

MEETING June 4, 2024
DATE:

SUBJECT: Resolution Approving Employment Agreement Between the City of Berkeley and Paul Buddenhagen for the position of City Manager

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Motion to adopt Resolution approving Employment Agreement between the City of Berkeley and Paul Buddenhagen for the position of City Manager.
2. Alternative action based on the direction of the City Council related to this subject matter.

DISCUSSION

On May 10, 2024, the City Council appointed Mayor Jesse Arreguin as the Labor Negotiator, with duties to engage in negotiation with a City Manager candidate.

Following a diligent negotiation, the City Council will discuss and consider for potential Council action a decision to appoint Paul Buddenhagen as the City Manager for the City of Berkeley, subject to the execution of an Employment Agreement and approval of a related Resolution.

The proposed Resolution approving such Employment Agreement and related Employment Agreement are provided as Attachment 1.

The Employment Agreement provides, among other material terms and subject to certain terms and conditions, that Mr. Buddenhagen will receive compensation in an annual amount of \$401,722.10, that Mr. Buddenhagen will receive employee benefits as explained further in the Employee Agreement, and that Mr. Buddenhagen would commence work for the City on September 16, 2024.

OPTIONS

1. Adopt the proposed Resolution.
2. Do not adopt the proposed Resolution.
3. Some other action or inaction related to this subject matter at the direction of the City Council.

FINANCIAL IMPACT

Mr. Buddenhagen's compensation is an annual rate of \$401,722.10, with additional employee benefits as stated in the Employment Agreement. The actual benefit amount will depend on his selection of health benefits.

Attachments

Written Public comments.

1. Resolution Approving City Manager Employment Agreement Between City and Paul Buddenhagen

RESOLUTION NO. #####-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY APPOINTING
PAUL BUDDENHAGEN TO THE POSITION OF CITY MANAGER AND APPROVING
AN EMPLOYMENT AGREEMENT IN CONNECTION WITH SAID APPOINTMENT

WHEREAS, the City Council now desires to appoint Paul Buddenhagen ("Employee") as the City Manager for the City of Berkeley; and

WHEREAS the functions, duties, powers, and prerogatives of the City Manager are specified in Berkeley City Charter Sections 27 and 28, as well as in the Berkeley Municipal Code. These provisions shall control should any conflict exist pertaining to this Resolution or the City Manager Employment Agreement that it authorizes; and

WHEREAS, the City Council desires to set the salary and benefits as well as other terms and conditions of employment for Employee and to approve an Employment Agreement; and

WHEREAS, Employee is willing and qualified to provide City Manager services to the City of Berkeley.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that:

Section 1. The City Council determines that the above findings are true and correct, and by reference incorporates those findings as an integral part of this Resolution.

Section 2. The City Council hereby adopts this Resolution approving the Employment Agreement between the City of Berkeley and Paul Buddenhagen for the position of City Manager, attached hereto as Attachment A.

Section 3. Paul Buddenhagen is hereby appointed to the position of City Manager effective September 16, 2024.

Section 4. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the Office of the City Clerk.

ATTACHMENT A: City Manager Employment Agreement

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF BERKELEY AND PAUL BUDDENHAGEN**

This Employment Agreement (“Agreement”) is made by and between the City of Berkeley (“City”) and Paul Buddenhagen (“Employee”). City and Employee are hereinafter collectively referred to as the “Parties.”

RECITALS

WHEREAS, the City desires to retain the services of Employee as City Manager of the City; and

WHEREAS, the City Council of the City desires to provide certain benefits, establish certain conditions of employment, and establish working conditions for Employee; and

WHEREAS, Employee desires to provide said services as City Manager to the City under the terms and conditions hereinafter set forth; and

WHEREAS, Employee represents that Employee is willing and qualified to provide such services to the City; and

WHEREFORE, in consideration of the respective mutual covenants and promises hereinafter contained and made subject to all of the terms and conditions hereof, the Parties hereto do agree as follows:

OPERATIVE PROVISIONS

1. **Effective Date.** This Agreement shall become effective on the date that the Agreement is signed by the Mayor (“Effective Date”).
2. **Position and Duties.** Employee shall serve as the City Manager and shall perform the functions, services, and duties specified in Section 28 of the Berkeley City Charter, and perform other legally permissible and proper duties and functions as designated by the City Council from time to time. Employee shall provide services at the direction and under the supervision of the City Council. It is the intent of the Parties that Employee shall keep the City Council fully apprised of all significant ongoing operations of the City. Toward that end, Employee shall report directly to the City Council and will periodically, or as may be otherwise specifically requested by the City Council, provide status reports to the City Council on Employee’s activities and those of the City. Without additional compensation, Employee shall provide such other services as are customary and appropriate to the position of City Manager, together with such additional services assigned from time to time by the City Council as may be consistent with California law, the City’s Charter and the City’s Municipal Code. Employee shall devote best efforts and attention to the performance of these duties. Employee agrees to remain in the exclusive employ of the City while employed

