AT-WILL EMPLOYMENT AGREEMENT

THIS AT-WILL EMPLOYMENT AGREEMENT ("Agreement") is made and entered into the 2nd day of May, 2014, between the CITY OF FRESNO, State of California, a municipal corporation, ("**City**"), and Manuel A. Mollinedo, ("**Employee**"), both of whom agree as follows:

RECITALS

A. The City Manager of the City of Fresno ("**Manager**") desires to employ the services of **Employee** as Director of Parks, After School, Recreation, and Community Services ("Director of PARCS") for the City as authorized in Article VII of the Charter of City of Fresno ("Charter").

B. It is the desire of the **Manager** to secure and retain the services of **Employee** and to provide inducement for him to remain in such employment.

C. It is also the desire of the **Manager** to provide terms and conditions of **Employee**'s employment on an at-will basis, and set the working conditions of **Employee**.

D. The term of this Agreement commences June 2, 2014, and shall continue until the **Manager** decides to terminate employment, or upon **Employee**'s resignation, or by mutual consent.

E. **Employee** desires to accept employment as Director of PARCS of the City on the terms and conditions set forth in this Agreement.

In consideration of the above recitals and the mutual promises, covenants, and conditions in this Agreement, the parties agree as follows:

SECTION 1. AT-WILL EMPLOYMENT STATUS

A. **Employee's** employment with the **City** is employment at the sole will, discretion, and pleasure of the **Manager**. The **Manager** may remove the **Employee** at any time, with or without cause. Nothing in this Agreement or in any other document shall limit the right of **Employee** or the **Manager** to terminate the at-will employment relationship.

B. **Employee**'s employment status with the **City** shall remain at-will as defined by California law regardless of the length of employment or representation(s) of continued employment by any agent or employee of the **City**.

SECTION 2. DUTIES AND TERM

A. **Employee** shall professionally perform the functions and duties of the Director of PARCS as specified in the Charter, Fresno Municipal Code, other ordinances, and resolutions of the **City,** and perform other legally permissible and proper duties and functions

as the **Manager** shall assign, including appointment, training, evaluation, suspension or removal of subordinate employees as set forth in Charter Article VIII, Section 806.

B. The terms of this Agreement shall commence on June 2, 2014, and continue until the **Manager** decides to terminate **Employee's** employment, upon **Employee's** resignation, or by mutual consent of the parties.

C. **Employee** agrees to abide by all **City** rules, policies, practices, and procedures in the performance of his duties.

D. **Employee** shall work a regular director work schedule, as determined by **Manager**.

SECTION 3. SALARY AND BENEFITS

A. The Council of the City of Fresno has adopted Fiscal Year 2014 Salary Resolution No. 2013-101, which provides a salary range for the position of Director of PARCS. The salary set forth herein, is within the range provided in Resolution No. 2013-101.

B. In consideration for **Employee**'s performance of his duties under this Agreement, **City** shall pay **Employee** an annual base salary of one hundred forty-seven thousand dollars ($147,000), payable in installments as other employees of the **City** are paid, and in accordance with applicable law, rules, and other regulations, such as the City Salary Resolution. Should the **City** implement a wage reduction for all Non-Represented Management-Confidential employees during the life of this Agreement, **Employee**'s base pay will be reduced by the same percentage (i.e., City-wide employee application).

C. **City** shall provide **Employee** use of a **City** issued a laptop computer and cell phone, for business use.

D. **City** shall pay **Employee** a monthly vehicle allowance of three hundred dollars ($300.00). All costs of operation of the vehicle for the **Employee**, including but not limited to, fuel, maintenance, and insurance, shall be borne by **Employee.**

E. **Employee** may participate in the **City**'s deferred compensation plan through voluntary payroll deductions.

F. **City** shall pay **Employee** a relocation and transitional housing allowing of a lump-sum total of seven thousand, five hundred dollars ($7,500.00), payable in the **Employee's** first paycheck to cover any and all moving expenses and pre-move visits to Fresno.

G. Except as may be specifically set forth in this Agreement, all provisions of the Fresno Municipal Code, the City of Fresno Administrative Manual, resolutions and official policies of the **City** relating to annual leave, vacation, sick leave, holidays, health insurance, long term disability insurance, retirement and other fringe benefits generally applicable to Non-Represented Management-Confidential **Employees** of the **City** shall also apply to **Employee** when and as he becomes eligible for them. In addition, **Employee** shall be

granted a starting balance of 100 hours of Annual Leave at the commencement of his employment. **City** reserves the right to modify, suspend or discontinue any and all of the above benefits at any time without notice to or recourse by **Employee** as long as such action is taken with respect to all Non-Represented Management-Confidential Employees in the City (i.e., City-wide employee application). Nothing in this Agreement shall be construed as requiring **City** to establish or continue any particular plans in the discharge of its obligations under this Agreement.

H. **Employee** shall generally be entitled to annual performance evaluations and review of compensation; however, failure to evaluate **Employee** on an annual basis shall not be considered a breach of this Agreement.

SECTION 4. TERMINATION AND SEVERANCE PAY

A. **Employee**'s employment shall be subject to the absolute and sole discretion of the **Manager**. **Employee** may be removed from his position as Director of PARCS and his employment terminated at the will of the **Manager** at any time for any reason whatsoever or for no reason at all, as provided in Section 1 of this Agreement. Should **Employee** elect to resign, he shall provide the **Manager** with 30 days written notice.

B. In the event the **Manager** terminates **Employee's** employment with the City, **Employee** shall be paid severance pay in an amount equal to six (6) months of his base salary. Severance pay shall not be utilized for purposes of retirement credit and no additional benefits (e.g., sick leave, vacation, or administrative leave) will accrue or be owed during the six (6) month severance period.

C. This Agreement shall terminate immediately and **City** shall not be obligated to make any severance payment upon the occurrence of any one of the following events:

(1) Upon the death of **Employee;**
(2) Upon determination that **Employee** is unable to perform the essential functions of his position with or without a reasonable accommodation, due to a mental, physical or other illness or disability lasting a period of six (6) months or longer;
(3) In the event **Employee** is terminated because of serious misconduct or malfeasance, which the **Manager** determines is related to the effective performance of **Employee's** official duties;
(4) Upon six (6) months written notice by the **Manager** to terminate the Agreement; or
(5) Upon **Employee's** 30 days written notice to **Manager** of his intent to resign employment.

SECTION 5. PROFESSIONAL DEVELOPMENT

A. **City** shall budget and pay for **Employee**'s attendance at one professional organization conference per year, which may include attendance at a California League of Cities Conference. Attendance at additional professional conferences, classes, or meetings may be approved in advance by the **Manager**, subject to budgetary constraints.

B. **City** shall pay for the travel and subsistence expenses of the **Employee** for official travel, meetings, short courses, institutes, seminars, and occasions reasonably necessary to continue the professional development of **Employee** and to reasonably pursue necessary official and other functions of the **City**, subject to budgetary constraints.

SECTION 6. ARBITRATION OF DISPUTE

A. In the event of any dispute involving any provision of this Agreement, or any dispute regarding **Employee**'s employment with the **City** or termination from the **City** (with the exception of claims for workers' compensation, unemployment insurance and any matter within the original jurisdiction of the California Labor Commissioner), including, but not limited to, a claim of constructive discharge, retaliation, wrongful termination, discrimination, or harassment, **Employee** and the **City** agree to submit any such dispute to non-binding arbitration, pursuant to the provisions of the California Code of Civil Procedure, commencing at Sections 1280 et seq. (or any successor or replacement statutes).

B. **Employee** shall have the opportunity to seek all relief that would otherwise be available in law or equity.

C. The arbitration provision shall not relieve **Employee** of his obligation to timely pursue an administrative or governmental tort claim within the jurisdiction of any administrative or public agency (e.g., the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, the City of Fresno, etc.) before asserting any such claim against the **City**.

D. If **Employee** and the **City** are unable to agree on the selection of a neutral arbitrator, the **City** at its discretion and cost, shall obtain a list of at least three arbitrators from the State Mediation and Conciliation Service or American Arbitration Association. **Employee** (first) and then the **City,** will alternately strike names from the list until only one (1) name remains; the remaining person shall be the arbitrator. Arbitration proceedings shall be held in California at a location mutually convenient to the **Employee** and the **City**, but not outside of Fresno County unless mutually agreed to by the **Employee** and the **City**.

E. **Employee** and the **City** agree that each party shall be entitled to pursue discovery, including written discovery and depositions, which is sufficient to adequately arbitrate their claims. However, absent consent from the arbitrator for good cause shown, discovery initiated by each party shall not exceed three (3) depositions, 35 interrogatories, 35 requests for production and 35 requests for admissions, save and except requests to authenticate any document. The arbitrator shall hear and resolve any discovery disputes between the parties, and is empowered to award discovery sanctions pursuant to the California Code of Civil Procedure.

