-district; while other maps proposed that all five City Councilmembers would be elected by-district; and

WHEREAS, the CVRA, at California Elections Code section 14026(a)(3), defines a prohibited "at-large method of election" to include "one that combines at-large elections with district-based elections"; and

WHEREAS, on October 4, 2018, the City Council directed that there be five (5) electoral districts within the City, and that all five Members of the City Council no longer be elected at-large; the Council finding that five (5) districts is most consistent with the CVRA and the Statement of Principles unanimously approved by the City Council; and

WHEREAS, on November 15 and November 29, 2018, the City Council held two further public hearings as required by Elections Code 10010, at which the public was invited to provide input regarding the content of the draft maps and the sequence of elections; and

WHEREAS, on December 10, 2018, the City Council introduced, read by title, and waived further reading of this Ordinance which includes a map (see attached Exhibit "A") with five council districts that are population balanced and based on communities of interest and other Constitutional factors as set forth in the CVRA and Federal Voting Rights Act; and

WHEREAS, California Government Code section 34886 permits the City Council to change the City's method of election by ordinance, with certain formalities, to a by-district system in which each Councilmember is elected only by the voters in the electoral district in which the Councilmember resides; and

WHEREAS, pursuant to California Government Code section 34886, it is declared that the purpose of the change in the method of electing members of the City Council of the City of Palm Springs made by this Ordinance is to implement the guarantees of Article I, Section 7 and Article II, Section 2 of the California Constitution, as set forth in the California Voting Rights Act (California Elections Code sections 14025 through 14032); and

WHEREAS, local voters' preference for at-large elections, whether expressed through referendum, initiative or charter amendment election, does not alter the requirements of the CVRA, nor does it insulate the City from potential litigation under the CVRA; and

WHEREAS, the Council has determined that portions of certain provisions of the Charter of the City of Palm Springs are inconsistent with the CVRA, including without limitation the at-large election elements of Sections 301 and 302, and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code section 34886, an ordinance providing for the election of the Members of the City Council of the City of Palm Springs by-district in five single-member districts as reflected in Exhibit A to this Ordinance.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES ORDAIN AS FOLLOWS:

**SECTION 1.** Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference as material findings in support of this Ordinance.

**SECTION 2.** By-District Elections. Section 2.02.005 is hereby added to Chapter 2.02 of Title 2 of the City of Palm Springs Municipal Code to read as follows:

**"2.02.005 – By-District Elections.**

- A. By-District Elections. Pursuant to California Government Code section 34886, all members of the City Council of the City of Palm Springs shall be elected by-district in five (5) single-member districts.
1. All members of the City Council shall be elected in the electoral districts established by subsection B of this Section and as subsequently reapportioned pursuant to State law. All City Council elections shall take place "by district" as that term is defined in California Government Code section 34871, meaning each of the five (5) Councilmembers shall be elected from each district, by the voters of that district alone.
  2. Any Councilmember elected or appointed to represent a district must reside in that district and be a registered voter in that district, and any candidate for City Council must reside in,

- and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued.
3. Termination of residency in a district by a Councilmember shall create a vacancy for that City Council district unless a substitute residence within the district is immediately declared and established within thirty (30) days after the termination of residency.
  4. Notwithstanding any other provision of this Section, all Councilmembers, including the Councilmember who serves as Mayor, in office at the time this Section takes effect shall continue in office until the expiration of the at-large term to which they were elected. In the event a vacancy occurs before the expiration of the term of a Councilmember, in office at the time this Section takes effect, including the Councilmember who serves as Mayor, a person who is appointed or elected by special election to fill such vacancy may reside anywhere within the corporate boundaries of the City. A person appointed or elected to fill such a vacancy shall hold the office in accordance with the City Charter and applicable provisions of the City of Palm Springs Municipal Code.
- B. **City Council Districts and District Elections.** All five Councilmembers shall be elected on a by-district basis from the Council districts shown and numbered on the map titled 'City of Palm Springs District Map' attached as Exhibit A, a copy of which shall be on file in the City Clerk's office. In November, 2019, and every four years thereafter, the following three City Council districts shall be elected by-district: District 1; District 2; and District 3. In November, 2021, and every four years thereafter, the following two City Council districts shall be elected by-district: District 4 and District 5. The City Council may, by future enactment, change the dates of these elections as required and/or authorized by applicable law.
- C. **Amendment of District Boundaries.** Pursuant to California Elections Code section 21620, as it may be amended from time to time, the City Council shall adjust the boundaries of any or all of the districts following each federal decennial census or, if authorized by the City Charter, following each federal mid-decade census, to ensure that the districts are in compliance with all applicable provisions of law."

