

RESOLUTION NO. _____

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL
APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF
CUPERTINO AND TINA KAPOOR, INTERIM CITY MANAGER, AND
AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT**

WHEREAS the City Council appointed Tina Kapoor as Interim City Manager at the June 17, 2025 City Council Closed Session.

WHEREAS, this Interim City Manager appointment is subject to the terms outlined in the Interim City Manager Employment Agreement ("Employment Agreement"), attached hereto as Attachment B;

WHEREAS, the terms, conditions and provisions of the Employment Agreement have been reviewed and approved by the City Attorney;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the aforementioned Employment Agreement and authorizes the Mayor to execute said agreement on behalf of the City of Cupertino.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970 and the State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because the Employment Agreement would have no or only a de minimis physical impact on the environment. Where it can be seen with certainty that the action does not have the potential for causing a significant effect on the environment, CEQA does not apply. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 15th day of July 2025, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

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ABSTAIN:

<p>SIGNED:</p> _____ Liang Chao, Mayor City of Cupertino	 _____ Date
<p>ATTEST:</p> _____ Kirsten Squarcia, City Clerk	 _____ Date

CITY OF CUPERTINO
INTERIM CITY MANAGER
EMPLOYMENT AGREEMENT

This INTERIM CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement") is effective as of the 17th day of June, 2025, by and between the CITY OF CUPERTINO a general law city and municipal corporation ("City") and Eshverya Gianchandani aka Tina Kapoor, an individual ("Employee").

RECITALS

WHEREAS, the City's former City Manager recently departed the City effective June 6, 2025, after being placed on administrative leave on May 2, 2025; and

WHEREAS, Employee was appointed as Acting City Manager on May 2, 2025, and has served the City in that capacity since then; and

WHEREAS, effective the 2nd day of May, 2025, Employee was appointed as the City's Acting City Manager, which position is an at-will position pursuant to Cupertino Municipal Code Section 2.28; and

WHEREAS, the City Council desires to employ Employee to serve as the Interim City Manager for the City beginning effective June 17, 2025; and

WHEREAS, it has been the desire of the City Council to contract with Employee to serve in the position of Interim City Manager for the City to temporarily fill 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 at Cupertino Municipal Code Section 2.28.040; and

WHEREAS, Employee desires to continue to temporarily perform City Manager services for the City on an interim basis and upon the conclusion of services as Interim City Manager Employee shall have the right to return to her former position as Deputy City Manager at the Step 5 level, with the salary and benefits established for that classification under the Unrepresented Employees' Compensation Program; and

WHEREAS, the parties wish to establish the terms and conditions of Employee's provision of City Manager professional services to the City and its related agencies on an interim basis through this Agreement.

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

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Employee as Interim City Manager for the City to perform the functions and duties of the City Manager on an interim basis, as specified in the City Manager job description on file in City Hall, 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. Employee shall devote her best efforts and full-time attention to performance of these duties. During the term of this Agreement, Employee will only perform the duties of Interim City Manager.

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, must be available at all times, 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 Interim City Manager will require Employee to generally observe normal business hours, as set by the City and may be duly revised from time-to-time, which will also often require the performance of necessary services outside of normal business hours. Notwithstanding the foregoing, the 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 Interim City Manager.

1.4 Employment Status. Upon appointment to the Interim City Manager position, Employee shall serve as Interim City Manager at the will and pleasure of the City Council pursuant to Cupertino Municipal Code § 2.28.010. Employee understands that such appointment is "at-will" and shall be subject to summary dismissal as Interim City Manager without any right of notice or hearing except as expressly provided in this Agreement, including any due process pre-disciplinary "Skelly" meeting. Subject to Article 4.0 (entitled "Right to Reappointment to Deputy City Manager Position"), the City may terminate Employee as Interim City Manager at any time in accordance with Section 3.4 below. Employee's at-will employment status as Interim City Manager shall not impact Employee's employment status as Deputy City Manager upon termination of this Agreement.

1.5 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. 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, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.6 FLSA Exempt Status. Employee agrees that the position of Interim City Manager is that of an exempt employee for the purposes of the Fair Labor Standards Act ("FLSA").

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee's base compensation shall be Two Hundred Ninety Five Thousand Dollars and No Cents (\$295,000.00) annually ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time that other employees of the City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs. Employee shall be entitled to any across the board salary increase that is provided to salaried exempt managerial employees in connection with any amendment to the Unrepresented Employees' Compensation Program.

2.2 Retroactive Compensation. City will retroactively compensate Employee at the salary set forth in section 2.1 for services rendered as Acting City Manager, beginning on her appointment date of May 2, 2025 through the effective date of this Agreement. Such retroactive compensation shall consist of the difference between Employee's compensation as Deputy City Manager and the rate of compensation provided for in Section 2.1 above. This retroactive compensation will be provided at the next regular pay period, or as soon thereafter as possible.

2.3 Deferred Compensation. Subject to the applicable IRS limitations that may be in effect at the time -- currently \$23,500 annually -- the City shall contribute on a monthly basis the maximum amount into Employee's deferred compensation account.

2.4 CalPERS Reporting. Employee acknowledges that the City makes no representation, and Employee shall not rely on any representation, that the difference in compensation provided in this Agreement and the compensation provided to Employee as Deputy City Manager, or any retroactive compensation provided in Section 2.2 above, will be treated as "compensation earnable" under CalPERS laws and regulations for purposes of calculating her CalPERS service retirement benefits.