3. **At-Will.** Employee acknowledges that Employee is an at-will employee of the City who shall serve at the pleasure of the City Council at all times during the period of Employee's service hereunder, pursuant to City Charter Section 27. Employee expressly acknowledges and agrees that nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment, or any right to a hearing before or after a decision by the City Council to terminate Employee's employment, except as is expressly provided by law, including but not limited to under the Brown Act (Gov. Code sec. 54950 et seq.). Employee understands that notwithstanding any other applicable laws, resolutions, and policies, they have no right to pre-or-post-disciplinary due process. Nothing contained in this Agreement shall in any way prevent, limit, or otherwise interfere with the right of the City to terminate the services of Employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from this position with the City, subject only to the provisions set forth in Section 11 of this Agreement. This at-will employment relationship shall be expressly subject to the rights and obligations of the City and Employee, as set forth in Section 11 below.
4. **Term.** The term of this Agreement shall commence on Employee's first day of City employment, which shall be September 16, 2024 ("Commencement Date"). This Agreement shall remain in effect until terminated by either party hereto as provided herein ("Term"), consistent with the nature of Employee's at-will employment status.
5. **Hours of Work.** Employee is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. Employee does not have set hours of work as Employee is expected to be available at all times. Employee shall maintain regular office hours at City Hall between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday, excepting holidays or furlough days, except when absent in the proper performance of Employee's duties and responsibilities as City Manager, or when utilizing leave. Employee may, with Council's express written approval, flex their working hours from something other than 8:30 a.m. to 5:30 p.m. on specific days of the week and/or change their work location from City Hall to a permissible remote work location for a specified period time.
6. **Evaluation of Performance.** The City Council shall conduct performance evaluations of the City Manager in a manner consistent with the terms in this Section 6 and other relevant City policies. While the City Council shall consult with the City Manager over the format and process of any evaluation, the ultimate format and process shall be at the City Council's discretion. The City shall conduct an initial performance evaluation following the first six (6) months of employment and again at the twelve (12) month mark, then annually thereafter or as Council otherwise deems necessary. Annual performance evaluations shall be provided to the City Manager within sixty days of the anniversary of the Commencement Date. Nothing in this section shall prohibit the City Council from evaluating the City Manager's performance at any other interval or time. City Council shall review base salary and/or benefits of the Employee at the time of the Employee's annual performance review, taking into account factors such as Employee's performance, available City budget, and any recent or anticipated cost of living adjustments that have or will be given to other

managerial employees for the City. Such evaluations will become part of Employee's personnel file.

7. **Compensation.** Employee shall receive, as starting base salary for performance of the duties of City Manager, the sum of Four Hundred and One Thousand, Seven Hundred Twenty-Two Dollars and Ten Cents (\$401,722.10) per year. To the extent the salary amount prescribed by this Agreement deviates from the City's existing salary schedule for the City Manager position, the Council will adopt an amended salary schedule as required by California Code Regulations tit. 2 section 570.5. Any such adjustments shall be made in open session during a regularly scheduled meeting of the City Council, with a record of said City Council action being subsequently attached to this Agreement as an automatic amendment thereto.
8. **Benefits.** City shall provide benefits to Employee as specified for City Department Head employees by the Municipal Code, ordinance, resolution or a Memorandum of Understanding or policy to the extent expressly approved by the City Council, including without limitation the Unrepresented Employees Manual. To the extent a term concerning the benefits specifically identified below conflicts with this Agreement, this Agreement controls.
 - A. **Vacation Leave.** Vacation must be approved in advance by the Mayor or their designee, as determined by a majority of the Council ("Designee"). Employee shall earn five weeks of vacation leave annually. After two (2) years of service, Employee may take up to two (2) weeks of vacation in advance of actual earning upon approval of the City Council or the Council's Designee. Vacation leave can accrue up to three hundred and twenty (320) hours. After that threshold is reached, an employee may be required to take vacation at the option of the City. All employees must reduce their accrued vacation leave to 320 hours by the last pay period in February of each year. Upon termination, an employee or their estate shall be paid for all accrued unused vacation leave at the employee's base rate at the time of his or her termination, and such employee or his or her estate shall reimburse the City for any vacation leave taken before it had accrued. If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday period.
 - B. **Sick Leave.** Employee is eligible for one (1) sick leave day (eight [8] hours) per month of service. To qualify for sick leave, Employee shall notify Mayor or the Council's Designee prior to or within two hours of Employee's start time for daily duties. For every six (6) months of perfect attendance, Employee will receive eight (8) hours of bonus time. "Perfect attendance" means the employee has not received sick leave or salary continuation benefits and has not taken or been placed on leave without pay. Sick leave bonus time can be used for any leave purpose authorized by the Unrepresented Employees' Manual. Employee may accumulate sick leave up to a maximum of two hundred (200) days (1600 hours). Sick leave will not accrue during any period of absence without pay. Sick leave credits are accrued on the basis of actual straight time hours worked or paid, based on a forty-hour workweek. Except as otherwise provided under

the CalPERS conversion of sick leave retirement credit benefit (California Government Code Section 20965) and the other exceptions set forth below, all accrued sick leave shall be canceled upon termination of Employee.

