

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

The parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") are Lorraine Salas and Karina Quintanilla (referred to as "Plaintiffs" herein), and the City of Palm Desert, a California charter city and municipal corporation (referred to as "City" or "Defendant" herein). These persons or entities are sometimes referred to as "Parties" or "each Party" herein. This Agreement is effective as of the latest date written next to the signature of a Party to this Agreement.

RECITALS

A. On or about June 5, 2019, Plaintiffs filed a complaint for a violation of the California Voting Rights Act of 2001 ("CVRA") against the City in Riverside County Superior Court, thereby instituting the action entitled *Salas, et. al. v. City of Palm Desert, California*, Case No. PSC-1903800 (the "CVRA Action").

B. The City answered the complaint on September 27, 2019, denying the allegations in the complaint and asserting affirmative defenses.

C. The Parties desire to settle the CVRA Action and to fully and finally settle any and all matters between them arising out of, or relating to, the CVRA Action, or any claims that could have been raised in connection with the CVRA Action or the City's system of at-large elections for City Council Members occurring prior to the date of this Agreement, without any further court proceedings, trial, appeal or adjudication of any issue of fact or law, except as provided herein, and without any admission with respect to such matters.

D. The purpose of this Agreement is to settle the CVRA Action by the Parties jointly requesting the Court to enter a judgment pursuant to its authority under the Code of Civil Procedure § 664.5 and the CVRA, requiring the City, pursuant to procedures set forth in Elections Code § 10010 to change from an at-large system of election of five (5) City Council Members to a system

of by-district elections for five (5) City Council members as described in subsection (a) of Exhibit 1, hereto, in time for the November 2020 City Council elections, as provided in Exhibit 1.

TERMS AND CONDITIONS

NOW, THEREFORE, in light of the foregoing recitals, and in consideration of the representations, warranties, releases, and promises contained herein, the Parties agree to the following terms and conditions:

1. **Stipulation for Entry of Judgment.**

1.1. Immediately upon full execution of this Agreement, and satisfaction of the terms set forth in paragraphs 1.2 and 1.3, whichever comes last, the Parties shall execute and jointly file with the Court the Stipulation for Entry of Judgment attached hereto as Exhibit 1 (“Stipulation”). The Parties further agree to jointly request that the Court enter judgment consistent with the Stipulation. The Stipulation for Entry of Judgment, including the proposed judgment thereon, and faithful performance of the terms of that judgment, are integral to this Agreement, and shall, in all respects, be construed as being part of this Agreement. If the Court fails to enter judgment consistent with the Stipulation, this Agreement is null and void.

1.2. The final judgment shall include a copy of the judicially approved electoral district map. The City shall conduct a public process in accordance with Elections Code § 10010, to consider the adoption of district boundaries for the Civic Center District as contemplated in Paragraph (a)(1) of the Stipulation. To facilitate resolution, Plaintiffs are encouraged to participate in the public process as early as is practicable, either by (1) submitting one or more maps that are acceptable to them for consideration by the Council or (2) specifying which of the maps submitted by the City’s consultants or third parties are acceptable to them, or (3) both. If the Council adopts a map that Plaintiffs have identified as acceptable to them, that electoral district map shall be

deemed the approved electoral district map, and final judgment shall be entered accordingly in the CVRA Action. If the Council does not choose a map that the Plaintiffs have identified as acceptable to them, within five (5) days of the City Council's first reading of the ordinance including the City's proposed electoral district map, Plaintiffs and representatives of the City shall meet and confer concerning the electoral district map. If the Parties agree upon an electoral district map, that electoral district map shall be deemed the approved electoral district map, and final judgment shall be entered accordingly in the CVRA Action. If following the meet and confer process, the City's representatives agree to changes in the electoral district map or to a different map, the City Council may schedule one or more additional public hearings and meetings to consider the amended electoral district map or different map, in accordance with Elections Code § 10010. If following the meet and confer process, the Parties are unable to agree on an electoral district map, this Agreement is null and void.

