



CITY COUNCIL STAFF REPORT

DATE: JULY 5, 2017 CONSENT CALENDAR

SUBJECT: ENGAGEMENT OF SPECIAL LEGAL COUNSEL, BIRD LAW GROUP AND COLANTUONO, HIGHSMITH & WHATLEY

FROM: David H. Ready, City Manager

BY: Edward Z. Kotkin, City Attorney

SUMMARY

The City Attorney worked with the City Manager engaging the services of a law firm active in representation of cannabis industry businesses to assist in the City's further implementation of Palm Springs Municipal Code (PSMC) Chapter 5.35, the City's ordinance regarding its Initial Medical Cannabis Regulation Program for the six (6) permitted collectives/cooperatives operating in the City of Palm Springs, and PSMC Chapter 5.45, the City's ordinance applicable to Medical Cannabis Related Businesses and Activities. Consistent with the Council's direction on June 7, 2017 as to engagement of independent contract attorneys, the City Attorney is requesting Council ratification of this engagement entered pursuant to the City Manager's authority under the PSMC. The City Attorney is also requesting the Council's approval for the engagement of a second law firm to assist in transactional and litigation services arising from and related to certain specialized areas of municipal legal practice, including without limitation exactions, cannabis, and election matters. Fees, costs and expenses paid pursuant to each of the two (2) agreements will not to exceed twenty-five thousand dollars (\$25,000.00).

RECOMMENDATION:

- 1) Ratify Agreement No. 6988, a Professional Services Agreement, with Bird Law Group, A Professional Corporation, for specialized legal services arising from and related to cannabis and the City's implementation of Chapters 5.35 and 5.45 of the Palm Springs Municipal Code, in a total amount not to exceed twenty-five thousand dollars (\$25,000.00).
- 2) Approve Agreement No. _____, a Professional Services Agreement, with Colantuono, Highsmith & Whatley, Professional Corporation, for specialized legal services arising from and related to certain specialized areas of municipal legal practice, including without limitation exactions, cannabis, and election matters, in a total amount not to exceed twenty-five thousand dollars (\$25,000.00), in a form substantially similar to that published with this staff

ITEM NO. 1.H.

- report, subject to minor modification, within the reasonable discretion of the City Attorney;
- 3) Authorize the City Manager to execute all necessary documents

STAFF ANALYSIS:

Almost two (2) months ago, the City of Palm Springs has established the Office of the City Attorney as an in-house department to lead and coordinate in the direction and provision of all legal services to the City. The City will be in the process of moving forward with implementation of Chapter 5.45 of the municipal code, the City's ordinance applicable to medical cannabis related businesses and activities. The implementation of this ordinance will allow the expansion of commercial medical cannabis uses beyond the six (6) established and permitted medical cannabis cooperatives and collectives. The City Attorney will also be developing and presenting Chapter 5.55 of the municipal code, effective January 1, 2018, to regulate "Adult Use" of cannabis, *i.e.*, non-medically related cannabis activity, and related updates to the City's Zoning Code. As it did when adopting Chapters 5.35 and 5.45, Palm Springs will be aggressively leading in the movement toward effective regulation of adult use of cannabis. The City Council's *ad hoc* cannabis subcommittee, tasked with the responsibility to "review current and proposed state legislation with current city regulations," has provided direction to staff – as the legal environment in Sacramento unfolds, Palm Springs will be a leader in providing an excellent environment for the best cannabis businesses in the marketplace, whether oriented toward medical or adult use. The time for aggressive work in this area is right now.

On June 27, 2017, the Governor signed SB 94 ("The Reconciliation Bill"), which will serve to reconcile the existing medical cannabis regulatory framework under the Medical Cannabis Regulation and Safety Act (MCRSA) with Proposition 64, the Adult-Use of Marijuana Act (AUMA). The Reconciliation Bill, also known as the "Medicinal and Adult-Use Cannabis Regulation and Safety Act" ("MAUCRSA") provides a framework for the co-existence of licensing for adult-use (non-medical) and medical cannabis, eliminates prior restrictions on cross-licensure, provides for two (2) forms of taxation by the State of California (cultivation and excise), consolidates State authority over cannabis, establishes that there are two (2) types of licenses, "A" licenses for adult use and "M" licenses for medical use¹.

