

INTERIM CITY ATTORNEY SERVICES AGREEMENT

This INTERIM CITY ATTORNEY SERVICES AGREEMENT ("Agreement") is entered into by and between the CITY OF CUPERTINO ("City"), a California municipal corporation, and ALESHIRE & WYNDER, LLP ("Firm"), effective on the last date signed below. The City and the Firm shall each be a "Party" and shall collectively be referred to as the "Parties."

1. Appointment

City Council hereby appoints Floy E. Andrews ("Andrews") as the City Attorney ("City Attorney"), on an interim basis and hires the Firm as its interim City Attorney, to render such legal services as are customarily rendered by such official and as further specified herein, including attending meetings of the City Council and any other City boards and commissions and their affiliated agencies, as needed or requested by the City Council. The City Attorney shall report to the City Council, and shall hold office hours at City Hall, 10300 Torre Avenue, Cupertino, as needed. Other members of the Firm may provide services to City as directed by Andrews. The Firm represents that it employs, or will employ at its own expense, all personnel required for the satisfactory performance of any and all tasks and services set forth herein. Within sixty (60) days of the execution of this Agreement, the Parties will meet to mutually agree upon an amendment to this Agreement to further define the Firm's scope of services and compensation, if necessary. This Agreement shall be for a term of one year from its effective date. The term may be extended by mutual written agreement.

The Firm represents that it possesses all necessary training, licenses, and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity. The Firm further agrees to perform legal services in a manner that complies with the California Rules of Professional Conduct and state laws relating to conflicts of interest and self-dealing, including the California Political Reform Act (Government Code sections 81000 et seq.) and Government Code sections 1099 et. seq. Violation of the professional conduct and ethics laws is cause for termination of this Agreement and recovery by City of fees paid for services performed in violation of said rules and law.

2. Scope of Work and Duties

The Firm shall perform any and all work necessary for the provision of City Attorney services to City, as set forth in the Municipal Code, including, but not limited to, the following:

(a) Attendance at meetings of the City Council, or any other City boards and commissions and other affiliated entities, unless excused by the Mayor or Vice Mayor as needed; and

(b) Provide legal advice, written legal opinions, and consultation on all matters affecting City to the City Council, City Manager, boards, commissions, committees, officers, and employees of City and as requested by the City Council, the City Manager, or their designee, in

accordance with such policies and procedures as may be established by City from time to time; and

(c) Be available for consultation with City staff, personally, electronically, and telephonically, as needed on legal matters which are within their area of operation; and

(d) Prepare or review necessary legal documents such as: ordinances, and resolutions; agreements of any nature; real property instruments of any nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; bonds of any size, amount, and offering terms and conditions; public works construction documents including bid specifications, contracts, bonds, insurance, liens and related documents; memorandum of understanding; franchise agreements; and all similar documents; and

(e) The City Attorney shall manage the in-house legal office in a manner to promote the efficiency and utility of the personnel, encourage their professional development, and cause legal affairs of City to be successfully resolved; and

(f) Represent and advise City on pending and potential litigation, in an efficient and expeditious manner, in any such litigation; it is expressly understood that the Firm shall not be responsible for any pending litigation matter(s) handled by attorneys previously or otherwise employed by City until such files have been transferred to the Firm and the Firm has specifically appeared in the matter(s) as attorneys of record on behalf of City; and

(g) Hold regular office hours at City Hall; and

(h) Attend meeting with in-house attorney staff to discuss projects and workloads; and

(i) Monitor pending and current legislation and case law as appropriate; and provide updates to all in house attorney staff and City Manager; and

(j) Supervise all outside legal services, if any; and

(k) Provide representation to City in all of its legal affairs, including, but not limited to, municipal law, land use, environmental, toxics, mining, water, tort defense, personnel, labor representation, code enforcement, criminal prosecution, redevelopment, housing, cable television, finance, franchising, contracts, enterprise and other matters, except where conflicts exist or where the City Council may otherwise direct. The City Attorney shall represent City in all of the foregoing legal matters, and in initiating and defending all litigation unless otherwise directed by the City Council; and

(l) Keep City informed as to the progress and status of all pending matters in accordance with such procedures as the City Council may establish from time to time; and

(m) Manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. Issues impacting the Firm's provision of services shall be promptly reported. All legal services provided by the Firm shall be properly supervised and all personnel shall be qualified to handle the work assigned. If outside special counsel is retained,

unless otherwise directed by the City Council, such special counsel shall be supervised by the City Attorney; and

(n) Provide monthly confidential updates to the City Council and City Manager on the status of major projects and high profile or high-risk litigation and provide quarterly reports on the cost of the Firm's services.

