AMENDED AT WILL EMPLOYMENT AGREEMENT

THIS AMENDED AGREEMENT is effective as of January 1, 2017, between the **CITY** OF FRESNO, State of California, a municipal corporation, ("**City**"), and BRUCE A. RUDD, ("**Employee**"), both of whom agree as follows:

RECITALS

A. The Mayor of the City of Fresno ("**Mayor**") desires to continue to employ the services of **Employee** as Chief Administrative Officer of City ("**City Manager**") as provided in Article VII of the Charter of the City of Fresno ("**Charter**").

B. It is the desire of the **Mayor** to secure and retain the services of **City Manager**.

C. It is also the desire of the **Mayor** to provide certain benefits, establish certain terms and conditions of **Employee's** employment on an at-will basis, and set the working conditions of **City Manager.**

D. **Employee** desires to continue employment as **City Manager** of the **City** with an Amended Agreement effective date of January 1, 2017, on the terms and conditions set forth in this Agreement.

E. The Council of the City of Fresno has adopted a Salary Resolution, which provides a salary range for the position of **City Manager**. The salary set forth herein is within the range provided in the Salary Resolution.

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 specified 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 Manager's** length of employment, past performance, past raises, compensation or benefit package, promotions or promises on the part of any individual of continued employment.

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 **Mayor** shall from time to time assign.

SECTION 3. TERM

A. **Employee** shall continue as an at-will employee as **City Manager** at the sole will, discretion, and pleasure of the **Mayor**.

B. **Employee** shall perform the functions and duties of **City Manager** at a professional level expected and required of the position of **City Manager**, and perform other legally permissible and proper duties and functions as the **Mayor** shall assign until July 31, 2017.

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

SECTION 4. BASE SALARY

City shall pay **Employee** an annual base salary of $243,240 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.

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-Represented 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 generally with respect to similarly situated persons and does not single out **Employee**.

C. **Employee** may accumulate leave time up to a total of 1,200 hours; leave time in excess of 1,200 hours shall be used, cashed out, transferred to another City employee, or abandoned, at the employee's election; however, **Employee** may elect to cash out leave, but defer payment until a later date, up through Employee's date of separation of employment from the City of Fresno.

D. **Employee** may elect to designate a portion of his base compensation, up to $20,500 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**.

E. Upon separation from the City of Fresno, except for malfeasance, crimes of moral turpitude, or similar offense, **Employee** and/or the surviving spouse may continue City health benefits for himself and/or the surviving spouse at the monthly rate paid by then-current employees. Should similar medical benefits become available through subsequent employment, City of Fresno retiree health benefit shall cease.

SECTION 6. RETENTION BONUS

[Prior bonus provision deleted].

SECTION 7. TERMINATION AND SEVERANCE PAY

A. **Employee's** employment shall be subject to the absolute and sole discretion of the **Mayor**. **Employee** may be removed from office and his employment terminated at the will of **Mayor** at any time for any reason whatsoever or for no reason at all, as provided in Charter Section 702 and Section 1 of this Agreement.

B. In the event **Employee** is terminated by the **Mayor, City** shall pay to **Employee** six months of base salary plus employer contributions to maintain the Health and Welfare Trust coverage for six months.

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

(1) Upon the death of **Employee**.

(2) Upon a determination in accordance with all legal requirements that **Employee** is unable to perform the essential functions of his position due to illness or other disability for a period of six months and it is medically determined that **Employee** is permanently disabled from performing the essential functions of his position even with reasonable accommodation.

(2) In the event **Employee** is terminated because of serious misconduct or malfeasance which **Mayor** determines is materially and substantially related to **Employee's** performance of his official duties.

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 8. AUTOMOBILE ALLOWANCE

City shall pay **Employee** a monthly vehicle allowance of five hundred dollars ($500.00) per month. 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

A. **City** shall pay the professional dues, subscriptions and incidental business expenses of **Employee** reasonably necessary for his full participation in the International City Management Association, the League of California Cities, and other national, regional, state, and local associations and organizations that **Mayor** may deem necessary and desirable for **Employee's** continued professional participation, growth, and enhancement or for the good of the **City**.

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**.

SECTION 10. 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, 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. This 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** will 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 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 **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 admit the genuineness of 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 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 10 shall survive the termination of **Employee's** employment and shall survive the termination and/or expiration of this Agreement.

SECTION 11. 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**;	Mayor Lee Brand 2600 Fresno Street Fresno, CA 93721-3600
If to the **Employee**;	Bruce A. Rudd 22322 Masters Drive Friant, CA 93626

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 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. The **City** reserves the right to revise, modify, delete or add to any and all policies, procedures, work rules, benefits, 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 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 in all respects by the laws of the State of California.

H. **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.

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.

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

CITY OF FRESNO

By: _____
MAYOR LEE BRAND

EMPLOYEE

By: _____
BRUCE A. RUDD

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____