Upon consultation with the City Council's *ad hoc* cannabis subcommittee and working with the City Manager, the City Attorney retained the Bird Law Group, in an amount not to exceed twenty-five thousand dollars (\$25,000.00), under the City Manager's signature authorization. Ms. Bird worked as an analyst for the United States Marine Corps, graduated UCLA law school in 2009 where she was a chief managing editor of a law review, clerked for a United States District Court judge, and worked at Bingham McCutcheon and Manatt, Phelps & Phillips for a combined period of almost six (6) years,

¹ Testing and laboratory licenses are universal.

and established the Bird Law Group in April 2016. Her firm has developed a significant client base in the cannabis industry, and is a frequent speaker at cannabis-industry related functions. She serves as general counsel for numerous small to medium-sized businesses in the medical cannabis industry, including collectives. Specially discounted rates for attorneys at Ms. Bird's firm range secured specifically for government agency work are \$225/hour for associates, and \$250/hour for partners/shareholders.

The City's needs with respect to expertise regarding cannabis transcend the industry expertise that Ms. Bird's firm brings to the table. The City Attorney determined that it would be in the City's interest to establish a special counsel relationship with a leader in the municipal law field with particular expertise relevant to exactions, cannabis, and election matters. It is not an overstatement to indicate that Michael Colantuono is perhaps California's leading expert on the law of local government revenues, handling six cases on that subject in the California Supreme Court since 2004. He has served as President of the League of California Cities City Attorneys' Department, and his academic and professional resume are impeccable. You may review Mr. Colantuono's on-line biography at <https://chwlaw.us/attorneys/michael-g-colantuono/>. Hourly rates for attorneys at Mr. Colantuono's firm range from \$195/hour for new associates to \$350/hour for shareholders and senior counsel.

The agreement with Ms. Bird's firm has been executed already, and the City Attorney has reviewed the agreement proposed for execution, and discussed its specific terms with Mr. Colantuono. The City Attorney's office will allow the incorporation in the final agreement of Mr. Colantuono's standard "cloud" based digital storage provision. Absent Council direction to the contrary, the City Attorney anticipates that the agreement will be signed as presented here with that single modification, but requests authority for minor modifications.

ALTERNATIVES:

Reject either or both of the proposed professional services agreements. The services provided by Ms. Bird's firm to date are very limited.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) DETERMINATION:

The proposed agreements are not "projects" for purposes of the California Environmental Quality Act (CEQA), as that term is defined by CEQA guidelines (Guidelines) section 15378. Engagement of these lawyers is an organizational or administrative activity by the City of Palm Springs in furtherance of its police power, and will not result in a direct or indirect physical change in the environment, per section 15378(b)(5) of the Guidelines.

FISCAL IMPACT:

Sufficient funding is budgeted and available in contractual legal services, Account No. 001-1200-43220.



Edward Z. Kotkin,
City Attorney



Marcus L. Fuller, MPA, P.E., P.L.S.,
Assistant City Manager



David H. Ready, Esq., Ph.D.,
City Manager

Attachments:

Professional Services Agreements

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of this ____ day of June, 2017, by and between the CITY OF PALM SPRINGS, a California charter city and municipal law corporation ("City"), and the law firm of COLANTUONO, HIGHSMITH & WHATLEY, Professional Corporation, a California professional corporation (hereinafter "Firm").

RECITALS

A. The City of Palm Springs, pursuant to its authority under the City Charter and all applicable law, acting by and through the City Manager, desires to contract with Firm to provide legal services for the City as may be requested or required by the City Attorney or City Council, including without limitation transactional and litigation services arising from and related to certain specialized areas of municipal legal practice, including without limitation exactions, cannabis, and election matters.

