

AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY OF BUENA PARK AND AARON FRANCE

This Amended and Restated Employment Agreement (“Agreement”) is made and entered into as of June 24, 2023, by and between the City of Buena Park, a California municipal corporation (“City” or “Employer”), and Aaron France, an individual (“Employee”).

RECITALS

A. Employee has been employed by the City in various capacities since 2005, and has been employed in his current capacity as City Manager since March 9, 2021.

B. The current agreement between the City and City Manager expires on March 12, 2024.

C. Employee has demonstrated the requisite specialized experience, skills, training, certifications, licenses, and authorizations, and is otherwise qualified to serve as City Manager.

D. The City desires to retain Employee as City Manager and City Manager desires to continue to serve as City Manager beyond March 12, 2024.

E. City and Employee wish to enter into an amended and restated employment agreement that sets forth the rights and obligations of the parties and that will supersede all prior negotiations, discussions, or agreements.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Employee agree as follows:

1. TERM.

A. Initial Term. Unless sooner terminated as provided in Section 7, or extended as set forth in subsection (B) immediately below, this Agreement shall commence on June 24, 2023, (“Effective Date”) and shall remain effective through and including July 5, 2025, (“Expiration Date”).

B. Extensions. The term of this Agreement may be extended in writing on the same terms and conditions set forth herein and upon mutual consent of Employee and the City, with City’s consent requiring approval by the City Council. At least two (2) weeks prior to the Expiration Date (or no later than June 21, 2025), the City Council shall notify Employee whether it desires to extend the term of this Agreement on a month-to-month basis, or any such longer time agreed by the Parties. In the event the City Council declines or fails to give notice of its intent to extend this Agreement, such action or inaction shall constitute notice of intent not to extend. Employee shall remind the City Council of its obligation to give notice under this section not later than one (1) calendar month prior to the Expiration Date (or no later than June 4, 2025). Should Employee desire not to extend the term of this Agreement, Employee shall disclose this information in the notice provided to the City Council described in the preceding sentence.

2. DUTIES AND AUTHORITY. Employee shall be vested with the full powers and shall perform the full duties of the Office of City Manager as set forth in: the Buena Park City Code; any and all applicable rules, regulations and procedures; the official and most recent job description for City Manager; and applicable state or federal law, as each of the foregoing currently or may be amended in the future exist. At the option of City, Employee shall also serve as Executive Director of any authority or agency created by or staffed by the City. Employee shall exercise such other powers and perform such other duties as the City Council may assign from time to time.

3. EMPLOYEE'S OBLIGATIONS. Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties and responsibilities to City. Employee shall obtain prior authorization from the City Council for any outside employment, consulting, teaching, or enterprise.

4. SALARY AND BENEFITS.

A. Base Salary.

(1) Base Salary Schedule. During the term of this Agreement, City shall pay Employee the annual salary reflected in the table below at the beginning of the pay period that includes the Effective Date. Employee's annual salary will be prorated and paid on City's normal paydays, subject to legally permissible or required withholdings. Employee's salary is compensation for all hours worked and for all services under this Agreement, including but not limited to service as Executive Director for any commission, boards, or agencies affiliated with the City, or any other service provided or position served by the City Manager for the City. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

<u>Effective Date</u>	<u>Annual Salary</u>	<u>Monthly Equivalent</u>
6/24/2023	\$276,016.00	\$23,001
6/22/2024	\$289,827.20	\$24,152

(2) Management Salary Adjustments. Employee shall receive general cost of living adjustments and other salary and benefit enhancements granted for other management employees only as made expressly applicable to Employee by action of the City Council. Employee shall be subject to any wage or salary concession generally applicable to management employees of City only if expressly applicable to Employee by action of the City Council or as agreed to by Employee. Salary concessions include salary reductions, furloughs, or any other wage concession generally applicable to management employees.

