

**CITY ATTORNEY EMPLOYMENT AGREEMENT between the
CITY OF BURBANK
and
JOSEPH H. McDOUGALL**

THIS AGREEMENT is made and executed on ____ of November, 2021, by and between the City of Burbank, a municipal corporation ("City") and, Joseph H. McDougall, an individual, ("McDougall" or "City Attorney") (collectively the Parties).

RECITALS

1. Joseph H. McDougall has been the Chief Assistant City Attorney since May 2019, and has been part of the City Attorney's Office for over 16 years.

2. The City Council now wishes to appoint Joseph H. McDougall as its City Attorney and Joseph H. McDougall wishes to accept the position as City Attorney. 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 320.

AGREEMENT

NOW, THEREFORE, City agrees to engage the services of Joseph H. McDougall as its City Attorney, and Joseph H. McDougall agrees to be City Attorney, all for the compensation and subject to the covenants and conditions as set forth herein.

1. EMPLOYMENT

City hereby employs McDougall as its City Attorney and McDougall hereby accepts such employment effective on November 13, 2021. McDougall's title shall be City Attorney.

2. COMMITMENTS AND UNDERSTANDINGS

A. The City Attorney's Commitments

(1) Duties and Authority

(a) The City Attorney shall perform all of the duties of the City Attorney as set forth in Section 320 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.

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

(c) The City Attorney 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 Attorney becomes mentally or physically incapable of performing the City Attorney'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 Attorney shall receive all **severance** benefits provided in Section 6.C below.

B. City Commitments

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

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

(3) The City shall pay for or provide the City Attorney reimbursement for all actual business expenses. The City shall provide the City Attorney 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 Attorney that are necessary for the City Attorney'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 Attorney's continued professional participation and advancement.

- (5) The City agrees to pay the travel and subsistence expenses of the City Attorney to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Attorney, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Attorney serves as a member.
- (6) The City also agrees to pay for the travel and subsistence expenses of the City Attorney for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Attorney.
- (7) The City recognizes the desirability of representation in and before local civic, non-profits and other organizations, and the City Attorney 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 Attorney 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.

3. COMPENSATION

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The initial base salary shall be annually \$270,000 (\$22,500 per month and \$10,384.62 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 as provided for in subsection (c), below, and may be set by resolution or minute order, but does not require amendment of this Agreement.
- (b) The City Attorney shall be paid at the same intervals and in the same manner as regular City employees.
- (c) Part of the City Council's Financial Policy is to pay employees at the average of relevant market. When Council is considering a change in the salary range for any of the Department Managers, City Clerk, City Treasurer, City Manager, and City Attorney, any percentage increase Council makes to the range for the City Attorney, will be

granted as in pocket percentage increase to the City Attorney's base salary.

(2) Retirement Benefits

(a) The City contracts with the California Public Employees' Retirement System (PERS) for retirement benefits and the City Attorney is considered a classic member thereof. Based on PERS rules and PERS contract amendment, the City Attorney 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 Attorney.

B. Basic Benefits

(1) Holidays

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

(2) Leave Allowance

(a) The City provides an executive leave program for Department Managers and Appointed Officials, which includes sick, vacation, administrative, compensatory time, personal, military, family, bereavement, and funeral leave. The City Attorney 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 Attorney shall accrue leave time totaling 356 hours per year; hours will accrue per pay period commencing with appointment as City Attorney. Leave time accrual balance amounts and cash out procedures will be in accordance with procedures applicable to all City Department Managers. As of the date of this Agreement, cash out is allowed for up to 500 hours per fiscal year from accrued leave balances. Currently, 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 Attorney shall be entitled to all benefits, rights, and privileges accorded to non-public safety City Department Managers 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 Managers or other unclassified employees, whichever provides the greatest benefit will control unless explicitly stated otherwise herein.

C. Automobile Allowance

The City shall provide the City Attorney an automobile allowance of \$500 per month to fully compensate him for the use of his personal vehicle in the performance of his duties as City Attorney.

4. INSURANCE/DEFERRED COMPENSATION

A. Cafeteria, Dental, and Vision Plan

The City offers a Section 125 Cafeteria Benefits Plan of benefits to all its employees. The Plan offers a myriad of options including health insurance, vision insurance, and dependent care. The City currently contracts with PERS for health insurance coverage under the Public Employees' Medical and Hospital Care Act (PEMHCA) and have various plans available for you to select. The City contributes the statutory minimum for employees and retirees for health insurance premiums under PEMHCA. The City Attorney, as a Department Manager employee, hired before 2008, shall receive \$711.25 each month to use as he sees fit to purchase plan benefits. The PEMHCA statutory minimum is included in the base cafeteria amount. Any unused amount may be used in accordance with the Plan (which includes taking it in cash). However, should McDougall have health insurance premium costs in excess of this Cafeteria amount, the City will contribute an additional amount for any premium expenses above the Cafeteria amount, so long as the City's total contribution toward McDougall's health insurance premium cost does not exceed an amount equal to 100% of the cost of the PERS Platinum plan that corresponds to McDougall's selected plan option (i.e. one party, two party, family options). City paid dental insurance plan is provided for City Attorney and eligible dependents. City paid vision insurance plan is provided for City Attorney and if he elects to enroll dependents, he will be responsible for paying all dependent premiums.

