

CITY MANAGER EMPLOYMENT AGREEMENT
between the
CITY OF BURBANK
and
M. JUSTIN HESS

THIS AGREEMENT is made and executed on 1st of October, 2019, by and between the City of Burbank, a municipal corporation ("City") and M. Justin Hess, an individual, ("Hess" or "City Manager") (collectively the Parties).

RECITALS

1. M. Justin Hess has been Acting City Manager since July 16, 2019, while the City Manager was on an extended leave prior to retirement.
2. The City Council now wishes to appoint M. Justin Hess as its City Manager and M. Justin Hess wishes to accept the position as City Manager. The Parties wish to enter into an employment agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq., and City of Burbank Charter Section 315.

AGREEMENT

NOW, THEREFORE, City agrees to engage the services of M. Justin Hess as its City Manager, and M. Justin Hess agrees to be City Manager, all for the compensation and subject to the covenants and conditions as set forth herein.

1. EMPLOYMENT

City hereby employs Hess as its City Manager and Hess hereby accepts such employment effective on October 1, 2019. Hess' title shall be City Manager.

2. COMMITMENTS AND UNDERSTANDINGS

A. The City Manager's Commitments

(1) Duties and Authority

- (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) The City Manager shall perform all of the duties of the City Manager as set forth in Section 315 of the Burbank Charter and applicable provisions of the Burbank Municipal Code

(jointly, the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.

(c) The City Council may also designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities could include public financing authorities and joint powers authorities.

(d) The City Manager shall not spend time teaching, consulting, speaking, or other non-City connected business, for which compensation is paid without the express prior consent of the City Council.

(2) Disability or inability to perform

(a) In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, he will be deemed to have resigned from his position. In the event of such resignation, the City Manager shall receive all severance benefits provided in Section 6.C below.

B. City Commitments

(1) The City shall provide the City Manager with the compensation, incentives and benefits, specified elsewhere in this Agreement.

(2) The City shall provide the City Manager with a private office, secretary, staff, office equipment, supplies, and all other facilities and services adequate for the performance of the City Manager's duties.

(3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses. The City shall provide the City Manager a City credit card to charge appropriate and lawful business expenses.

(4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager that are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the

City, and for the City Manager's continued professional participation and advancement.

- (5) The City understands that Lakeside Golf Club has a tradition of providing the City Manager with a "Courtesy Membership." It is understood that should a Courtesy Membership be offered to the City Manager, any cost associated with use of their facilities, except those already covered under section 2.B. (3) of this agreement, shall be paid by the City Manager.
- (6) The City agrees to pay the travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Manager serves as a member.
- (7) The City also agrees to pay for the travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager.
- (8) The City recognizes the desirability of representation in and before local civic, non-profits and other organizations, and the City Manager is authorized to become a member of such groups or attend the functions of the same, for which the City shall pay membership dues or cost of attendance. The City Manager agrees not to serve as a Board member on any Burbank based non-profit organization or a non-profit based elsewhere, but doing business in Burbank.

C. City Council Commitments

- (1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.
- (2) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the City Manager, either publicly or privately.

- (3) No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.
- (4) Neither the City Council, as a whole, nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

3. **COMPENSATION**

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The initial salary shall be \$293,717.06 annually (\$24,476.42 per month and \$11,296.81 bi-weekly). Any future salary range adjustments and increases in salary within the range shall be at the sole and absolute discretion of the City Council and may be set by resolution.
- (b) The City Manager shall be paid at the same intervals and in the same manner as regular City employees.
- (c) Notwithstanding the City's salary table or general City management salary reductions the annual salary of the City Manager shall never be less than the annual salary (excluding overtime and any incentive compensation) of the City's next-highest-paid employee. In the event that a promotion, an adjustment to the salary table, or a general management salary reduction would result in the City Manager being paid less than the City's next-highest-paid employee's annual salary, the City Manager's annual salary will automatically and effective on the same date, be set at the annual salary of the City's next-highest-paid employee without further action by the City Council.

(2) Retirement Benefits

- (a) The City contracts with the California Public Employees' Retirement System (PERS) for retirement benefits and the City Manager is considered a classic member thereof. Currently, based on PERS rules, the City Manager shall pay 8% of his retirement costs. Effective the beginning of the pay period containing July 1, 2020, the City Manager

shall pay half of his respective pension's normal cost, as provided for by CalPERS regulations. The normal cost of employee pensions is established annually by CalPERS. As of Fiscal Year 2019-2020, half the normal cost of employee pensions is 9.14% for classic miscellaneous members such as the City Manager.

(b) The City does not participate in Social Security other than the Medicare portion.

B. Basic Benefits

(1) Holidays

The City Manager is entitled to 10 paid holidays per calendar year.