- C. Administrative Leave. The Employee may be approved by the Mayor or Designee to receive up to an 50 hours of compensated administrative leave per January 1, or prorated for the course of the year when employed for less than a full year. This administrative leave is granted to employees whose job responsibilities cause them to work numerous hours in excess of the normal City work week. If administrative leave is abused or misused, the City Council or its Designee may rescind administrative leave. Administrative leave must be approved in advance by the Mayor or Designee. Unused administrative leave may be carried over to the next calendar year, providing the total of excess vacation and unused administrative leave does not exceed three hundred and twenty (320) hours. Otherwise, the excess administrative leave must be taken within the calendar year in which it was earned, or it may be forfeited. Upon termination or retirement, no monetary award will be authorized for unused accumulated administrative leave.
- D. Tenure Date. All tenure-related benefits shall be calculated using the Commencement Date or as otherwise determined by the City's Human Resources Department to facilitate the terms of this Agreement.
- E. Automobile Allowance. The City shall reimburse the use of Employee's vehicle on authorized City business equal to the amount established by the Internal Revenue Service. This automobile allowance is intended to reimburse Employee for local travel, defined as travel within fifty (50) miles of the City. All travel outside of local travel shall be paid at the same rate as other City employees.
- F. Holidays and Floating Personal Days Off. Employee may observe the holidays specified in section 5.1 of the Unrepresented Employees Manual. These holidays shall be taken in the same manner as the City management employees. Employee shall accrue three (3) floating personal days off to be used at Employee's option, subject to approval of the Mayor or Designee. Employees shall have the number of floating holidays for the months before the January of their first calendar year prorated based upon their date of hire. All use of floating holidays must be approved in advance. If the City Council cannot permit Employee's use of a floating holiday during the relevant calendar year, employee may add the floating holiday time to their accrued vacation time, subject to the maximum vacation accumulation.
- G. Retirement. The City's CalPERS plan includes a two-tiered retirement system for members as required by the California Public Employees' Pension Reform Act (PEPRA) of 2013. Employee shall be enrolled in the Classic member tier, as defined by CalPERS law and regulations, since Employee is not a "New Member" under CalPERS. Employee shall receive and make contributions to

CalPERS retirement as specified for Classic members and in compliance with PEPRA requirements.

- H. Health, Dental, and Vision. City shall provide Employee with health, dental and vision insurance benefits in the same manner as the City provides for Department Head employees and their dependents.
- I. Life Insurance. City shall provide term life insurance for Employee, with a payable death benefit of twenty-five thousand (\$25,000). Employee has the option to purchase additional coverage offered by the City's insurance carrier.
- J. Fitness Subsidy. Employee may take advantage of the City's partially subsidized membership to the Berkeley YMCA. Neither the City nor its Claims Administrator shall be liable for any injury that may arise out of Employee's participation in and use of a YMCA membership. The amount that the City contributes towards Employee's monthly membership fee is subject to federal and state income tax withholding.

9. **Fidelity Bond.** City shall bear the full cost of any fidelity or other bonds required of Employee relating to Employee's service as City Manager under any law or ordinance.

10. **Expenses.**

- A. City-Related Expenses. City agrees to pay for City-related expenses incurred by Employee in accordance with City policy, provided that approval of such expenses must be by the Mayor or Designee.
- B. Phone. Employee shall receive a city cell phone.
- C. Travel. Travel expenses for the City Manager shall be subject to approval in writing by the Mayor or Designee.
- D. Development Expenses. City agrees to budget for and pay reasonable professional dues, subscriptions to professional publications, and travel and subsistence expenses for Employee for professional participation and travel, meetings, and occasions adequate to continue professional development. Professional development expenses shall be subject to approval in writing by the Mayor or Designee.

11. **Termination of Agreement.**

- A. By City. This Agreement may be terminated by the City for any reason by a simple majority vote of the City Council in a regular council meeting, with written notice provided to Employee.
 - 1. *No Cause Termination.* In the event that Employee's employment as City Manager is terminated for no reason or for any reason other than as set forth below in Section 11(A)(2) or Section 11(A)(3), and Employee signs, does

not revoke, and delivers to the City Council a general and full release of all claims substantially in the form attached as Exhibit A (General Release Agreement), which may be amended as required by law to effectuate a full and complete release, on or after Employee's termination date but no later than the date set by the City Council at the time of termination in accordance with applicable law, City shall provide the following severance benefits ("Severance"):

- a. If Employee is Terminated before nine months following the Commencement Date, then City shall pay Employee a severance amount equal to six (6) months' base salary and shall pay for continued health benefits (medical, dental, and vision) for Employee and any dependents enrolled during employment for six (6) months or until Employee secures health benefits through another source, whichever comes first.
- b. If Employee is Terminated between nine months-and-one-day and eleventh months following Commencement Date, City shall pay Employee a severance amount equal to eight (8) months' base salary and shall pay for continued health benefits (medical, dental, and vision) for Employee and any dependents enrolled during employment for eight (8) months or until Employee secures health benefits through another source, whichever comes first.
- c. If Employee is Terminated after eleven months-and-one-day following the Commencement Date, City shall pay Employee a severance amount equal to 12 (12) months' base salary and shall pay for continued health benefits (medical, dental, and vision) for Employee and any dependents enrolled during employment for 12 (12) months or until Employee secures health benefits through another source, whichever comes first.
- d. The Parties understand and agree that any severance-related payments through the City's payroll system and/or on its payroll schedule shall not constitute continued employment for any purpose, nor shall they entitle Employee to any benefits beyond those set forth in this Section 11(A).
- e. Severance shall include only the cash payments and health benefits described in this Section 11(A)(1).
- f. For the purposes of this Section 11(A)(1), "Terminated" shall mean either of the following:
 - (1) The City Council ends the employment relationship; or
 - (2) Employee resigns after the City Council or Designee makes a written request for the Employee's resignation.