1.3. The parties shall also consult with the Riverside County Registrar of Voters and any other persons as may be required to confirm that ranked choice voting can be conducted for elections in the City, beginning with November 2020, at an initial cost of no more than \$350,000 to the City, not including the costs of necessary educational advertising campaign that is undertaken to explain the new system to voters. If the Registrar is unable to conduct ranked choice voting beginning in November 2020, the parties will meet and confer in good faith in an effort to agree on implementation of RCV at the earliest practicable date, with the Stipulated Judgment to be revised accordingly. If, following the meet and confer process contemplated in this paragraph, the Parties are unable to agree on implementation of RCV and the date by which such implementation is to occur, this Agreement is null and void.

2. Parties' Attorneys' Fees and Litigation Expenses.

2.1. Plaintiffs are prevailing parties, entitled to recover their reasonable attorneys' fees, costs and expenses, pursuant to Elections Code section 14030. The City will pay Plaintiffs, in an amount to be negotiated by the Parties, their reasonable attorneys' fees consistent with the standards established in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49, and litigation expenses consistent with Elections Code section 14030, including, but not limited to, expert witness fees and expenses as part of the costs. If the Parties are unable to reach an agreement on the amount of attorneys' fees and costs to be awarded to the attorneys for Plaintiffs, then the Parties will submit the issue of the amount of attorneys' fees, costs and expenses to an arbitrator, who shall be a retired jurist with experience mediating or adjudicating California Voting Rights Act cases. Nothing in this paragraph shall be construed as prohibiting the Parties from agreeing to mediation. Other than as provided herein, the parties shall each bear their own costs and expenses, attorney fees and interest arising out of or relating to this CVRA Action.

3. Litigation Standstill. Upon full execution of this Agreement, all litigation activities relating to the CVRA Action, other than those necessary to effectuate this Agreement, will be suspended and court calendar dates removed, including all pending discovery. The parties agree to jointly seek a stay of further proceedings until February 28, 2020, to permit the conditions contained in paragraphs 1.2 and 1.3 to be conducted without the need for litigation proceedings in the meantime.

4. No New Lawsuits or Legal Actions. Plaintiffs shall not file or assist in any way (for example, and without limitation by soliciting new potential plaintiffs, referring new potential plaintiffs to Plaintiffs' counsel herein, or providing pleadings, briefs, reports, discovery, investigations or any other document or matter prepared in connection with, or anticipation of the CVRA

Action) any other person or entity to investigate, analyze, prepare for or file, another lawsuit against the City, alleging a violation of the California Voting Rights Act, Section 2 of the federal Voting Rights Act, or a voting rights violation under the Constitutions of the State of California or of the United States of America based on the facts alleged (or which could have been alleged) in the CVRA Action.

5. Release of Claims.

5.1 Release by Salas & Quintanilla. In return for the promises and other consideration provided in this Agreement, Plaintiffs, for themselves and their past, present or future heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, attorneys, contributors, successors and assigns (“Plaintiff Releasers”), do, upon entry of Judgment by the Court, fully release, acquit, waive and forever discharge the City, including its current, past and future City Council members, Mayors, administration, employees, consultants, contractors, agents, attorneys, successors and assigns (“Defendant Releasees”), from any and all claims, actions, causes of action, factual allegations, demands (including, without limitation, demands for equitable and injunctive relief) debts, damages, costs, expenses, including expert fees, losses, or attorneys’ fees of whatever nature, involving the City’s electoral system, or elections held thereunder, whether or not known, suspected or claimed, arising out of, based on, or in any way related to (i) the facts alleged (or facts that could have been alleged) in the complaint filed in the CVRA Action, or (ii) the “at-large” electoral system of Defendant City, including, but not limited to Claims based upon the Constitution of the United States of America, the Constitution of the State of California, the CVRA, including a claim that the electoral system provided for in paragraph (a) of Exhibit 1 hereto is in violation of the CVRA, Section 2 of the federal Voting Rights Act, California Government Code § 34870 *et seq.*, California Government Code § 34900 *et seq.*, (“Claims”), which Claims

the Plaintiff Releasors have or may have against the Defendant Releasees, except for rights to enforce this Agreement and the Judgment. In this Paragraph, the conjunctive includes the disjunctive.