B. Firm is qualified to, and desires to perform the foregoing professional services as necessary for the support of the City Attorney and the City Council.

C. City and Firm wish to provide for the terms and conditions of retaining and employing Firm to provide legal services as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. Retention of Firm

City hereby retains and employs Firm to provide legal services as may be requested or required in support of the City Attorney or the City Council. Such services include but are not necessarily limited transactional and litigation services arising from and related to certain specialized areas of municipal legal practice, including without limitation exactions, cannabis, and election matters.

2. Independent Contractor.

Firm and any attorneys or other persons employed by Firm, shall at all times be considered an independent contractor and not an employee of the City and not entitled to any benefits of the City's employees. Except to the extent provided herein, the City and its employees shall not have any control over the conduct of Firm.

3. Fees, Costs, and Expenses.

- 3.1 City agrees to pay Firm at the rates set forth in Exhibit "A," which is attached hereto and is incorporated herein by reference.
- 3.2 City agrees to pay out-of-pocket costs and expenses associated with Firm's work pursuant to Exhibit "A."
- 3.3 Fees, costs and expenses paid pursuant to this Agreement, shall have an aggregate value of no more than twenty-five thousand dollars (\$25,000.00).

4. Statements/Task-Billing. Firm shall prepare and present to City detailed monthly statements for professional and other services rendered to City for the month preceding the statement, indicating each task performed by Firm. City shall pay the statements within thirty (30) days of receipt of the same. Firm shall update City, upon request, regarding the status of Firm's billings.

5. Insurance and Indemnification.

- 5.1. Firm shall carry Professional Liability/Errors and Omissions insurances in an amount not less than one million dollars (\$1,000,000.00) per occurrence and (\$2,000,000.00) in aggregate. All insurance coverage shall be provided by an insurance company with a rating of A-, VII or greater in the latest edition of Best's Insurance Guide and authorized to do business in the State of California. Such policies shall not be canceled or materially changed absent thirty (30) days' prior written notice to the City. With respect to Professional Liability/Errors and Omissions insurance, Firm agrees to maintain such insurance for at least three (3) years after termination of this Agreement as long as such insurance is reasonably available on the market.
- 5.2. Firm agrees to indemnify, defend and hold harmless, the City, its City Council, officers, agents and employees from and against and claim, demands, damages, injury or judgment which arises out the negligent performance or willful misconduct of Firm in performing under this Agreement.

6. Term and Termination. The term of this Agreement shall continue until terminated by either party. Firm shall serve under the terms of this Agreement at the pleasure of City, and by a majority vote of the City Council, City hereby reserves the right to terminate this Agreement upon ten (10) days written notice to Firm for any reason or to require substitute attorney personnel. In the event that Firm's services are terminated, all unpaid charges shall be due and payable to Firm for work actually performed up to the time of termination and for any other work Firm completes at the direction of the City. Firm may terminate this Agreement with or without cause upon ninety (90) days written notice to the City.

7. Notice. Any notices required by this Agreement shall be given by personal service or by delivery of such notice by first-class mail, postage prepaid. Such notices shall be addressed to each party at the address listed below. Either party may change the information in such notice upon written notice as provided herein.

City:
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263-2743
Attn: City Attorney
Phone: 760.323.8205

Firm:
Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Attn: Michael G. Colantuono
Phone: (530) 432-7357

8. City Officers and Employees; Non-Discrimination.

8.1 No officer or employee of the City shall be personally liable to the Firm, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to Firm or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Firm acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall Firm enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. Firm warrants that Firm has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

8.3 In connection with its performance under this Agreement, Firm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Firm shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9. Conflicts of Interest. Firm represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement. Firm represents that no City employee or official has a material financial interest in Firm. During the term of this Agreement and/or as a result of being awarded this contract, Firm shall not offer, encourage or accept any financial interest in Firm's business from any City employee or official.

10. Files. All legal files of Firm pertaining to the City shall be and remain the property of City. Firm shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at Firm's expense, upon termination of this Agreement.

