

Agenda Item: ID# 18-1558 (1-W)

Date: 12/13/18

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## FRESNO CITY COUNCIL



### Supplemental Information Packet

Agenda Related Item(s) – ID#18-1558 (1-W)

**Contents of Supplement: Amended Employment Agreement**

#### Item(s)

**Approve Amended At-Will Employment Agreement with Executive Director,  
Fresno Revitalization Corporation**

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

## **AMENDED AT-WILL EMPLOYMENT AGREEMENT**

This AMENDED AGREEMENT is entered into the 13th day of December 2018, between the FRESNO REVITALIZATION CORPORATION, a California non-profit public benefit corporation, (Corporation) and MARLENE MURPHEY (Employee), both of whom agree as follows:

### **RECITALS**

- A. The Corporation desires to continue to employ the services of Employee to conduct administrative oversight, budgeting and implementation of the Corporation's activities that include the activities of the Successor Agency and the Successor Housing Agency, and desires the Employee to provide all such services in the capacity of Executive Director of the Corporation.
- B. It is the desire of the Corporation 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 Corporation to provide certain benefits, establish 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 December 13, 2018, and shall continue until the Corporation decides to terminate employment or upon Employee's resignation. All previous employment agreements between the Corporation and Employee are null and void.
- E. Employee desires to continue employment as the Executive Director on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

### **SECTION 1. AT-WILL EMPLOYMENT STATUS**

- A. Employee's employment 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 Employer. Nothing in this Agreement or in any other document shall limit the right of Employee or Employer to terminate the at-will employment relationship. No elected official, supervisor, employee, or agent of the Corporation 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 Corporation shall remain employment at-will regardless of the Executive Director's length of employment, past performance, past raises, promotions or promises on the part of any individual of continued employment.
- C. Employer's right to terminate Employee shall only be limited by Federal and State statutory protections, restrictions and limitations, including but not limited to the Corporation's inability to terminate based upon age, race, gender and other similar civil rights protections defined therein.

### **SECTION 2. DUTIES**

- A. Employee shall professionally perform to the satisfaction of the Corporation, administrative oversight, budgeting, management, planning and other services as necessary to be performed by an Executive Director of the Corporation.

### **SECTION 3. TERM**

- A. Employee shall have as the effective date of employment under this Agreement as set forth above and shall continue employment under the terms of this Agreement until terminated pursuant to this Agreement.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Corporation 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 her employment with the Corporation or the position of Executive Director.

### **SECTION 4. BASE SALARY**

- A. In consideration for Employee's performance of her duties under this Agreement, the Corporation shall pay Employee an annual base pay of \$127,576 payable in installments and in accordance with applicable laws, rules and other regulations.
- B. Corporation 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. Employer shall not provide health benefits, retirement benefits, monthly vehicle allowance, life insurance or other similar fringe benefits.
- B. Notwithstanding subsection A above, Employee shall receive \$20,000 annually to be contributed towards Employee's voluntary retirement account sponsored by the Corporation. In the event there is no available voluntary retirement account sponsored by the Corporation, Employee may elect to have the amount transferred into another voluntary retirement account approved by the Corporation.
- C. Notwithstanding subsection A above, the Corporation shall provide Employee \$891 in monthly contribution towards a health reimbursement arrangement (HRA) account sponsored by the Corporation as may be allowed by Internal Revenue Service Notice 2002-45 and Internal Revenue Rule 2002-41, or the equivalent amount in direct payment to Employee if there is no HRA account available.
- D. Employee shall receive vacation, sick leave, supplemental sick, administrative, and holiday leave, in accordance and consistent with Successor Agency practices.

### **SECTION 6. OFFICIAL BUSINESS/PROFESSIONAL DEVELOPMENT**

Corporation shall pay for incidental business and travel expenses of the Employee for official travel, meetings, seminars, associations and occasions necessary for official business and professional development.

### **SECTION 7. TERMINATION AND SEVERANCE PAY**

- A. Employee's employment shall be subject to the absolute and sole discretion of the Board of Directors of the Corporation (Board). Employee may be removed from office and her employment terminated at the will of the Board at any time for any reason whatsoever or for no reason at all, subject to Federal and State statutory protections restrictions and limitations as provided in Section 1 of this Agreement.

B. In the event of termination, Employee shall not receive severance pay.

## **SECTION 8. NOTICES**

A. 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 Corporation: Board Chairman  
2600 Fresno Street  
Fresno, CA 93721-3600

If to the Employee: Marlene Murphey  
848 M Street, 3<sup>rd</sup> Floor  
Fresno, CA 93721; or Employee's residence  
identified in Corporation 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 of the date of deposit of such written notice in the United States Mail.

## **SECTION 9. INDEMNIFICATION**

A. Corporation 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 Executive Director. Corporation 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 her capacity as Executive Director, 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 Corporation.

## **SECTION 10. CONFIDENTIAL INFORMATION**

A. Employee acknowledges that during the course of her employment with the City, she will become privy to information about the Corporation, which the Corporation deems private, confidential and proprietary. Employee agrees to treat all such information in strict confidence and will not disclose any Confidential Information she 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 her in a way detrimental to or to the disadvantage of the Corporation. Employee further acknowledges the disclosure of Confidential Information may be harmful to the Corporation 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 Board Chairman to employees of the Corporation or other individuals having a need to know as part of their official duties with the Corporation.

D. In the event the 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 Board Chairman so the Board Chairman 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 11. 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 Corporation or termination from the Corporation (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 Corporation 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 Corporation are unable to agree on the selection of a neutral arbitrator, the Corporation 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 Corporation, 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 Corporation, but not outside of Fresno County unless mutually agreed to by the Employee and the Corporation.

E. Employee and the Corporation 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 Corporation shall each bear their own costs incurred for legal representation as part of any such arbitration. The Corporation 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 Corporation hereby agree that this Section 11 shall survive the termination of Employee's employment and shall survive the termination and/or expiration of this Agreement.

## **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, she had the opportunity to consult an attorney of Employee's choice concerning all terms and conditions of this Agreement.

H. 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.

I. The failure or delay of Corporation 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 Corporation's right at a later time to enforce any such term or provision.

IN WITNESS WHEREOF, the Board Chairman, Secretary, and Employee have signed and executed this Agreement, effective the date and year first written above.

CORPORATION

EMPLOYEE

By: \_\_\_\_\_  
Esmeralda Soria  
BOARD CHAIRMAN

By: \_\_\_\_\_  
Marlene Murphey

CORPORATION

By: \_\_\_\_\_  
Yvonne Spence  
BOARD SECRETARY

**APPROVED AS TO FORM:**

DOUGLAS T. SLOAN  
City Attorney

By:  \_\_\_\_\_  
Tina R. Griffin  
Assistant City Attorney