

CITY OF CUPERTINO

AT-WILL CITY MANAGER EMPLOYMENT AGREEMENT

This AT-WILL CITY MANAGER EMPLOYMENT AGREEMENT (“Agreement”) is entered into and made effective the 29th day of August, 2022, by and between the CITY OF CUPERTINO, a general law city and municipal corporation (“City”), and PAMELA WU, an individual (“Employee”).

RECITALS

WHEREAS, it is the desire of the City Council of the City of Cupertino (hereinafter the “City Council”) to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the City’s Municipal Code; and

WHEREAS, California Government Code Section 34852 provides that an ordinance establishing a city manager form of government shall define the powers and duties of the city manager; and

WHEREAS, the powers and duties of the city manager of the City are set forth in Section 2.28.040 of the Cupertino Municipal Code; and

WHEREAS, based on Employee’s executive and administrative qualifications and ability, the City Council desires to employ Employee to serve as the city manager for the City; and

WHEREAS, Employee desires to perform and assume responsibility for the provision of city manager services to the City; and

WHEREAS, the parties wish to establish the terms and conditions of Employee’s provision of city manager professional services to the City through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Employee as City Manager for the City to perform the functions and duties of the City Manager, as specified in the City’s Municipal Code and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign, including but not limited to the following:

(a) To see that all laws and ordinances of the City are duly enforced and that all franchises, permits, licenses, and privileges granted by the City are faithfully performed

and observed;

(b) To control, order, and give directions to all directors of departments and to subordinate officers and employees of the City under her jurisdiction through her department directors, and to transfer employees from one department to another;

(c) The services and facilities of the City Treasurer and the City Attorney shall be made available to the City Manager to the same extent and in the same manner that the services are available to the City Council;

(d) To appoint, discipline and dismiss any and all officers and employees of the City except those elected by the electors of the City or whose appointment or dismissal is denied to the City Manager under the laws of the state. The power to appoint given in this paragraph does not include the power to create a new position except as provided under Chapter 2.52 of the City's Municipal Code;

(e) To attend all meetings of the City Council unless excused there from by the City Council;

(f) To recommend to the City Council for adoption such measures and ordinances as she deems necessary or expedient;

(g) To keep the City Council at all times fully advised as to the financial conditions and needs of the City;

(h) To prepare and submit to the City Council the annual budget and to administer it after adoption;

(i) To purchase or cause to be purchased all supplies for all of the departments or divisions of the City. No expenditures shall be submitted or recommended to the City Council except on report and approval of the City Manager;

(j) To make investigation into the affairs of the City and any department or division thereof and any Contract or the proper performance of any obligation running to the City;

(k) To investigate all complaints in relation to matters consuming the administration of the government of the City and in regard to the services maintained by public utilities in the City and to see that all franchises, permits, and privileges granted by the City are faithfully observed;

(l) To execute general supervision over all public buildings, public parks, streets, and other public property which are under the control and jurisdiction of the City Council;

(m) To devote her entire working time, thought, and energy to the duties and interests of the City;

(n) To receive and open all official mail and communications addressed either to the Mayor or to the City Council;

(o) To make reports and initiate recommendations as may be desirable or as requested by the City Council; and

(p) To perform such other duties and exercise such other powers as may be delegated to her from time to time by ordinance, resolution, or other action of the City Council.

Employee shall devote her best efforts and full-time attention to performance of these duties.

1.2 Work Schedule. It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position and must devote a great deal of time outside the normal office hours to the business of the City. Employee acknowledges that proper performance of the duties of City Manager will require Employee to generally observe normal business hours, as set by City and as may be duly revised from time to time, and will also often require the performance of necessary services outside of normal business hours, without the option for an alternative work schedule that includes a regularly scheduled weekday off. Notwithstanding the foregoing, City will permit Employee such reasonable "time off" as is customary for exempt employees of the City, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked, and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities. Employee shall focus her professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict of interest with the City or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of the City Manager.