- g. The City shall, in its discretion, decide whether to issue the severance amount and the continued health benefits as either a lump-sum cash payment and direct payment of Employee's COBRA costs for the continued health benefits period, or to issue the severance-related payments through the City's payroll system and/or its payroll schedule and maintain the Employee and eligible dependents on the City's health insurance plan during the continued health benefits period. For purposes of this subsection, "continued health benefits period" refers to the duration for which the Employee and eligible dependents shall receive health insurance benefits pursuant to this Section 11(A)(1). If the City decides to issue severance-related payments through the City's payroll system, the City shall convert the remaining non-health related payments to a lump-sum cash payment if requested by the Employee and necessary for the Employee to obtain employment elsewhere.
2. *For Cause Termination.* Notwithstanding Section 11(A)(1) above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of Section 11(A)(1) if Employee is terminated for Cause. Cause shall be defined as any of the following:
- a. Conviction of or a plea of nolo contendere to a felony or a misdemeanor involving moral turpitude, dishonesty, breach of trust, abuse of position, or unethical conduct; or
 - b. Material willful misconduct, material or willful gross neglect, fraud, misappropriation, embezzlement, theft, or dishonesty; or
 - c. Willful or repeated failure, for reasons other than disability, to devote substantially all of Employee's business time and effort to the City or abandonment of duties; or
 - d. Harassment, discrimination, retaliation, or "Abusive Conduct". For the purposes of this Section, "Abusive Conduct" shall mean "conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious"; or
 - e. Abuse of office or position. For the purposes of this Section, "abuse of office or position" means conduct that meets the criteria of a crime involving abuse of their office or position or moral turpitude,

including abuse of public authority, waste, fraud, misappropriation of funds, or other illegal fiscal practices, violation of the law under color of authority, or a crime against public justice.

3. *Employee Conviction.* If an Employee is convicted of a crime involving an abuse of their office or position, or moral turpitude, all of the following shall apply as per Government Code, Section 53243 et seq. For the purposes of this Section, “abuse of office or position” means either an abuse of public authority, including waste, fraud, misappropriation of funds, or other illegal fiscal practices, violation of the law under color of authority, or a crime against public justice.
 - a. If Employee is provided with paid administrative leave pending an investigation, then Employee shall be required to fully reimburse City such amounts paid; and
 - b. If City pays for the legal defense of Employee, then Employee shall be required to fully reimburse City such amounts paid to the extent permitted by law; and
 - c. If the City paid a cash settlement to the Employee related to the termination of Employee, then Employee shall be required to fully reimburse City such amounts paid; and
 - d. Any severance benefits not yet paid to Employee shall be forfeited.
 4. *Death of Employee.* If, during the Term or any extended Term, Employee dies, Employee’s estate shall receive outstanding wages and accruals subject to payout upon separation but shall not be entitled to any additional compensation or payment, including Severance.
 5. *Disability or Inability to Perform.* If, as the result of long-term or permanent disability, sickness, accident, injury, mental incapacity or other personal health-related reason, the City determines that Employee is unable to perform the essential duties and functions of the City Manager role, with or without reasonable accommodation, after exhausting all authorized use of accruals or other authorized paid/unpaid leave available under City policies or state or federal law, the City Council may terminate Employee. If the City Council does elect to terminate Employee due to incapacity, Employee shall receive severance benefits provided in Section 11(A)(1) above. In exercising this option, the City will comply with its obligations under applicable state and federal disability and public retirement laws.
- B. **By Employee.** Employee shall provide at least sixty (60) days’ written notice to City in the event Employee voluntarily resigns or retires. This notice requirement may be waived by the City in its sole discretion. In the event Employee voluntarily retires or resigns their position (unless asked to do so in writing by the City Council pursuant to Section 11(A)(1)(f)(2)), Employee shall

be entitled only to earned but unpaid base salary, accrued but unpaid expenses required to be reimbursed, and any accruals subject to payout upon separation, through the date of separation from employment.

12. **Workplace Investigations.** The City Council has authority, acting as a majority, to place the City Manager on paid administrative leave during the pendency of a workplace investigation in which the City Manager is an actual or potential target or respondent. During such leave of absence, the Council shall designate an Acting City Manager to exercise the responsibilities of the City Manager or as otherwise dictated by City Charter or the City's Municipal Code.

13. **Conflicts of Interest.**

- A. Employee represents and warrants to the City that Employee presently has no interest and represents that the Employee will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with the performance of services under this Agreement.
- B. Employee shall not, during the Term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in corporate limits in the City, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the Council. For and during the Term of the Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as Employee's personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City of Berkeley, without the prior written consent of the Council.
- C. None of Employee's immediate family members shall have interests, business ventures, or investments that would create a conflict of interest for Employee under Section 13 (A) or (B) above, per California Government Code, Section 87103. Immediate family is defined as Employee's spouse and dependent children under Government Code Section 82029.