(2) Leave Allowance

(a) The City provides an executive leave program for its executive employees, which includes sick, vacation, administrative, compensatory time, personal, military, family, bereavement, and funeral leave. The City Manager shall use this leave only for vacation, administrative leave, sickness or disability, or for the critical illness or death of a family member.

(b) The City Manager shall accrue leave time totaling 356 hours per year; hours will accrue per pay period commencing with appointment as City Manager. Leave time accrual balance amounts and cash out procedures will be in accordance with procedures applicable to all City Department Directors. As of the date of this Agreement, cash out is allowed for up to 350 hours per fiscal year from accrued leave balances. The maximum leave accrual is limited to a total of 1,500 hours and once this limit is reached there will be no further accrual until leave balance falls below 1,500 hours.

(3) Benefits that Accrue to Other Employees

The City Manager shall be entitled to all benefits, rights, and privileges accorded to non-public safety City Department Directors except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public

safety City Department Directors or other unclassified employees, whichever provides the greatest benefit will control unless explicitly stated otherwise herein.

C. Automobile Allowance

The City shall provide City Manager a car allowance of \$500.00 per month to fully compensate him for the use of his personal vehicle in the performance of his duties as City Manager.

4. INSURANCE/DEFERRED COMPENSATION

A. Cafeteria, Dental, and Vision Plan

The City Manager may choose:

1.) pursuant to Resolution No. 19-29,067, Section 15 (b)¹, to provide proof of medical coverage other than a City medical plan, and shall receive \$711.25 per month for the Cafeteria Plan. This Cafeteria Plan amount not utilized for eligible fringe benefits shall be added to his earnings. Section 15 (b) provides: "Effective November 19, 2017, the City Clerk and City Treasurer, and each Appointed Official and Department Manager hired prior to January 1, 2008 who is enrolled in a City medical plan, or who provides proof of medical coverage other than a City medical plan, shall receive \$711.25 per month for the Cafeteria Plan... Cafeteria Plan amounts not utilized by an employee for eligible fringe benefits shall be added to their earnings..." or 2.) to receive a Cafeteria Plan contribution dollar amount equivalent to 100% of PERS Choice Benefit that corresponds to his selected option (i.e. one party, two party, family options). City paid dental insurance plan is provided for City Manager and eligible dependents. City paid vision insurance plan is provided for City Manager.

B. Disability Insurance

In accordance with current policy, the City provides a disability insurance policy featuring a 14-day elimination period for short term disability (STD) at 70% salary replacement up to \$2,500 per week; and, a 180-day elimination period for long term disability (LTD) at 60% salary replacement up to \$10,000 per month.

C. Life Insurance and Accidental Death

Life insurance in the amount of \$500,000 and a \$500,000 Accidental Death and Dismemberment policy from a carrier of the City's choice. These policies are in effect whether the City Manager is performing his job duties or not. Premiums are fully paid by the City.

¹ or as hereafter amended or renumbered.

D. Deferred Compensation

The City will match voluntary contributions that City Manager makes to an eligible 457 Deferred Compensation plan up to a maximum of \$500 per month.

E. Retired Health Saving Plan (RHS)

The City shall contribute \$100 per month, on the City Manager's behalf, into a retiree medical account. Also 50% of the City Manager's accrued leave payout at the time of separation will be deposited into this account for medical costs of City Manager and eligible dependents as allowed under the plan.

F. Retiree Medical Trust

The City shall make a contribution per pay period into the Burbank Employee Retiree Medical Trust (BERMT) on Hess' behalf at the same rate as contributions are made on behalf of City Department Directors.

G. Utility Retiree Medical Trust

Pursuant to the Utility Retiree Medical Trust (URMT) Plan documents, the City Manager will have a one-time option to participate in the URMT. If the City Manager wishes to opt into the URMT Plan, he must notify in writing the Assistant Management Services Director (over benefits), Julianne Venturo, by 5:00 on October 15, 2019 of his decision to opt in.

5. PERFORMANCE APPRAISAL

Hess will submit his preliminary goals to City Council and hold a performance evaluation session with City Council within 30 days of his appointment. During this session, Hess and the City Council will agree to goals and expectations for the City Manager. Thereafter, Hess and the City Council will meet on a quarterly basis for his performance evaluation. Annually, after the City Council's reorganization in December and following its policy goal setting, Hess will establish new goals and performance objectives he believes necessary for the proper operation of the City and to attain alignment with City Council's policy goals; and schedule a performance evaluation session to discuss the new goals and expectations. At least once annually during one of these quarterly meetings, City Council will conduct a performance appraisal in accordance with specific criteria provided by City Council, which it can request the City Manager to develop.

Further, City Council shall provide City Manager with a summary of performance findings and allow adequate opportunity for a discussion with City Manager about his appraisal.

6. SEPARATION

A. Resignation/Retirement

The City Manager may resign at any time and agrees to give the City at least 30 days' advance written notice of the effective date of the City Manager's resignation, unless the Parties otherwise agree in writing. If the City Manager retires from full time public service, the City Manager's actual retirement date will be mutually established.

