

EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF MANHATTAN BEACH AND BRUCE MOE

RECITALS

- A. The City of Manhattan Beach ("City") desires to hire a City Manager.
- B. Bruce Moe ("Employee") has been employed by the City since 1989, and has served the City as its Finance Director since 1998.
- C. Employee represents that he is qualified to perform the duties of City Manager.
- D. The parties acknowledge that Employee is committed to the ideals of the International City Management Association ("ICMA"). The parties mutually desire that Employee be subject to and comply with the ICMA Code of Ethics.
- E. Employee commits to comply with the ICMA Code of Ethics.
- F. City and Employee wish to enter into an Employment Agreement that sets forth the rights and obligations of the parties.

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

1. **TERM.** Employee commenced his service as City Manager on February 6, 2018, which shall also be deemed the effective date of this Agreement ("Effective Date"). Unless sooner terminated as provided in this Agreement, the initial term of this Agreement shall be for three years from the Effective Date, with an expiration date of February 5, 2021, unless extended. However, nothing in the Agreement is intended to prevent Employee from resigning with at least 60 days' written notice.

2. **DUTIES AND AUTHORITY.** Employee shall exercise the powers and perform the duties of the position of City Manager as set forth in the Manhattan Beach Municipal Code, City's personnel rules, regulations and procedures and the City Manager job description, as each of them currently or may in the future exist. At the option of City, Employee shall serve as Executive Director of or a representative to any other authority or agency created by or staffed by City. Employee shall exercise such other powers and perform such other duties as City, by the City Council, may from time to time assign.

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 (together "Outside Employment"), which is actually or potentially in conflict with or inimical to, or which

materially interferes with, his duties and responsibilities to City. Additionally, Employee shall not undertake any Outside Employment except with the consent of the City Council.

4. SALARY AND BENEFITS.

A. Base Salary. City shall pay Employee an annual base salary of \$255,000. At its sole discretion, the City Council may consider merit adjustments commensurate with Employee's performance in accordance with the evaluation process pursuant to Section 5 of this Agreement. Employee's salary shall be subject to withholding and other applicable taxes and shall be payable to Employee at the same time as other employees of City are paid. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. Employment Benefits. In addition to base salary, City shall provide to Employee the following benefits:

(1) Holidays. Employee shall be entitled to the same holidays listed below, with pay, consistent with the rules applicable to the City's Management/Confidential employees. Employee's salary includes holiday pay. Accordingly, Employee shall not be entitled to any additional salary or compensation for working on a holiday.

- a. New Year's Day
- b. Martin Luther King Day
- c. Presidents' Day
- d. Memorial Day
- e. Independence Day
- f. Labor Day
- g. Columbus Day
- h. Veterans Day
- i. Thanksgiving Day
- j. Friday following Thanksgiving Day, and
- k. Christmas Day.

(2) General Leave. Employee shall accrue general leave at the rate of 280 hours annually, prorated and credited each pay period. When possible, general leave shall be scheduled with the City Council at least two weeks in advance. Employee may accrue general leave not to exceed a limit of 840 hours. Once Employee's accrual

reaches the 840-hour limit, all further accruals will cease; and Employee will not be eligible for further accruals until his accrued general leave balance falls below the 840-hour limit. Employee may "cash out" accrued leave in accordance with the applicable rules for Management/Confidential employees.

(3) Group Medical, Dental and Vision Insurance. During the term of his employment, Employee and his eligible dependents shall participate in the City's CalPERS group medical program under the Public Employees' Medical and Hospital Care Act and dental and vision insurance plans in accordance with the terms and conditions of such act, plan or program on the same basis as Management/Confidential employees of the City.

(4) Life Insurance. Employee will receive City paid life insurance under the City's group policy with a benefit that is 1.5 times annual base salary, subject to a maximum of \$500,000. Medex Travel Assist will be included with the coverage.

(5) Automobile.

a. City shall provide to Employee a monthly automobile allowance of \$400. Such amount is designed to reimburse Employee for all costs associated with the use of Employee's automobile for City business, including but not limited to all applicable costs of automobile liability insurance, maintenance, operating expenses, depreciation and interest.

b. Employee shall maintain all records required by applicable California and federal law concerning use of such automobile, including without limitation, records to substantiate personal and City-related use of such automobile.

c. Employee currently has an automobile liability insurance policy with \$250,000/\$500,000/\$100,000 maximum coverage, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts arising out of the operation of the automobile. Unless otherwise required by the City, Employee shall maintain a policy with such coverage and limits throughout the term of this Agreement.