**SECTION 3. CEQA.** Based upon the whole of the administrative record before it, the City Council hereby finds that a transition from at-large to by-district elections is exempt from environmental review under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.) pursuant to State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) sections 15061(b)(3), 15320, and 15378(b)(3). Adoption of this Ordinance is an organizational and administrative activity of the City, does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment, and is therefore not a project for purposes of CEQA. (State CEQA Guidelines, §§ 15061(b)(3); 15378(b)(5).) In the event adoption of this Ordinance does constitute a project, it is categorically exempt under the Class 20 (Changes in the Organization of Local Governments) categorical exemption. (State CEQA Guidelines, § 15320.) Further, none of the exceptions to the exemptions found in State CEQA Guidelines section 15300.2 apply. Staff is hereby directed to prepare, execute and file with the Riverside County Clerk a CEQA Notice of Exemption within five (5) working days of the adoption of this Ordinance.

**SECTION 4. Integration of Ordinance.** If any provision of this Ordinance or the application thereof to any person or circumstance is overturned or suspended, this Ordinance shall be deemed overturned or suspended in its entirety and no portion of this Ordinance shall be deemed severable from the overturned or suspended provision.

**SECTION 5. Effective Date.** This Ordinance shall become effective thirty (30) days following its adoption.

**SECTION 6. Publication.** The City Clerk shall certify to the adoption of this Ordinance and shall cause a summary of the same to be published in the official newspaper of the City of Palm Springs within fifteen (15) days following its adoption.

**SECTION 7. Entry of Note into Charter.** Within thirty (30) days following the Effective Date of this Ordinance, the City Clerk is hereby directed to enter a notation that elements of Sections 301 and 302 of the City Charter that are consistent with an "at-large method of election" as the term is defined by California Elections Code section 14026(a)(3), are superseded by preemptive State law, *i.e.*, the CVRA, pursuant to the court decision of *Jauregui v. City of Palmdale*, (2014) 226 Cal.App.4th 781. To the extent that Sections 301 and 302 of the City Charter conflict with the provisions of this Ordinance, this Ordinance shall govern.

[signatures on next page]

PASSED, APPROVED AND ADOPTED this 19th day of December, 2018, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
MAYOR ROBERT MOON

ATTEST:

\_\_\_\_\_  
Anthony Mejia, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Edward Z. Kotkin, City Attorney

**CERTIFICATION**

**STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE  
CITY OF PALM SPRINGS**

)  
) **ss**  
)

I, Anthony Mejia, City Clerk, hereby certify that the attached is a true copy of Ordinance No. 1971, introduced by the City Council of the City of Palm Springs, California, at a City Council meeting held the 10th day of December, 2018. Ordinance No. 1971 was passed, approved and adopted at a regular City Council meeting held on the 19th day of December, 2018.

WITNESS my hand and official seal of the City of Palm Springs this \_\_\_\_ day of \_\_\_\_\_, 2018.