14. **City Property.**

- A. "Proprietary Information" is all information and any idea pertaining in any manner to the business of the City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of the City in the course of employment or otherwise produced or acquired by or on behalf of the City. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, banking information, audit reports, forecasts, customer lists, electronic logins, usernames, and passwords. All Proprietary Information not generally known outside of the City's organization,

and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information."

- B. During Employee's employment by the City, Employee shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of the City and as is, or may be, necessary to perform the job responsibilities under this Agreement.
- C. At the outset of employment, City shall provide Employee with the following equipment: laptop, credit card, parking pass, and keys. Depending on Employee's choice, a city cell phone may be provided. If the City switches to requiring an ID or swipe pass, such will be provided. Employee acknowledges that any and all property provided to Employee will be and remain the sole property of the City.
- D. Employee shall return all of the property listed in this Section and any additional City property in Employee's possession at the conclusion of employment. Employee shall delete and destroy all physical files and copies and all files and copies which may reside on personal electronic devices or in any electronic or virtual location that includes Proprietary Information of the City. Employee shall furnish to the City Attorney all login and password information for programs, services, subscriptions, apps, databases and other electronic, web-based or cloud-based locations that Employee has created or had access to in connection with Employee's City employment. Employee must comply with this Section by no later than the close of business on Employee's separation date, or as otherwise directed by the Mayor or Designee.
- E. Following termination, Employee shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of the City.
- F. Employee's obligations under this Section shall survive the termination of employment and the expiration of this Agreement.

15. **Indemnification.** Subject to, in accordance with, and to the extent permitted by the California Government Claims Act, Government Code Section 810 et seq. and Government Code Section 995 et seq., the City will indemnify, defend, and hold Employee harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Employee's tenure as City Manager, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of employment as City Manager.

16. **General Provisions.**

- A. **Entire Agreement.** This Agreement contains the final, complete, and exclusive agreement and understanding between the Parties. Any amendments, modifications, or variations from the terms of this agreement shall be in writing

and shall be effective only upon approval of such amendment, modification or variation by the City Council and Employee.

- B. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended, or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each party waives their future right to claim, contest, or assert that this Agreement was modified, cancelled superseded, or changed by any oral agreement, course of conduct, waiver, or estoppel.
- C. Severability. The terms of this Agreement are contractual and not a mere recital. Should any provision or part of any provision or application thereof be held invalid, the invalidity shall not affect any other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared to be severable.
- D. Attorneys' Fees. In any legal action, brought to enforce or interpret the terms of this Agreement, the parties shall bear their own attorneys' fees and costs.
- E. Notices. Notices given under this Agreement shall be in writing and shall be either:
 - 1. Served personally; or
 - 2. Delivered via first-class U.S. Mail, certified, with postage prepaid and a return receipt requested; or
 - 3. Sent via Federal Express, or some other equivalent private mail delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

Attn: Mayor of the City of Berkeley
City Hall, 2180 Milvia St.
Berkeley, CA, 94704
Phone: (510) 981-2489

EMPLOYEE:

As on File with City in Employee's Personnel File

- F. Governing Law. This Agreement, and the rights and obligations of the Parties, shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in the Alameda County Superior Court.
- G. Amendment. This Agreement may not be amended except in a written document signed by Employee, approved by the City Council and signed by the City's Mayor.
- H. Acknowledgment. Employee acknowledges that Employee had the opportunity to consult legal counsel regarding this Agreement, that Employee has read and understands this Agreement, that Employee is fully aware of its legal effect, and has entered into it freely and voluntarily and based on Employee's own judgment and not on any representations or promises other than those contained in this Agreement.
- I. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.
- J. Electronic Signatures. The Parties may execute this Agreement by electronic signature, subject to the terms and conditions set forth in Government Code, Section 16.5.

IN WITNESS THEREOF, the City of Berkeley has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk on this ____ day of _____, 2024.

ON BEHALF OF THE CITY:

Mayor Jesse Arreguín

Date

EMPLOYEE

PAUL BUDDENHAGEN

Date

APPROVED AS TO FORM

Name: Farimah Brown
City Attorney

Date

“EXHIBIT A”

GENERAL RELEASE AGREEMENT

This General Release Agreement (“Agreement”) is entered into by and Between PAUL BUDDENHAGEN (“Manager”) and CITY OF BERKELEY (“City”) (individually “Party” and collectively, “Parties”), in light of the following facts:

WHEREAS, Manager’s employment with the City concluded on [DATE];

WHEREAS, Certain disputes have arisen between the City and Manager;

WHEREAS, the City and Manager each deny any liability whatsoever to the other;

WHEREAS, the City and Manager wish to fully and finally resolve any and all disputes they may have with each other;

WHEREAS, Manager is hereby informed that Manager has twenty-one (21) days from receipt of this Agreement to consider it. The City hereby advises Manager to consult with legal counsel before signing this Agreement;

WHEREAS, Manager acknowledges that for a period of seven (7) days following the signing of this Agreement (“Revocation Period”), Manager may revoke the Agreement, and that this Agreement shall not become effective or enforceable until the day the Revocation Period has expired;

WHEREAS, Manager acknowledges that the salary payment referenced in Section 7 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to Manager through the date of employment separation. Manager also acknowledges that City has made this salary payment without regard to whether Manager signs this Agreement. The salary payment does not constitute consideration for this Agreement.