B. Termination and Removal

- (1) The City Manager is an at-will employee serving at the pleasure of the City Council.
- (2) The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. Termination, as used in this section, shall also include a request that the City Manager resign, a reduction in salary except pursuant to an overall reduction in management salaries as provided for above, or reduction of other financial benefits of the City Manager, a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position.
- (3) The City Manager shall not be removed during the 60-day period preceding or following the date of any City Council reorganization, which follows a City election for membership on the City Council, or during the 60-day period following any change in membership of the City Council, except upon unanimous vote of the City Council.

C. Severance Pay

- (1) In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement, then in that event, the City agrees to pay the City Manager a lump sum payment equal to nine months' base salary then in effect as provided for herein. In exchange for payment of this amount, City Manager shall sign a full release, releasing the

City from liability for any employment claim and agrees that he will not file, initiate, or cause to be filed or initiated any action in any federal or state court for wrongful termination or other employment causes of action such as, but not limited to, age discrimination.

- (2) In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The City agrees to pay the City Manager's COBRA coverage for the same number of months for which the City Manager is entitled to a lump sum cash payment above, or until he either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. Hess shall notify the City within five days of securing new full-time employment or insurance.
- (3) The City will facilitate outplacement services for the City Manager for up to six (6) months, as needed, at no cost to the City Manager.
- (4) If the City breaches a provision of this employment agreement benefiting the City Manager and fails to cure such breach after written notice of default from the City Manager, then the City Manager may treat such breach as a termination of his employment and will receive the benefits of the severance pay provision.

If the City Manager resigns following a formal action by a majority of the City Council calling for his resignation, then the City Manager at his option, may treat such resignation as a termination and will receive the benefits of the severance pay provision.

- (5) All payments required under this severance section are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

D. Waiver of Severance Benefits

- (1) The City Manager waives his right to the severance benefits provided for in Section 6.C in the event he is terminated for any of the following reasons:

- (a) Conviction of a felony;
 - (b) Continued abuse of non-prescription or prescription drugs or alcohol that materially affects the performance of City Manager's duties; or
 - (c) Repeated and protracted unexcused absences from the City Manager's office and duties.
 - (d) Conduct unbecoming a City employee holding the position of City Manager such as theft, dishonesty or other similarly significant misconduct which would cause discredit to the City.
 - (e) Pursuant to Government Code Section 53260, the City shall not provide a cash or noncash settlement to the City Manager if the City believes, and subsequently confirms, pursuant to an independent audit, that the City Manager has engaged in fraud, misappropriation of funds, or other illegal fiscal practices.
- (2) In the event the City terminates the City Manager for any of the reasons noted in this section, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Section 6.F below, and such other termination benefits and payments as may be required by law. The City Manager shall not then be entitled to any severance benefits provided by Section 6.C.

E. Repayment of Severance Benefits

Pursuant to Government Code Section 53243.2 if this Agreement is terminated and City Manager receives any cash settlement or severance hereunder, the City Manager shall fully repay any such monies, if City Manager is convicted of a crime involving abuse of his office or position.

F. Payment for Unused Leave Balance

- (1) On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided herein, except for any leave balance that may be going into his RHS account, if any. Accumulated leave balances shall be paid at the City Manager's monthly salary rate at the effective date of separation.

- (2) In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

7. MISCELLANEOUS PROVISIONS

A. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City, such as Section 6. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

B. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be made in writing and approved by City Manager and City Council in open session.

C. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

D. Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.

E. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Los Angeles County Superior Court, California.

F. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

G. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

(1) If to the City:

City Council
Attention: Mayor
275 East Olive Avenue
Burbank, CA 91502

With a copy to the City Attorney

(2) If to the City Manager:

City Manager
275 East Olive Avenue
Burbank, CA 91502

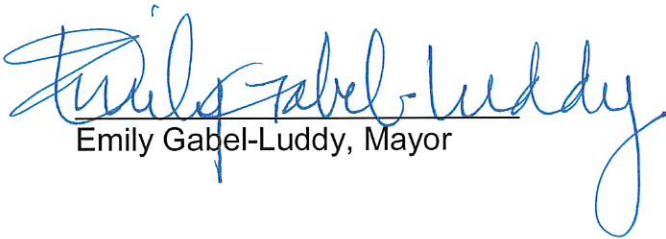
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H. Conflict with Charter

Should any provision of this Agreement be found in conflict with the Charter of the City of Burbank, the provisions of the Charter shall control.

IN WITNESS WHEREOF the Parties have executed this Amended and Restated City Manager Employment Agreement as of the day and year first above written.

“City”
City of Burbank



Emily Gabel-Luddy, Mayor

“City Manager”



M. Justin Hess

Attest:



Zizette Mullins, MMC, City Clerk

Approved as to Form
Office of the City Attorney



Amy Albano, City Attorney