3.0 TERM

3.1 Commencement & Effective Date. Employee commenced services hereunder as Interim City Manager, following her appointment by the City Council, on June 17, 2025 ("Effective Date").

3.2 Term. The term of this Agreement shall begin on the Effective Date. This Agreement may be terminated at any time in accordance with Section 3.3 and 3.4, subject to Article 4.0 (entitled "Right to Reappointment to Deputy City Manager").

3.3 Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the City Council with at least five (5) business days' advance written notice. In the event Employee terminates this Agreement, Employee shall automatically revert to the position of Deputy City Manager under the terms and conditions set forth in Section 4.0 of this Agreement. No severance shall be due to Employee in the event of Employee's termination of this Agreement.

3.4 Automatic Termination Due to Appointment of Permanent City Manager. This Agreement shall automatically terminate as of the effective date of the appointment of a permanent City Manager.

3.5 Termination by City. The City Council may terminate this Agreement at any time with or without cause, by providing written notice of the reason(s), subject to Article 4.0 (entitled "Right to Reappointment to Deputy City Manager Position") below. The City Council's right to terminate Employee pursuant to this Section 3.5 shall not be subject to or in any way limited by the City's Administrative Rules and Regulations, the Cupertino Municipal Code, or past City practices related to the employment, discipline or termination of the City's employees. Employee expressly waives any rights provided for the City Manager under the City's Administrative Rules and Regulations, the Municipal Code, or under other state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination. However, such waived rights do not include those rights Employee may have under the California or United States constitutions to a name-clearing hearing. Nothing herein, however, shall be construed to create a property interest, where one does not exist by rule of law, in the position of City Manager. No severance shall be due to Employee in the event of the City's termination of this Agreement.

(a) Termination by City for Cause. The City may terminate this Agreement and Employee's employment with the City 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. 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) résumé fraud or other acts of material dishonesty, 2) unauthorized absence or leave, 3) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or conviction of a felony under California law, 4) use or possession of illegal drugs, 5) corrupt or willful misconduct in office, including any illegal or unethical act involving personal gain, and 6) "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). For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City terminates for cause this Agreement and/or the services of Employee hereunder, then Employee shall have no right to revert to the position of Deputy City Manager.

(b) Termination by City Council Without Cause. The City Council may terminate Employee's appointment as Interim City Manager without cause at any time based upon management reasons such as implementing the City's goals or policies, including but not limited to (i) change of administration or (ii) incompatibility of management styles, subject to Article 4.0 (entitled "Right to Reappointment to Deputy City Manager Position") below.

(c) Automatic Termination Due to Appointment of Permanent City Manager. This Agreement shall automatically terminate as of the effective date of the appointment of a permanent City Manager. In such event, Employee shall have the right to be reappointed to the position of Deputy City Manager as provided in Article 4.0 (entitled "Right to Reappointment to Deputy City Manager Position") below.

4.0 RIGHT TO REAPPOINTMENT TO DEPUTY CITY MANAGER POSITION

In the event this Agreement: i) is terminated by Employee as provided in Section 3.3, ii) is terminated by the City without cause as provided in Section 3.5(b), or iii) automatically terminates due to the appointment of a permanent City Manager as provided in Section 3.4(c), then Employee shall have the right to be reappointed to the position of Deputy City Manager earning the salary and enjoying the benefits specified in the Unrepresented Employees' Compensation Program, at her former step in the salary schedule for the position of Deputy City Manager (Step 5).

5.0 BENEFITS

5.1 Continuation of Benefits. During the term of this Agreement, Employee shall continue to receive the same benefits she received as Deputy City Manager prior to the Effective Date of this Agreement, including those provided for the position of Deputy City Manager in the Unrepresented Employees' Compensation Program; provided, however, that Employee is entitled to receive any additional or more generous benefits provided under the Appointed Employees' Compensation Program in the then-current Resolution.

6.0 BONDS AND INDEMNIFICATION

6.1 Indemnification. To the extent mandated by the California Government Code, the 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 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 any other intentional or malicious conduct or gross negligence of Employee. The City's obligations under this Section shall survive the termination of this Agreement.

6.2 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.

7.0 GENERAL PROVISIONS

7.1 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 the 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 promises not contained in this Agreement shall be valid or binding upon either party.

7.2 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 City Council approval.

7.3 Notices. 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:

Tina Kapoor
[On file with Human Resources Division]

Notices 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.

7.4 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, Sections 87100 et seq., Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

7.5 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.

7.6 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.

7.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

7.8 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 his or her 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 the 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.

7.9 Independent Legal Advice. The 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 has at least had the opportunity to do so, and the 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.

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, all in triplicate.

CITY: CITY OF CUPERTINO

By: _____
Liang Chao, Mayor

ATTEST:

Kirsten Squarcia, City Clerk

APPROVED AS TO FORM:
Aleshire & Wynder, LLP



Floy Andrews, City Attorney

EMPLOYEE



Tina Kapoor (Jul 9, 2025 11:22 PDT)

Eshverya Gianchandani aka Tina Kapoor

Revised Interim City Manager Employment Agreement (Tina Kapoor)

Final Audit Report


2025-07-09


Created:	2025-07-09
By:	Kirsten Squarcia (kirstens@cupertino.org)
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"Revised Interim City Manager Employment Agreement (Tina Kapoor)" History


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