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 Attorney is performing his job duties or not. Premiums are fully paid by the City.

D. Deferred Compensation

The City will match voluntary contributions that City Attorney 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 Attorney's behalf, into a retiree medical account. Also 50% of the City Attorney's accrued leave payout at the time of separation will be deposited into this account for medical costs of City Attorney 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 McDougall's behalf at the same rate as contributions are made on behalf of City Department Managers.

5. PERFORMANCE APPRAISAL

McDougall will submit his preliminary goals to City Council and hold a performance evaluation session with City Council within 45 days of his appointment. During this session, McDougall and the City Council will agree to goals and expectations for the City Attorney. Thereafter, McDougall and the City Council will meet every six months for his performance evaluation. Annually, after the City Council's reorganization in December and following its policy goal setting, McDougall 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, City Council will conduct a performance appraisal in accordance with specific criteria provided by City Council, which it can request the City Attorney to develop. Further, City Council shall provide City Attorney with a summary of performance findings and allow adequate opportunity for a discussion with City Attorney about his appraisal.

6. SEPARATION

A. Resignation/Retirement

The City Attorney may resign at any time and agrees to give the City at least 45 days' advance written notice of the effective date of the City Attorney's resignation unless the Parties otherwise agree in writing. If the City Attorney retires from full time public service, the City Attorney's actual retirement date will be mutually established.

B. Termination and Removal

- (1) The City Attorney is an at-will employee serving at the pleasure of the City Council.
- (2) The City Council may remove the City Attorney at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Attorney in writing. Termination, as used in this section, shall also include a request that the City Attorney resign, a reduction in salary except pursuant to an overall reduction in management salaries or reduction of other financial benefits of the City Attorney, a material reduction in the powers and authority of the City Attorney, or the elimination of the City Attorney's position.
- (3) The City Attorney 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 Attorney is terminated by the City Council during such time that the City Attorney is willing and able to

perform the City Attorney's duties under this Agreement, then in that event, the City agrees to pay the City Attorney 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 Attorney shall sign a full release, releasing the City, its officers, officials and employees 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 Attorney 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 Attorney's COBRA coverage for the same number of months for which the City Attorney 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. McDougall 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 Attorney for up to six (6) months, as needed, at no cost to the City Attorney.
- (4) If the City breaches a provision of this employment agreement benefiting the City Attorney and fails to cure such breach after written notice of default from the City Attorney, then the City Attorney may treat such breach as a termination of his employment and will receive the benefits of the severance pay provision.

If the City Attorney resigns following a formal action by a majority of the City Council calling for his resignation, then the City Attorney 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 Attorney 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) Abuse of non-prescription or prescription drugs or alcohol that materially affects the performance of City Attorney's duties; or
 - (c) Repeated and protracted unexcused absences from the City Attorney's office and duties.
 - (d) Conduct unbecoming a City employee holding the position of City Attorney 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 Attorney, if the City believes, and subsequently confirms, pursuant to an independent audit, that the City Attorney has engaged in fraud, misappropriation of funds, or other illegal fiscal practices.
- (2) In the event the City terminates the City Attorney for any of the reasons noted in this section, then the City may terminate this Agreement immediately, and the City Attorney 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 Attorney 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 Attorney receives any cash settlement or severance hereunder, the City Attorney shall fully repay any such monies, if City Attorney 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 Attorney 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 Attorney's monthly salary rate at the effective date of separation.
- (2) In the event the City Attorney dies while employed by the City under this Agreement, the City Attorney's beneficiaries or those entitled to the City Attorney's estate, shall be entitled to the City Attorney'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 Attorney'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 Attorney. Any amendments are to be made in writing and approved by City Attorney 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. 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.

E. 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.

F. 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 Attorney 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 Manager

(2) If to the City Attorney:

City Attorney
275 East Olive Avenue
Burbank, CA 91502

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 City Attorney Employment Agreement as of the day and year first above written.

“City”
City of Burbank

“City Attorney”

Bob Frutos, Mayor

Joseph H. McDougall

Attest:

Approved as to Form
Office of the City Attorney

Zizette Mullins, MMC, City Clerk

Amy Albano, City Attorney