5.2 Release by City. In return for the promises and other consideration provided in this Agreement, and except as provided in paragraph 2.1, above, the City, for itself and its current, past and future City Council members, Mayors, administration, employees, consultants, contractors, agents, attorneys, successors and assigns (“Defendant Releasors”) does, upon entry of Judgment by the Court, fully release, acquit, waive and forever discharge Plaintiffs, including their heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, members, contributors, successors and assigns (“Plaintiff Releasees”), from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief) debts, damages, costs, expenses, including expert fees, losses, or attorneys’ fees of whatever nature, related to Plaintiffs’ CVRA Action, whether or not known, suspected or claimed, arising out of, based on, or in any way related to the facts alleged (or facts that could have been alleged) in the complaint filed in the CVRA Action, which Claims the Defendant Releasors have or may have against the Plaintiff Releasees, except for rights to enforce this Agreement, or as provided herein. In this Paragraph, the conjunctive includes the disjunctive.

6. Express Waiver of All Claims Under California Civil Code Section 1542. It is further understood and agreed that this Agreement extends to all of the above-described Claims and potential Claims, and that all rights under California Civil Code § 1542 are hereby expressly waived by the Parties for themselves and the other Releasors with respect to all such Claims. Section 1542 provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Notwithstanding these provisions of Section 1542, Plaintiffs and Defendant expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all Claims described in Paragraph 5.1 and 5.2, which they do not know or suspect to exist in their favor at the time of execution hereof and that the settlement reflected in this Agreement contemplates the extinguishment of all such Claims, except for rights to enforce this Agreement.

7. Non-Admission of Liability. This Agreement, including the Stipulation for Entry of Judgment and the [Proposed] Judgment, pertains to disputed Claims under statutes, and is not intended to be, and shall not be construed as an admission by any of the Parties of any violation of any statute or law or constitution, or any other improper or wrongful conduct.

8. Admissibility of this Agreement. This Agreement constitutes a compromise of disputed claims and shall not be treated as an admission of liability by any of the Parties or any of the Releasees at any time or for any reason. This Agreement shall not be admissible in any legal or administrative proceeding between the City and Plaintiffs. Notwithstanding the generality of the foregoing, the Parties agree that once it is signed by the Parties this Agreement shall be further binding and admissible in any judicial or administrative proceeding: (a) to enforce the terms of the Stipulated Judgment entered under Paragraph 1 of this Agreement pursuant to California Code of

Civil Procedure § 664.6 or otherwise; and (b) for breach of this Settlement Agreement's provisions.

9. Integration. This Agreement constitutes the final and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations concerning any matters directly, indirectly or collaterally related to the subject matter of this Agreement. This Agreement further sets forth the rights and obligations of the Parties hereto. The Parties hereto have expressly and intentionally included in this Agreement all collateral or additional agreements which may, in any manner, touch or relate to any of the subject matter of this Agreement and, therefore, all promises, covenants and agreements, collateral or otherwise, are included herein. The Parties acknowledge that in entering into this Agreement, neither have relied on any statement, promise, representation or warranty whatsoever, which is not expressly contained herein. It is the intention of the Parties to this Agreement that it shall constitute an integration of all their agreements, and each understands that in the event of any subsequent litigation, controversy or dispute concerning any of its terms, conditions or provisions, no party hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other alleged collateral or oral agreement between the Parties not included herein.

10. Amendment. This Agreement cannot be amended, modified or waived except by a writing executed by the Party to be charged, which expresses, by its terms, an intention to modify this Agreement.

11. Construction of Agreement. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of California and any applicable laws of the United States. The language of the Agreement shall not be construed for or against any particular

party by reason of its participation or lack of participation in draft any provision of the Agreement. This Agreement shall be interpreted and construed as if drafted by each of the Parties with equal participation in the drafting hereof. The headings used herein are for reference only and shall not affect the construction of this Agreement.

