



**VILLAGE COUNCIL AGENDA
SPECIAL MEETING
226 Cypress Lane, Palm Springs, Florida 33461
Wednesday, September 29, 2021
6:00 PM**

Persons who need an accommodation in order to attend or participate in this meeting should contact the Village Clerk at (561) 965-4010 at least three (3) business days prior to the meeting in order to request such assistance.

1. CALL TO ORDER

2. ROLL CALL Mayor Bev Smith, Vice Mayor Gary Ready, Mayor Pro Tem Doug Gunther, Council Member Joni Brinkman, Council Member Patti Waller, Village Attorney Glen Torcivia, Village Manager Richard Reade, and Village Clerk Kimberly Wynn

3. PUBLIC COMMENT

4. ORDER OF BUSINESS

4.1 Provide Direction for Recruiting Village Manager

1. Letter from the Village Attorney to the Mayor and Council

4.2 Discussion Regarding Assignment of Duties of Interim Village Manager

1. Letter from Village Attorney to Mayor and Council About Dual Office Holding

5. ADJOURNMENT

If a person decides to appeal any decision made by this Council with respect to any matter considered at this meeting, he will need a record of the proceeding, and that for such purpose he may need to ensure that verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

**TORCIVIA, DONLON
GODDEAU & RUBIN, P.A.**

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CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

September 27, 2021

Mayor Smith and Village Council Members
Village of Palm Springs
226 Cypress Lane
Palm Springs, FL 33461

Re: Interim Village Manager

Dear Mayor and Council Members:

To assist in your consideration of how to ensure that the responsibilities of the Village Manager continue to be completed, we have prepared a separate letter analyzing the ability of Assistant Village Manager Kim Glas-Castro to serve and provide assistance to the Village. As more fully set forth in said letter, Florida law would prohibit Ms. Glas-Castro from serving as both the Village Manager (even on an interim basis) as she is an elected official (Vice Mayor) for the Town of Lake Park. Accordingly, that letter provides some suggestions for assigning Ms. Glas-Castro certain duties that would fulfill some responsibilities without violating the dual office prohibition.

We have also prepared a draft Interim Village Manager Agreement. This is only a draft from which you can provide direction. It is based on Mr. Reade's agreement with certain adjustments. For example, we have deleted language regarding severance pay and the associated Release. We established an initial term of 6 months (which corresponds to the Charter's 6 month probationary period for the Village Manager).

We have also modified language regarding termination of the Agreement, so that either party can terminate on 30 days' notice. We kept many of the benefits (health insurance, car allowance, cell phone, etc.) the same. We reduced the amount of Personal Leave Time that can be accrued (from 800 hours to 400 hours). We increased Administrative Leave days from 5 to 10 on the theory that any Interim Manager may want the ability to take time off (i.e. holidays, pre-planned trips, etc.)

We left the amount of salary blank. Please note that Mr. Reade's ending salary was \$184,910.54.

Mayor Smith and Village Council Members
September 27, 2021
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I have attached the Florida League of Cities "Members in Transition List." My understanding is that some of these individuals may be interested in serving as Interim Village Manager. It is also my understanding that Michael Bornstein would be willing to serve on an interim basis.

I trust that the above is of assistance.

Sincerely,



GLEN J. TORCIVIA, ESQUIRE
GJT/ak
Enclosure

cc: Rich Reade, Village Manager
Kim Glas-Castro, Assistant Village Manager
Kimberly Wynn, Village Clerk

Village of Palm Springs Interim Village Manager Agreement

THIS INTERIM VILLAGE MANAGER AGREEMENT between _____ (“MANAGER” or “EMPLOYEE”) and the VILLAGE OF PALM SPRINGS, a Florida municipal corporation (“EMPLOYER” or “VILLAGE”) is made this ____ day of October, 2021.

WHEREAS, the parties have decided to enter into this Interim Village Manager Agreement (“Agreement”);

WHEREAS, the Village Council, on behalf of the Village, desires to employ Manager, as the Interim Village Manager of the Village on a temporary basis, pursuant to the terms, conditions and provisions of this Agreement; and

WHEREAS, the Manager has agreed to commence employment as the Interim Village Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the Village and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established, the sufficiency of which is hereby acknowledged, have agreed as follows:

I. EMPLOYMENT OF MANAGER

Subject to the terms and conditions set forth in this Agreement, EMPLOYER hereby agrees to employ MANAGER as its full-time, exempt Interim Village Manager and MANAGER hereby agrees to commence such employment.