1.4 Employment Status. Upon appointment to the City Manager position, Employee shall serve at the will and pleasure of the City Council and understands that she shall be an "at-will" employee without recourse to demotion rights and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary "*Skelly*" hearing, except as expressly provided in this Agreement. The City Council may terminate Employee at any time in accordance with Section 3.4 below.

(b) City Documents. All data, studies, reports, and other documents prepared by Employee while performing her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, except as may be required by any

governmental agency or court of competent jurisdiction or by any obligation to disclose such materials under the California Public Records Act. Such materials shall not be used by Employee, without the prior written consent of the City Council, for any purposes other than the performance of her duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.5 Exclusion from Competitive Service. Employee understands, acknowledges, and agrees that she is exempt from the City's personnel system and is subject to Resolution No. 21-070, entitled "A Resolution of the City Council of the City of Cupertino Amending the Appointed Employees' Compensation Program" ("Appointed Employees' Compensation Program Resolution"), as may be amended from time to time at the sole discretion of the City Council. In the event of a conflict between the Appointed Employees' Compensation Program Resolution and this Agreement, this Agreement controls.

1.6 FLSA Exempt Status. Employee agrees that her position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee's initial base annual compensation shall be Two Hundred Ninety-Eight Thousand Dollars (\$298,000.00) annually ("Salary"). Employee's Salary shall be increased by the same percentage and at the same time any discretionary across-the-board increase in base annual compensation granted to exempt management employees covered by the Unrepresented Employees' Compensation Program prior to August 29, 2022. Employee's Salary shall be paid on a pro-rated basis biweekly at the same time as other employees of the City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs as determined by the City.

2.2 Deferred Compensation. City shall provide to Employee the same deferred compensation plan that may be provided to other employees covered under the Appointed Employees' Compensation Program, if any. Employee shall be solely responsible for making contributions to the deferred compensation plan.

2.3 Annual Salary Review. The City Council and Employee agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 5.2. Following the annual performance review, the City Council may increase the Employee's salary. Any action to approve an increase must be approved by a majority vote of the City Council at a regularly noticed public meeting. The City Council and/or the Employee reserve the right to defer or refuse any or all part of any base salary adjustment if either party determines that the fiscal state of the City or any other public policy consideration warrants such action.

3.0 TERM

3.1 Commencement & Effective Date. Employee shall commence her

services hereunder at 12:01 a.m. Pacific Standard Time on August 29, 2022 or such earlier date upon which the City Council and Employee may mutually agree, in either event such date will also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. This Agreement shall remain in effect from the Effective Date specified at Section 3.1 and shall automatically expire seven (7) years thereafter, unless this Agreement is terminated prior to that date pursuant to Section 3.3 or Section 3.4.

3.3 Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the City Council with at least thirty (30) days' advance written notice prior to the effective date of termination, unless a shorter period is acceptable to Council. In the event Employee terminates this Agreement, Employee expressly agrees that she shall not be entitled to any severance pay.

3.4 Termination by City. The City Council may by majority vote terminate this Agreement at any time with or without cause, by providing written notice of the reason(s). The City Council's right to terminate Employee pursuant to this Section 3.4 shall not be subject to or in any way limited by the Administrative Rules and Regulations of the Personnel Code ("Personnel Rules") or past City practices related to the employment, discipline, or termination of the City's employees. Nothing herein shall be construed to create a property interest where one does not exist by rule of law in the position of City Manager. Upon appointment to the City Manager position, Employee will be and will remain an at-will employee serving at the pleasure of the City Council.

(a) Termination by City for Cause. The City Council may terminate this Agreement for cause at any time by providing Employee with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such cause. For purposes of this Agreement, the term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: (1) breach of this Agreement; (2) violation of the City's Municipal Code, ordinances, rules, and regulations, including but not limited to the City's Personnel Rules; (3) willful or persistent material breach or neglect of duties; (4) resume fraud or other acts of material dishonesty; (5) insubordination (which shall be defined as a repeated failure to carry out a directive or directives of the City Council made by the City Council as a body); (6) corrupt or willful misconduct in office; (7) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or conviction of a felony under California law; (8) willful destruction or misuse of City property; (9) habitual intoxication while on duty, whether by alcohol, prescription drugs, or non-prescription drugs where they are being used in a manner not authorized by Employee's treating physician; (10) use or possession of illegal drugs; (11) inexcusable absence without an authorized leave of absence; (12) willful political activity involving the support of candidates for the City Council; (13) theft or attempted theft; (14) financial mismanagement; (15) material dishonesty; (16) willful violation of federal, state, or City discrimination and harassment laws concerning either members of the general public or City's employee(s) while acting in the course and scope of employment and/or while on City premises or time; (17) willful and unlawful retaliation against any City officer or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or related directly thereto; (18)

