

AMENDED AT-WILL EMPLOYMENT AGREEMENT

THIS AMENDED AT-WILL EMPLOYMENT AGREEMENT ("Agreement") is made and effective January 11, 2017, between the CITY OF FRESNO ("City"), a municipal corporation, and JERRY P. DYER, ("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 Police Chief for the City of Fresno ("Police Chief") as authorized in Article VII, Section 705 of the Charter of the 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 Employee's employment on an at-will basis, and set the working conditions of Employee.

D. Employee desires to continue employment as Police Chief of City on the terms and conditions set forth in this Agreement.

E. The term of this Agreement shall continue until the Manager elects to terminate Employee's employment, or upon Employee's resignation, but in any event not later than October 16, 2019. All previous employment agreements between City and Employee, including amendments thereto are null and void.

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

SECTION 1. AT-WILL EMPLOYMENT STATUS

A. Employee's employment with the City may be terminated at the will, discretion, and pleasure of Manager, with or without cause, subject to the provisions of the Public Safety Officers Procedural Bill of Rights, under Government Code Sections 3300 and 3304(c) et seq., which provides that no chief of police may be removed by a public agency or appointing authority, without providing the chief of police with written notice and the reason or reasons therefore and an opportunity for an administrative appeal. Employee may also terminate this Agreement at any time by providing 30 days' written notice. Nothing in this Agreement or in any other document shall limit the right of Employee or City to terminate the at-will employment relationship, and nothing in this Agreement shall be construed to create a property interest, where one does not exist by rule or law, in the job of Police Chief.

B. Employee's employment status with the City shall remain at-will as defined by California law regardless of the length of employment, past or current performance, raises, promotions, or representations of continued employment by any agent or employee of the City. No elected official, supervisor, employee, or agent of the City has any authority to enter into an agreement with Employee for employment for any specific period of time or to make an agreement for employee other than at-will.

SECTION 2. DUTIES

A. Employee shall perform the functions and duties of Police Chief at a professional level expected and required of the position of Police Chief, and perform other legally permissible and proper duties and functions as the Manager shall assign.

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

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

SECTION 3. SALARY AND BENEFITS

A. In consideration for Employee's performance of his duties hereunder, City shall pay Employee an annual base salary of \$207,053.84, payable in installments in accordance with the same pay periods for other Non-Represented Management - Confidential employees of the City, and in accordance with applicable laws, rules and other regulations, such as the City's Salary Resolution. Should City implement a wage reduction for Non-Represented Management-Confidential Employees during this Agreement, Employee's base pay will be reduced by the same percent. In no event shall Employee's salary be less than five percent above that of his subordinate employees.

B. [Prior bonus provision deleted.]

C. Except as may be specifically set forth in this Agreement, Employee shall be entitled to sick leave, vacation leave, administrative leave, holidays (accrual and conversion), including any cash-out provisions, and to participate in City's health and welfare insurance, long term disability, and life insurance in the same manner as granted to members of the Fresno Police Officers Association Management Unit, and subject to the terms of the applicable health and welfare plan documents as they may be amended from time to time. Nothing herein shall be construed as requiring City to establish or continue any particular health and welfare plans in the discharge of its obligations under this Agreement. Sick leave, vacation, holiday, and administrative leave time accrued shall not be pensionable compensation.

D. Except as may be specifically set forth in this Agreement, Employee shall be entitled to other fringe benefits generally applicable to Non-Represented Management- Confidential Employees of City. This subsection shall not be interpreted or applied in a manner whereby Employee shall be entitled to dual benefits for the same category of benefit.

E. City shall pay Employee a monthly uniform allowance of \$100 per month. All costs for uniform upkeep for the Employee shall be borne by Employee.

F. Employee shall receive compensation consistent with Police Management for satisfactorily having attained the Management P.O.S.T. Certificate as set forth in the current FPOA-Management Unit contract with City regarding Supervisory and Management level P.O.S.T. Certifications for a total of nine percent above his base rate of pay.

G. Employee may elect to designate a portion of his base compensation, up to six percent of base compensation each year of employment, to be contributed to Employee's deferred compensation plan account, in increments through customary payroll processing. Employee is responsible for the establishment of the Deferred Compensation account via the procedure offered to City of Fresno employees. The election made pursuant to this paragraph is to designate a portion of base compensation to be contributed to the Deferred Compensation account, not in addition to base salary. All deferred compensation contributions made to Employee's plan account shall be retained by Employee.

H. Employee shall accrue regular sick leave (i.e., eight hours per month), and accrue administrative leave as other Non-Represented Employees.