II. DUTIES AND RESPONSIBILITIES

The MANAGER shall be responsible to the EMPLOYER and shall perform the functions and duties of the Village Manager as provided in the Charter, the Code of Ordinances, Policies and Procedures of EMPLOYER, and as provided by Florida Law, the Palm Beach County Code of Ethics and as mutually agreed to by the MANAGER and EMPLOYER from time to time. The MANAGER shall devote whatever time is necessary to perform the duties of the position. The MANAGER shall remain in the exclusive employment of EMPLOYER until termination or expiration of this Agreement.

The MANAGER shall be responsible only to the Village Council and shall satisfactorily perform the duties of Village Manager as determined by the Village Council. The MANAGER shall have the authority and responsibility to direct and supervise the operation of the EMPLOYER and to appoint, employ, recognize, and terminate the employment or services of such individuals as may be necessary for the proper and efficient operation of the EMPLOYER in accordance with applicable laws, policies, practices and rules.

III. EXCLUSIVE EMPLOYMENT

MANAGER shall not be employed by any other employer during the Term or any extension or modification of the Term of this Agreement.

During employment by EMPLOYER, MANAGER is prohibited from accepting compensation, remuneration, gifts or other tangible or intangible items of value from outside organizations, entities, or persons unless such acceptance is permitted by applicable ethical laws and approved by EMPLOYER.

The term “employed” as used in this section, shall not be construed to exclude occasional teaching, writing or consulting performed on the MANAGER’S time off not in excess of an average of ten (10) hours per week in a non-conflicting capacity, in accordance with the provisions of Florida Statutes or the Palm Beach

County Code of Ethics. The MANAGER shall devote his full time to act as the Interim Village Manager and to carry out to the best of his abilities all the duties imposed upon him by the Charter and the Ordinances of the Village and such other duties as the EMPLOYER may assign from time to time. During the term of this Agreement and any extensions thereof, the MANAGER shall not hold office in any political party or political organization.

IV. TERMS OF EMPLOYMENT

- A. The Term of this Agreement and MANAGER'S employment shall commence on October ____, 2021, and shall remain in effect until March 31, 2022 unless earlier terminated as provided in Section VII. The Term of this Agreement may be modified or extended only by written mutual consent of the parties.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the EMPLOYER to terminate the service of MANAGER at any time, subject only to the provisions set forth in Section VII herein below.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the MANAGER to resign at any time, subject only to the provisions set forth in Section VII herein below.

V. COMPENSATION

- A. Base Salary. EMPLOYER agrees to pay MANAGER for services rendered at the base annual salary of \$_____. The Base Salary shall be paid in installments at the same time as other employees of the EMPLOYER are paid.

- B. Benefits.

- 1. Personal Leave Time: MANAGER shall earn Personal Leave Time in the amount of 30 days (240 hours) annually. MANAGER shall earn Personal Leave Time per year accrued in equal installments on a weekly or bi-weekly basis to correspond to the EMPLOYER'S regular payroll cycle. The MANAGER shall be permitted to use Personal Leave Time in the same manner and under the same provisions as other Village employees as set forth in the EMPLOYER'S policies, as amended from time to time. Personal Leave Time shall be immediately available for use upon accrual of same. Additionally, MANAGER is entitled to participate in EMPLOYER'S Personal Leave Incentive Payment Program, to the extent such a program exists, as outlined in EMPLOYER'S employment regulations/policies. MANAGER'S participation in the Personal Leave Incentive Payment Program shall have the same maximum annual payout as other Village employees, but MANAGER shall not have a minimum personal leave day usage in order to participate in the Personal Leave Incentive Payment Program.

All accrued and unused Paid Leave Time (up to a maximum of 400 hours) shall be paid at 100% upon separation of employment, regardless of the reason for separation.