(6) Retirement Plan. Employee shall be covered by the Public Employees' Retirement System plan applicable to current miscellaneous employees of City in accordance with the terms and conditions of that plan as it now exists or as it may be changed from time-to-time in the future. In addition, City will provide a retiree medical benefit of \$400 per month until Medicare eligibility or age 65. This retiree medical benefit will be provided according to the eligibility, terms and conditions in effect on the Effective Date.

(7) Technology. At no cost to Employee, City shall provide Employee with the use of a City-owned laptop computer and a smart phone (iPhone or equivalent), subject to applicable City policies and procedures.

(8) Long and Short Term Disability Insurance. Employee will receive City paid Long Term Disability coverage under the City's group policy with a plan benefit that pays 60% of salary after a 60-day waiting period. Employee may purchase short term disability coverage under the City's group plan at his own expense, according to the terms, conditions and procedures of that plan.

(9) Professional Development. City shall pay all reasonable and necessary business expenses, including travel, conference, meals, lodging and meeting expenses incurred in obtaining continuing education within the state and the ICMA annual meeting, in accordance with the City budget, resolutions and state law, as applicable. Upon prior City Council approval, City shall pay all reasonable and necessary business expenses, including travel, conference, meals, lodging and meeting expenses incurred outside the state.

(10) Bonding. City shall bear the full cost of any fidelity or other bonds required of Employee under any law, or City ordinance or resolution by virtue of his employment with the City.

(11) Deferred Compensation Plan. Employee shall be entitled to participate, at Employee's sole expense, in the City's 457 deferred compensation plan in accord with the terms and conditions of that plan. In addition, City shall contribute an annual amount of \$17,500, incrementally paid on a bi-weekly basis, to a 401(a) and contribute an amount equal to two percent of Employee's salary to a Retiree Health Savings Plan in accord with the terms, conditions and procedures of the 401(a) plan document and provisions of the Internal Revenue Code, including related regulations.

(12) Designation of Recipients Pursuant to Government Code Section 53245. Employee may file with City a designation of a person who, notwithstanding any other provision of law, shall, on the death of Employee, be entitled to receive all warrants or checks that would have been payable to Employee had he survived. Employee may change the designation from time to time. Any person so designated shall claim such warrants or checks from City. On sufficient proof of identity, City shall deliver the warrants or checks to the claimant. A person who receives a warrant or check pursuant to this subsection is entitled to negotiate it as if he or she were the payee.

(13) Additional Benefits. Employee shall be entitled to participate in City's healthcare and/or dependent care expense accounts at his own expense, subject to the applicable terms and conditions. Employee shall also be entitled to use City's on-site fitness center, subject to City's policies for such use.

5. **ANNUAL EVALUATIONS.** On or before six months from the Effective Date of this Agreement, and every one year anniversary thereafter, the City Council may conduct an evaluation of Employee's performance. During that evaluation, the City Council and Employee shall mutually establish performance goals and objectives to be met by Employee during the following year. Employee will request and schedule such reviews, as appropriate, pursuant to City Council agenda procedures or as otherwise directed by the

City Council. In addition, the City Council may, but is not required to, review Employee's salary and benefits as part of the evaluation process or at any other time. Nothing in this paragraph is intended to limit additional interim evaluations or reviews or to limit the normal communications process between the City Council and Employee.

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, 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.

7. **AT-WILL EMPLOYMENT RELATIONSHIP.** Employee is employed at the pleasure of the City Council, and is thus an at-will employee. The City Council may terminate this Agreement and the employment relationship at any time without cause. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate the employment of Employee. City shall pay Employee for all services through the effective date of termination. In addition, Employee shall receive severance to the extent provided in Section 8 and shall receive no other compensation or payment (except for vested benefits).

8. **SEVERANCE.**

A. If City terminates this Agreement (thereby terminating Employee's employment with City) without cause during the term of this Agreement, City shall:

(1) Pay Employee an amount equal to his then-monthly base salary for a period of six months on a monthly basis, less interim compensation (as defined below) to which Employee becomes entitled during the six-month period following his termination. Employee shall use his best efforts and due diligence to secure employment with, become an independent contractor for, or otherwise provide services for compensation for, any person, organization or entity, other than City; and

(2) Provide at no cost to Employee the insurance benefits provided by Section 4.B(3) herein for six months or until Employee secures other employment, whichever occurs first. Such medical and dental insurance benefits will be provided to Employee through reimbursement of COBRA premiums.

