# AMENDED AT-WILL EMPLOYMENT AGREEMENT

THIS AMENDED AT-WILL EMPLOYMENT AGREEMENT ("Agreement") is made and entered into the 11th day of January, 2016, between the CITY OF FRESNO, State of California, a municipal corporation, ("City"), and Ramona R. Smith, ("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 Assistant City Manager 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 retain the services of Employee and to provide inducement for her to remain in such employment.

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

D. The term of this Agreement commences January 11, 2016, and shall continue until the Manager decides to terminate employment, or upon Employee's resignation, or by mutual consent.

E. Employee desires to continue employment as Assistant City Manager of the City on 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.

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 Assistant City Manager 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 January 11, 2016, and continue until the Manager decides to terminate Employee's employment, upon Employee's resignation, or by mutual consent of the parties. All previous employment agreements, including amendments thereto, between the City and Employee are null and void.

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 a Salary Resolution which provides a salary range for the position of Assistant City Manager. The salary set forth herein is within the range provided in the Salary Resolution, and subject to future Salary Resolutions changes.

B. In consideration for Employee's performance of her duties under this Agreement, City shall pay Employee an annual base salary of one hundred ninety thousand dollars ($190,000.00), 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 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.

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 she becomes eligible for them. City reserves the right to modify, suspend or discontinue any and all of the benefits in this Agreement 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.

## 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 position as Assistant City Manager and 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, Employee 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 months of base salary. In addition, in the event of termination, all benefits under the City's Health and Welfare Trust for Employee shall continue for six months, and the City shall pay the employer's contribution to maintain all health and welfare benefits for those six months. 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 month severance period, with the exception of the health and welfare coverage set forth herein this subsection.

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 the 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, including but not limited to criminal conviction in office;
(4) Upon six months written notice by the Manager to terminate the Agreement; or
(5) Upon Employee's resignation or retirement from 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 her 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.

## SECTION 5. PROFESSIONAL DEVELOPMENT

A. City shall budget and pay for Employee's attendance at two professional organization conferences per year, which may include attendance at a California League of Cities Conference, which are necessary and desirable for Employee's continued professional participation, growth, or for the good of the City. 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.

C. City shall budget and pay the dues for Employee, which are reasonably and necessarily incurred for her full participation in one civic organization, subject to budgetary constraints.

D. City shall also budget and pay for the professional dues for one professional organization, which is necessary and desirable for Employee's continued professional participation, growth, or for the good 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 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:

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| If to the City: | Bruce Rudd<br>City Manager<br>2600 Fresno Street<br>Fresno, CA 93721-3600 |
| If to the Employee: | Ramona R. Smith<br>2600 Fresno Street<br>Fresno, CA 93721-3600; or<br>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 Employee may not assign any of 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, she has had reasonable time and opportunity to consult with an attorney or representative of choice concerning all terms and conditions of this Agreement. Employee also represents, she has carefully read and fully understands the meaning, intent, and consequences of this Agreement, and that she 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 she has had the opportunity to independently seek any needed expert advice in this regard, and that she 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.

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: 6/28/16

EMPLOYEE

By: _____
Ramona R. Smith

Date: 6/27/16

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By: _____
Tina R. Griffin
Assistant City Attorney