WHEREFORE, in consideration of the respective mutual covenants and promises hereinafter contained and made subject to all of the terms and conditions hereof, the Parties hereto do hereby agree as follows:

TERMS AND CONDITIONS

- 1. Effective Date.** The effective date of this Agreement shall be the date of the signature of the last of the Parties to sign this Agreement.
- 2. Purpose of Agreement; Separation Date.** The intent of this Agreement is, in furtherance of the Parties’ mutual desire to conclude their employment relationship, in exchange for Manager’s resignation from City employment and full release and waiver of claims against the City and commitment to the other material terms set forth in this Agreement, the City

shall provide Manager with the fair and adequate consideration pursuant to Section 4 of this Agreement. The Parties acknowledge and agree that Manager will resign City employment effective close of business on [DATE] (the "Separation Date").

3. **Receipt of Salary Payment.** Manager hereby acknowledges receipt of a check or checks for all compensation owing to Manager, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from the City.
4. **Severance.** Within five (5) business days following Manager's signing, delivering to the City, and not revoking this Agreement, the City shall pay Manager the gross amount provided for in Section 11 of the attached Employment Agreement, less applicable deductions, and shall provide the months of medical benefits as provided in that same Section 11. Manager acknowledges that the severance is in excess of all amounts due and owing to Manager as a result of Manager's employment by the City.
5. **Release of Claims.** In further exchange for the consideration and compromises set forth in this Agreement, except as set forth herein, Manager, on behalf of themselves, their heirs, estate, executors, administrators, successors and assigns, irrevocably and unconditionally releases, acquits and forever discharges the City, and its affiliates, partners, joint venturers, successors and assigns, and its officers, employees, volunteers, interns, attorneys, agents and insurers, and all persons acting by, through, under or in concert with any of them, individually and jointly ("Released Parties") from all charges, complaints, promises, agreements, controversies, suits, rights, demands, costs, losses, debts, actions, causes of action, claims, judgments, obligations, damages, liabilities and expenses, including any claims for attorneys' fees and costs, of any kind or character whatsoever, known and unknown, suspected, unsuspected, anticipated and unanticipated ("Released Claim" or "Released Claims"), which Manager now has, owns or holds, or claims to have, own or hold, against each or any of the Released Parties on or before Effective Date of this Agreement.
 - A. This release of all known or unknown, suspected or unsuspected, anticipated and unanticipated Released Claims specifically includes, without limitation:
 - i. any Released Claims alleged or referred to, directly or indirectly, or in any way connected with, or arising out of, or which may hereafter be claimed to arise out of Manager's employment with the City or actions taken during Employee's tenure as City Manager;
 - ii. any Released Claims or causes of action arising out of, in connection with or relating to Manager's employment with the City in any position, including, but not limited to, claims or causes of action based on: federal, state, or local employment discrimination, harassment, or retaliation statutes, laws, regulations or ordinances, based on any category protected by law, including without limitation age,

sex, gender identity or expression, race, religion, national origin, marital status, sexual orientation, ancestry, parental status, or disability arising under Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000 *et seq.* (“Title VII”), the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621 *et seq.* (“ADEA”), the California Fair Employment and Housing Act (California Government Code §§ 12900 *et seq.*); the Federal Americans With Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.* (“ADA”); the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. §§ 651 *et seq.*); the California Occupational Safety and Health Act of 1973 (California Labor Code §§ 6300 *et seq.*); the Family Medical Leave Act (29 U.S. § 2601); the California Family Rights Act (Cal. Gov. Code § 12950 *et seq.*); the Unruh and George Civil Rights Acts; the Genetic Information and Non-Discrimination Act; the Rehabilitation Act of 1973; the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1001 *et seq.*); the Equal Pay Act; the Fair Labor Standards Act (29 U.S.C. § 203); qui tam claims under Federal False Claim Act (31 U.S.C. §§ 3730 *et seq.*); 42 U.S.C. Section 1981; the California Constitution; the California Labor Code; the California Government Code; the Federal Equal Pay Act of 1963 (29 U.S.C. §§ 201 *et seq.* (“EPA”); the Meyers-Milias-Brown Act (California Government Code §§ 3500 *et seq.*); any other federal, state or municipal constitution, statute, regulation and/or ordinance affecting or relating to the claims and rights of the Manager; or claims for attorneys’ fees and costs;

- iii. any claim (i) sounding in tort, specifically including, but not limited to, any torts related to constructive and/or wrongful discharge in violation of public policy, defamation, invasion of privacy, intentional and negligent interference with contract and/or prospective economic advantage, fraud and any misrepresentation, and intentional and negligent infliction of emotional distress; (ii) any breach of contract of employment or collective bargaining agreement (expressed or implied) or any grievance initiated by an employee under a collective bargaining agreement; or (iii) any covenant of good faith and fair dealing (express or implied); or
- iv. Any administrative claim or charge that may be submitted to a local, state, or federal agency, including without limitation the California Civil Rights Department, the

California Department of Labor Standards and Enforcement, the California Public Employment Relations Board, the U.S. Department of Labor, but excluding the U.S. Equal Employment Opportunity Commission ("EEOC").