12. Representation of Counsel. Each of the Parties expressly acknowledges and represents that it has been represented by counsel in negotiations culminating in this Agreement. Each of the Parties has read this Agreement, reviewed the same with counsel, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of the releases and the waiver of rights under California Civil Code § 1542.

13. Authority. The undersigned represent and warrant that they have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement.

14. Execution in Counterparts. This Agreement may be executed in counterparts, which will be binding upon the Parties hereto as if all of said Parties executed the original hereof. This Agreement may be executed by facsimile or scan signatures. Delivery of this Agreement bearing a facsimile or scanned signature or signatures shall have the same force and effect as if the Agreement bore an inked original signature or signatures.

15. Choice of Law/Jurisdiction. The Court where the CVRA Action was filed will retain jurisdiction over this matter under California Code of Civil Procedure Section 664.6 in the event of a default by any of the Parties and be allowed to enforce the terms of this Agreement.

16. Enforcement of Agreement. In the event that any action in law or equity is initiated by any party to enforce the provisions of this Agreement, to obtain a declaration of rights and obligations in conjunction therewith, or

otherwise arising out of this Agreement, attorneys' fees may be available to the prevailing party or parties pursuant to Code of Civil Procedure section 1021.5, Elections Code 14030 and/or another applicable statute.

17. Severance of Void/Unenforceable Provisions. Each of the Parties acknowledges and agrees that the terms and conditions of this Agreement are valid, binding, and enforceable as to it. In the event, however, that any term, provision, covenant, or condition of this Agreement shall be declared invalid, void, or unenforceable by a final judgment or other final judicial determination, such portion shall be deemed severed from this Agreement and, except as provided in Paragraph 1, the remaining parts shall remain in further force and effect, so long as the economic and legal substance of the transaction contemplated thereby are not affected in any manner materially adverse to any Party to this Agreement. Upon any binding determination that any term or other provision of this Agreement is invalid, void, or unenforceable, the Parties shall negotiate in good faith to modify the Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable and legally enforceable manner in order that the transaction contemplated thereby may be effected to the fullest extent possible.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth opposite their respective signatures.

Dated: October __, 2019

Lorraine Salas

Dated: October __, 2019

Karina Quintanilla

otherwise arising out of this Agreement, attorneys' fees may be available to the prevailing party or parties pursuant to Code of Civil Procedure section 1021.5, Elections Code 14030 and/or another applicable statute.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth opposite their respective signatures.

Dated: November 14, 2019


Lorraine Salas

Dated: November __, 2019

Karina Quintanilla


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IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth opposite their respective signatures.

Dated: October __, 2019

Lorraine Salas

Dated: October 22, 2019



Karina Quintanilla

Dated: October __, 2019

CITY OF PALM DESERT


By: _____

APPROVED AS TO FORM

Dated: October 31, 2019

GOLDSTEIN BORGEN
DARDARIAN & HO LLP

SHENKMAN & HUGHES PC

By:  _____

MORRIS J. BALLER
KEVIN SHENKMAN
Attorney for Plaintiffs
LORRAINE SALAS and
KARINA QUINTANILLA

Dated: October __, 2019

CITY OF PALM DESERT CITY ATTORNEY

ROBERT HARGREAVES
City Attorney for Defendant
CITY OF PALM DESERT

Dated: October __, 2019

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

By: _____

CHRISTOPHER E. SKINNELL
Attorneys for Defendant
CITY OF PALM DESERT

Dated: November 22, 2019 CITY OF PALM DESERT

By: _____


APPROVED AS TO FORM

Dated: November __, 2019 GOLDSTEIN BORGEN
DARDARIAN & HO LLP

SHENKMAN & HUGHES PC


By: _____
MORRIS J. BALLER
KEVIN SHENKMAN
Attorney for Plaintiffs
LORRAINE SALAS and
KARINA QUINTANILLA

Dated: November __, 2019 CITY OF PALM DESERT CITY ATTORNEY



ROBERT HARGREAVES
City Attorney for Defendant
CITY OF PALM DESERT

Dated: November 20, 2019 NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP

By: _____

CHRISTOPHER E. SKINNELL
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CITY OF PALM DESERT