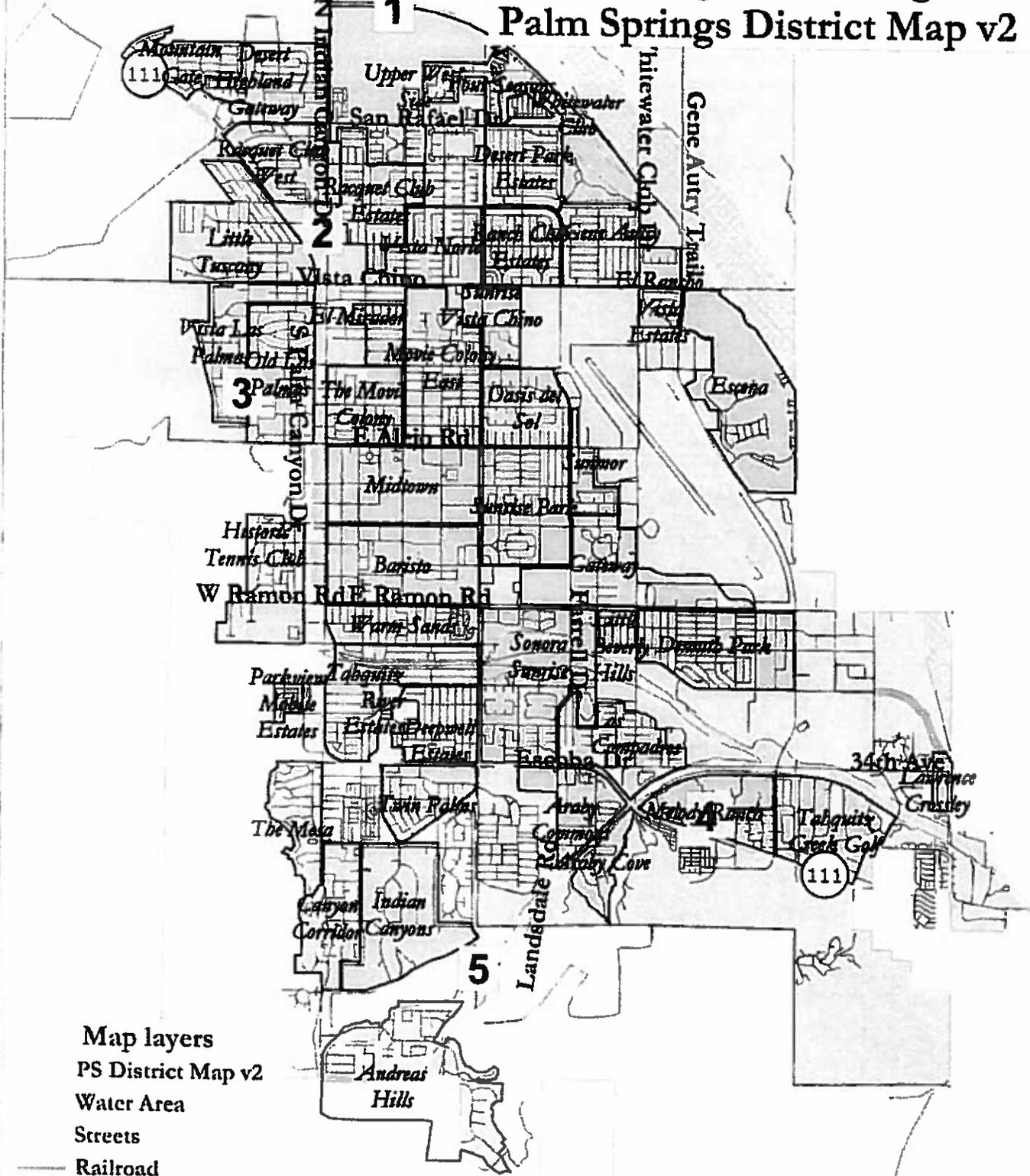
\_\_\_\_\_  
Anthony Mejia, City Clerk

**EXHIBIT A**

**[MAP ATTACHED BEHIND THIS PAGE]**

# Palm Springs Districting 2018

## Palm Springs District Map v2



- Map layers
- PS District Map v2
  - Water Area
  - Streets
  - Railroad
  - Palm Springs
  - 1PS Neighborhoods

For more detail, please see the plan viewer on the City's website  
 Map prepared by National Demographics, December 3, 2018

