

AT-WILL EMPLOYMENT AGREEMENT

THIS AT-WILL EMPLOYMENT AGREEMENT ("Agreement") is made and entered into the 4th day of July, 2016, between the CITY OF FRESNO, State of California, a municipal corporation, ("City"), and Kerri Donis, ("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 Fire Chief for the City ("Fire Chief") 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 Employee's employment on an at-will basis, and set the working conditions of Employee.

D. The term of this Agreement commences July 4, 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 employment as Fire Chief of the City on the terms and conditions set forth in this Agreement.

THHEREFORE, 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, with or without cause, subject to the provisions of the Firefighters Procedural Bill of Rights Act, under Government Code Sections 3250 et seq., including Government Code Section 3254, subsection (c), which provides that no fire chief may be removed by a public agency or appointing authority without providing that person with written notice, the reason or reasons for removal, and an opportunity for administrative appeal. The parties understand and acknowledge that the rights and protections described and afforded in the Firefighters Procedural Bill of Rights Act shall only apply during events and circumstances involving the performance of Employee's official duties, pursuant to Government Code Section 3262. 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, 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 Fire Chief. Employee may also terminate this Agreement at any time by providing 30 days written notice to the Manager.

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.

SECTION 2. DUTIES AND TERM

A. Employee shall professionally perform the functions and duties of the Fire Chief as 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. Employee agrees to abide by all City rules, policies, practices, and procedures in the performance of her duties.

C. 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 Fire Chief. 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 salary of one hundred eighty-seven thousand two hundred and fifty-four dollars (\$187,254), 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). In no event shall Employee's salary be less than five percent (5%) above that of her subordinate employees.

C. City shall provide Employee use of a City issued cell phone, for business use.

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

E. Employee's pension contribution rate in the Second Tier of the City of Fresno Fire and Police Retirement System (commencing at Fresno Municipal Code Section 3-401 et seq.)("Tier 2 System") shall be nine percent (9%).

F. 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, Employee shall be entitled to sick leave, vacation leave, uniform allowance, administrative leave (90 hours), supplemental administrative leave (32 hours), holidays (accrual), and to participate in City's

health and welfare insurance, long term disability/workers' compensation, Deferred Retirement Option (DROP), Attendance/Health Incentive, Health Reimbursement Arrangement (HRA), and life insurance in the same manner as granted to the Fire 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 be pensionable compensation only to the extent it is a benefit provided pursuant to the Fire Management Unit Memorandum of Understanding. Such accrued sick leave, vacation, holiday, and administrative leave shall be calculated at a 40-hour work week rate of pay for purposes of calculating pensionable compensation and leave cash-outs.

H. 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 the City when and as she becomes eligible for them. City reserves the right to modify, suspend or discontinue any and all of the benefits provided 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. 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.

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 her position as Fire Chief and her 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, she shall provide the Manager with 30 days written notice.

B. In this first year of this Agreement, in the event the Manager terminates Employee's employment with the City, Employee shall be paid severance pay in an amount equal to six (6) months of her base salary, plus the City's portion of contributions to maintain health and welfare coverage, that is provided by the City, for six (6) 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 severance period, with the exception of the health and welfare coverage set forth herein this subsection.

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 resignation

D. 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 her 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;
- (4) Employee accepts other employment, as set forth in Section 3, 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 from employment.

E. 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 pay for Employee's attendance at two (2) professional organization conferences 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.

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

D. City shall pay the professional dues for two (2) professional organizations, such as the International Association of Fire Chiefs or the Center for Public Safety Excellence, which is necessary and desirable for Employee's continued professional participation, growth, enhancement, or for the good of the City, subject to budgetary constraints.

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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 her 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:

If to the City:	Bruce Rudd City Manager 2600 Fresno Street Fresno, CA 93721-3600
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If to the Employee:	Kerri Donis 2600 Fresno Street Fresno, CA 93721-3600; 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 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 she may not assign any of her 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 her 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 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.

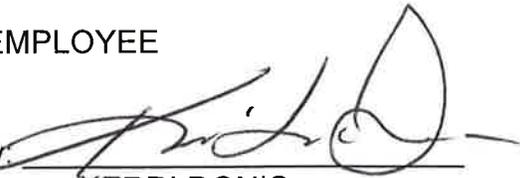
IN WITNESS WHEREOF, the City of Fresno has caused this Agreement to be signed and executed in its behalf by the Manager, and Employee has signed and executed this Agreement on the date and year set forth below.

CITY OF FRESNO

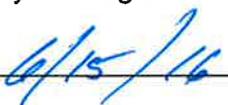
EMPLOYEE

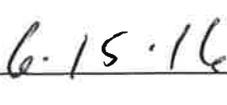
By: 

BRUCE RUDD
City Manager

By: 

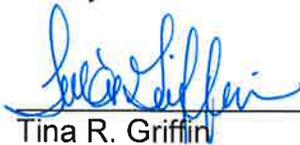
KERRI DONIS
Fire Chief

Date: 

Date: 

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By:  _____
Tina R. Griffin
Assistant City Attorney