- B. The Released Claims subject to release under this Agreement do not include: any rights that cannot be waived as a matter of law; any rights Manager has to file or pursue a claim for workers' compensation or unemployment insurance; any rights or claims for indemnification the City may have according to any written indemnification agreement with the City to which Manager is a party or under applicable law; or any claims for breach of this Agreement.
- C. Notwithstanding the foregoing, this Agreement and the releases contained within, do not limit Manager's ability to bring an administrative charge with an administrative agency, but Manager expressly waives and releases any right to recover any type of personal relief from the City, including but not limited to monetary damages or reinstatement, in any administrative action or proceeding, whether California or federal, and whether brought by Manager or on Manager's behalf by an administrative agency, related in any way to the matters released herein. Furthermore, nothing in this Agreement prohibits the Parties from reporting possible violations of law or regulation to any government agency or entity, including but not limited to the Equal Employment Opportunity Commission and/or the California Civil Rights Department, or making other disclosures that are protected under the whistleblower provisions of law.

6. **Waiver of Unknown Claims/Specific Waiver of Section 1542.** Manager specifically and expressly waives all rights under the provisions of Section 1542 of the Civil Code of California ("Section 1542 Waiver") with respect to the Released Claims. Section 1542 Waiver provides as follows:

GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN [EMPLOYEE'S] FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY [EMPLOYEE], WOULD HAVE MATERIALLY AFFECTED [EMPLOYEE'S] SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Thus, for the purposes of making a complete settlement of the Released Claims which Manager may have or claims to have against the Released Parties, Manager waives and releases any and all Released Claims against the Released Parties, including Released Claims which are unknown and unsuspected as of the Effective Date of this Agreement. Manager warrants that they have read this Agreement, including the Section 1542 Waiver,

and have had an opportunity to consult with counsel of their own choosing about this Agreement and specifically about the Section 1542 Waiver, and that they understand this Agreement and the Section 1542 Waiver. Manager acknowledges that they may later discover facts different from or in addition to those now known or believed to be true regarding the matters released or described in this Agreement, and even so they agree that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Manager assumes any and all risk of any mistake in connection with the facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now known to them relating thereto. Manager agrees, to the fullest extent permitted by law, that they will not initiate or file a lawsuit or internal City proceeding to assert any Released Claims. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the City shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any Released Claim.

7. **Return of Documents.** Manager agrees and represents that no later than [DATE] they will return to the City all City property of which they have possession, custody or control, including, but not limited to, computer, electronic and telephonic equipment, as well as all City data (including logins and passwords) and documents whether in hard copy or maintained on any electronic media.

8. **Non-Disclosure of Confidential and Proprietary Information.** The Parties acknowledge that as City Manager is a high-ranking official and an officer of the City; in that capacity they were and are responsible for, among other things, executing and enforcing all laws, and policies of the City and administering the City's affairs, controlling and administering the City's financial affairs and supervising purchasing, contracting, and confidential information. Consistent with their Employment Agreement and the City Charter, Manager represents and agrees that they have not and shall not at any time or in any manner, either directly or indirectly, whether or not for compensation use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any confidential information concerning any matters affecting or relating to the business of the City or any Proprietary Information as defined in the Employment Agreement except with the express written permission of the City or as required by court order or properly-issued subpoena. Such information includes but is not limited to, any attorney-client communications and attorney work product, or any of the information concerning the business of the City, its manner of operation, its plans, or other proprietary data where such information is not publicly known and is not otherwise subject to public inspection or disclosure.

9. **Information Regarding Employment.** Subject to any applicable law, the City agrees that all inquiries with respect to Manager's separation will be referred to the Mayor or the Mayor's delegee who will provide only the following information: (a) the date of hire and date of separation; (b) that this is a mutual and amicable separation based on a mutual desire to separate Manager from employment and provide a smooth leadership transition.

10. **Personnel File Documents.** No documents shall be entered into Manager's personnel file after the Effective Date of this agreement without both Parties approving the entry of the document.

11. **Age Discrimination Waiver. THIS AGREEMENT CONTAINS A WAIVER OF AGE DISCRIMINATION CLAIMS, AND MANAGER HAS CAREFULLY READ AND ACKNOWLEDGES THE FOLLOWING:**

- A. In connection with the Older Workers' Benefits Protection Act ("OWBPA") which prohibits discrimination against older workers in a variety of different contexts, Manager acknowledges that the City has advised Manager to consult with an attorney prior to signing this Agreement. As set forth in the OWBPA, 29 U.S.C. § 626(f)(1), Manager hereby acknowledges the following:
- i. that this Agreement is written in a manner calculated to be understood by Manager and that Manager in fact understands the Agreement;
 - ii. that this Agreement specifically refers to and waives rights or claims arising under the OWBPA;
 - iii. that this Agreement applies only to claims arising up to and including the Effective Date of this Agreement;
 - iv. that in exchange for this Agreement, Manager received value beyond that to which Manager is already entitled;
 - v. that the City has advised Manager in writing to consult with an attorney before executing the Agreement and the Manager has done so; and
 - vi. that Manager has been provided with an adequate period of time to review this Agreement.
- B. Manager further acknowledges that Manager is entitled to consider this Agreement for up to twenty-one (21) calendar days before signing it. Manager may waive the twenty-one (21) calendar day notice period; if the Manager chooses to do so, they may initial below, indicating they have made a knowing and voluntary decision to sign the Agreement prior to expiration of the twenty-one (21) calendar day period with informed consent and after consultation with legal counsel.