11. Modifications to the Agreement. Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of Firm's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by Firm and paid by the City.

12. Assignment and Delegation. This Agreement contemplates the personal professional services of Firm and it shall not be assigned or delegated without the prior written consent of the City. Firm shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

13. Legal Construction.

13.1 This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed under the laws of the State of California.

13.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

13.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

13.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

15. Entire Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and contains all covenants and agreements between the parties with respect to such matter.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated in the preamble to this Agreement and represent that they are authorized to bind their respective parties.

ATTEST:

CITY OF PALM SPRINGS

By: _____
Kathleen D. Hart,
Interim City Clerk

By: _____
David H. Ready,
City Manager

APPROVED AS TO FORM:

By: _____
Edward Z. Kotkin
City Attorney

COLANTUONO, HIGHSMITH & WHATLEY,
Professional Corporation, a California professional
corporation

By: _____
Signature

Printed Name

EXHIBIT "A"

**COLANTUONO, HIGHSMITH & WHATLEY
Rates and Billing Practices**

1. **Rates:** Effective July 5, 2017, the hourly rates for legal personnel on this matter are as follows:

Shareholders and senior counsel	\$350
10 th year and more senior associates	\$340
9 th year associates	\$320
8 th year associates	\$320
7 th year associates	\$315
6 th year associates	\$310
5 th year associates	\$280
4 th year associates	\$270
3 rd year associates	\$240
2 nd year associates	\$225
1 st year associates	\$195
Paralegals	\$160
Legal assistants	\$145

2. **Billing Practices:** Time is charged in minimum units of one-tenth (. 1) of an hour.

The time charged will include the time spent on telephone calls relating to City's matter, including calls with City, witnesses, opposing counsel, court personnel, state filing agencies, vendors, and other necessary telephone calls. The legal personnel assigned to City's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing, or other proceeding, each will charge for the time spent, as long as the attendance is required and appropriate. Firm will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

3. **Costs and Other Charges:**

(a) Firm may incur various costs and expenses in performing legal services under this Agreement. City agrees to pay for all costs, disbursements, and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness,

professional, mediator, arbitrator and/or special master fees, and other similar items. Except for the items listed below, all costs and expenses will be charged at Firm's cost.

In-office photocopying: \$0.10/page

Mileage: Per IRS Mileage Rates, currently \$0.535/mile

(b) Out of town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Firm's personnel.

(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of City's matter, it may become necessary to hire expert witnesses, consultants or investigators. City agrees to pay such fees and charges. Firm will select any expert witnesses, consultants or investigators to be hired, and City will be informed of and have the opportunity to consent to persons chosen and their charges.

(d) Other Fees. City understands that if any matter proceeds to court action or arbitration, City may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of City.

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of this 8th day of June, 2017, by and between the CITY OF PALM SPRINGS, a California charter city ("City"), and the law firm of BIRD LAW GROUP, A PROFESSIONAL CORPORATION, a California professional corporation (hereinafter "Firm").

RECITALS

A. The City of Palm Springs, pursuant to its authority under the City Charter and all applicable law, acting by and through the City Manager, desires to contract with Firm to provide legal services for the City as may be requested or required by the City Attorney or City Council, including without limitation transactional and litigation services arising from and related to cannabis and the City's implementation of Chapters 5.35 and 5.45 of the Palm Springs Municipal Code.

B. Firm is qualified to, and desires to perform the foregoing professional services as necessary for the support of the City Attorney and the City Council.

C. City and Firm wish to provide for the terms and conditions of retaining and employing Firm to provide legal services as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. Retention of Firm

City hereby retains and employs Firm to provide legal services as may be requested or required in support of the City Attorney or the City Council. Such services include but are not necessarily limited to transactional and litigation services arising from and related to cannabis and the City's implementation of Chapters 5.35 and 5.45 of the Palm Springs Municipal Code.

