

RESOLUTION NO. 2023 - _____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPOINTING CRAIG CORNWELL AS CITY
ATTORNEY AND APPROVING AN
EMPLOYMENT AGREEMENT THEREFORE
INCLUDING ANNUAL COMPENSATION OF
\$250,000, PLUS ONE-TIME RELOCATION
BENEFITS OF \$15,000, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY
RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:**

SECTION 1. The City Council hereby appoints Craig Cornwell as the City Attorney of the City of Merced to be effective on December 5, 2023.

SECTION 2. The City Attorney Employment Agreement is hereby approved and shall be effective from December 5, 2023 to December 4, 2026, as set forth on Exhibit "A" to this Resolution.

SECTION 3. The publicly adopted Pay Scale is set forth on Exhibit "B" to this resolution. Said publicly adopted pay scale will be updated and approved by the City Council as necessary to comply with the terms and conditions of the City Attorney Employment Agreement as set forth in this Agreement.

SECTION 4. The Mayor is hereby authorized to execute the Employment Agreement with Craig Cornwell to serve as the City Attorney for the City of Merced.

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PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2023, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:


Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:



City Attorney 4/13/2023
Date

CITY OF MERCED
CITY ATTORNEY EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this ___ day of _____ 2023 by and between the CITY OF MERCED, a California municipal corporation and Charter City ("Employer" or "City") and CRAIG J. CORNWELL ("Employee") an individual, (sometimes collectively "the Parties").

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.

B. The Merced City Council conducted an extensive recruitment process for the City Attorney position, and after carefully evaluating Employee's knowledge, skills, and experience, administrative skills and abilities, unanimously desires to appoint Employee to the position of City Attorney.

C. The Parties mutually agree that this form of Agreement reflects the terms and conditions under which the Parties intend and desire to employ Employee.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

SECTION 1. TERM. This Agreement shall become effective December 5, 2023 ("Effective Date"). Subject to City's right to terminate Employee's employment at any time, as provided for in this Agreement, the Term of this Agreement is three (3) years from the Effective Date and may be extended for an additional term as determined by mutual written agreement between the parties. City's election not to extend this Agreement shall not entitle Employee to severance pursuant to Section 7 of this Agreement.

SECTION 2. DUTIES AND AUTHORITY. Employer agrees to employ Employee as City Attorney, to exercise the powers and authority and to perform the functions and duties specified in the Merced City Charter, the Municipal Code and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist. Employee shall

exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by its City Council, may legally assign.

SECTION 3. COMPENSATION AND PERFORMANCE EVALUATION.

A Employer agrees to pay Employee at the rate of an annual base salary of Two Hundred Forty Two Thousand Seven Hundred and 18 Dollars and Fifty Three Cents (\$242,718.53), plus Premium Pay in the amount of Seven Thousand Two Hundred and Eighty One Dollars and Fifty Six Cents (\$7,281.56); for a total of Two Hundred Fifty Thousand Dollars and Nine Cents (\$250,000.09), subject to deduction and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for the City Manager, City Attorney, City Clerk, and any Department Directors not covered by collective bargaining agreements ("Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. Periodically, the City Council shall meet with Employee for the express purpose of determining any appropriate salary adjustment, but the ultimate decision in regard to the timing and the amount of any adjustment is within the sole discretion of the City Council. In determining any appropriate salary adjustment, the City Council may take into account cost of living adjustments and changes in the base salary of Executive Management Employees or the manner (but not the amount) by which Executive Management Employees are paid.

B. Upon a date mutually agreed to by the parties, but no later than ninety (90) days following the effective date of this Agreement, Employee and Employer, by and through the City Council, shall meet to set mutually-agreed upon performance goals and objectives for each year under this Agreement. Thereafter, Employee and Employer, by and through the City Council, shall meet on an annual basis, or at any time or times during the period in which this Agreement remains in effect, in order for the City Council to conduct an evaluation of Employee's performance. The City Council may provide Employee with a written performance evaluation in such format as the City Council may determine.

C. Employee's compensation as discussed under this Section is not tied to the compensation of any other City employee or group of City employees, except as expressly provided in this Agreement.

SECTION 4. EMPLOYEE BENEFITS.

A. Administrative Leave, Vacation Leave and Sick Leave. Employee shall earn ninety-six (96) hours of administrative leave per calendar year. Administrative leave must be taken in the calendar year in which it is credited to Employee. In lieu of time-off, Employee may opt to be paid for the administrative leave in December of the year earned. Administrative leave not paid or taken by December of the year earned shall be lost and not reimbursed to Employee.

Vacation Leave shall accrue at 3.696 hours per pay period with a maximum accrual of 192 hours. Sick leave shall accrue at 3.696 hours per pay period with a maximum accrual of 1,056 hours. Annual vacation and sick leave shall be accrued and administered in the same manner as vacation and sick leave is administered for Executive Management Employees.

