

RESOLUTION NO. 2022 – 199

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, APPOINTING BARRY SCHULTZ AS CITY ATTORNEY AND AUTHORIZING THE MAYOR TO EXECUTE A THREE (3) YEAR EMPLOYMENT AGREEMENT BETWEEN THE CITY OF NATIONAL CITY AND BARRY SCHULTZ WITH THE EFFECTIVE DATE OF JANUARY 1, 2023

WHEREAS, Barry J. Schultz was working in the capacity of City Attorney and was selected as City Attorney for the City of National City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of National City as follows:

SECTION 1. Barry J. Schultz is hereby appointed to the position of City Attorney for the City of National City effective January 1, 2023.

SECTION 2. In consideration of Mr. Schultz's acceptance of the appointments made hereinabove, the City Council hereby approves the following employment terms and conditions:

A. Commencement of Employment

January 1, 2023 is hereby designated as the date of commencement of Mr. Schultz's duties to serve as City Attorney.

B. Salary / Compensation

The base salary to be paid to Mr. Schultz for his services as City Attorney, shall be \$212,256.00 annually with a 3% annual increase after year 1 and 2 upon satisfactory annual evaluations, annual payment of \$7,500 for Deferred Compensation, \$750.00 per month for vehicle allowance payable in accordance with the City's customary payroll practices.

C. Benefits

In addition to base salary, Mr. Schultz shall receive such other benefits as are provided to City Council-Appointed Officers of the City, including holidays, vacation leave, executive leave, sick leave, and insurance and retirement benefits.

SECTION 3. The Mayor is hereby authorized to execute an Employment Agreement between the City and Barry J. Schultz with an initial term of three (3) years. Said Agreement is on file in the Office of the City Clerk.

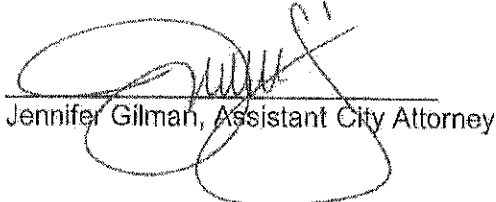
PASSED and ADOPTED this 6th day of December, 2022


Alejandra Sotelo-Solis, Mayor

ATTEST:


Luz Molina, City Clerk

APPROVED AS TO FORM:


Jennifer Gilman, Assistant City Attorney

Passed and adopted by the City Council of the City of National City, California, on December 6, 2022 by the following vote, to-wit:

Ayes: Sotelo-Solis, Bush, Morrison, Rios, Rodriguez

Nays: None.

Absent: None.

Abstain: None.

AUTHENTICATED BY: ALEJANDRA SOTELO-SOLIS
Mayor of the City of National City, California



Luz Molina
City Clerk of the City of National City, California

BY: *Shelley Chapel*
for Shelley Chapel, MMC, Deputy City Clerk

[To be read aloud prior to Adoption of Resolution Approving Employment Agreement]

**Report Out of Salary and Benefits of City Attorney
Government Code Section 54953 (c)(3)**

The following is a summary of the salary and benefits to be received by the City Attorney:

- Three-year contract effective January 1, 2023
- \$212,256.00 annual salary
- 3% annual increase after years 1 and 2 upon satisfactory annual evaluation from the City Council.
- Deferred Compensation of \$7,500 annual.
- \$750.00 per month for Vehicle Allowance.
- The employee shall accrue holiday, sick and vacation leave and other paid leave on an annual basis at the rate provided to Executive employees.
- Employee life insurance of \$150,000.
- Availability of Health and Dental Insurance.
- Participation in CalPERS Retirement System.

**EMPLOYMENT AGREEMENT
CITY ATTORNEY
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EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this 6th day of December, 2022, by and between the City of National City, a municipal corporation, (hereinafter called "Employer") and Barry J. Schultz (hereinafter called "Employee") an individual who has education, training and experience in legal issues involving local government, and who is a member in good standing of the State Bar of California, both of whom agree as follows:

Section 1 Term.

This Agreement shall remain in full force in effect for a period of three (3) years from January 1, 2023, through December 31, 2026, unless sooner terminated by the Employer or Employee as provided in Section 9, 10 or 11 of this Agreement.

The term of this Agreement may be extended for an additional two (2) years upon mutual agreement of the Parties in writing.

Section 2 Duties and Authority.