- 2. Administrative Leave Days: MANAGER shall be provided ten (10) days of Administrative Leave Days each contract term for use in any manner he deems appropriate. Such leave shall accrue in full immediately upon beginning employment. Further, Administrative Leave Days accrued, but not used by the end of each contract term shall be forfeited. However, unused Administrative Leave Days shall be paid upon separation from employment, regardless of the reason for separation. "Contract term" is defined as October 2021 to the following March 31, 2022.
 - 3. Insurance: The MANAGER, his spouse and dependents, if any, shall be entitled to and enjoy inclusion in the EMPLOYER'S Health Insurance Program and other insurance benefit programs that may be offered in the same manner and under the same provisions and benefits

as other Village employees, as the same exists or may be amended from time to time by the EMPLOYER.

4. Retirement/Deferred Compensation: The MANAGER shall be eligible to participate in the system currently available to, and under the same terms as, other Village employees or any successor plans. The MANAGER shall be subject to the same contribution and vesting schedule as all other participants in the same or similar job categories.
 5. Car Allowance: In lieu of an official vehicle, EMPLOYER shall provide MANAGER with a monthly car allowance of five Hundred Fifty and No/100 Dollars (\$550.00) in full payment of any expenses arising from this employment, provided the MANAGER maintains personal car insurance coverage for property damage and bodily injury consistent with the EMPLOYER'S current automobile policy limits. Pursuant to §112.061, Florida Statutes, such allowance may be changed by the EMPLOYER on the basis of a signed statement of the MANAGER, filed before the allowance is changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to the mileage reimbursement provisions of §112.061, Florida Statutes. MANAGER shall be responsible for any tax consequences relating to such car allowance.
 6. Cellular Telephone: EMPLOYER shall provide MANAGER with a cellular telephone and service to be used EMPLOYER-related business. MANAGER shall be responsible for any tax consequences relating to the provision of such a device and associated service.
 7. Dues, Subscriptions, and Training: EMPLOYER shall pay reasonable and appropriate professional dues, subscriptions, and training on behalf of the MANAGER for the purpose of allowing him participation in direct job-related associations, subject to budget constraints.
 8. Per Diem and Subsistence Allowance. MANAGER shall be reimbursed for work-related travel outside Palm Beach County based on the categories and at the standard rates provided in §112.061, Florida Statutes, which reimbursement shall not be considered part of the MANAGER'S Compensation. However, no reimbursement for mileage or other vehicle expenses related to the maintenance or operation of MANAGER'S private vehicle will be provided except as specified in Section V, B, 5, of this Agreement. As an exempt employee, no additional compensation will be paid for time spent traveling on EMPLOYER business other than MANAGER'S Base Salary then in effect.
 9. Additional Benefits: Said further and additional benefits which are provided to other Village employees now or in the future shall be provided to the MANAGER.
 10. The Manager is authorized to use his Village issued credit card (or be reimbursed) up to \$2,400 a year for Village related expenditures, which are hereby determined to serve a public purpose.
- VI. PERFORMANCE EVALUATION: Annually, the EMPLOYER and MANAGER will work together to mutually agree upon such goals and performance objectives, generally as a result of the budget process, which they determine to be essential for the proper operation of the Village and progress towards attaining EMPLOYER'S policy directives and shall further establish a relative priority among those various goals and objectives. All agreed-upon goals and objectives shall be realistic and have resources reasonably committed to be effectively implemented. Progress towards such goals and objectives may be evaluated annually or as otherwise agreed to by both parties.
- VII. TERMINATION
- A. Without Cause.