## Palm Springs - Palm Springs District Map v2

District		1	2	3	4	5	Total
Ideal	Total Pop	8,524	9,322	9,133	9,107	8,465	44,551
8,910	Deviation from ideal	-386	-412	223	197	-445	857
	% Deviation	-4.33%	-4.62%	2.50%	2.21%	-4.99%	9.62%
Total Pop	% Hisp	49%	22%	27%	17%	11%	25%
	% NII White	31%	67%	62%	74%	83%	64%
	% NII Black	10%	4%	4%	3%	2%	4%
	% Asian-American	8%	5%	4%	4%	2%	5%
Citizen Voting Age Pop	Total	5,475	7,670	7,168	7,429	7,575	35,317
	% Hisp	29%	14%	18%	12%	10%	16%
	% NII White	49%	76%	72%	80%	83%	73%
	% NII Black	11%	4%	5%	2%	2%	4%
	% Asian/Pac. Isl.	10%	4%	3%	4%	4%	5%
Voter Registration (Nov 2016)	Total	3,683	5,788	4,883	5,278	5,780	25,414
	% Latino est.	22%	15%	13%	11%	9%	14%
	% Spanish-Surnamed	20%	13%	12%	10%	8%	12%
	% Asian-Surnamed	1%	1%	1%	1%	1%	1%
	% Filipino-Surnamed	2%	1%	1%	1%	1%	1%
	% NII White est.	71%	68%	84%	91%	85%	80%
	% NII Black	13%	4%	6%	2%	2%	5%
Voter Turnout (Nov 2016)	Total	2,795	4,745	3,892	4,355	4,843	20,629
	% Latino est.	18%	13%	11%	10%	8%	12%
	% Spanish-Surnamed	16%	12%	10%	9%	7%	10%
	% Asian-Surnamed	2%	1%	1%	1%	1%	1%
	% Filipino-Surnamed	2%	1%	1%	1%	1%	1%
	% NII White est.	75%	69%	86%	92%	86%	82%
% NII Black	13%	4%	6%	2%	2%	5%	
Voter Turnout (Nov 2014)	Total	1,613	2,959	2,514	2,875	3,356	13,317
	% Latino est.	17%	9%	8%	7%	5%	8%
	% Spanish-Surnamed	16%	8%	7%	6%	5%	8%
	% Asian-Surnamed	1%	1%	1%	1%	1%	1%
	% Filipino-Surnamed	2%	1%	1%	1%	0%	1%
	% NII White est.	61%	78%	80%	89%	91%	82%
% NII Black est.	11%	3%	9%	2%	2%	5%	
ACS Pop. List.	Total	9,340	9,613	9,862	8,961	8,506	46,281
Age	age0-19	26%	15%	15%	10%	5%	14%
	age20-60	50%	49%	52%	39%	43%	47%
	age60plus	24%	36%	34%	51%	52%	39%
Immigration	immigrants	27%	30%	22%	17%	14%	20%
	naturalized	39%	48%	40%	41%	50%	43%
Language spoken at home	english	57%	72%	68%	78%	81%	71%
	spanish	35%	21%	23%	13%	12%	21%
	asian-lang	5%	2%	4%	4%	2%	3%
	other lang	3%	5%	5%	6%	5%	5%
Language Fluency	Speaks Eng. "1 yrs than Very Well"	17%	9%	14%	7%	4%	10%
Education (among those age 25+)	hs-grad	54%	55%	51%	55%	52%	53%
	bachelor	16%	20%	22%	22%	23%	21%
	graduate degree	9%	14%	13%	15%	18%	14%
Child in Household	child-under18	22%	13%	13%	8%	4%	11%
Pct of Pop. Age 16+	employed	53%	49%	51%	40%	42%	47%
Household Income	income 0-25k	29%	24%	34%	31%	30%	30%
	income 25-50k	26%	25%	25%	27%	21%	24%
	income 50-75k	16%	17%	16%	16%	16%	16%
	income 75-200k	24%	29%	21%	24%	24%	24%
	income 200k-plus	5%	6%	4%	3%	10%	6%
Housing Status	single family	78%	83%	55%	76%	77%	73%
	multi-family	22%	17%	45%	24%	23%	27%
	rented	40%	31%	60%	40%	36%	41%
	owned	60%	69%	40%	60%	64%	59%

Total population data from the 2010 Decennial Census.

Surname-based Voter Registration and Turnout data from the California Statewide Database.

Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NII White and NII Black registrations and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2012-2016 American Community Survey and Special Tabulation 5-year data.



# City of Palm Springs

Office of the City Attorney

3200 E. Tahquitz Canyon Way • Palm Springs, California 92262  
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## MEMORANDUM

**Date:** December 20, 2018

**To:** City Clerk

**From:** Edward Kotkin, City Attorney

**Re:** Southwest Voter Registration Education Project (SVREP) Settlement

This is to confirm that the above referenced case was settled per Council direction, received during closed session, on December 19, 2018.

Respectfully,

Edward Z. Kotkin  
City Attorney

## Edward Kotkin

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**From:** Edward Kotkin  
**Sent:** Wednesday, December 19, 2018 3:59 PM  
**To:** Amy Blaisdell  
**Cc:** David Ready; Geoff Kors; Lisa Middleton  
**Subject:** Talking Points re Settlement  
**Attachments:** SVREP-Palm Springs FINAL Settlement EXECUTED by SVREP 12.19.18.pdf

**Importance:** High

Amy,

Here you go.

1. The settlement memorializes certain elements of this matter's history: the SVREP's demand letter, the City's adoption of its resolution of intention to convert to districts, the extension of time to convert to districts until 12/31/18, the introduction of Ordinance No. 1971 on 12.10.18, and the adoption of the ordinance this evening
2. The settlement resolves ALL claims and issues to date related to the CVRA between the parties
3. No party admits any specific liability, and each party bears its own costs to date, except for term 5
4. Each of the parties releases the other from claims arising from or related to the City's districting process to date
5. The City will pay SVREP's attorney \$30K in attorneys' fees pursuant to the "safe harbor" provision of the CVRA – cities that convert to districts have the other side's attorneys' fees for which they may be liable capped at \$30K
6. The payment will be made within 10 business days of the City's receipt of the signed agreement (we already have it) AND reasonably redacted legal invoices from Mr. Shenkman to SVREP in the amount of \$30K or more



Edward Z. Kotkin, City Attorney

City of Palm Springs

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