Employer agrees to employ Barry J. Schultz, as City Attorney, on an at-will basis, to perform the functions and duties specified in the National City Municipal Code and the California Government Code, and to perform other legally permissible and proper duties and functions, commencing on January 1, 2023.

Section 3 Compensation.

A. Base Salary: Employer agrees to pay Employee an annual base salary of Two Hundred and Twelve Thousand Two Hundred and Fifty-Six Dollars (\$212,256.00), payable in installments at the same time that the other executive employees of the Employer are paid. Employer agrees to pay Employee a 3% annual increase after year 1 and 2 upon satisfactory annual reviews.

B. This Agreement shall be re-opened to discuss compensation and benefits if, and at the time, managers or executives receive any increase in compensation or benefits.

C. Beginning January 1, 2024 consideration shall be given on an annual basis to increase salary, based upon increases in the Consumer Price Index ("CPI"), as that term is defined at Government Code section 3511.1(b). Any increase in salary shall be dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement.

D. Deferred Compensation: Employer shall provide seven-thousand five-hundred (\$7500) annually to Employee's selected deferred compensation plan. This payment shall be made each January in years 2024, 2025, and 2026.

Section 4 Health, Disability and Life Insurance Benefits.

A. The Employer agrees to provide Employee a cafeteria health benefit of \$1200.00 per month.

B. The Employer agrees to put into force and to make required premium payments for short term and long term disability coverage for the Employee.

C. The Employer shall pay the amount of premium due for term life insurance in the amount of \$150,000. The Employee shall name the beneficiary of the life insurance policy.

Section 5 Vacation, Sick and Military Leave.

A. The Employee shall accrue sick and vacation leave and other paid leave on an annual basis at the rate provided to Executive employees.

B. The Employee is entitled to accrue all unused vacation and sick leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all unused vacation and sick leave in accordance with the Employer's customary practice for Executive Employees.

C. The Employee shall be entitled to military reserve leave time pursuant to state law and City policy.

Section 6 Monthly Vehicle Allowance.

The Employer agrees to pay to the Employee, during term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$9000.00 per year, payable at \$750.00 per month, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater National City area. For purposes of this Section, use of the car within the greater National City area is defined as travel to locations within a 50 mile radius of the National City Civic Center.

Section 7 Retirement.

The Employer agrees to enroll the Employee into the Public Employees' Retirement System and to make all the appropriate contributions on the Employee's behalf, for the required Employer share. Employee shall pay the entire employee share, as determined by CalPERS.

Section 8 General Business Expenses.

1. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the League of California Cities, and such other national, regional, state and local governmental groups and committees in which Employee services as a member.

3. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for the Employee's professional development and for the good of the Employer.

4. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. The

Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

5. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

6. The Employer shall provide Employee with a computer, software, fax/modem, and cell phone required for the Employee to perform the job and to maintain communication.

Section 9 Termination.

For the purpose of this Agreement, termination shall occur when:

1. The majority of the Employer's City Council votes to terminate the Employee at a duly authorized public meeting.

2. If the Employer, citizens or legislature acts to amend any provisions of the state or local law pertaining to the role, powers, duties, authority, and responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

3. If the Employer reduces the base salary, compensation or any other financial benefits of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.

4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of suggestion.

5. Breach of contract declared by either party with a 30 day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

Section 10 Severance.

The Employee is an at-will employee, serving at the pleasure of the Employer's City Council. This Agreement, and the Employee's employment with the Employer, may be terminated with or without cause by the Employer's City Council. In the event the Employee is terminated for cause, or voluntarily resigns his position with the Employer, then the Employee shall not be entitled to the payment of Severance by the Employer.

In the event the Employee is terminated by the Employer other than for cause, and during such time that Employee is willing and able to perform his duties under this Agreement, then Employer agrees to pay Severance equal to one year's base salary at the current rate of pay. This Severance shall be paid in one lump sum unless otherwise agreed to by the Employer and the Employee. This severance shall include the Employee's continued participation in the Employer's health care plan for a period of one year after his separation from City Employment. The value of the City's contribution to the cost of health care shall not exceed the established contribution for Executive employees as of the date of the Employee's separation.

In the event of Severance, the Employee shall also be compensated for all accrued sick and vacation leave.

If the Employee is terminated because of a conviction of a felony, then the Employer is not obligated to pay Severance under this section. If the Employee is convicted of a crime involving an abuse of office or position, then regardless of the term of the contract, if the

Employee is terminated, any cash settlement, including severance, related to the termination received by Employee from Employer shall be fully reimbursed to the Employer.