B. Additional Benefits. Except as expressly provided herein, Employee shall receive the same health insurance and retirement benefits and be entitled to participate in plans and programs such as short term and long-term disability plans, life insurance plans, and deferred compensation plans, as are available to Executive Management Employees. This Agreement shall be deemed amended as to these benefits, and these benefits only, whenever the City Council adopts a resolution or takes action changing these benefits.

C. Cell Phone and iPad. Employee shall be entitled to the same benefits regarding the provision of a cell phone and iPad or reimbursement for cell phone and iPad expenses relating to business usage as provided to any Executive Management member.

D. Car Allowance. Employee shall be entitled to the same benefits regarding the provision of a car as provided to any Executive Management member as determined in accordance with City Council Resolution 86-7, as amended annually by the Finance Officer based upon the Internal Revenue Service's mileage rate.

E. Amendment. Employee's benefits provided under this Section 4 are not tied to the compensation of any other City employee or group of City employees except as expressly provided in this Section.

F. Retirement. Employer agrees to enroll Employee in the California Public Employees' Retirement System (CalPERS) under its current contract for miscellaneous employees. Said contract provides for a retirement benefit of two

percent (2.0%) at the age of sixty-two (62) for PEPRA members of CalPERS. Employee shall be required to pay the full 7.5% of the employee member contribution of Employee's retirement costs.

G. Relocaton Expenses. Employer agrees to provide Fifteen Thousand Dollars (\$15,000) to Employee to be used temporary housing and relocation expenses as follows. Payment shall be made in an initial lump sum payment of Three Thousand Dollars (\$3,000) for temporary housing within the first two weeks of employment. Employee shall receive a lump sum for relocation expenses of Twelve Thousand Dollars (\$12,000) upon Employee's presentation of notification that he has a place of residence in the City of Merced

SECTION 5. GENERAL BUSINESS EXPENSES.

A. Employer recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service to Employer, including for Professional Memberships related to the position. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.

B. City shall reimburse Employee for expenses incurred attending a reasonable number of League of Cities and other similar professional conferences relevant to the performance of Employees duties.

C. The expenses to be budgeted and paid in the Section 5, Paragraphs A and B above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Council. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate.

SECTION 6. AT-WILL EMPLOYMENT RELATIONSHIP.

A. Consistent with Article VI of the City Charter, Section 500, Employee is appointed by, and serves at the pleasure of, the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate this Agreement and the employment of Employee at any time, with or

without Cause, and with or without notice. Employer shall pay Employee for all services through the Effective Date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 7, Severance and Benefit Payoff at Termination, and General Release Agreement, below.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from employment with Employer, subject only to Employee's providing sixty (60) calendar days prior written notice to Employer of the effective date of Employee's resignation.

SECTION 7. SEVERANCE AND BENEFIT PAYOFF AT TERMINATION, AND GENERAL RELEASE AGREEMENT.

A. If Employer terminates this Agreement (thereby terminating Employee's Employment) without Cause, as determined by at least four (4) affirmative votes of the members of the City Council at a Regular Meeting of the City Council, and if Employee signs, delivers to the City Council, and does not revoke, the General Release Agreement in the form attached hereto as Exhibit A, Employer shall pay Employee a lump sum benefit equal to six (6) months of Employee's then applicable salary (base salary plus premium pay) and shall provide Employee six (6) months of continued medical and dental benefits beginning on the Effective Date of termination (collectively "Severance").

B. If Employer terminates this Agreement (thereby terminating Employee's Employment) with Cause, as determined by at least four (4) affirmative votes of the members of the City Council at a Regular Meeting of the City Council, Employee shall not be entitled to any additional compensation or payment, including Severance. If the City Council intends to terminate with Cause, based on a reason or reasons set forth in subpart 5 or 6, immediately below, the Council shall first deliver to Employee a written Notice of Intent to Terminate, stating the reason or reasons for the proposed termination, and providing a thirty (30) day period for Employee to cure. If, in the City Council's independent judgment, Employee cures the identified reason or reasons for Cause termination, Employee shall not be terminated therefor. As used in this Agreement, Cause shall mean any of the following:

1. Conviction of a felony;
2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional

violation of law;

3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
4. Willful abandonment of duties;
5. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body;
6. Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to employees or public safety; or (c) violates properly established rules or procedures of Employer.

C. In no event may Employee be terminated without cause within ninety (90) days after any municipal election for the selection or recall of one or more of the members of the City Council.

D. If Employee terminates this Agreement (thereby terminating Employee's employment), Employee shall not be entitled to any additional compensation or payment, including Severance.

E. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Administrative and Vacation Leave.

SECTION 8. EMPLOYEE'S OBLIGATIONS AND HOURS OF WORK.
Employee shall devote his full energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote Employer's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at City Council meetings). Employee's base salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of Employer and the exempt, salaried nature of the employment, employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's

participation in activities out of the office, Employee will generally be expected to keep office hours at City Hall, Monday through Friday, during normal business hours.

