REQUEST FOR COUNCIL ACTION

SUBJECT: Discussion and possible action regarding Resolution 17-145, authorizing the Mayor to execute an Agreement between the City of West Jordan and Mark R Palesh
THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. __________

AGREEMENT BETWEEN THE CITY OF WEST JORDAN
AND MARK R. PALESH

WHEREAS, Utah State Code, Section 10-3b-103(6)(a)(iii), authorizes the City Council to appoint an individual to serve as City Manager; and

WHEREAS, the City Council of the City of West Jordan desire to approve an Agreement between the City of West Jordan and Mark R Palesh; and

WHEREAS, the Mayor is authorized to execute this amendment pursuant to Utah Code Annotated §10-3-1223,

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

Section 1. The Mayor is hereby authorized and directed to execute an Agreement between the City of West Jordan and Mark R. Palesh.

Section 2. This Resolution shall take effect July 14, 2017

Adopted by the City Council of West Jordan, Utah, this 14th day of September 2017.

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council

"AYE"  "NAY"

Council Member Alan Anderson
Council Member Dirk Burton
Council Member Zach Jacob
Council Member Chris McConnehey
Council Member David Newton
Council Member Chad Nichols
Mayor Kim V. Rolfe
AN AGREEMENT BETWEEN THE CITY OF WEST JORDAN
AND MARK R. PALESH

THIS AGREEMENT ("Agreement") is entered into this _____ day of July, 2017, by
and between the City of West Jordan, Utah, a municipal corporation ("City"), and Mark R.
Palesh ("Mr. Palesh"), an individual. The City and Employee are sometimes referred to
herein individually as "Party" and collectively as "the Parties."

RECITALS

WHEREAS, Mr. Palesh agreed to come out of retirement in 2015 in order to serve as
the City Manager of the City of West Jordan; and

WHEREAS, Mr. Palesh has ably served the City in that capacity and has accomplished
numerous goals for the betterment of the City during his tenure; and

WHEREAS, Mr. Palesh now desires to return to retirement; and

WHEREAS, the Parties desire by this Agreement to provide for the terms and
conditions of Mr. Palesh’s separation from the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants
contained herein, the sufficiency and adequacy of which is hereby acknowledged, the Parties
hereby agree as follows:

AGREEMENT

1. EMPLOYMENT. The Parties agree to follow the following timeline to allow
Mr. Palesh to return to retirement:

(a) Mr. Palesh’s last day of employment will be September 10, 2017.
(b) Mr. Palesh will continue in the role of City Manager until the day before the
   Deputy City Manager’s first day of employment, or September 10, 2017 at the
   latest.
(c) Effective the start date of the Deputy City Manager, Mr. Palesh will serve as an
   employee in an advisory role through September 10, 2017.
(d) Mr. Palesh will return to retirement on September 11, 2017.
(e) In order to best serve the City and in the interest of continuity, Mr. Palesh has
   offered to remain available to advise the City on an informal and as-needed basis,
   for no compensation additional to that described in Paragraph 3;
2. **SUCCESION PLANNING.** In order to facilitate an orderly succession for the management of the City, the City Council and Mr. Palesh agree to the following succession plan:

(a) While the City Council and the City Manager recognize that only the City Manager has the authority to appoint a Deputy City Manager, the City Manager agrees to extend an offer of employment to the candidate selected by the City Council.

(b) Any employment negotiations between the City and the individual selected as Deputy City Manager, including but not limited to salary and employment start date, will be conducted by the Mayor and two City Council Members of the Mayor’s choosing; and

(c) Within three business days of receiving written direction from the City Council, Mr. Palesh will extend an offer of employment to the individual selected by the City Council to serve as Deputy City Manager. Mr. Palesh shall appoint that individual at the direction of the City Council.

3. **COMPENSATION.** The Parties agree that Mr. Palesh is entitled to certain benefits under Utah law and his current Employment Agreement, executed on March 10, 2016. This compensation is as follows:

(a) Mr. Palesh will continue to receive his regular salary and benefits through September 10, 2017.

(b) All accrued compensation and benefits due to Mr. Palesh shall be paid in a lump sum on January 3, 2018. This final payment of $185,289.15 is comprised of accrued benefits payable through September 10, 2017 and the state statutory six months compensation described in paragraph 10 of the City Manager Employment Agreement. Those amounts include the following:

   i. Accrued compensation through September 10, 2017 totaling $67,345.35 comprised of the following:
      1. Accrued Vacation of 338.93 hours totaling $34,256.88
      2. Accrued Sick Leave of 35.4 hours totaling $5,009.70
      3. Accrued Holiday Leave of 16 hours totaling $2,156.64
      4. Accrued Executive Leave of 220.5 hours totaling $19,814.13
      5. Additional wages earned totaling $6,108.00

   ii. State statutory six month compensation as described in the City Manager Employment Agreement totaling $117,943.80 comprised of the following:
      1. 26 weeks regular pay totaling $93,454.40
      2. Accrued Vacation totaling $8,983.30
      3. Accrued Sick Leave totaling $4,322.27
      4. Accrued Executive Leave of $7,188.80
      5. Accrued Car Allowance of $2,795.00
      6. Accrued Insurance Benefit of $1,200.03
4. **WAIVER AND MODIFICATIONS.** Neither the City nor Mr. Palesh may waive any of the terms or conditions of this Agreement or agree to any amendment or modification to this Agreement except by agreement between the Parties in writing and executed in the same manner as this Agreement. Such amendments shall be incorporated and made a part of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.

5. **ENTIRE AGREEMENT.** This Agreement sets forth and establishes the entire understanding between the City and Mr. Palesh relating to the separation of his employment with the City. Any prior discussions or representations by or between the Parties are merged into and rendered null and void by this Agreement.

6. **BINDING AGREEMENT.** This Agreement shall be binding on the City and Mr. Palesh, as well as their heirs, assigns, executors, personal representatives and successors in interest.

7. **MUTUAL NON-DISPARAGEMENT.** While Mr. Palesh is choosing to retire of his own accord and the Parties have no reason to anticipate any future disputes, in order to ensure that the Parties can move forward in the best interest of the City and its residents, the Parties agree that neither will make or participate in any disparaging, demeaning, or derogatory comments about one another, either verbally or through any other media.

8. **ATTORNEYS’ FEES AND COSTS.** In the event that any litigation results from or arises out of this Agreement or the performance of any of the terms included herein (including, but not limited to, any formal or informal adjudicative proceedings or negotiations in connection with this Agreement), the City and Mr. Palesh agree to reimburse the prevailing party’s reasonable attorneys’ fees and court costs as determined by the court, in addition to any other relief to which the prevailing party may be entitled.

9. **SEVERABILITY.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

10. **GOVERNING LAW.** This Agreement and all matters pertaining hereto (including its interpretation, application, validity, performance, and breach), shall be governed, construed, and enforced in accordance with the laws of the State of Utah. The City and Employee herein agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in Salt Lake County, State of Utah.

11. **EFFECTIVE DATE.** This Agreement shall become effective immediately upon execution by both Parties.
12. NOTICES. Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

West Jordan City Recorder
8000 South Redwood Road
West Jordan, UT 84088

Mark R. Palesh
5987 West 8170 South
West Jordan, UT 84081

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

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

CITY OF WEST JORDAN

BY: ________________________________ Date: ________________________________

Mayor Kim V. Rolfe

MARK R. PALESH

BY: ________________________________ Date: ________________________________

Mark R. Palesh

Approved as to form:

______________________________
David R. Brickey, West Jordan City Attorney