Section 11 Resignation.

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of thirty (30) days' notice unless the parties agree otherwise.

Section 12 Performance Evaluation.

Employer may annually review the performance of the Employee in the Employee's anniversary month subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum may include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the evaluation meeting.

Section 13 Hours of Work.

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule, compatible with the normal business hours of the City of National City.

Section 14 Outside Activities.

A. Disclosure and Acknowledgement: Employee has disclosed and acknowledged the following outside activities: board member of California Southern Small Business Development Corporation, San Diego Parks Foundation and the Carmel Valley Community Planning Group. Should this present a conflict of interest or inability for the City Attorney to provide full service to the City, he will withdraw from such activities.

B. Notice and Consent: Employee shall give written notice to Council for Council's approval of any new outside activities of Employee.

Section 15 Indemnification.

In accordance with federal, state or local law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of the performance of Employee's duties as City Attorney, or resulting from the exercise of judgment or discretion in connection with the course and scope of performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. In such cases, the Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at the Employer's expense and the Employer may not unreasonably withhold approval. Legal representation provided by Employer for Employee shall extend until a final determination of the legal action, including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings, including attorney's fees and any other liabilities incurred by,

imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of or in connection with the performance of the Employee in the course and scope of her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes the Employer shall have the right to compromise and settle any claim or suit. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

If Employee is convicted of a crime involving an abuse of his office or position, as defined in Government Code section 53243.4, then Employee shall fully reimburse Employer for any funds provided for Employee's criminal defense, if any such funds were provided pursuant to or consistent with this Section. This paragraph shall not be construed as creating or implying an obligation by Employer to provide a criminal defense to Employee.

Section 16 Bonding.

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17 Other Terms and Conditions of Employment.

A. The Employer shall fix any such 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, the National City Municipal Code, or any other law.

B. Except as otherwise provide in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other appointed employees of the Employer as provided in the Municipal Code or by practice.

Section 18 Notices.

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

EMPLOYER: Mayor
City of National City
1243 National City Boulevard
National City, CA 91950-4301

EMPLOYEE: Barry J. Schultz
[At the address of the
Employee's principal
residence]

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19 General Provisions.

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. 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.

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. Effective Date. This Agreement shall become effective on January 1, 2023.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

E. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

F. Construction. The parties acknowledge and agree that (1) each party is of equal bargaining strength, (2) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (3) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (4) each party and such party's counsel and advisors have reviewed this Agreement, (5) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (6) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF NATIONAL CITY

EMPLOYEE

By: 

Ron Morrison, Mayor



Barry J. Schultz

APPROVED AS TO FORM:

CITY ATTORNEY PROPOSAL AND RESPONSE

Proposed Contract

Response

Term: three year

Term - Three year

Salary: \$212,256

Salary - \$212,256

3% annual salary adjustment with a satisfactory performance

3% annual salary adjustment with satisfactory performance

Holiday Leave as provided to Exec. Emps.

Holidays Leave as provided to Exec. Emps.

Admin. Leave as provided to Exec. Emps.

Admin. Leave as provided to Exec. Emps.

Vacation Accrual as provided to Exec. Emps.

Vacation Accrual as provided to Exec. Emps.

Employee Life Insurance \$150,000

Employee Life Insurance \$150,000

Health Benefits – Based on cafeteria plan for Exec.

Health Benefits – Based on cafeteria plan for Exec.

Severance pay – Bs per contract

Severance pay - As per contract

Vehicle allowance - \$750/monthly

Vehicle allowance - \$750/monthly

Participation in CalPers Retirement

Participation in CalPers Retirement

General Business Expenses per contract

General Business Expenses per contract

Deferred Compensation - \$7,500 annually

Deferred Compensation - \$7,500 annually

Performance Evaluation: contract proposes that the process, form, criteria and format for evaluation be mutually agreed to between Council and City Attorney.

Annual Goal Setting: propose that the Council and City Attorney on an annual basis define goals and performance objectives consistent with City Council's policy objectives.

Community Engagement: Attend quarterly Community Breakfast Meetings. Continue office participation in Diversity Fellowship program and participation in Mock Trial program.

Outside Activities: I am currently a board member for California Southern Business Development Corporation, San Diego Parks Foundation and the Carmel Small Business Planning Group. Should this present a conflict of interest or inability for the City Attorney to provide full service to the City, he will withdraw from such activities.