B. Regardless of any other provision or the term of this Agreement, the maximum severance and health benefits that Employee may receive under this Agreement as a result of termination, shall not exceed the limitations provided in Government Code §§ 53260–53264, including the limitation that the maximum cash settlement that Employee may receive shall be an amount equal to the monthly salary of the Employee multiplied by the number of months left on the unexpired term of the Agreement.

C. As used in this Agreement, the term "interim compensation" shall include, but not be limited to: compensation, in any form, to which Employee is entitled

from employment other than employment with City; compensation, in any form, to which Employee is entitled as an independent contractor; and compensation, in any form, from any source, including, without limitation, unemployment and disability insurance, from any person, entity or source, to which Employee is otherwise entitled. Interim compensation shall include retirement benefits. Upon City's request, Employee shall promptly provide City with documentary evidence of interim compensation.

- D. Employee shall not be entitled to severance pay if:
 - (1) Employee terminates this Agreement; or
 - (2) City terminates this Agreement for cause because Employee:
 - a. Breaches this Agreement, including, without limitation, by willful or persistent material breach of duties or inattention to duties;
 - b. Engages in corrupt or willful misconduct in office, including any illegal act involving personal gain;
 - c. Is convicted of a felony or misdemeanor. In no event shall a minor traffic offense or moving violation be considered a misdemeanor involving moral turpitude. In the event Employee is terminated while under investigation for any felony or misdemeanor involving moral turpitude, City may withhold part or all of any severance payment, until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered. If charges are not filed, or if Employee is found innocent, City shall pay any severance to which Employee is entitled;
 - d. Has committed resume fraud or commits other acts of material dishonesty;
 - e. Takes unauthorized absences or leave;
 - f. Violates the City's anti-harassment policies or fails to report or investigate claims of harassment as required by law;
 - g. Abuses drugs or alcohol to such an extent that such abuse materially affects the performance of his duties;
 - h. Acts in any way that has or may have a substantial and adverse effect on City's interest;
 - i. Abuses his office or position, as that term is defined in Government Code Section 53243.4;
 - j. Fails to comply with the ICMA Code of Ethics; or

k. Violates properly established rules or procedures, or adversely affects the reputation of City, its officers or employees.

For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave.

E. Except as otherwise mutually agreed, any dispute as to whether severance is excused under Section 8, Paragraph D, shall be referred to arbitration before a single neutral arbitrator selected from a list of seven arbitrators requested from the California State Mediation and Conciliation Service. Employer will strike the first name and the parties will alternate striking names until one person is left who shall be designated as the arbitrator. The arbitrator shall determine the rules and procedures to be used for the arbitration with due regard to the rights of the parties. Each party shall initially pay one-half the cost of the arbitration. The prevailing party in the arbitration shall be entitled to reasonable attorney fees and that party's costs of arbitration.

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. 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.** Amendments to this Agreement are effective only upon City Council and Employee written approval.

11. **NOTICES.** All notices pertaining to this Agreement shall be sent to:

EMPLOYEE: Bruce Moe
At the most recent address on file in Employee's
personnel file held by City's Human Resources
Department

CITY: City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Such notice shall be deemed made when personally delivered, transmitted by facsimile, or when mailed, 48 hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

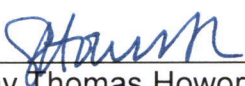
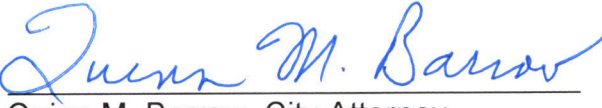
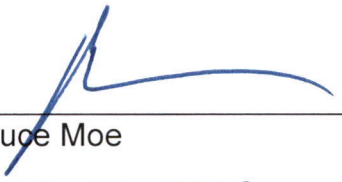
12. **GENERAL PROVISIONS.**

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 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.

C. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial, tax 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.

Executed by the parties as of the date below:

CITY OF MANHATTAN BEACH By:  Amy Thomas Howorth, Mayor Date: <u>2/21/18</u> ATTEST:  2-21-18 Liza Tamura, City Clerk APPROVED AS TO FORM:  Quinn M. Barrow, City Attorney	EMPLOYEE By:  Bruce Moe Date: <u>2-13-2018</u>
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