1. EMPLOYER may terminate MANAGER without cause at any time during the Term of the Agreement, or any extension of the term authorized by written amendment, in accordance with the provisions of Village Charter Section 4.02, as amended from time to time.
 2. The EMPLOYER'S termination of MANAGER without cause shall be in accordance with the provisions of the Village Charter and the determination of the Village's Council shall be final and non-appealable.
 3. Pursuant to Section V, B, 1 of this Agreement, EMPLOYER shall pay any accrued and unused Paid Leave Time, if any, within 15 days of the separation date.
 4. MANAGER is not entitled to or eligible for Severance Pay, and EMPLOYER shall not make payment for Severance Pay, due to termination Without Cause. However, pursuant to Section V, B, 1, Employer shall pay any accrued and unused Paid Leave Time, if any, within 15 days of the separation date.
- B. With Cause.
1. EMPLOYER may terminate MANAGER With Cause as provided herein.
 2. "With Cause" is defined as termination based upon a determination by the Council that any of the following actions were committed by the MANAGER:
 - a. fraud;
 - b. embezzlement;
 - c. conviction of a felony relating to official duties;
 - d. violation of Florida's or Palm Beach County's Code of Ethics by the MANAGER;
 - e. violation of EMPLOYER'S Code of Ethics and Conflict of Interest or Outside Employment policies;
 - f. breach of this Agreement;
 - g. violation of the EMPLOYER'S Policy Against Harassment or Discrimination;
 - h. violation of EMPLOYER'S Drug-Free Workplace Policy; or
 - i. misconduct, as defined in Fla. Stat. 443.036(29), as amended from time to time.
 3. EMPLOYER may terminate MANAGER With Cause at any time during the Term of the Agreement, or any extension of the Term authorized by written amendment, in accordance with the provisions of Village Charter Section 4.02, as amended from time to time. In its sole discretion, EMPLOYER may suspend MANAGER for a period not to exceed 45 days during the period between the time a preliminary resolution is passed and any final resolution being passed. EMPLOYER shall determine at the time of suspension whether such suspension shall be with or without pay.
 4. The EMPLOYER'S termination of MANAGER With Cause shall be in accordance with the provisions of the Village Charter and the determination of the Village's Council shall be final and non-appealable.
 5. MANAGER is not entitled to or eligible for Severance Pay, and EMPLOYER shall not make payment for Severance Pay, due to termination Without Cause. However, pursuant to Section V, B, 1, Employer shall pay any accrued and unused Paid Leave Time, if any, within 15 days of the separation date.
- C. Resignation.
1. MANAGER may voluntarily resign his employment with EMPLOYER by providing EMPLOYER at least thirty (30) days written notice in advance. During the 30-day period, EMPLOYER may require MANAGER to cease or limit the work performed on EMPLOYER matters, during which time MANAGER is entitled to such regular Compensation and Benefits as is due under this Agreement until the effective date of the resignation as provided in the notice.

2. MANAGER is not entitled to or eligible for Severance Pay, and EMPLOYER shall not make payment for Severance Pay, due to resignation from employment.
3. Pursuant to Section V, B, 1, EMPLOYER shall pay any accrued and unused Paid Leave Time, if any, within 15 days of the separation date.

D. Expiration of Term.

1. MANAGER'S employment shall automatically terminate at the expiration of the Agreement's Term, or any subsequent Term where extended by a written amendment.
2. MANAGER is not entitled to or eligible for Severance Pay, and EMPLOYER shall not make payment for Severance Pay, due to the expiration of the Term, or any subsequent Term where extended by a written agreement.
3. Pursuant to Section V, B, 1, EMPLOYER shall pay any accrued and unused Paid Leave Time, if any, within 15 days of the separation date.

E. Death.

1. This Agreement, the Term and any subsequent Term where extended by written agreement, and MANAGER'S employment shall terminate automatically upon the MANAGER'S death.
2. MANAGER is not entitled to or eligible for Severance Pay, and EMPLOYER shall not make payment for Severance Pay, as a result of death.
3. Pursuant to Section V, B, 1, EMPLOYER shall pay MANAGER'S designated beneficiary any accrued and unused Paid Leave Time, if any, due MANAGER (excluding Severance Pay) through the date of death pursuant to this Agreement. Said payment to be made within fifteen (15) days of the MANAGER'S Death. "Designated beneficiary" shall be the person(s) designated by the MANAGER in the Village's Life Insurance Program, will, trust, or similar document.

F. Disability

1. If the MANAGER becomes permanently disabled and is unable to perform his duties or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four consecutive weeks whether paid or unpaid after exhaustion of any accrued and unused Paid Leave Time, if any, or holiday time, EMPLOYER shall have the option to terminate this Agreement.
2. Pursuant to Section V, B, 1, Employer shall pay any accrued and unused Paid Leave Time, if any, within 15 days of the separation date.
3. MANAGER is not entitled to or eligible for Severance Pay, and EMPLOYER shall not make payment for, Severance Pay, as a result of Disability.