INITIALS: ____

- C. Manager may revoke this Agreement for a period of seven (7) calendar days after executing the Agreement. Any such revocation must be communicated in writing to the City Attorney at [EMAIL ADDRESS] within the seven (7) calendar day revocation period. This Agreement shall

not become effective or enforceable until the revocation period has expired. No payments shall be made pursuant to this Agreement prior to expiration of this revocation period.

12. Complete and Voluntary Agreement.

- A. Manager acknowledges that Manager has read and understands this Agreement; that Manager has had the opportunity to seek legal counsel of Manager's choosing and to have the terms of the Agreement fully explained to Manager; that Manager is not executing this Agreement in reliance on any promises, representations or inducements other than those contained herein; and that Manager is executing this Agreement voluntarily, free of any duress or coercion. Manager specifically understands that by entering into this Agreement Manager is forever foreclosed from pursuing any of the claims waived herein.
- B. Manager acknowledges that Manager has at least five (5) business days to seek legal counsel of Manager's choosing before signing this Agreement. This five (5) business day period runs **concurrently** with the twenty-one (21) day period referenced in Section 11.B. above. Manager may waive the five (5) business day review period; if the Manager chooses to do so, Manager shall initial below, thus providing written confirmation that Manager has made a knowing and voluntary decision to sign the Agreement prior to the expiration of the five (5) business day period with informed consent and after consultation with legal counsel.

INITIALS: _____

- 13. Settlement Privilege.** The Parties agree that if this Agreement does not become effective for any reason, this Agreement shall be deemed negotiation for settlement purposes only and will not be admissible in evidence or used for any purpose whatsoever, and will not be admissible in any trial or appeal under California Evidence Code § 1152 and Federal Rules of Evidence 408.
- 14. No Admissions.** By entering into this Agreement, the Released Parties do not admit that they have engaged in, or are now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this Agreement is not an admission of liability, and that the City specifically denies liability related in any manner to Manager's employment. The Parties agree that it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against the City, except a proceeding to enforce this Agreement.
- 15. Tax Consequences.** The City has made no representation about and takes no position on the tax consequences of this Agreement. A dispute regarding the tax status of this Agreement shall not affect the validity of this Agreement. Manager has had an opportunity to discuss the potential tax consequences of this Agreement with their own counsel and agrees to indemnify and hold harmless the City from any and all costs and assessments

including, but not limited to delinquent taxes, penalties and/or assessments levied against the City in connection with this Agreement.

16. **Assignment.** Manager acknowledges that they have not heretofore assigned or transferred to or purported to assign or transfer to any person or entity the Released claims or any part or portion thereof, and agrees to indemnify and hold harmless the Released Parties from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred whether or not litigation commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer thereof.
17. **Entire Agreement.** This Agreement supersedes any and all agreements, either oral or written, between the Parties with respect to the separation of Manager's employment relationship with the City. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party that are not contained in this Agreement. No agreement, statement, or promise not contained in this Agreement shall be valid or binding.
18. **Applicable Law and Venue.** This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the Alameda County Superior Court.
19. **Modification.** Any modification of this Agreement shall be effective only if it is in writing and signing by all Parties to this Agreement.
20. **Severability.** If any part of this Agreement is determined to be invalid, unlawful, or unenforceable, that part shall not be deemed to be part of this Agreement.
21. **Full Execution Authority.** Each Party executing this Agreement warrants and represents that it or they have full authority to bind the corresponding Party to this Agreement.
22. **Attorneys' Fees and Costs.** Each Party shall bear its own attorneys' fees and costs arising from and/or in any way related to this Agreement and the claims covered by this Agreement. Manager expressly waives any and all rights and claims Manager might otherwise have against City for reimbursement of attorneys' fees and costs associated with any legal representation related to this Agreement and the claims covered by this Agreement.
23. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall, for all purposes, be deemed an original, and all such counterparts, taken together, shall constitute the same instrument.
24. **Electronic Signatures.** The Parties may execute this Agreement by electronic signature, subject to the terms and conditions set forth in Government Code section 16.5.

THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND ACCEPT AND AGREE TO THE PROVISIONS CONTAINED HEREIN, AND HEREBY EXECUTE IT, KNOWINGLY AND VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Name:
Title:
City of BERKELEY
Date: _____

City Manager
Date: _____

Approved as to Form and Legality:

Name:
City Attorney
Date: _____

Name:
Attorney for City Manager
Date: _____