willful violation of any conflict of interest or incompatibility of office laws; (19) performance of material outside business interests that conflict directly with the activities and duties as City Manager, but not including educational or professional training programs conducted by Employee whether for personal financial gain or not; (20) refusal to take or subscribe to any oath or affirmation which is required by law; (21) engaging in conduct tending to bring embarrassment or disrepute to City; (22) any illegal or unethical act involving personal gain; (23) "abuse of office or position" as defined in Government Code § 53243.4 (i.e., waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and corruption); or (24) any similar cause. For any of the foregoing, the City Council may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City Council terminates for cause this Agreement and the services of Employee hereunder, then City shall have no obligation to pay severance.

(b) Termination by City Council Without Cause. The City Council may terminate Employee at any time without cause but rather based upon management reasons, including but not limited to: (i) change of administration or (ii) incompatibility of management styles. In the event Employee is terminated without cause, such action shall be provided and delivered to the Employee in writing. Employee further expressly agrees that she shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4.1 below.

3.5 Announcement of Separation. In the event that Employee provides notice of intent to terminate this Agreement pursuant to Section 3.3, City and Employee shall work in good faith to prepare a joint press release or statement, the contents of which shall be mutually agreeable to City and Employee, for release within five (5) calendar days of delivery of notice of a party's intent to terminate, and shall defer making any public comments regarding the termination of the Agreement prior to the release of the agreed-upon statement. The joint press release or statement shall not contain any information that is disparaging to either party. Should the parties be unable to agree upon a joint press release or statement within five (5) hours, City reserves the right to issue unilaterally a press release or statement, which shall not contain any information that is disparaging to Employee.

3.6 Waiver of Certain Discipline and Termination Rights. Employee may have under the California or United States constitutions rights to a name-clearing hearing. Employee expressly waives any rights afforded under City's personnel system or policies, and any rights afforded to Employee under the Cupertino Municipal Code (including Chapter 2.52) or under state or federal law, including Government Code § 54950 *et seq.* ("Brown Act"), to any form of pre- or post- discipline or termination hearing, appeal, or other administrative process pertaining to discipline or termination. Such rights waived under this Section 3.5 include the right under the Brown Act (Government Code § 54957(b)) to have complaints or charges against an employee heard in a public session upon Employee's request.

4.0 SEVERANCE

4.1 Severance Pay. If the City Council terminates Employee without cause and Employee does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then City shall pay to Employee severance in an amount equal to her

monthly base salary (as defined in Section 2.1 above, calculated on a per diem basis) then in effect multiplied by twelve (12), less applicable deductions and excluding deferred compensation or the value of any other benefits.

Notwithstanding the foregoing, Government Code § 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. Accordingly, should such proposed severance payment exceed the amount authorized to be paid under Government Code § 53260, then the amount paid to Employee shall be reduced in the amount necessary to comply with such statute (For example, if termination occurs with two (2) months left in the term, severance would be equal to the monthly base salary multiplied by two (2) rather than the six (6) months otherwise provided by this Section 4.1.).

4.2 No Severance Pay if Termination for Cause or Termination by Employee.

As provided in Section 3.4(a), should Employee be terminated for cause, City shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should Employee terminate this Agreement, City shall have no obligation to pay the severance provided for in Section 4.1 above.

4.3 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause. Employee expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit A.

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate more effective management of the City. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.4 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement or the services of Employee hereunder.