VIII. General Provisions:

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon EMPLOYER and MANAGER and the successors, assigns and heirs of each respectively.
- C. This Agreement may not be modified or changed in any way whatsoever except by mutual written consent of both parties.

- D. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by the party.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- F. Indemnification. EMPLOYER shall provide an attorney to defend the MANAGER against any civil action for any injury or damage suffered as a result of any act, event, or omission that arises out of the MANAGER'S employment, unless the MANAGER acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. When providing such defense, EMPLOYER may compromise and settle any such claim or suit and pay the amount of such settlement in its sole discretion. EMPLOYER shall not be liable for the acts or omissions of the MANAGER committed while acting outside the course and scope of his employment or committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property. In such instances where EMPLOYER has provided a defense, yet the MANAGER was found to be personally liable for such injury or damages, the MANAGER shall reimburse EMPLOYER for any legal fees, costs, and expenses EMPLOYER has incurred or otherwise paid on his/her behalf in connection with the alleged conduct. Such payment shall become due and payable within thirty (30) days of the final judgment.
- a. Where the MANAGER has separated employment prior to the EMPLOYER or MANAGER receiving notice of the civil action, EMPLOYER shall provide an attorney to defend the MANAGER against as a result of any act, event, or omission that arises out of the MANAGER'S course and scope of employment, unless MANAGER acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.
 - b. EMPLOYER shall provide an attorney to defend the MANAGER against complaints or charges brought before the State or local Commission on Ethics if it determines that the act, event, or omission arises out of the MANAGER'S course and scope of employment, and that providing such defense serves a public purpose. Such defense shall be provided regardless of whether the EMPLOYER or MANAGER receives notice of the charge prior to or after the MANAGER'S separation from employment. However, the VILLAGE's obligation to pay for any such defense expires for any such complaints or charges filed more than five (5) year after the MANAGER's separation date. If MANAGER is determined to have personally and directly violated the applicable Code of Ethics, he shall, within thirty (30) days of said determination, pay the VILLAGE all monies paid by the VILLAGE in defending MANAGER, including, but not limited to, all attorneys' fees incurred.
- G. EMPLOYER shall bear the full cost of any fidelity or other bonds required of the MANAGER under any policy, regulation, law or ordinance.
- H. Failure of the EMPLOYER to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of EMPLOYER'S right to enforce or exercise said right(s) at any time thereafter.
- I. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- J. Post-Termination Name Clearing Meeting: MANAGER may avail himself of the Village's Post Termination Name-Clearing process in accordance with Village policy in effect at the time of termination, if any. However, in light of the organizational structure, MANAGER must submit any request for such meeting in writing to the City Attorney within 10 business days of the date

of termination and such meeting will be scheduled to occur at a regular Council Meeting with the Council presiding at such meeting or, in lieu of attending a meeting, MANAGER or the Village may choose for Manager to submit a written statement to be included in the MANAGER'S personnel file. The meeting is not an appeal of the termination decision and the Council shall not consider reinstatement at the Post-Termination Name Clearing Meeting, if such a meeting is held. The process is designed to allow the employee to present information in the public record regarding the information forming the basis of the termination.

- K. All notices required to be given under the terms of this Agreement or which any of the parties desires to give hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

TO:	Village of Palm Springs 226 Cypress Lane Palm Springs, FL 33461 ATTN: Mayor and Village Attorney	TO:	Address on File at the Village Clerk's office
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Any party may designate a change of address at any time by giving written notice thereof to the other parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day set forth above.

VILLAGE MANAGER

STATE OF FLORIDA

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this _____ day of _____ 2021 by _____, who is personally known to me, or has produced _____ as identification and did/did not take an oath.