SECTION 9. CONFIDENTIALITY AND NON-DISPARAGEMENT.

A. Employee acknowledges that in the course of his employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit and shall not disclose the Confidential Information to others without the express written consent of City.

B. Except as otherwise required by law, in the event the City terminates Employee with or without Cause, the City and Employee agree that no member of the City Council, the City management staff, nor the Employee shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to City and Employee. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

C. The obligations of Employer and Employee under this Section 9 shall survive the termination of this Agreement.

SECTION 10. OUTSIDE ACTIVITIES. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties and responsibilities to Employer. Employer will permit Employee to provide legal services to non-City clients on matters that shall not create a conflict of interest with services for the City of Merced, on a limited basis as follows. The hours of works shall not occur during City work hours and shall not exceed Fifty Hours (50 hrs.) per year for clients for compensation or without compensation as pro bono work.

SECTION 11. INDEMNIFICATION. Consistent with the California Government Code, Employer shall defend and indemnify Employee, using legal counsel of Employer's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. In the event there is a conflict of interest between Employer and Employee in such a case so that independent counsel is required for Employee, Employer may select the independent counsel after having considered the input of Employee and shall pay the reasonable fees of such independent counsel consistent with City litigation guidelines and standard rates received by City from its chosen special counsel.

Notwithstanding the foregoing, and consistent with Sections 53243 through 53243.3 of the Government Code, Employee shall be required, if convicted of a crime involving an abuse of his office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the Employee; (2) any funds provided for the legal criminal defense of the Employee; (3) any cash settlement related to the termination that Employee may receive; and (4) any other payments received by Employee from City that in any way relate to the foregoing.

SECTION 12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT. Employer may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 13. NOTICES. Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER:
City of Merced
c/o City Clerk
678 West 18th Street
Merced, California 95340

EMPLOYEE:
Craig J. Cornwell
At the address in Employee's personnel file

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be

deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service as provided by law.

SECTION 14. GENERAL PROVISIONS.

A. **Integration:** This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Council.

B. **Binding Effect:** This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. **Choice of Law:** This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Charter provisions, Codes, Ordinances, Policies and Resolutions.

D. **Severability:** 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.

E. **Conflict with City Charter or Municipal Code.** The City personnel ordinances, resolutions, rules and policies shall apply to Employee in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the Municipal Code, the City Charter or the Municipal Code shall prevail over this Agreement.

F. Employee's Independent Review: Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee acknowledges that he has been advised to obtain, and has availed herself of, legal advice with respect to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

EMPLOYER:
CITY OF MERCED
A California Charter Municipal Corporation

EMPLOYEE:

BY: _____
Matthew Serratto, Mayor

BY: 
Craig J. Cornwell

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  10/31/2023
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

EXHIBIT A

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Agreement") is entered into by and between _____ ("Employee") and the City of Merced ("Employer"), in light of the following facts:

- A. Employee's employment with Employer concluded on _____.
- B. Certain disputes have arisen between Employer and Employee.
- C. Employer and Employee each deny any liability whatsoever to the other.
- D. Employer and Employee wish to fully and finally resolve any and all disputes they may have with each other.

E. Employee is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. Employer hereby advises Employee to consult with his legal counsel before signing this Agreement.

F. Employee acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

G. Employee acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to his through the date of employment termination. Employee also acknowledges that Employer has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement. Employee acknowledges that the Severance referenced in paragraph 2 of this Agreement is in excess of all amounts that are due and owing to his as a result of his employment by Employer.

1. Receipt of Salary Payment. Employee hereby acknowledges receipt of a check or checks for all compensation owing to him, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from Employer.

2. Severance. Within ten (10) days following Employee's signing, delivering to the City Council, and not revoking this Agreement, City shall pay

Employee the gross amount provided for in Section 7 A of the attached Employment Agreement, less applicable deductions, and shall provide the months of medical benefits as provided in that same Section 7 A ("Severance"). Employee acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by Employer.

3. General Release. In consideration of the Severance to be paid and provided to Employee, and other good and valuable consideration, Employee hereby releases and discharges Employer and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment with Employer which he now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Employee hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Employee understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or his favor at the time of executing the release, which if known by him or his must have materially affected his or his settlement with the debtor."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of Employer and its past and present City Council Members, employees, representatives and agents, Employee expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Employee further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

4. Fees and Costs. Employee and Employer agree that in the event of litigation relating to this General Release Agreement, the prevailing party shall be entitled to recover her/its reasonable attorneys' fees and costs.

EMPLOYER:
CITY OF MERCED
A California Charter Municipal Corporation

EMPLOYEE:

BY: _____
Mayor

BY: _____

(Print Name)

ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

EXHIBIT B
CITY ATTORNEY WAGE SUMMARY
EFFECTIVE PP25 – 12/5/2023

Grade 928	\$242,718.53	Annual
	\$20,226.54	Monthly
	\$7,281.56	Annual Premium