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 Police Chief 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 or retire prior to October 16, 2019, he shall provide the Manager with 30 days written notice.

B. In the event the Manager terminates Employee's employment with City prior to October 16, 2019, Employee shall be paid severance pay in an amount equal to six months of his base salary. In addition, in the event of termination, all benefits under the Health and Welfare Trust for Employee shall continue for six months, and the City shall pay the employer's contribution to maintain all 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 this severance period.

C. Should Employee accept other employment at any time during the period of this Agreement, City's responsibility under this Agreement shall cease and no additional sums or benefits shall be payable, except such amounts that are due upon Employee's separation from City service. Employee agrees to notify the City in writing immediately upon acceptance of other employment, including full or part-time work whether independent contractor status or as an employee. City reserves the right to terminate this Agreement based upon the receipt of notification of the nature of employment by Employee prior to the date of separation.

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

- (1) Upon the death of the Employee;
- (2) Upon determination that Employee is unable to perform the essential functions of his position, with or without reasonable accommodation, due to a mental, physical or other illness or disability lasting a period of six months or longer;

- (3) In the event Employee is terminated because of 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) Employee accepts other employment, as set forth in Section 4, Subsection C in this Agreement;
- (5) Upon six months written notice by the Manager to terminate the Agreement; or
- (6) Upon Employee's resignation or retirement.

E. In the event, Employee's employment is terminated with City or Employee resigns, Employee shall be entitled to receive salary, benefits, and reimbursable expenses accrued by Employee through the date of termination, but shall not alter the limitations on the severance pay period as set forth above, if applicable. The City shall have no further obligation or liability to Employee under this Agreement.

F. City shall withhold from any salary or benefits payable to Employee all federal, state, local, and other taxes and other amounts as permitted or required pursuant to law, rule, or regulation.

G. 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.

SECTION 5. AUTOMOBILE ALLOWANCE

City shall provide Employee use of a City vehicle assigned to the Police Department, for business use to commute to and from work, and/or with permission of the Manager, in lieu of vehicle allowance.

SECTION 6. PROFESSIONAL DEVELOPMENT

A. City shall pay the dues for Employee, which are reasonable and necessary for his participation in two civic organizations.

B. City shall pay the professional dues for three professional organizations, such as the International Association of Chiefs' of Police, Police Executive Research Forum, California Police Chiefs' Association, which are necessary and desirable for Employee's continued professional participation, growth, enhancement, or for the good of the City.

C. City shall pay for Employee's attendance at two professional organization conferences, one of which may include attendance at a California League of Cities Conference.

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

E. Employee shall submit to City all expenses incurred related to his professional development, as set forth in this Section, and City shall reimburse Employee the full amount of any such reasonable and necessary expenses advanced by him.

SECTION 7. 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 (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 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. This 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 will obtain a list of arbitrators from either 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 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 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 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, or as determined by the arbitrator, the arbitrator shall issue a written opinion and award, 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 City shall each bear their own costs incurred for legal representation as part of any such arbitration. 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 shall survive the termination of Employee's employment and shall survive the termination and/or expiration of this Agreement.

SECTION 8. INDEMNIFICATION

City agrees that it will defend, hold harmless, and indemnify Employee from any and all demands, claims, suits, actions and legal proceedings brought against Employee in his official capacity as agent and employee of City, or for any acts, errors or omissions in his personal capacity arising out of the scope and duration of his employment with City, subject to California Government Code Section 825 and as otherwise permitted by law.

SECTION 9. 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 93721-3601
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If to the Employee:	Jerry P. Dyer 2323 Fresno Street Fresno, CA 93721; or Employee's residence identified in City personnel records
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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 10. 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 or understandings, oral or written by the terms of this Agreement.

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 hereunder.

D. The City reserves the right to revise, modify, delete or add to any and all policies, procedures, work rules, benefits, the personnel manual or any other document, except for the policy of at-will employment.

E. If any provision of this Agreement is declared or determined by any court of competent jurisdiction to be illegal, unconstitutional, invalid, or unenforceable, the remaining parts, terms, or provisions shall not be affected and shall remain in full force and effect and said illegal or invalid provisions or terms shall be severed from this Agreement.

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 Superior Court in and for the County of Fresno, California, or in the United States District Court for the Eastern District of California.

G. This Agreement shall be governed, construed, and enforced under 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 an attorney of Employee's choice concerning all terms and conditions of this Agreement. Employee further 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 powers, 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 effective as of the date and year set forth above.

CITY OF FRESNO

EMPLOYEE

By:


BRUCE RUDD, City Manager

By:


JERRY P. DYER, Police Chief

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By:


TINA R. GRIFFIN,
Assistant City Attorney