5.2 Performance Evaluations. The City Council will endeavor to review and evaluate the performance of Employee on a quarterly basis, or on any other schedule agreed upon by Employee and the City Council. In addition, the City Council will conduct an annual performance review and evaluation of Employee in August of each year beginning in 2023, concurrently with an annual salary review. Any performance review (quarterly, annual, or otherwise) will be conducted in accordance with the purpose noted in Section 5.1 above, and will be based on specific criteria developed by the City Council after consultation with Employee. Such criteria may be modified as the City Council may from time to time determine, in consultation with the Employee.

5.3 Written Summary. The City Council may, at its sole discretion, elect to provide a written summary of each performance evaluation to Employee within two (2) weeks

following the conclusion of the review and evaluation process, and may, at its discretion, schedule at least one (1) closed personnel session with Employee to deliver and discuss the evaluation.

6.0 BENEFITS

6.1 Automobile Allowance. City shall reimburse Employee for the use of her personal automobile for official City business at the rate of Five Hundred Dollars (\$500.00) per month. The car allowance and parking expense reimbursements authorized by this Section 6.1 shall constitute full compensation for any and all expenses related to the operation and maintenance of Employee's vehicle for City purposes. Employee shall maintain throughout the term of this Agreement automobile liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) for bodily injuries or death of one person and Fifty Thousand Dollars (\$50,000.00) for property damage arising from one accident. Employee shall provide City with evidence of such automobile liability insurance coverage, to consist of a certificate of insurance or a copy of the insurance policy.

6.2 PERS. Employee is a "classic" member of CalPERS and shall participate in the City's 2% at 60 formula subject to the terms and conditions in the Appointed Employees' Compensation Program.

6.3 Sick, Vacation and Holiday Leave. Employee shall accrue vacation leave at a rate of 192 hours annually, with a maximum accrual of 352 hours. Employee shall otherwise receive sick, vacation, and holiday leave at the same level as all full-time employees, subject to the terms and conditions in the City's Personnel Rules as amended from time to time, based on the same terms and conditions applicable to management employees covered by the Unrepresented Employees' Compensation Program. Sick leave shall have no cash out value upon Employee's separation from the City.

6.4 Administrative Leave. Employee shall accrue administrative leave as time off from work, instead of pay or compensatory leave credit for overtime work, at the rate of eighty (80) hours per year, subject to the terms of the Appointed Employees' Compensation Program. Employee may elect a buyout of administrative leave time once per year at a time determined by City. Upon Employee's separation from City service for any reason, the City shall compensate Employee for any accrued administrative leave. The value of accrued administrative leave shall be calculated using Employee's prevailing pay rate on the date of Employee's separation from City service.

6.5 Professional Dues and Subscriptions. City agrees to pay for professional dues and subscriptions of Employee directly related to her duties as City Manager, including but not limited to membership in the International City Management Association ("ICMA"), the California City Management Foundation ("CCMF"), the League of California Cities, the American Planning Association ("APA"), and the Urban Land Institute ("ULI"), provided the City Council has made provisions for such costs in the annual budget.

6.6 Professional Development. City hereby agrees to pay travel and subsistence expenses of Employee for professional and office travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue

necessary official functions for the City, including but not limited to city manager associations and other such national, regional, state, and local government groups and committees on which Employee serves as a member, provided that the City Council has made provisions for such costs in the annual budget. City also agrees to pay tuition, travel, and subsistence expenses of Employee for courses, institutes, and seminars that are necessary for her professional development and the good of the City, provided that the City Council has provided for same in the annual budget.

6.7 Expenses. Employee shall be entitled to reimbursement for all reasonable expenses necessarily incurred by her in the performance of her duties upon presentation of vouchers indicating the amount and purpose thereof, and further provided that such expenses are in accordance with policies established from time to time by City and consistent with budget approved by the City Council for that purpose during the term of this Agreement.

6.8 Housing Assistance. Employee may elect to receive Housing Assistance in accordance with the City's Housing Assistance Program for Appointed Employees and Department Heads, Resolution No. 15-092, in effect as of the execution date of this Agreement, which is subject to approval by the City Council.

