

CITY OF MERCED
INTERIM 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 BRIAN DOYLE ("Employee") an individual, (sometimes collectively "the Parties").

RECITALS

A. City is a California Charter 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 Merced City Charter.

B. The Merced City Council conducted an extensive recruitment process for the Interim 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 Interim 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 June 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 six (6) months from the Effective Date and may be extended for an additional term of up to three (3) months as determined by mutual written agreement between the parties. Two (2) months prior to the expiration of this Agreement, the parties agree that they shall meet to discuss the renewal of the Agreement and Employer shall at that time, or within a reasonable time thereafter, notify Employee of its determination in that regard.

SECTION 2. DUTIES AND AUTHORITY. Employer agrees to employ

Employee as Interim 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.

A. Employer agrees to pay Employee a base monthly salary of Nineteen Thousand Four Dollars and eighty cents (\$19,004.80), which is based upon an annual base salary of Two Hundred Twenty-Eight Thousand Fifty-Seven Dollars and Sixty-Five Cents (\$228,057.65), 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.

B. In addition to the base monthly salary, Employer agrees to pay Employee an Essential Worker Premium Pay at the rate of Two Dollars and Nineteen Cents (\$2.19) per hour, subject to deduction and withholding of any and all sums required for federal or state income tax 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.

SECTION 4. EMPLOYEE BENEFITS.

A. Administrative Leave, Vacation Leave and Sick Leave.

1. Employee shall earn forty-eight (48) hours of administrative leave during the term of this Agreement. 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 the date this Agreement terminates January of the subsequent year shall be lost and not reimbursed to Employee.

2. Vacation Leave shall accrue at 6.160 hours per pay period with a maximum accrual of 320 hours. Sick leave shall accrue at 3.696 hours per pay period with a maximum accrual of 1056 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. In lieu of participation in the family health insurance benefits provided by the City including, but not limited to, medical, dental, and vision, Employee elects to receive as additional compensation the amount of Eight Hundred Sixty Dollars and Forty-Four Cents (\$860.44) bi-weekly, which is the current City contribution for family health insurance and related benefits. This payment in lieu of participation in the family medical provided by the City shall not be eligible for CalPERS salary calculation.

C. Cellphone and Laptop. Employee shall be entitled to the same benefits regarding the provision of a cellphone and laptop or reimbursement for cellphone and laptop 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 2019-73, as amended annually by the Finance Officer based upon the Internal Revenue Service's mileage rate.

E. Travel Expenses. Employer shall pay Employee a travel allowance in accordance with the Employer's Travel Policy when Employee is traveling to and working in Merced. Additionally, Employer shall pay up to three (3) nights per week for overnight accommodations at the El Capitan Hotel.

F. 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.

G. 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 (62) for PEPRA members of CalPERS. Employee shall be required to pay the full employee member contribution of Employee's retirement costs, currently 6.25% and subject to change based on CalPERS requirements.

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. 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, in accordance with established City travel policies, for travel and training expenses to attend the annual League of California Cities Conference in September 2023.

C. The expenses to be budgeted and paid in the Section 5, Paragraph A 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, by providing written notice of termination to Employee. 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.

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. 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, a minimum of two (2) days per week, during normal business hours.

SECTION 8. 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 8 shall survive the termination of this Agreement.

SECTION 9. 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.

SECTION 10. 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 11. 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 12. 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:
Brian Doyle
(at the home address then shown 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 13. 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 himself 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 Serrato, Mayor

BY: _____
Brian Doyle

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ATTEST:
CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: K. Flores 5/25/23
Contract City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer