

## **AMENDED AT-WILL EMPLOYMENT AGREEMENT**

THIS AMENDED AGREEMENT is made and entered into the 11th day of July, 2016, between the CITY OF FRESNO, State of California, a municipal corporation, ("City"), and Richard Rasmussen, ("Employee"), both of whom agree as follows:

### **RECITALS**

A. The City Manager of the City of Fresno ("Manager") desires to continue to employ the services of Employee as Independent Reviewer for the City as provided in Article VII of the Charter of City of Fresno ("Charter").

B. It is the desire of the Manager to 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 certain benefits, establish certain terms and conditions of employment on an at-will basis, and set the working conditions of Employee.

D. The term of this Agreement commences July 11, 2016, and shall continue until the Manager decides to terminate employment, or upon Employee's resignation, or by mutual consent. All previous employment agreements between the City and Employee, including amendments thereto, are null and void.

E. Employee desires to accept the terms and conditions set forth in this Agreement.

THEREFORE, 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. No elected official, supervisor, employee, or agent of the City has any authority to enter into an agreement with Employee for employment for any specified period of time or to make an agreement for employment other than at-will. The parties agree the above Recitals are true.

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**

A. Employee shall professionally perform the functions and duties of the Independent Reviewer specified in the Charter and/or Fresno Municipal Code, and 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 section 806.

B. City and Employee agree that Employee will dedicate an average of 20 hours per week to the role and functions of Independent Reviewer for the City of Fresno. City understands that Employee will perform much of the duties from Employee's residence in Utah or other out-of-town locations. Employee will take reasonable efforts to make at least 18 visits to Fresno per year, including at least one per month, to perform on-site duties relating to the job. Such travel will be done at Employee's expense. The duration of such visits will typically span all or parts of two days, including Sundays.

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

### **SECTION 3. BASE SALARY AND OTHER ALLOWANCES**

A. The Council of the City of Fresno has adopted a Salary Resolution, which provides a salary range for the position of Independent Reviewer. The salary set forth herein, is within the range provided in the Salary Resolution.

B. In consideration for Employee's performance of his duties under this Agreement, City shall pay Employee a monthly base salary of \$6,700 per month, 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 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 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 reserves the right to modify, suspend or discontinue any and all of the benefits in this Agreement at any time. 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.

G. 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.

H. Employee shall be entitled to Annual Leave of 10 hours per month. Employee is not entitled to other leave allocations, including but not limited to holidays, supplemental sick or administrative leaves. Employee may cash out up to 50% of his existing Annual Leave balance as of the date of the first full payroll in July 1 of each fiscal year.

#### **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 Independent Reviewer 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.

B. In the event the Manager terminates Employee's employment with the City, Employee shall be paid severance pay in an amount equal to three months of base salary. In addition, all health and welfare benefits shall continue for three months, and the City shall pay the employer's contribution to maintain all health and welfare benefits for those three months. Severance pay shall not be utilized for purposes of retirement credit and no additional benefits (e.g., annual leave, vacation/sick leave, or administrative leave) will accrue or be owed during the three month severance period, except as stated herein. This paragraph shall not be interpreted to allow Employee to obtain dual payment of his base salary or other benefits during any time 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, or
- (2) Upon determination in accordance with all legal requirements 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 and it is medically determined that Employee is permanently disabled, or
- (3) In the event Employee is terminated because of serious misconduct or malfeasance, which the Manager determines is related to Employee's ability to effectively perform his official duties, or
- (4) Upon three months written notice by the Manager to terminate the Agreement; or
- (5) Upon Employee's resignation of employment.

D. Employee agrees and acknowledges that if this Agreement is terminated, any cash settlement related to the termination Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position, as defined in California Government Code §53243.4, which currently defines "abuse of office or position" as either: (1) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

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## **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 jurisdiction of the California Labor Commissioner), including, but not limited to, claims of wrongful termination such as retaliation in violation of public policy or constructive discharge, discrimination, retaliation 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 claim within the jurisdiction of any administrative agency (e.g., the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, 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 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 as allowed by the Code of Civil Procedure. 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 Code of Civil Procedure.

F. Following a hearing conducted by the arbitrator, in a manner mutually agreed to by the parties and/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 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 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.

## **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:	City Manager 2600 Fresno Street Fresno, CA 93721-3600
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If to the Employee:	Richard Rasmussen
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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.

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.

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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

EMPLOYEE

By:   
Bruce Rudd  
City Manager

By:   
Richard Rasmussen

Date: 7/18/16

Date: 7/18/16

APPROVED AS TO FORM:

DOUGLAS T. SLOAN  
City Attorney

By:   
TINA R. GRIFFIN  
Assistant City Attorney