All the foregoing legal services shall be coordinated under the direction of the Mayor, City Council, and City Manager. Notwithstanding any other provision contained herein, any legal services may only be ultimately authorized by the City Council. Nothing in this Agreement shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign any legal matter of the City from or to the Firm.

3. City Duties

City agrees to provide such information, assistance, cooperation, and access to books, records, and other information as is necessary for the Firm to effectively render its professional services under this Agreement. To the extent City desires services to be rendered on site, City, at City's expense, will make available sufficient office space, furniture, telephones, computers, facsimile machines, and administrative support, as may be necessary therefor. City further agrees to abide by this Agreement, and to pay the Firm's bills for fees, costs, and expenses.

4. Legal Fees, Costs, and Billing Practices

The Firm's hourly billing rates for general advisory services will be as follows:

Partner	\$325
Sr. Associate	\$305
Associate	\$285
Law Clerk	\$195
Paralegal	\$195
Document Clerk	\$125

The Firm's hourly billing rates for litigation & special services will be as follows:

Partner	\$385
Sr. Associate	\$305
Associate	\$285
Law Clerk	\$195
Paralegal	\$195
Document Clerk	\$125

Special services include all matters requiring special expertise above and beyond routine municipal assignments and/or routine matters, including but not limited to: complex planning, land use and housing, refuse and solid waste, major contracts, economic development projects, municipal finance, public works contracting, real estate, rent control and just cause eviction law, eminent domain/regulatory takings, labor and employment, investigations, enterprise funds,

environmental and toxics, water, energy, utilities, franchise-cable and telecommunications, and police and fire matters.

Some unique services, such as bond financing work, will be billed at \$500 for Attorneys.

Reimbursables, such as work being refunded by a developer to City, are \$400-700, for Partners and \$350-600 for Associates. The specific determination of a rate within the above ranges shall be based upon the experience of the attorney and subject to mutual agreement prior to the performance of these unique services.

Fees will be charged for all time actually expended in increments of one-tenth of an hour. The Firm will not bill to a minimum increment greater than one-tenth (0.10) of an hour. The Firm will annually increase these billing rates consistent with any annual increase in the Consumer Price Index (October over October time period) for All Urban Consumers (not seasonally adjusted) San Francisco-Oakland-Hayward area (1982-1984 = 100) as published by the Bureau of Labor Statistics, U.S. Department of Labor, rounded to the nearest whole \$1. The Firm will implement the increase each year on January 1st, or as soon thereafter as the CPI information is published. The Firm may otherwise increase these rates periodically to reflect the advancing experience, capability, and seniority of Firm members as well as general economic factors. The Firm has errors and omissions insurance coverage applicable to the services being provided under this Agreement.

City will also reimburse the Firm for payments to third parties, including other legal firms, incurred in the course of representation. City will not reimburse for ordinary costs of business, including but not limited to, overhead costs, staff time, long-distance telephone, facsimile, postage, and routine photocopying. City will reimburse for non-routine photocopying costs (e.g., litigation matters, document review, color copies, and large print jobs) at a cost of 10 cents per page and will reimburse for charges for electronic legal research time. No lodging expenses will be charged for attendance at City Council meetings or other meetings at City Hall, but travel time is billed at the hourly billing rates set forth above.

The Firm will provide detailed monthly billing statements for fees and expenses incurred. City agrees to pay the Firm's billed fee and expenses within thirty (30) days after billing. Monthly billing statements shall set forth a description of all work performed, hours worked, identify the person undertaking the work, and rates charged.

5. Insurance

The Firm agrees to maintain insurance in the following amounts:

a. Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

b. Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

c. Worker's Compensation insurance as required by the laws of the State of California.

d. Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).

The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A: VII in the latest edition of Best's Insurance Guide, or a California approved Surplus Lines carrier (e.g., Lloyd's of London).

6. Authorized Representative of City

The City Council shall direct the Firm's provision of services under this Agreement. The City designates the Mayor as the authorized representative to be the primary person to communicate with the Firm regarding the subject matter of this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between the Firm and other representatives of City. Unless directed otherwise by the City, all correspondence and bills will be directed to the Mayor (currently Liang Chao (lichao@cupertino.gov)), with a copy to Serena Tu, Executive Assistant, City Manager's Office (serenat@cupertino.gov). The City may update the officials or employees designated in this paragraph by providing written notice to the Firm.

7. Conclusion of Services, Discharge and Withdrawal

Unless otherwise agreed in writing, the representation of Client under this Agreement will automatically terminate at the time the Firm completes the legal services agreed to under this agreement.

