AT-WILL EMPLOYMENT AGREEMENT

THIS AT-WILL EMPLOYMENT AGREEMENT ("Agreement") is entered into and effective the **1st day of July, 2016**, between the CITY OF FRESNO, State of California, a municipal corporation, ("City"), and **Noemi Schwartz**, ("Employee"), both of whom agree as follows:

RECITALS

A. The City Attorney of the City of Fresno ("City Attorney") desires to continue to employ the services of Employee as **Executive Assistant** to the City Attorney (the "position") for the City as authorized in the Charter of City of Fresno ("Charter").

B. It is the desire of the City Attorney to retain the services of Employee and to provide inducement for Employee to remain in such employment.

C. It is also the desire of the City Attorney to provide certain benefits and establish the terms and conditions of Employee's employment on an at-will basis.

D. Employee desires to accept and continue employment on the terms and conditions set forth in this Agreement.

E. The Council of the City of Fresno adopts a Salary Resolution on an annual basis, which provides a salary range for the position and an Annual Appropriation Resolution that appropriates the salary and benefits as set forth in this Agreement.

F. 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 City Attorney. The City Attorney may terminate 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 City Attorney 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 specific period of time or to make an agreement for employment other than at-will.

B. Employee's employment status with the City shall remain at-will as defined by California law, regardless of the length of employment, past raises, promotions or promises of continued employment by any agent or employee of the City.

C. City's right to terminate Employee shall only be limited by Federal and State protections, restrictions and limitations, including but not limited to the City's inability to terminate based upon age, race, gender and other similar civil rights protections defined therein.

SECTION 2. DUTIES AND TERM

A. Employee shall professionally perform the functions and duties of the position set forth in this agreement and as specified in the corresponding job specification, and perform other legally permissible and proper duties and functions as the City Attorney shall from time to time assign.

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

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Attorney to terminate the services of Employee subject only to the provisions of this Agreement.

D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from employment with the City.

E. Nothing in this Agreement shall preclude the termination of this Agreement by mutual consent of both parties.

F. Employee shall work a regular work schedule, as determined by City Attorney.

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. The salary set forth herein is within the range provided in the current Resolution, as amended.

B. In consideration for Employee's performance of Employee duties under this Agreement, effective the **1st day of July, 2016**, City shall pay Employee an annual base salary of **sixty-one thousand, five hundred ninety-six dollars ($61,596)**, payable in installments as other Non-Represented Management-Confidential 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. Employee may participate in the City's deferred compensation plan through voluntary payroll deductions.

D. Except as may be specifically set forth in this Agreement, all provisions of the Fresno Municipal Code, Council resolutions, and official policies of the City relating to annual leave, vacation, supplemental sick leave, 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 Employee becomes eligible for them. 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.

E. The City and Employee understand annual performance evaluations are an important part of maintaining adequate communications between City and Employee and City therefore agrees Employee shall be evaluated by the City Attorney during each fiscal year of the City. The time and place of the Employee's evaluation shall be at the discretion of the City Attorney. A copy of a written evaluation shall be delivered to Employee. Employee shall have the right to respond orally and/or in writing to the evaluation. Within thirty days of the delivery of the written evaluation to Employee, the City Attorney shall meet with Employee to discuss the evaluation.

F. Employee shall be entitled to annual performance evaluations and may receive additional merit base pay in recognition of excellent performance, as determined solely by the City Attorney.

SECTION 4. TERMINATION AND SEVERANCE PAY

A. Employee's employment shall be subject to the absolute and sole discretion of the City Attorney. Employee may be reassigned or terminated at the will of the City Attorney at any time for any legal reason whatsoever or for no reason at all, as provided in Section 1 of this Agreement.

B. In the event of termination, Employee shall be paid severance in an amount equal to three months of base salary. In addition, in the event of termination, all benefits under the Health and Welfare Trust for Employee shall continue for three months, and the City shall pay the employer's contribution to maintain all benefits for those three months. Severance pay shall not be utilized for retirement credit and no additional benefits (e.g., supplemental sick leave, sick leave, annual leave, administrative leave, or car allowance) will accrue or be owed during the three 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 the position with or without a 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 City Attorney determines is related to the effective performance of Employee's official duties, including but not limited to criminal conviction in office; or

(4) Upon Employee's resignation or retirement of employment.

D. If this Agreement is terminated, any severance or 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 Employee's 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. 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 that are requested by the parties and that 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 5 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 6. 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:

To City: Douglas T. Sloan
City Attorney
2600 Fresno Street
Fresno, CA 93721-3600

To Employee: **Noemi Schwartz**
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 7. GENERAL PROVISIONS

A. This Agreement shall constitute the entire Agreement between the parties as to the subject matter herein. This Agreement restates, replaces, 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. Amendments providing for promotions or increases in compensation shall be valid once processed by the City Attorney and submitted to the City's Personnel Department, with all other terms contained in this Agreement continuing, unless also modified.

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 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 she 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.

K. Pursuant to the Transparency in City Government Act, this Agreement shall be provided to the City Clerk and made available for public inspection on the City's website.

IN WITNESS WHEREOF, the City of Fresno has caused this Agreement to be signed and executed in its behalf by the City Attorney, and Employee has signed and executed this Agreement effective as of the date and year first written above.

CITY OF FRESNO

By: [redacted]

City Attorney

EMPLOYEE

By: [redacted]

Noemi Schwartz

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: [redacted]

Assistant City Attorney