2. Independent Contractor.

Firm and any attorneys or other persons employed by Firm, shall at all times be considered an independent contractor and not an employee of the City and not entitled to any benefits of the City's employees. Except to the extent provided herein, the City and its employees shall not have any control over the conduct of Firm

3. Fees, Costs, and Expenses.

3.1 City agrees to pay Firm at the rates set forth in Exhibit "A," which is attached hereto and is incorporated herein by reference.

3.2 City agrees to pay out-of-pocket costs and expenses associated with Firm's work pursuant to Exhibit "A."

3.3 Consistent with Palm Springs Municipal Code Section 7.03.020(7), fees, costs and expenses paid pursuant to this Agreement, shall have an aggregate value of no more than twenty five thousand dollars (\$25,000.00).

4. **Statements/Task-Billing.** Firm shall prepare and present to City detailed monthly statements for professional and other services rendered to City for the month preceding the statement, indicating each task performed by Firm. City shall pay the statements within thirty (30) days of receipt of the same. Firm shall update City, upon request, regarding the status of Firm's billings.

5. **Insurance and Indemnification.**

5.1. Firm shall carry Professional Liability/Errors and Omissions insurances in an amount not less than \$100,000 per occurrence and \$300,000 in aggregate. All insurance coverage shall be provided by an insurance company with a rating of A-, VII or greater in the latest edition of Best's Insurance Guide and authorized to do business in the State of California. Such policies shall not be canceled or materially changed absent thirty (30) days' prior written notice to the City. With respect to Professional Liability/Errors and Omissions insurance, Firm agrees to maintain such insurance for at least three (3) years after termination of this Agreement as long as such insurance is reasonably available on the market. Within thirty (30) days of execution of this Agreement by City, Firm will increase these amounts to not less than \$1,000,000.00 per occurrence, and \$2,000,000.00 in aggregate, and provide proof to City of this increase in coverage.

5.2. Firm agrees to indemnify, defend and hold harmless, the City, its City Council, officers, agents and employees from and against and claim, demands, damages, injury or judgment which arises out the negligent performance or willful misconduct of Firm in performing under this Agreement.

6. **Term and Termination.** The term of this Agreement shall continue until terminated by either party. Firm shall serve under the terms of this Agreement at the pleasure of City, and by a majority vote of the City Council, City hereby reserves the right to terminate this Agreement upon ten (10) days written notice to Firm for any reason or to require substitute attorney personnel. In the event that Firm's services are terminated, all unpaid charges shall be due and payable to Firm for work actually performed up to the time of termination and for any other work Firm completes at the direction of the City. Firm may terminate this Agreement with or without cause upon ninety (90) days written notice to the City.

7. Notice. Any notices required by this Agreement shall be given by personal service or by delivery of such notice by first-class mail, postage prepaid. Such notices shall be addressed to each party at the address listed below. Either party may change the information in such notice upon written notice as provided herein.

City:
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263-2743
Attn: City Attorney
Phone: 760.323.8205

Firm:
Bird Law Group
3001 Red Hill Ave., Building 4, Suite 208
Costa Mesa, CA 92626
Attn: Andrea Ruth Bird, President
Phone: 714.279.8772 x 202

8. City Officers and Employees; Non-Discrimination.

8.1 No officer or employee of the City shall be personally liable to the Firm, or any successor-in-interest, in the event of any default or breach by the City or for any amount which may become due to Firm or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Firm acknowledges that no officer or employee of the City has or shall have any direct or indirect financial interest in this Agreement nor shall Firm enter into any agreement of any kind with any such officer or employee during the term of this Agreement and for one year thereafter. Firm warrants that Firm has not paid or given, and will not pay or give, any third party any money or other consideration in exchange for obtaining this Agreement.

8.3 In connection with its performance under this Agreement, Firm shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Firm shall ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age, marital status, ancestry, national origin, sexual orientation, gender identity, gender expression, physical or mental disability, or medical condition. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

9. Conflicts of Interest. Firm represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the City under this Agreement. Firm represents that no City employee or official has a material financial interest in Firm. During the term of this Agreement and/or as a result of being awarded this contract, Firm shall not offer, encourage or accept any financial interest in Firm's business from any City employee or official.

