

**AT-WILL INTERIM CITY MANAGER  
EMPLOYMENT AGREEMENT**

THIS AT-WILL INTERIM CITY MANAGER EMPLOYMENT AGREEMENT is by and between the City of Merced, a California Charter Municipal Corporation, hereinafter referred to as “City,” and John M. Bramble, hereinafter referred to as “Employee,” and collectively the “Parties” is entered into on this \_\_\_\_ day of December, 2015.

**RECITALS**

WHEREAS, the City’s City Manager position is a regular position that will be vacant on December 6, 2015, and for which the City is actively conducting a recruitment for a permanent appointment; and

WHEREAS, during this recruitment period, the City will have an immediate need for an employee to perform the duties of the position of City Manager, which is a position that is critically necessary to the on-going functions of the City and requires highly-specialized senior management and leadership skills; and

WHEREAS, the City desires to employ Employee as a temporary, at-will Interim City Manager of the City of Merced while the City conducts and finalizes the recruitment for a permanent City Manager; and

WHEREAS, Employee is competent and qualified to perform the services required by this Agreement and Employee desires to perform and assume responsibility for the provision of professional services to the City temporarily as the Interim City Manager; and

WHEREAS, the City anticipates that the City Manager position will be filled with a permanent replacement within 90 days; and

WHEREAS, Employee’s employment is authorized by Government Code section 21221(h), which allows CalPERS retired annuitants to be employed without reinstatement from retirement and before the expiration of the 180-day waiting period on an interim basis to fill a vacant position while the recruitment for a permanent placement is being conducted; and

WHEREAS, the Mayor and City Council wishes to establish the terms and conditions of Employee's temporary employment as Interim City Manager by way of this Agreement.

NOW, THEREFORE, the Parties do mutually agree as follows:

**1. DUTIES.**

1.1 Duties.

City hereby agrees to temporarily employ Employee as an At Will, Interim City Manager of the City of Merced to temporarily perform the functions and duties of the City Manager as specified in the Charter, Ordinances and Resolutions of the City, and to perform such other legally permissible and proper duties and functions as the Mayor and City Council shall from time to time assign.

1.2 Conflicts Prohibited.

During the term of this Agreement, Employee will not acquire or maintain any direct or indirect financial interest or engage in any business transaction which conflicts in any manner or degree with his performance of his duties and obligations pursuant to this Agreement.

**2. TERM.**

2.1 Term.

The term of this Agreement shall commence on December 14, 2015, and shall automatically terminate on February 5, 2016, unless earlier terminated prior to this date by either party (hereafter "Term"). If the City Council appoints a permanent City Manager before February 5, 2016, Employee's services and this Agreement shall terminate on such date determined by the City Council and communicated to Employee in writing.

2.2 Employment Status.

Employee is aware that his employment is At-Will, and that his employment under this Agreement can be terminated at any time with or without cause or notice. Employee understands and agrees that the terms of his employment are

governed only by this Agreement and that he will not acquire a property interest in his employment pursuant to this Agreement.

2.3 Termination by City and Employee.

The City Council may terminate this Agreement at any time with or without cause. Employee may also terminate this Agreement at any time with or without cause, however, it is requested that Employee provide the City Council with at least two (2) weeks advanced written notice before the effective date of his termination, unless a shorter time is acceptable to the Council.

2.4 No Reappointment.

Employee shall not be eligible to be reappointed to this position following the expiration of this Agreement.

**3. COMPENSATION.**

3.1 Compensation.

Employee shall be paid at the hourly rate of \$84.1764 for each hour worked under this Agreement. In accordance with Government Code section 21221(h), this hourly rate was computed by taking the monthly salary of the City Manager and dividing it by 173.333. This hourly rate is not less than the minimum, nor in excess of the maximum paid by the City to other employees performing comparable duties as listed on a publically available pay schedule for the City manager position. Employee will be paid on regularly scheduled City payroll dates and the hourly pay shall be subject to any applicable payroll taxes and withholdings.

