

CITY OF MERCED

CITY ATTORNEY EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2018 by and between the CITY OF MERCED, a California municipal corporation and Charter City ("Employer" or "City") and PHAEDRA A. NORTON ("Employee") an individual, (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 City Attorney position, and after carefully evaluating Employee's knowledge, skills, and experience, as well as her administrative skills and abilities, it now 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 _____, 2018 ("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 agreement in writing between the parties. Six (6) 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 their determination in that regard. 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, Four Thousand, Six Hundred Dollars (\$204,600.00), 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. The annual base salary of Employee shall be established by resolution of the City Council. Employee will receive an annual cost-of-living adjustment (COLA) to her salary on the first pay period of the calendar year commencing in 2020, of the actual COLA, but no greater than two and a half percent (2.5%). The COLA will be based on the California CPI for Urban Wage Earners and Clerical Workers for the 12 months between December and December as calculated by the Department of Industrial Relations as authorized by Government Code section 3511.1 and 3511.2.

This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the base salary of Executive Management Employees

or the manner (but not the amount) by which Executive Management Employees are paid.

B. 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.

1. Upon commencing employment with the City, Employee shall be credited with ninety-six (96) hours of administrative leave. Thereafter, commencing on January 1st of each year Employee shall be credited with an additional 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, except that unused administrative leave credited for the 2018 calendar year shall be carried over to the 2019 calendar year. In lieu of time-off, Employee may opt to be paid for the administrative leave in December of the year earned, except for the 2018 calendar year. Administrative leave not paid or taken by December of the year earned shall be lost and not reimbursed to Employee.

2. Upon commencement of employment, Employee shall be credited with an initial bank of 96 hours of vacation time ("initial bank"). Thereafter, Employee's vacation leave shall accrue at 6.160 hours per pay period with a maximum accrual of 320 hours. Annual vacation leave shall be accrued and administered in the same manner as vacation leave is administered for Executive Management Employees.

3. Upon commencement of employment, Employee shall be credited with an initial bank of 96 hours of sick leave. Thereafter, sick leave

shall accrue at 3.696 hours per pay period with a maximum accrual of 1056 hours. Annual sick leave shall be accrued and administered in the same manner as sick leave is administered for Executive Management Employees.

B. Additional Benefits. Except as expressly provided herein, Employee shall receive the same health, dental and vision insurance, CALPERS 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 the City's 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. Employee shall be entitled to the same benefits regarding the provision of a cell phone or reimbursement for cell phone expenses relating to business usage as provided to Executive Management members.

D. Car Allowance. Employee shall be entitled to the same benefits regarding the provision of a car as provided to Executive Management members 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.

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 for expenses incurred in her attending a reasonable number of League of Cities conferences or other similar professional conferences relevant to the performance of her duties, as well as her annual dues to the California State Bar.

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 or attend.

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 her employment with Employer, subject only to Employee's providing sixty (60) calendar days prior written notice to Employer of the effective date of her 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 five (5) 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 her then applicable base salary, 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 five (5) 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.
7. Disciplinary action by the State Bar of California which results in suspension and/or revocation of Employee's license to practice law in the State of California.

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 her full energies, interest, abilities and productive time to the performance of this Agreement and utilize her 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 evening 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 her 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 her duties and responsibilities to Employer.

SECTION 11: Indemnification

A. 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.

B. 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 her 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:

(1) **EMPLOYER:**

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

(2) **EMPLOYEE:**

Phaedra A. Norton
Home address on file 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, her employment is subject to Employer's generally applicable rules and policies pertaining to employment matters as they currently or may in the future exist, and her employment is, and will continue to be, at the will and pleasure 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 she has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that she 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 she 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 Municipal Corporation

By _____

Date: _____

EMPLOYEE:

PHAEDRA A. NORTON

By Phaedra A Norton

Date: 9-25-18

APPROVED AS TO FORM:

By K Flores 9/26/18
City Attorney Date

ATTEST:

By _____
City Clerk Date