

## **AT-WILL EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made and entered into the 27th day of June, 2016, between the CITY OF FRESNO, State of California, a municipal corporation, ("City"), and GEORGEANNE WHITE, ("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 Director of the Department of Public Utilities for the City as provided in Article VII of the Charter of City of Fresno ("Charter").

B. It is the desire of the Manager to secure and 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 June 27, 2016, and shall continue until the Manager decides to terminate employment, or upon Employee's resignation. All previous employment agreements between the City and Employee, including amendments thereto, are null and void.

E. Employee desires to accept 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. 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. No elected official, supervisor, employee, or agent of the City has any authority to enter into an agreement with Employee for employment for any specified period of time or to make an agreement for employment other than at-will. The parties agree the above Recitals are true.

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**

A. Employee shall professionally perform the functions and duties of a Assistant Director of Public Utilities specified in the Charter and/or Fresno Municipal Code, and 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 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 Assistant Director work schedule, as determined by the Director of Public Utilities and the Manager.

### **SECTION 3. SALARY AND BENEFITS**

A. The Council of the City of Fresno adopted a Salary Resolution, which provides a salary range for the position of Assistant Director of Public Utilities. The salary set forth herein is within the range provided in the Salary Resolution.

B. In consideration for Employee's performance of her duties under this Agreement, City shall pay Employee an annual base salary of one hundred twenty-five thousand dollars (\$125,000), 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 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. 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 shall generally be entitled to annual performance evaluations and review of compensation; however, failure to evaluate Employee on an annual basis shall not be considered a breach of this Agreement.

F. 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 her position as Assistant Director of the Department of Public Utilities 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.

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 (6) months of base salary. In addition, all health and welfare benefits 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., annual leave, vacation/sick leave, or administrative leave) will accrue or be owed during the six (6) month severance period, except as otherwise stated herein. This paragraph shall not be interpreted to allow Employee to obtain dual payment of her base salary or other benefits during any time 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 (6) months or longer;
- (3) In the event Employee is terminated because of serious misconduct or malfeasance, which the City 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 of 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 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. 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 jurisdiction of the California Labor Commissioner), including, but not limited to, claims of wrongful termination such as retaliation in violation of public policy or constructive discharge, discrimination, retaliation 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 his obligation to timely pursue an administrative claim within the jurisdiction of any administrative agency (e.g., the Department of Fair Employment and Housing, the Equal Employment Opportunity Commission, 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 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 as allowed by the Code of Civil Procedure. 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 and/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 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 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.



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 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.

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

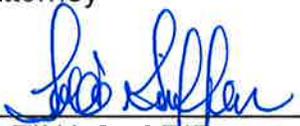
By:   
\_\_\_\_\_  
GEORGEANNE WHITE

Date: 7/15/16

Date: 7.11.16

APPROVED AS TO FORM:

DOUGLAS T. SLOAN  
City Attorney

By:   
\_\_\_\_\_  
TINA R. GRIFFIN  
Assistant City Attorney