6.9 Other Benefits. Except as expressly provided in this Section 6.0, Employee shall be entitled to receive benefits as provided for under the Appointed Employees' Compensation Program, as amended from time to time, which presently consist of, but are not limited to, retirement benefits, health coverage, life insurance, disability insurance, Cupertino sports club membership, floating holidays, and holidays. These benefits are subject to modification during the course of this Agreement at the sole and absolute discretion of City at such times and to such extent as City may deem appropriate; provided, however, there shall be no reduction in benefits unless City implements the same reduction of benefits to all other employees covered under the Appointed Employees' Compensation Program; and further provided that in the event of a conflict between the Appointed Employees' Compensation Program and this Agreement, this Agreement shall control.

7.0 BONDS AND INDEMNIFICATION

7.1 Indemnification. To the extent mandated by the California Government Code, City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This Section 7.1 shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or to any other intentional or malicious conduct or gross negligence of Employee.

7.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between

the parties with respect to Employee's employment by City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by either party or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

8.2 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require approval by the affirmative vote of at least three (3) members of the City Council.

8.3 Notice. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:

City of Cupertino
Attention: City Clerk
10300 Torre Avenue
Cupertino, CA 95014

To Employee:

Pamela Wu
[On file with Human Resources Dept.]

Notice shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.4 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts or reasonably might be expected to conflict with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to Section 87100 *et seq.*, Section 1090, and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

8.5 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.6 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.7 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and the parties agree that venue for any action arising out of this agreement shall be in Santa Clara County, California.

8.8 Mandatory Government Code Provisions. Government Code §§ 53243–53243.4 require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of their office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§ 53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§ 53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§ 53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§ 53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§ 53243.4. “Abuse of office or position” defined.

Employee represents that Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement or severance related to a termination that Employee may receive from City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of Employee's office or position. The Government Code provisions referenced in this Section 8.8 are attached hereto in Exhibit B.

8.9 Independent Legal Advice. City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or had the opportunity to do so, and City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

///

///

[signature page follows]

IN WITNESS WHEREOF, the City of Cupertino has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement.

CITY OF CUPERTINO
A Municipal Corporation

PAMELA WU
An Individual

By: 
Darcy Paul
Mayor, City of Cupertino

Pamela Wu

Date: 7/21/2022

Date: Jul 11, 2022

APPROVED AS TO FORM:

Christopher D. Jensen
Christopher D. Jensen (Jul 25, 2022 13:17 PDT)
Christopher D. Jensen
City Attorney

ATTEST:


Kirsten Squarcia
City Clerk

Date: 7/21/22

EXHIBIT A

**FORM OF AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL
RELEASE**

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Cupertino, a general law city and municipal corporation (hereinafter referred to as "THE CITY"), and _____, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1. EMPLOYEE was hired by THE CITY as an at-will City Manager effective _____ serving at the pleasure of the City Council of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit A ("THE CONTRACT"). EMPLOYEE is currently __ years old.

2.2. THE CITY and EMPLOYEE desire that EMPLOYEE resign and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between THE CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of _____, __. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under THE CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

3. CONSIDERATION

3.1 EMPLOYEE shall receive payment to him/her at the time of his/her voluntary separation all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by law or THE CONTRACT or any other agreement with THE CITY.

3.2. In exchange for the waivers and releases set forth herein, THE CITY shall also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of _____ and

cents (\$_____.00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges THE CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "THE CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at any time from the beginning of time up to and including _____, ____ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including but not limited to any and all claims whether arising under any federal, state, or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin, or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12, 900 *et seq.*, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

4. **SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA**

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626 *et seq.*, Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that she/he knowingly and voluntarily, for just compensation in addition to anything

of value to which EMPLOYEE was already entitled, waives, and releases any rights he/she may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that he/she has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) This waiver/release is written in a manner understood by EMPLOYEE;
- (b) EMPLOYEE is aware of and/or has been advised of his/her rights under the ADEA and OWBPA, and of the legal significance of his/her waiver of any possible claims he/she currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- (c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights he/she may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his/her own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;
- (d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the EFFECTIVE DATE of this AGREEMENT;
- (e) EMPLOYEE has been advised by this writing that he/she should consult with an attorney prior to executing this AGREEMENT;
- (f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, his/her counsel of choice, and he/she does not need any additional time within which to review and consider this AGREEMENT;
- (g) EMPLOYEE has **seven (7) days following his/her execution** of this AGREEMENT to revoke the AGREEMENT;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release"; and
- (i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

5. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code § 1542 reads as follows:

"General Release – Claims Extinguished"

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at

the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

EMPLOYEE hereby waives the protection of California Civil Code § 1542.

6. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so; and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission, or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment, or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally, and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist, or have previously existed against THE CITY or THE CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless THE CITY and THE CITY PARTIES from and against any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that he/she shall be exclusively liable for the payment of all taxes for which he/she is responsible, if any, as a result of his/her receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state, or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary, or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during his/her employment. Said services shall be provided as needed by THE CITY at a rate of \$100.00 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of his/her employment with THE CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that he/she has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state, or federal agency or court; that he/she will not do so at any time hereafter for any claim arising on any date up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, he will request such agency or court to withdraw from the matter forthwith.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released, or granted, or purported to assign, transfer, release, or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

8. MISCELLANEOUS

8.1. No Admission: Nothing contained herein shall be construed as an admission by THE CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision, or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision, or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.7. Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.

8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be

deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to EMPLOYEE:

At EMPLOYEE's home address on file with THE CITY.

As to THE CITY:

City of Cupertino
Attention: City Clerk
10300 Torre Avenue
Cupertino, CA 95015

///

///

///

///

///

///

///

///

///

///

///

[signature page follows]

IN WITNESS WHEREOF, THE CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this Agreement, and the attorneys for THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

CITY OF CUPERTINO
A Municipal Corporation

An Individual

By: _____

Mayor, City of Cupertino

Date: _____

Date: _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

Date: _____

EXHIBIT B

GOVERNMENT CODE SECTIONS 53243-53243.4

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.






City Manager Employment Agreement

Final Audit Report

2022-07-11

Created:	2022-07-11
By:	Araceli Alejandre (aracelia@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAant-y5SvJ-DfrSEcaU9v6EKHDeBixZoD

"City Manager Employment Agreement" History

-  Document created by Araceli Alejandre (aracelia@cupertino.org)
2022-07-11 - 6:37:41 PM GMT- IP address: 73.170.27.253
-  Document emailed to tangwupamela@gmail.com for signature
2022-07-11 - 6:43:12 PM GMT
-  Email viewed by tangwupamela@gmail.com
2022-07-11 - 7:19:41 PM GMT- IP address: 66.249.84.250
-  Document e-signed by Pamela Wu (tangwupamela@gmail.com)
Signature Date: 2022-07-11 - 7:43:19 PM GMT - Time Source: server- IP address: 24.143.245.142
-  Agreement completed.
2022-07-11 - 7:43:19 PM GMT



Powered by
Adobe
Acrobat Sign







AT-WILL CITY MANAGER EMPLOYMENT AGREEMENT

Final Audit Report

2022-07-25

Created:	2022-07-25
By:	Kirsten Squarcia (kirstens@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAZbIpV-SumvGyqjCYk8CvpAEwITJtDFYN

"AT-WILL CITY MANAGER EMPLOYMENT AGREEMENT" History

-  Document created by Kirsten Squarcia (kirstens@cupertino.org)
2022-07-25 - 8:14:29 PM GMT- IP address: 162.245.20.145
-  Document emailed to christopherj@cupertino.org for signature
2022-07-25 - 8:15:16 PM GMT
-  Email viewed by christopherj@cupertino.org
2022-07-25 - 8:17:33 PM GMT- IP address: 104.47.73.126
-  Signer christopherj@cupertino.org entered name at signing as Christopher D. Jensen
2022-07-25 - 8:17:48 PM GMT- IP address: 136.24.42.212
-  Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)
Signature Date: 2022-07-25 - 8:17:49 PM GMT - Time Source: server- IP address: 136.24.42.212
-  Agreement completed.
2022-07-25 - 8:17:49 PM GMT