AMENDED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF FRESNO AND THE CITY ATTORNEY

THIS AMENDED AGREEMENT is made and shall be effective as of March 17, 2016, between the CITY OF FRESNO, State of California, a municipal corporation, ("City"), by and through the Fresno City Council, and Douglas T. Sloan ("Employee"), both of whom agree as follows:

RECITALS

A. The Council of the City of Fresno desires to continue to employ the services of Employee as City Attorney of City as provided in Article VIII of the Charter of the City of Fresno.

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

C. It is also the desire of the Council 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 City Attorney on the terms and conditions set forth in this Agreement.

E. The Council of the City of Fresno adopts on an annual basis a Salary Resolution which provides a salary range for the position of City Attorney and an Annual Appropriation Resolution which appropriates the salary and benefits for the City Attorney contained within this Agreement.

THEREFORE, in consideration of the above recitals and the mutual promises 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-will. Employment at-will may be terminated with or without cause and with or without notice at any time by Employee or the City. Nothing in this Agreement or in any other document shall limit the right of Employee or the City 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 with the City shall remain employment at-will regardless of the City Attorney's length of employment, past performance, past raises, promotions or promises on the part of any individual of continued employment.

C. City's right to terminate Employee shall only be limited by Federal and State Constitutional 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

Employee shall professionally perform the functions and duties specified in the Charter and the Fresno Municipal Code, and other ordinances and resolutions of the City and perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

SECTION 3. TERM

A. Employee is currently employed by the City as the City Attorney and shall continue employment under the terms of this Amended Agreement until terminated pursuant to this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Council to terminate the services of Employee subject only to the provisions set forth in this Agreement.

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

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

SECTION 4. BASE SALARY

A. City shall pay Employee an annual salary equal to $195,000.00, payable in installments at the same time as other Non-Represented Management-Confidential employees of the City are paid, and in accordance with applicable Fresno Municipal Code provisions and other regulations, such as the City's Salary Resolution. Salary for partial pay periods shall be pro-rated. Council shall continue to appropriate and amend the Salary Resolution as necessary from time to time to fulfill the terms of this Agreement.

B. City shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except as provided herein.

SECTION 5. BENEFITS

A. 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-Representative Management-Confidential employees of the City shall also apply to Employee when and as he becomes eligible for them.

B. 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, so long as such action is taken with respect to all similarly situated employees in the City, (city-wide employee application) and does not single out Employee.

C. Employee shall be entitled to annual performance evaluations.

D. [prior bonus provision omitted].

E. Notwithstanding Subsection A of this Section, Employee shall be entitled to an annual leave accrual maximum of 1200 hours and the right to cash out up to 100 hours of annual leave during any fiscal year.

SECTION 6. TERMINATION AND SEVERANCE PAY

A. Employee's employment shall be subject to the absolute and sole discretion of the Council. Employee may be removed from office and his employment terminated at the will of the Council at any time for any reason whatsoever or for no reason at all, subject to Federal and State constitutional protections, restrictions and limitations, as provided in this Agreement.

B. In the event of termination, Employee shall be paid severance in an amount equal to six months of 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 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 six 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 7. ANNUAL PERFORMANCE EVALUATIONS

The City and Employee understand that annual performance evaluations are an important part of maintaining adequate communications between City and Employee and City therefore agrees that Employee shall be evaluated by the Council during each fiscal year of the City. The time and place of the Employee's evaluation shall be at the discretion of the Council. The Employee's evaluation will be based on the duties and

responsibilities of the City Attorney as set forth in the Charter and as assigned by the Council. 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 Council shall meet with Employee to discuss the evaluation.

SECTION 8. AUTOMOBILE ALLOWANCE

City shall pay Employee a monthly vehicle allowance equivalent to the greater of Five Hundred Dollars ($500.00) per month or such other vehicle allowance as is paid to other department heads of the City. All costs of operation of the vehicle for the Employee, including but not limited to fuel, maintenance, and insurance, shall be borne by Employee.

SECTION 9. PROFESSIONAL DEVELOPMENT

City shall pay the professional dues, subscriptions and incidental business expenses of Employee reasonably necessary for his full participation in the California Bar Association. To the extent the City Attorney deems it necessary, City shall cover all other national, regional, state, and local associations and organizations desirable for Employee's continued professional participation, growth, and enhancement or for the good of the City.

SECTION 10. 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:	Council President 2600 Fresno Street Fresno, CA 93721-3600
If to the Employee:	Douglas T. Sloan City Attorney's Office 2600 Fresno Street Fresno, CA 93721-3600

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 11. INDEMNIFICATION

City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Attorney. City will compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination or employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee as described herein, for any acts undertaken or committed in his capacity as City Attorney, regardless of whether the notice of filing

of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City.

SECTION 12. GENERAL PROVISIONS

A. This Agreement shall constitute the entire agreement between the parties as to the subject matter herein and all other prior agreements, arrangements or understandings, oral or written, are merged into and superseded 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 is not assignable.

D. 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.

E. 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 United States District Court for the Eastern District of California.

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

G. Employee agrees and represents that prior to entering into this Agreement, he has had the opportunity to consult an attorney of Employee's choice concerning all terms and conditions of this Agreement.

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

CITY OF FRESNO
COUNCIL PRESIDENT

Paul Caprioglio
_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

EMPLOYEE
DOUGLAS T. SLOAN

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