F. Following a hearing conducted by the arbitrator, in a manner mutually agreed to by the parties or as determined by the arbitrator, the arbitrator shall issue a written opinion and award, if applicable, which shall be signed and dated. The arbitrator shall be permitted to award only those remedies in law or equity which are requested by the parties and which the arbitrator determines to be supported by credible, relevant evidence.

G. The arbitrator's opinion will be subject to judicial enforcement or review pursuant to California Code of Civil Procedure Sections 1285 et seq.

H. Except as provided by statute, **Employee** and the **City** shall each bear their own costs incurred for legal representation as part of any such arbitration. The **City** shall bear all reasonable costs of the arbitrator, court reporter, if any, and any related costs of arbitration, except to the extent that **Employee** would have been required to pay such costs (e.g., filing fees, court reporting fees at deposition and at trial, or discovery sanctions) if said claim were to be litigated in a court of law.

I. **Employee** and the **City** hereby agree that this Section 6 shall survive the termination of **Employee**'s employment and shall survive the termination and/or expiration of this Agreement.

J. The failure or delay of **City** at any time or times to require performance of, or to exercise any of its power, rights or remedies with respect to any term or provision of this Agreement or any other aspect of **Employee's** conduct or employment in no manner (except as otherwise expressly provided herein) shall affect **City's** right at a later time to enforce any such term or provision.

SECTION 7. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, first class mail postage pre-paid, addressed as follows:

If to the **City**:	Bruce Rudd City Manager 2600 Fresno Street Fresno, CA 93721-3600
If to the **Employee**:	Manuel Mollinedo 2600 Fresno Street Fresno, CA 93721-3600; or **Employee's** residence identified in City personnel records

Alternatively, any notice required pursuant to this Agreement may be personally served in the manner as 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 United States mail.

SECTION 8. GENERAL PROVISIONS

A. This Agreement shall constitute the entire Agreement between the parties as to the subject matter herein and supersedes all other prior agreements, representations, arrangements or understandings, oral or written.

B. This Agreement may not be altered, amended, modified, or otherwise changed, except by a writing signed by the duly authorized representatives of the parties to this Agreement.

C. This Agreement is for the personal services of **Employee**, and he may not assign any of his rights, powers, duties, or obligations under this Agreement.

D. The **City** reserves the right to revise, modify, delete, or add to any and all policies, procedures, work rules, benefits, and the personnel manual or in any other document, except for the policy of at-will employment. However, any such changes will be in writing and will be approved by the **City**.

E. If any provision or other portion of this Agreement is held unconstitutional, invalid, or unenforceable the remainder of this Agreement or portion hereof shall be deemed severable, shall not be affected by the unconstitutional, invalid, or unenforceable provision or portion, and shall remain in full force and effect.

F. Personal and subject matter jurisdiction and venue for any controversy or claim arising out of or relating to this Agreement shall be in the California Superior Court in and for the County of Fresno, California, or in the discretion of the **City**, the United States District Court for the Eastern District of California.

G. The rights and obligations of the parties and all interpretations in performance of this Agreement shall be governed, construed, and enforced in all respects by the laws of the State of California.

H. **Employee** agrees and represents that prior to entering into this Agreement, he has had reasonable time and opportunity to consult with an attorney or representative of his choice concerning all terms and conditions of this Agreement. **Employee** also represents, he has carefully read and fully understands the meaning, intent, and consequences of this Agreement, and that he is competent to execute this Agreement, and freely and voluntarily enters into this Agreement without duress.

I. **Employee** further acknowledges that provisions of this Agreement may result in certain tax consequences. **Employee** represents and warrants that he has had the opportunity to independently seek any needed expert advice in this regard, and that he shall bear full and complete responsibility for any and all tax consequences hereunder.

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J. The failure or delay of **City** at any time or times to require performance of, or to exercise any of its power, rights or remedies with respect to any term or provision of this Agreement or any other aspect of **Employee's** conduct or employment in no manner (except as otherwise expressly provided herein) shall affect **City's** right at a later time to enforce any such term or provision.

IN WITNESS WHEREOF, the City of Fresno has caused this Agreement to be signed and executed in its behalf by the **Manager**, and **Employee** has signed and executed this Agreement on the date and year set forth below.

CITY OF FRESNO

By: _____
BRUCE RUDD
City Manager

Date: 5/19/14

EMPLOYEE

By: _____
MANUEL A. MOLLINEDO

Date: 5-19-14

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By: _____ 5/2/14
Tina R. Griffin
Supervising Deputy City Attorney