B. Employment Benefits.

(1) Fringe Benefit Package. In addition to base salary and except as expressly provided in this Agreement, Employee shall receive the same fringe benefits currently provided to other full-time management employees of City, as provided in the City's Compensation Plan for management and executive employees and as those benefits exist on the effective date of this Agreement. Such fringe benefits shall be subject to the terms and conditions of the applicable plan, policy, or other controlling documents. In the event a benefit has different terms for executive management and any other group of management employees, the executive management benefit shall apply to Employee. Except as otherwise required by law or by contract with any benefit provider, changes in benefits shall not apply to Employee, unless and until so determined by action of the City Council.

(2) Incentive Pays. Employee shall be eligible for the following incentive pays:

a. Longevity Pay: Employee shall receive an additional four percent of base salary.

b. Educational Incentive: Master's Degree - \$200 per month

(3) CalPERS Employee Contributions. Employee shall pay the entire employee contribution under the City's Public Employees' Retirement System plan for miscellaneous employees. In the event City implements wage or salary concessions that are in-lieu of a requirement for management employees to pay some or all of the employee contributions, Employee will not be subject to such wage or salary concessions and contrary terms of Section 4, Paragraph A(2), above, shall not apply. This paragraph has no effect on provisions of the Compensation Plan for management employees requiring employees to pay a portion of the CalPERS employer contribution.

(4) Vacation and Management Leave Additional Terms. Employee may accrue vacation leave up to a maximum of 320 hours. Once Employee reaches the maximum accrual of 320 hours, Employee shall earn no additional vacation until his accrued balance falls below 320 hours. Upon termination of employment with the City (including retirement), as opposed to the mere termination or expiration of this Agreement, Employee shall receive cash payment for all accrued and unused vacation, not to exceed the maximum accrual limit of 320 hours. (The base hourly rate for purposes of the cash payment at termination shall be determined in the manner City normally uses at that time to convert base salary amounts to an hourly rate.) Any contrary terms of the Compensation Plan for management employees notwithstanding, Employee shall not be eligible for management or executive management leave beyond the basic grant of 60 hours per fiscal year given to all management employees.

(5) Vacation and Sick Leave Scheduling. Employee may schedule and use vacation time at his discretion, with due regard for the demands of the City Manager position and the needs of the City. Employee shall notify the City Council in writing before taking more than five (5) consecutive working days of vacation time, pre-scheduled sick leave, or otherwise being voluntarily absent from work for such period. Any requirement for

department head or City Manager approval stated in the vacation or sick leave programs are not applicable to Employee.

(5) Service Retirement Account. Prior to the Effective Date of this Agreement, City provided Management Employees hired between July 1, 1999, and July 21, 2021, with a Service Retirement Account (SRA) to defer out-of-pocket expenses for purchasing group medical insurance during retirement. During the term of this Agreement and while serving as City Manager, Employee desires to maintain his current account balance and eligibility to participate in the program as expressly as described in the Management Compensation Plan. However, 1) Employee desires to cease future contributions into this SRA program, and 2) Employee desires any calculations made in the program at retirement be made at the base hourly rate of pay (\$85.52/hour) as his former Assistant City Manager position.

(6) Cellular Phone. Prior to the Effective Date of this Agreement, City provided Employee with a cellular telephone and service plan for both personal and professional use. City will continue to provide Employee a cell phone and service plan during the term of this Agreement, subject to the same terms and conditions as existed immediately prior to this Agreement. In satisfaction of this requirement, Employee will retain his current cell phone and service plan. The cell phone and service plan may be changed in the future in the same manner as is applicable to other management employees receiving City provided cell phones and plans.

(7) Expenses. City recognizes that Employee may incur certain expenses of a non-personal and job-related nature. City agrees to reimburse or to pay such business expenses, which are incurred and submitted according to City's normal expense reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

(8) City Vehicle. City shall provide Employee with the use of a City passenger vehicle. City will insure (or self-insure), maintain, and pay the cost of fuel to operate this vehicle. Employee may use the vehicle for personal and official business.

(9) Bonding. City shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance by virtue of his employment as City Manager.