10. **Files.** All legal files of Firm pertaining to the City shall be and remain the property of City. Firm shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at Firm's expense, upon termination of this Agreement.

11. **Modifications to the Agreement.** Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of Firm's professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by Firm and paid by the City.

12. **Assignment and Delegation.** This Agreement contemplates the personal professional services of Firm and it shall not be assigned or delegated without the prior written consent of the City. Firm shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

13. **Legal Construction.**

13.1 This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed under the laws of the State of California.

13.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

13.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

13.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

14. **Consent to Use of E-Mail and Cloud Services.** In order to provide City with efficient and convenient legal services, Firm will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, City is consenting to such e-mail transmissions with Client and Client's representatives and agents.

In addition, Firm uses a cloud computing service with servers located in a facility other than Firm's office. Most of Firm's electronic data, including emails and documents, are stored in

this manner. By entering into this Agreement, City understands and consents to having communications, documents and information pertinent to the City's matter stored through such a cloud-based service.


15. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and contains all covenants and agreements between the parties with respect to such matter.

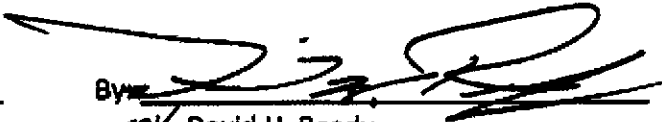
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated in the preamble to this Agreement and represent that they are authorized to bind their respective parties.

ATTEST:


CITY OF PALM SPRINGS

By: 
Kathleen D. Hart,
Interim City Clerk

By: 
David H. Ready,
City Manager

APPROVED AS TO FORM:

APPROVED BY CITY MANAGER
Net \$25,000.00 AL988

By: 
Edward Z. Kotkin
City Attorney

BIRD LAW GROUP,
A PROFESSIONAL CORPORATION

By: 
Signature

6/9/2017
Andrea Ruth Bird, Esq.

Not to Exceed \$ 25,000
Without The Express Written
Authorization Of The City
Manager

EXHIBIT "A"

**BIRD LAW GROUP,
A PROFESSIONAL CORPORATION
Rates and Billing Practices**

1. **Rates:** Effective June 1, 2017, the hourly rates for legal personnel on this matter are as follows:

Partner/Shareholder Attorneys:	\$250/hour
Associate Attorneys:	\$225/hour
Paralegals	\$100/hour
Legal Clerks	\$75/hour

2. **Billing Practices:** Time is charged in minimum units of one-tenth (.1) of an hour.

The time charged will include the time spent on telephone calls relating to City's matter, including calls with City, witnesses, opposing counsel, court personnel, state filing agencies, vendors, and other necessary telephone calls. The legal personnel assigned to City's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing, or other proceeding, each will charge for the time spent, as long as the attendance is required and appropriate. Firm will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

3. **Costs and Other Charges:**

(a) Firm may incur various costs and expenses in performing legal services under this Agreement. City agrees to pay for all costs, disbursements, and expenses in addition to the hourly fees. The costs and expenses commonly include, service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees, and other similar items. Except for the items listed below, all costs and expenses will be charged at Firm's cost. ~~Costs and expenses are not included in the flat fee arrangement unless specified in Schedule A.~~

In-office photocopying: \$0.10/page

Mileage: Per IRS Mileage Rates, currently \$0.535/mile

(b) Out of town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Firm's personnel.

(c) Experts, Consultants and Investigators. To aid in the preparation or presentation of City's matter, it may become necessary to hire expert witnesses, consultants or investigators. City agrees to pay such fees and charges. Firm will select any expert witnesses, consultants or investigators to be hired, and City will be informed of and have the opportunity to consent to persons chosen and their charges.

(d) Other Fees. City understands that if any matter proceeds to court action or arbitration, City may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of City.