The City may discharge the Firm at any time, with or without cause, by providing written notice to the Firm, which is effective upon receipt by the Firm. Discharge without cause will normally include a ninety (90) workday notice period to permit transition of matters and responsibilities to new counsel. In the event of discharge, if the Firm is the attorney of record in any proceeding, the Firm will promptly provide City with a substitution of attorney form if requested by City. City will execute and return the substitution of attorney form immediately upon receipt from the Firm.

The Firm may withdraw upon ninety (90) workdays' prior written notice, with or without cause. The Firm may withdraw at any time as permitted under the Rules of Professional Conduct of the State Bar of California. A valid reason for withdrawal by the Firm would include, but not be limited to, City's consent, City's breach of this Agreement, City's failure to pay fees and costs as provided in this Agreement, City's conduct renders it unreasonably difficult for the Firm to carry out the representation effectively, City declines to pay for the Firm's services at an increased rate under Section 2, or any fact or circumstances that would render the Firm's

continuing representation unlawful or unethical. If the Firm withdraws from representing City under this Section, it will have the right to terminate this Agreement and withdraw as counsel for City in any litigation where the Firm has appeared before a court. At such time as the Firm's services conclude, all unpaid fees for legal and related services and costs and expenses will immediately become due and payable.

8. Case Files

After the Firm's Services conclude, the Firm will, upon City's request, deliver the files for all City matters to City. If City does not request the files for this matter, the Firm will retain them for a period of five years after the matter is closed. If City does not request delivery of the files before the end of the five-year period, the Firm will have no further obligation to retain the files and may, at the Firm's discretion, destroy them without further notice to City. At any point during the five-year period, City may request delivery of the files. If City so requests, paper copies of original documents (or the originals themselves) will be provided free of charge. City agrees to pay for any additional fees or costs incurred to produce copies of electronic files, if City requests those files.

9. No Guarantee

Nothing in this Agreement and nothing in the Firm's statements to City will be construed as a promise or guarantee about the outcome of any matter. The Firm makes no such promises or guarantees.

10. Conflicts

The Firm has no present employment which is adverse to City, and agrees that it shall not represent clients in either litigation or non-litigation matters against City. However, the Firm may have past and present clients or may have future clients, which, from time to time, may have interests adverse to City. The firm reserves the right to represent such clients in matters not connected with its representation of City. The Firm shall promptly disclose to the City Council and City Manager any such actual or potential conflict immediately wherever the same shall arise or come to the attention of the Firm.

If a potential conflict of interest arises in the Firm's representation of two clients, if such conflict is only speculative or minor, the Firm shall seek waivers from each client with regards to such representation. However, if real conflicts exist, the Firm would withdraw from representing either client in the matter, and assist them in obtaining outside special counsel.

The Firm maintains a strict policy forbidding political contributions in city council races in the cities we represent or propose to represent and will adhere to this policy as to City. This policy is in conformity with the *Ethics Policy* adopted by the City Attorneys Department of the League of California Cities.

11. Independent Contractor

The Firm shall at all times herein be deemed an independent contractor wholly responsible for the manner in which it performs the Services under this Agreement and fully liable for the acts and omissions of its employees, subconsultants, and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture, or partnership relationship between City and the Firm, and no such relationship shall be implied from performance of this Agreement. The terms of this Agreement referring to direction from City shall be construed as providing for direction as to the scope of Services, and not as to the means and methods by which a result is obtained. The Firm shall pay all other taxes including but not limited to any applicable City of Cupertino business tax, not explicitly assumed in writing by City under this Agreement. The Firm shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities. In the event that the Firm or any employee, agent, or subcontractor of the Firm providing services under this Agreement is determined by a court of competent jurisdiction, arbitrator, or administrative authority, including but not limited to the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, the Firm shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and actual attorney's fees incurred by City in connection with the above.

Notwithstanding the Firm's independent contractor relationship with City, City may, from time to time (i.e. annually), and at its sole discretion, conduct an evaluation of the Firm's services as outside counsel, including conducting such evaluation in closed session as permitted under Government Code section 54957.

12. Indemnification and Liability

To the fullest extent permitted by the law, the Firm shall indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Firm or its subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, paralegal and attorneys' fees (including costs attributable to in-house paralegals and attorneys), City staff costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from the services under this Agreement, or any part thereof, but only to the proportionate extent caused by any negligent act or omission of the Firm, any subconsultant of the Firm, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities").

Irrespective of any language to the contrary in this Agreement, the Firm has no duty to provide or to immediately pay for an up-front defense of City against claims or allegations unproved in a final judgment in all courts, but shall reimburse those litigation costs and expenses referenced herein that are incurred by City to the proportionate extent caused by the negligence

of the Firm, any subconsultant of the Firm, anyone directly or indirectly employed by them, or anyone that they control. The Firm's indemnification and hold harmless obligation shall not exceed the Firm's finally determined percentage of liability based upon the comparative fault of the Firm.

