AT-WILL EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into the 3rd day of January, 2017, between the CITY OF FRESNO, State of California, a municipal corporation, ("**City**"), and DANIEL GAI, ("**Employee**"), both of whom agree as follows:

RECITALS

A. Councilmember Garry Bredefeld, representing Council District 6, (**"Councilmember"**) of the City of Fresno ("**City**") desires to employ the services of **Employee** as a Council Assistant, with the working title, "Council Assistant."

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

C. It is also the desire of the **Councilmember** 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 January 3, 2017, and shall continue until the **Councilmember** decides to terminate employment, upon **Employee**'s resignation, or by operation of law per Fresno Municipal Code ("FMC") §3-277(d).

E. Employee desires to accept employment as Council Assistant on the terms and conditions set forth in this Agreement.

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 **Councilmember**, or by operation of law per FMC §3-277(d). The **Councilmember** 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 **Councilmember** to terminate the at-will employment relationship.

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 Council Assistant specified in the Charter and FMC, and other ordinances and resolutions of the **City** and perform other legally permissible and proper duties and functions as the **Councilmember** shall assign.

B. **Employee** shall perform the functions and duties of a Council Assistant at a professional level expected and required of the position of a Council Assistant.

SECTION 3. SALARY AND BENEFITS

A. The Council of the **City** of Fresno adopted the Fiscal Year 2017 Salary Resolution, which provides a salary range for the position of Council Assistant. The salary set forth herein is within the range provided in the current Salary Resolution.

B. In consideration for **Employee**'s performance of his duties under this Agreement, **City** shall pay **Employee** an annual base salary of $52,000, 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** reserves the right to modify, suspend or discontinue any and all of the above benefits at any time. 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. **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, **Employee** shall be entitled to vacation and sick leave, supplemental sick leave, administrative leave, holidays, health insurance, long term disability insurance, retirement, life insurance, and other fringe benefits generally applicable to Non-Represented Management-Confidential Employees of the **City** when and as he becomes eligible for them.

SECTION 4. TERMINATION AND SEVERANCE PAY

A. **Employee**'s employment shall be subject to the absolute and sole discretion of the **Councilmember**. **Employee** may be removed from his position as Council Assistant and his employment terminated at the will of the **Councilmember** 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 **Councilmember** terminates **Employee's** employment with the **City**, **Employee** shall be paid severance pay in an amount equal to three months of base salary. 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.

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 misconduct or malfeasance, which the **City Councilmember** determines is related to the effective performance of **Employee's** official duties, including but not limited to criminal conviction in office;

(4) Upon three months written notice by the **Councilmember** to terminate the Agreement;

(5) Upon **Employee's** automatic termination per FMC §3-277(c); or

(6) 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. CONFIDENTIAL INFORMATION

A. **Employee** acknowledges that during the course of his employment with the **City**, he will become privy to information about the **City**, which the **City** deems private, confidential and proprietary. **Employee** agrees to treat all such information in strict confidence and will not disclose any Confidential Information he may obtain or have access to.

B. The term "Confidential Information" shall mean any and all documents, materials and information (whether oral or written) which is revealed to **Employee** directly or indirectly and whether specifically designated as "Confidential" or which ought reasonably be regarded as confidential under or in connection with the employment of **Employee**.

C. **Employee** further agrees the Confidential Information will not be used by him in a way detrimental to or to the disadvantage of the **City**. Employee further acknowledges the disclosure of Confidential Information may be harmful to the **City** and agrees to hold such Confidential Information in the strictest confidence and not to disclose the same or release it to any other party, except as authorized by the **Councilmember** to employees of the **City** or other individuals having a need to know as part of their official duties with the **City**.

D. In the event **Employee** becomes legally compelled (by deposition, interrogatory, public request for documents, order, subpoena, civil investigative demand, or similar process issued by a court of competent jurisdiction) to disclose any of the Confidential Information, prompt written notice of any such requirement shall be provided to the **Councilmember** so the **Councilmember** may seek a protective order or other appropriate remedy and/or waive in writing compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, and irrespective of whether or not compliance with the provisions hereof is waived, **Employee** agrees only that portion of the Confidential Information which **Employee's** legal counsel advises it is legally required to be disclosed shall be disclosed and reasonable efforts shall be made to obtain assurance that confidential treatment will be accorded such Confidential Information.

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 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 6 shall survive the termination of **Employee**'s employment and shall survive the termination and/or expiration of this Agreement.

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**:	Councilmember Garry Bredefeld 2600 Fresno Street Fresno, CA 93721-3600
If to the **Employee**:	Daniel Gai 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 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 he may not assign any of his 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, he has had reasonable time and opportunity to consult with an attorney or representative of his choice concerning all terms and conditions of this Agreement. **Employee** also represents, he 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.

l. **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 **Councilmember**, and **Employee** has signed and executed this Agreement on the date and year set forth below.

CITY OF FRESNO

By: _____
GARRY BREDEFELD
Councilmember, District 6

EMPLOYEE

By: _____
DANIEL GAI

APPROVED AS TO FORM:

DOUGLAS T. SLOAN
City Attorney

By: _____
DOUGLAS T. SLOAN
City Attorney