Notary Public
Signature and Seal

My commission expires:

ATTEST

VILLAGE OF PALM SPRINGS, FLORIDA

BY: _____
KIMBERLY M. WYNN, Village Clerk

BY: _____
BEV SMITH, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
GLEN J. TORCIVIA, Village Attorney

Members-in-Transition List
September 15, 2021

Robert Baldwin

District V
Former Manager of Dania Beach
Bwin1@mac.com

Matthew Campbell

District VII
Former Manager of Kenneth City
(727) 421-4046
watermanguide@gmail.com

John Drago

District III
Former Director of Daytona Beach
(407) 889-9495
Jdrago1@cfl.rr.com

Caryn Gardner-Young

District IV
Former Assistant Manager of Delray Beach
(561) 740-3286
caryngyoung@gmail.com

Joseph Helfenberger

District II
Former Manager of Lake City
(641) 954-2130
Joe.a.helfenberger@gmail.com

Ted Lakey

District II
Former Manager of Taylor County
(850) 573-1412
Ted_lakey@yahoo.com

Carisse LeJeune

District I
Former Deputy Manager of DeFuniak
Springs
(561) 202-7554
carisselejeune@gmail.com

Rodney Lucas

District IV
Former Interim Manager of Pahokee
(352) 449-2353
rodneylucas27@gmail.com

Horace McHugh

District V
Former Assistant of North Miami Beach
(954) 940-1972
Horace.mchugh@gmail.com

Sharon Ragoonan

District V
Former Assistant of North Miami Beach
(786) 489-5937
Sragoonan@msn.com

Alan Rosen

District VIII
Former Manager of Lake County
(954) 644-9999
alanmpa2005@gmail.com

William F. Underwood II

District IV
Former Manager of Loxahatchee Groves
(772) 233-1511
umsg@att.net

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CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

September 27, 2021

Mayor Smith and Village Council Members
Village of Palm Springs
226 Cypress Lane
Palm Springs, FL 33461

Re: Dual Office Holding/Assistant Village Manager

Dear Mayor and Council Members:

In view of the Village Manager's resignation and imminent departure, effective October 1, 2021, there is a need to reassign the duties of the position temporarily in order to ensure continuity of operations. While assigning all of the Manger's duties to the current Assistant Manager would seem to be a logical short-term solution, there are legal issues to consider due to the fact that the Assistant Manager also holds an elected position in another municipality.

The Florida Constitution prohibits an individual holding offices for two different municipalities at the same time. Article II, Section 5(a) of the Constitution provides as follows:

No person holding any office of emolument under any foreign government, or civil office of emolument under the United States or any other state, shall hold any office of honor or of emolument under the government of this state. **No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein**, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

Florida Constitution, Art. II, Sec. 5(a)(Emphasis added.)

Not every position of employment with a local government is considered an “office” for the purposes of this provision. The Florida Supreme Court has described the distinction between *officer* and *employee* as follows:

A person in the service of the government, who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in their nature, and defined by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of the government, the place and the duties remaining though the incumbent dies or is changed, is a public officer; every “office,” in the constitutional meaning of the term, implying an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws.

State ex rel. Holloway v. Sheats, 83 So. 508, 509 (Fla. 1919). Thus an “office” is characterized by duties that involve exercising certain important sovereign powers in making, executing or administering the law. It should be noted that the dual officeholding prohibition also applies to holding two offices within the same municipality. Thus, for example, the Florida Attorney General has opined on more than one occasion that the duties of a city administrator or manager could not be assigned to the same city’s police chief. Fla. Op. Atty. Gen 25 (1986); Fla. Op. Atty. Gen. 2013-08.

The Palm Springs Village Manager position is an “office” that falls within the above definition, because the Village Manager is charged with certain limited governmental powers that may be exercised without need for Council approval. By contrast, the Assistant Village manager position is not an “office” because the Assistant manager reports to the Manager and exercises none of those powers.¹

The position is established by the Village Charter as follows:

Section 4.01. - Manager.

There shall be a village manager who shall be the chief administrative officer of the village. He/she shall be responsible to the council for the administration of all village affairs placed in his/her charge by the council or under this Charter.

Village of Palm Springs Charter, Section 4.01.

¹ Accordingly, there is no “dual office holding” issue with respect to the Assistant Manager holding elected office in another municipality.

The powers and duties of the Village Manager are set out in Section 4.04 of the Charter:

Section 4.04. - Powers and duties of the village manager.