The Parties agree, to the fullest extent permitted by law, to submit to mediation, any dispute, cause, or controversy arising out of or relating to the validity, enforceability, interpretation, performance, or breach of this section, including, but not limited to, the determination of liability based upon the comparative fault of the Firm ("Claims"). In the event the parties do not resolve any Claims through mediation, then the Firm and City agree to binding arbitration of such Claims through JAMS, under California Code of Civil Procedure sections 1280 through 1294.4. The parties further agree that this Agreement is intended to be strictly construed to provide for mediation followed by arbitration, if necessary, as the sole and exclusive means for resolution of all disputes under this section (including, but not limited to, the determination of liability based upon the comparative fault of the Firm) to the fullest extent permitted by the. The Parties expressly waive any entitlement to have such controversies decided by a court or a jury.

Any mediation and/or arbitration of Claims under this section shall occur in Santa Clara County, California. The Parties shall be responsible for their own attorneys' fees and related hearing costs and shall split equally the costs for the mediator and/or arbitrator. The provisions of this section shall survive the completion of the services or termination of this Agreement.

If any provision in this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect. This Agreement may be modified only by written agreement.

13. Non-Waiver

The failure of City or the Firm to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Agreement shall not be deemed a waiver by that party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition. Payment to the Firm of compensation under this Agreement shall not be deemed to waive City's rights or the Firm's rights contained in this Agreement.

14. Severability

If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, invalid, or void, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

15. Disputes

City and the Firm agree to have disputes (except where City may request arbitration of a fee dispute by the State Bar) that arise out of, or relate to this Agreement, including but not limited to claims of negligence or malpractice arising out of or relating to the legal services

provided by the Firm to City, decided by binding arbitration in accordance with the provisions of the Code of Civil Procedure section 1280 *et seq.* and administered by JAMS pursuant to its comprehensive arbitration rules and procedures. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. the Firm and City shall each have the right of discovery in connection with any arbitration proceeding in accordance with, and to the full extent allowed by, the California Rules of Civil Procedure section 1283.05. City, however, may request arbitration of a fee dispute by the State Bar as provided by Business and Professions Code Section 6200, *et seq.* Alternatively, any legal action or proceeding by City against the Firm related to this Agreement may be brought in the courts of Los Angeles County, State of California.

16. Remedies

The rights and remedies of City provided in this Agreement are not intended to be exclusive, and are in addition to any other rights and remedies permitted by law.

17. Binding Agreement

This Agreement is intended to be binding on the parties and their respective successors and assigns.

18. Counterparts

This Agreement may be executed in counterparts, all of which taken together will be considered one original document.

19. Integrated Agreement; Amendment

This Agreement, including all exhibits, contains all of the agreement of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by City.

ACCEPTED AND AGREED:
City of Cupertino, a municipal corporation

By: Liang Chao
Liang Chao (Feb 23, 2025 11:30 PST)

Its: Mayor

Date: 02/23/2025

ALESHIRE & WYNDER, LLP
a California limited liability partnership

By: Floy Andrews

Floy Andrews, Partner
Date: Feb 20, 2025

ATTEST:

Kirsten Squarcia
Kirsten Squarcia (Feb 24, 2025 08:16 PST)

Kirsten Squarcia, City Clerk

Date: 02/24/2025

City of Cupertino - Interim City Attorney Agreement

Final Audit Report

2025-02-20

Created:	2025-02-20
By:	Araceli Alejandre (aracelia@cupertino.org)
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-  Document created by Araceli Alejandre (aracelia@cupertino.org)
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-  Document emailed to fandrews@awattorneys.com for signature
2025-02-20 - 9:00:05 PM GMT
-  Email viewed by fandrews@awattorneys.com
2025-02-20 - 9:30:52 PM GMT- IP address: 50.112.162.3
-  Signer fandrews@awattorneys.com entered name at signing as Floy Andrews
2025-02-20 - 9:55:29 PM GMT- IP address: 50.112.162.3
-  Document e-signed by Floy Andrews (fandrews@awattorneys.com)
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City of Cupertino - Interim City Attorney Agreement

Final Audit Report

2025-02-24

Created:	2025-02-22
By:	Kirsten Squarcia (kirstens@cupertino.org)
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-  Document emailed to lchao@cupertino.gov for signature
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-  Email viewed by lchao@cupertino.gov
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-  Signer lchao@cupertino.gov entered name at signing as Liang Chao
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-  Document e-signed by Liang Chao (lchao@cupertino.gov)
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