Employee shall not receive any benefits, incentives, compensation in lieu of benefits, paid time off or any other form of compensation other than his hourly rate of pay for hours worked. Specifically, Employee understands that he is not entitled to benefits provided to regular status City employees such as retirement benefits or contributions, medical, dental, vision, life or disability insurance, paid sick leave, paid vacation, paid holidays or any other paid or unpaid leave or severance pay. Employee will be covered by the City's Worker's Compensation Insurance.

### 3.2 Exempt Position and 960 Hour Limitation.

This position is exempt from the Fair Labor Standards Act overtime pay requirements. It is expected that this temporary position will average approximately 40 hours a week, with Employee's working hours coinciding with the City's regular business hours, plus evening hours on an as needed basis to attend City Council meetings and other evening events which require the attendance of the Interim City Manager. As a CalPERS retiree, Employee is allowed to work no more than 960 hours per fiscal year for any public employers. Pursuant to Government Code sections 7522.56(d) and 21221(h), all hours worked by Employee for the City will count toward the 960-hour fiscal year limitation. Accordingly, all hours worked by Employee must be reported to the City so that the hours may in turn be reported to CalPERS.

### 3.3 Reimbursable Expenses.

Employee shall be reimbursed by City in accordance with the City's travel policy (and state and federal law) for all authorized and necessary travel undertaken by Employee in the performance of his duties under this Agreement.

### 3.4 No Unemployment Benefits Received by Employee

Employee certifies and warrants that within the preceding twelve (12) months, he has not received any unemployment insurance payments for retired annuitant work for any public employer.

## **4. GENERAL PROVISIONS**

### 4.1 Indemnification.

The City shall defend, hold harmless and indemnify Employee against any tort, professional liability, claim or demand or other legal action arising out of an alleged act or omission occurring within the course or scope of Employee's services under this Agreement. This provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside of the course and scope of his employment.

4.2 Non-Assignment of Agreement.

This Agreement is not assignable by either the City or Employee.

4.3 Entire Agreement.

This Agreement constitutes the entire agreement and understanding of the parties and contains all of the covenants and agreements between the parties with respect to such employment. This Agreement supersedes any and all prior or contemporaneous contracts, agreements, negotiations, or understandings, either oral or in writing, between the parties.

4.4 Amendment.

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

4.5 Severability.

If any provision of this Agreement, or portion thereof is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force or effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

4.6 Venue.

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

4.7 Counterparts.

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

4.8 Interpretation.

This Agreement shall not be construed against any one party but shall be construed as if jointly prepared by the Parties.

4.9 Effect of Waiver.

The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power.

4.10 Employee's CalPERS Retirement Benefits

Employee acknowledges that in entering into this Agreement, he has made no reliance on any representations from the City or any of its employees regarding the impact that this Agreement has or will have on his CalPERS retirement benefits, status and/or obligations. That being true, Employee releases the City from any and all CalPERS related claims or liabilities that may arise due to his employment as Interim City Manager pursuant to this Agreement.

4.11 Effective Date.

This Agreement shall not become effective until it has been approved by the City Council and signed by the Mayor and Employee.

**5. NOTICES.**

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

To City: Mayor  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340

To Employee: John M. Bramble  
Interim City Manager  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by the Assistant City Clerk, and executed by the Employee on the date first above written.

**CITY OF MERCED**


BY: \_\_\_\_\_  
Mayor

**EMPLOYEE:**

  
John M. Bramble

**ATTEST:**

BY: \_\_\_\_\_  
Assistant City Clerk

215169  
 12-2-15  
\_\_\_\_\_  
Finance Officer Date.

**APPROVED AS TO FORM:**

BY:  12/1/15  
City Attorney Date

Funds Avail cdk AT 12/2/15  
001-0201-511-03-00  
\$29,100 AT