

## REPORT TO THE CITY COUNCIL

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**DATE:** February 5, 2019

**TITLE:** Joint Nondisclosure, Indemnity and Litigation Defense Agreement with Adkison Engineers, Inc., et al.

**Prepared by:** Jennifer Mizrahi, City Attorney

**Reviewed by:** Ted Stream, Special Litigation Counsel

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### RECOMMENDATION

**Approve a Joint Nondisclosure, Indemnity and Litigation Defense Agreement by and between the City of Desert Hot Springs, the City Council of the City of Desert Hot Springs, and Adkison Engineers, Inc., et al.**

### BACKGROUND

The attached is a proposed Joint Nondisclosure, Indemnity and Litigation Defense Agreement (“Agreement”) between the City of Desert Hot Springs, California, a municipal corporation and the City Council of the City of Desert Hot Springs, a duly elected governing body (collectively the “City”) on the one hand, and Adkison Engineers, Inc., a California corporation, Edy P. Adkison and Judith Adkison as trustees of the Adkison Family Revocable Living Trust, and Martha Ruiz-Snell (a.k.a., Martha Martell) (collectively, “Real Parties”) on the other hand.

Real Parties are the owners of that certain 481-acre parcel of real property (APN 667-050-001), located generally West of State Route 62 near Mission Creek Road, in the City of Desert Hot Springs, County of Riverside, State of California (the “Property”).

### LITIGATION

On October 18, 2018, Sierra Club and Center for Biological Diversity (“Petitioners”) filed a lawsuit in the County of Riverside Superior Court, *Sierra Club and Center for Biological Diversity v. City of Desert Hot Springs, et al.*, Case No. RIC1821985 (the “Litigation”), which challenges the City’s approval of the Development Agreement, alleging *inter alia* that the City failed to comply with the California Environmental Quality Act (“CEQA”) and the Subdivision Map Act when the City approved the Development Agreement. Pursuant to Section 10 of the Development Agreement, the Real Parties shall defend, indemnify and hold harmless the City, its officers, employees and agents from and against any claim, action or proceeding in connection with any challenge to the legality, validity or adequacy of the Development Agreement and concurrent and subsequent permits and entitlements approved for the Project; documentation prepared for the Project in accordance with California Environmental Quality Act; and any claim, action or proceeding against the City, its agents, officers, or employees which may arise from operations performed under or pursuant to this Development Agreement.

### JOINT DEFENSE AGREEMENT

The Parties have similar and common legal interests in the prosecution of the Litigation and the claims that will likely be contained therein, and any matters relating thereto. The Agreement sets forth the parameters that the Parties will work together in the litigation. Accordingly, the Agreement provides that the Parties agree to cooperate on information, strategy and documents concerning issues arising out of or relating to those claims, including, but not limited to, information and documents that may be subject to the attorney-client privilege, attorney work-product doctrine, and/or any other applicable privilege or immunity existing under state or federal law, effective as of the commencement of this Agreement or thereafter. The Agreement further provides that the Parties intend to vigorously defend against Petitioners’ claims. The Agreement also provides that although the Parties have a common interest in the defense of future claims raised against them in the Litigation, each of the Parties intends to appear in the

Litigation, oppose the Litigation, and may represent its own separate interests, some of which may be unique. Such representation of separate or unique interests is not inconsistent with the common interests of the Parties. This Agreement promotes full and effective communication between the Parties, avoids duplication of efforts made by them, and will help minimize the costs of litigation.

Further, the Agreement reaffirms the Real Parties obligation to indemnify, protect, defend and hold the City harmless. To this end, the Real Parties shall deposit \$20,000 within thirty (30) days of the execution of this Agreement as an advance ("Advance") on Legal Fees and Costs that the City may incur in the Litigation. The City shall pay all invoices it receives from the City's Outside Counsel using funds from the Advance until the Advance is fully expended. Once the Advance is fully expended, Real Parties shall be responsible for remitting payment on any monthly invoice that it receives from the City for Legal Fees and Costs incurred by the City's Outside Counsel in accordance with the terms of the Agreement (see Page 7 of the attached Agreement).

**FISCALIMPACT**

The Real Party will be indemnifying, defending and holding the City harmless.

**EXHIBIT:**

- 1) Agreement