C. Employment Status. This Agreement will continue Employee's employment with the City without interruption. Consequently, Employee's length of service with the City will continue to advance, without interruption, for benefits administration or other relevant purposes. Employee's paid leave balances will carry-over to the new position of City Manager, and Employee will accrue additional leave time during the term of this Agreement based on overall length of service with the City.

5. EVALUATIONS. Employee shall report to and may be evaluated by the City Council at any such times as determined in the City Council's discretion. During the term of this Agreement, Employee's performance as City Manager may be reviewed by the City

Council every twelve (12) months after the Effective Date. Employee will request and schedule such reviews, as appropriate pursuant to City agenda procedures or as otherwise directed by City Council. Nothing in this paragraph is intended to limit or preclude additional evaluations or reviews of Employee's performance by the City Council, or to limit or restrict the normal communications process between the City Council and the position of City Manager.

6. INDEMNIFICATION. Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement. However, in the event City provides funds for legal criminal defense pursuant to this section and terms of the Government Code, Employee shall reimburse the City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243 – 53243.4.

7. AT-WILL EMPLOYMENT RELATIONSHIP.

A. Consistent with Buena Park City Code Section 2.16.010 and California Government Code Section 36506, by way of this Agreement Employee is appointed by and serves as City Manager at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate this Agreement. City shall pay Employee for all services rendered under this Agreement throughout the term, and Employee shall have no right to any additional compensation or payment of any kind or nature; with the exception for payment of benefits to Employee as provided under Section 4 that accrue to Employee prior to the effective date of termination or expiration of this Agreement, and any severance payments that may be due Employee as provided in Section 8 below.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to entirely resign from employment with City, provided that Employee shall provide the City at least thirty (30) calendar days prior written notice.

8. SEVERANCE.

A. In lieu of the procedures and time limits provided under Buena Park City Code Sections 2.16.070 – 2.16.090, if Employer terminates this Agreement (thereby terminating Employee's Employment), without cause, Employer shall pay Employee a lump sum severance benefit calculated as provided in this paragraph. On the effective date of this Agreement, the lump sum severance shall be equal to six (6) months of Employee's then applicable base salary. The applicable base salary shall be Employee's base salary in effect on the effective date of termination.

B. In the event Employee's employment is entirely terminated by the City with (or for) cause, Employee shall not be entitled to any severance. As used in this Agreement, "cause" shall mean any of the following:

- (1) Conviction of a felony;

(2) Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;

(3) Willful abandonment of duties;

(4) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body, or persistent and willful violation of properly established rules and procedures; and

(5) Any other action or inaction by Employee that materially and substantially impedes or disrupts the performance of City or its organizational units, or is detrimental to employee safety or public safety.

C. If Employee voluntarily terminates this Agreement, or Employee otherwise entirely terminates or resigns from employment with the City, Employee shall not be entitled to any severance.

D. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 – 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the City for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 – 53243.4.

9. INTEGRATION OF AGREEMENT. This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Employee's employment with the City. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

10. METHOD OF AMENDMENT. No amendments to this Agreement may be made except by a writing signed and dated by City and Employee.

11. NOTICES. Any notice to City under this Agreement shall be given in writing to City, either by personal service or by registered or certified mail, postage prepaid, addressed to the City Clerk at the City's then principal place of business. A courtesy copy shall be given to the City Attorney in a like manner. Any such notice to Employee shall be given in a like manner and, if mailed, shall be addressed to Employee at his home address then shown in City's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this Article.

12. GENERAL PROVISIONS.

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

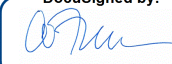
B. This Agreement sets forth the final, complete, and exclusive agreement between City and Employee relating to the employment of Employee as City Manager by City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions.

D. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally or on its behalf by its duly authorized representative.

EMPLOYEE

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AARON FRANCE

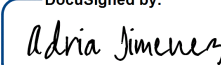
CITY

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By: _____
ARTHUR C. BROWN, MAYOR
CITY OF BUENA PARK

ATTEST:

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City Clerk (Seal)