The village manager shall:

- (a) Appoint, and for cause, suspend or remove all village employees provided for by or under this Charter, except as otherwise provided by law. He/she may authorize any department head to exercise these powers with respect to subordinates in that department head's department, office or agency.
- (b) Direct and supervise the administration of all departments, offices and agencies of the village, except as otherwise provided by this Charter or by law.
- (c) Attend all council meetings and shall have the right to take part in discussions, but may not vote.
- (d) See that all laws and provisions of this Charter and acts of the council, subject to enforcement by him/her or by village employees, are faithfully executed.
- (e) Prepare and submit the annual budget to the council and be responsible for its administration after adoption, and shall fix, in accordance with the budget, the salary of employees of all departments, offices and agencies of the village, except as otherwise provided by this Charter. Preparation and submission of the budget shall conform to general law.
- (f) Submit to the council and make available to the public a complete report on the finances and administrative activities of the village as of the end of each fiscal year.
- (g) Make such other reports as the council may require concerning the operations of the village departments, offices and agencies subject to his/her direction and supervision.
- (h) Keep the council fully advised as to the financial condition and future needs of the village and make such recommendations to the council concerning the affairs of the village for its common welfare.
- (i) Countersign contracts, bonds, agreements, checks and other written instruments of the village.
- (j) Perform such other duties as are specified in this Charter or may

be required by the council.

Village of Palm Springs Charter, Section 4.04 (Emphasis added.) Thus the Charter confers certain sovereign powers on the Village Manager, including the authority to hire and dismiss employees, enforce compliance with laws and acts of Council, prepare and administer the budget, and countersign contracts, bonds, and agreements on behalf of the Village.

In addition to these duties, the Village Manager performs many other day-to-day duties that are not the exercise of sovereign powers, such as overseeing departmental operations and preparation of the council agenda. The assistant manager currently assists in the performance of these and other duties.

For the reasons set out above, there would be significant potential legal consequences for both the Village and the Assistant Manager if the Council were to appoint her to serve as Interim Manager or otherwise assign all of the Manager's duties, including the position's sovereign powers, to her, even on a short term basis. As an alternative, the Council could assign the Manager's day-to-day, non-sovereign functions to the Assistant Manager, who would perform them in addition to her regular duties just as she would if the Manager were away on leave. The Sovereign powers, such as signing contracts, bonds, and other instruments on behalf to the Village, making final hiring and firing decisions, and enforcing compliance with Village laws and acts of Council should not be assigned to the Assistant manager, but should be assigned to another person who does not already hold an "office." Alternatively, such actions could be made subject to approval by the Council.

If the Council desires to take the action described above, a potential motion would be as follows:

I move that the following action be taken as a short-term solution to provide for continuity of Village operations upon the current Manager's resignation becoming effective, until such time as a longer term appointment may be made by the Council: The Assistant Village Manager will remain in her position and will take on, in addition to her current duties, only those duties that do not entail the exercise of any of the sovereign powers conferred on the Manager. Those powers not assigned to the Assistant Manager include, but are not limited to, the final authority to hire and dismiss employees, enforce compliance with laws and acts of Council, prepare and administer the budget, and countersign contracts, bonds, and agreements on behalf of the Village.

Those powers will be temporarily assigned to _____, who will act as the final decisionmaker

after receiving input and recommendations from the applicable department head and the Assistant Manager.

OR

Those actions will require Council approval and authorization.

An additional motion that the Council may wish to consider concerns the approval of standing purchase orders. As the current purchase orders will expire on September 30 with the end of the fiscal year, new purchase orders will need to be issued on October 1. The Assistant Village Manager can provide information about the purchase orders requiring signature. Pursuant to the Village Purchasing Code (Section 58-4) a department director has authority to purchase goods and/or services of less than \$5,000.00. Purchases between \$5,000 and \$25,000 require the authorization of the Village Manager. The Council could vote to approve the re-issuance of the purchase orders and authorize the Mayor or someone else to sign them, until such time as an Interim Village Manager is hired.

Sincerely,



GLEN J. TORCIVIA, ESQUIRE
GJT/ak

cc: Rich Reade, Village Manager
Kim Glas-Castro, Assistant Village Manager
Kimberly Wynn, Village Clerk